* **HIGH COURT OF DELHI : NEW DELHI**

\+ **ITA No.15 of 2007**

Judgment reserved on: January 7, 2008

% Judgment delivered on: February 19, 2008

Director of Income Tax (Exemptions)
Aayakar Bhawan, IIIrd Floor,
Laxmi Nagar, Distt. Centre
Delhi – 110 092 ...Appellant

Through Mrs. Prem Lata Bansal, Advocate

Versus

Dalmia Shiksha Prathishthan
4, Scindia House
New Delhi ...Respondent

Through Mr. R.M. Mehta, Advocate

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

MADAN B. LOKUR, J.

The Revenue is aggrieved by an order dated 20th February, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench A, in ITA No.1059/Del/2002 relevant for the Assessment Year 1997-98.

2. The Assessee is a trust imparting education through four educational institutions in Orissa and Rajasthan. It is registered under Section 12A(a) of the Income Tax Act, 1961 (the Act) since 1985. Upto and including the Assessment Year 1996-97, the Assessee was allowed exemption under Section 10(22) of the Act but for the Assessment Year 1997-98, the Assessing Officer departed from the past stand despite the contention of the Assessee that there was no change in its activities, mode of investment or functioning.

3. The Assessing Officer took three factors into consideration for deciding against the Assessee, namely, –

(i) The Assessee had let out a property owned by it on

rent. According to the Assessee, it owned House No.55 at Palam Vihar, Gurgaon and one of the rooms therein was given to an employee of Dapel Investment for security purposes of the building and rent of Rs.375/- per month was received by the Assessee. Dapel Investment is a sister concern of the Assessee trust and the annual rent received by the Assessee was only Rs.4,500/-. We are of the view that this amount is far too insignificant for taking a decision against the Assessee and denying it exemption under Section 10(22) of the Act. Indeed, learned counsel for the Revenue also did not raise any contention in this regard.

(ii) The Assessee had earned some amount on sale of books and thus it existed for purposes of profit. In this regard, the contention of the Assessee was that it had earned an amount of only Rs.9,603/- through sale of books. The explanation given by the Assessee was that some of the schools of the Assessee were in backward areas of Rajasthan and books were required to be procured from the main cities and sold to the students. This resulted in a minor profit to the Assessee and this cannot by itself

be construed to mean that the Assessee did not exist solely for educational purposes but had a profit motive. In this regard also, we are of the opinion that the amount is far too insignificant for consideration and learned counsel for the Revenue merely mentioned it without actually raising any contentions in this regard.

(iii) The main ground on which submissions were made by learned counsel for the Revenue was the conclusion of the Assessing Officer that the Assessee had invested its funds with a non-governmental body. The Assessing Officer, therefore, held that the Assessee had diverted funds for non-educational activities.

4. The Assessee contested this view of the Assessing Officer and the Commissioner of Income Tax (Appeals) [CIT (A)] accepted the contention of the Assessee and came to the conclusion that there was no material to suggest that the Assessee had invested the funds with a profit motive.

5. The Revenue had challenged the view of CIT (A) but that was rejected by the Tribunal and that is how the Revenue is before us in this regard. Apart from the fact that there is a concurrent finding against the Revenue, we find that even otherwise no case has been made out for interference by the Revenue.

6. In ***Commissioner of Income Tax v. Delhi Kannada Education Society, [2000] 246 ITR 731***, this Court laid down the conditions precedent for availing exemption under Section 10(22) of the Act. This was the view expressed by this Court:-

> "The conditions precedent for availing of exemption to an educational institution under section 10(22) of the Act are as follows:
>
> (a) The educational institution must actually exist for application of the said provision and mere taking of steps would not be sufficient to attract the exemption.
>
> (b) The educational institution need not be affiliated to any university or Board; in fact a society need not itself be imparting education and it is enough if it runs some schools or colleges;
>
> (c) The educational institution must exist solely for educational purposes and not for purposes of profit.

> But, merely because there is a surplus, that is to say a surplus of receipts over expenditure it cannot be said that the educational institution exists for profit;
>
> (d) An entity may be having income from different sources, but if a particular income is from an educational institution which exists solely for educational purposes and not for purposes of profit, then that income would be entitled to exemption and further the income should be directly relatable to educational activity."

7. In ***Governing Body of Rangaraya Medical College v. Income Tax Officer, [1979] 117 ITR 284***, the Andhra Pradesh High Court observed as follows:-

> "Merely because certain surplus arises from its operations, it cannot be held that the institution is being run for the purpose of profit so long as no person or individual is entitled to any portion of the said profit and the said profit is used for the purposes and for the promotion of the objects of the institution."

8. As observed by the Supreme Court in ***Aditanar Educational Institution v. Additional Commissioner of Income Tax, [1997] 224 ITR 310 at 318***, the decisive or acid test is whether on an overall view of the matter, the object of the trust is to make

a profit.

9. Applying the principles laid down by this Court, the Andhra Pradesh High Court and, of course, the Supreme Court, it cannot be said that the object of the Assessee was to make a profit by investing its funds in a non-governmental organization. The fact of the matter is that the Assessee had certain amounts which it could have either kept with itself or it could have invested for the purposes of earning interest. In this particular case, the Assessee chose to earn some interest on the funds that it had and that is, of course, far more prudent a proposition then merely keeping the amount with it and not earning any interest thereon. Merely because the Assessee earns interest as a result of its investment would not mean that the Assessee ceased to exist solely for educational purposes.

10. In this regard, the Tribunal has referred to Circular No.712 issued by the Central Board of Direct Taxes on 25th July, 1995. The Circular reads as follows:-

"Investment of Funds by Educational Institutions Covered Under Section 10(22).

Under section 10(22) of the Income-tax Act, any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit, is exempt from tax.

2. The Board have received representations from various institutions which fulfil the conditions laid down under section 10(22) of the Act, but are denied exemption because their funds are not invested in accordance with the provisions of section 11(5) of the Act. It is hereby clarified that since section 10(22) does not impose any restriction regarding mode of investment of funds, such institutions are not required to invest their funds in the modes specified under section 11(5) of the Income-tax Act. This clarification will not apply to the institutions seeking exemption under section 11 of the Act.

Sd-/
H.K. Choudhary
Under Secretary to the
Government of India.
[F.No.165/3/95-ITA.I]"

11. A perusal of the above would show that there is no restriction regarding the mode of investment of funds by an educational institution. There is no obligation that an educational institution must invest its funds in the modes specified in Section

11(5) of the Act.

12. In so far as the present case is concerned, the Assessee invested its funds and the intention was to use the funds and any interest earned thereon for educational purposes. At least there is no finding given by the Assessing Officer to the contrary and, therefore, it cannot be said that the funds were invested by the Assessee for non-educational purposes or for making a profit and for utilizing that profit for purposes other than education.

13. We may also note that learned counsel for the Assessee stated at the Bar that even for the subsequent Assessment Year, that is, 1998-99, without there being any change in circumstances, the contention of the Assessee that it continues to be an educational institution and is entitled to exemption under Section 10(22) of the Act was accepted. The present Assessment Year 1997-98 is the only odd assessment year for which the Assessee has been denied exemption and that too for reasons that are not at all germane to the issue.

14. On these facts, in our opinion, no substantial question of law arises. The appeal is, accordingly, dismissed. We assess counsel's fee at Rs.10,000/- which amount will be deposited by the Revenue within a period of four weeks from today by a cheque drawn in favour of the Registrar General of this Court.

15. List for compliance on 24th March, 2008.

MADAN B. LOKUR, J

February 19, 2008 **V.B. GUPTA, J**
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Certified that the corrected copy of the judgment has been transmitted in the main Server.