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%23.09.2009

Present: Mr. K.Sampath, Advocate with Mr. S. Krishnan, Advocate for the petitioner.  
Ms. Prem Lata Bansla, Advocate for the respondent.

+ W.P.(C) No.8590/2009

\* Rule DB.

Ms. Prem Lata Bansal, Advocate for the respondent states that as she would be relying upon the impugned order passed by the Director General of Income Tax (Exemption), and no counter affidavit is required to be filed. The counsel for the parties are prepared to argue the matter finally, at this stage. With the consent of the counsel for the parties, we have therefore heard the matter.

The facts of the case are that the Sri Venkateswar Education Society was registered by the Registrar of Societies on April 30, 1996. It set up a secondary school affiliated to the Central Board of Secondary Education. The school viz., Venkateswar International School, Sector 10 Dwarka, New Delhi-75, has around 1800 students. The Society registered under the Societies Registration Act has been running this school which is its sole activity as of today. All monies are utilized for the school. Accordingly, the society applied to the Director (Exemptions) for the grant of exemption under Section 23(C)(vi) of the Income Tax Act, 1961 from the year 2007-08 onwards. All the twenty one aims and objects of the society, except for five, pertain directly to providing education and raising funds for this purpose only. In this overall context of the Society's objects stating the



imparting of education as its sole motive, the objects also provide for care of the destitute/orphan children, the backward, the medically needy and the aged and poor, to enable its students to fulfil the constitutional goal of a citizens duty to have compassion for fellow citizens.

According to the petitioner, these provisions are for enabling compassion to be built in child's education as is clear from the reading of Objects 10 to 12 and 15. Notwithstanding this spirit and objective behind the aforesaid clauses, the respondent has rejected the application of the petitioner for grant of exemption under Section 23(C)(vi) of the Income Tax Act on the ground that the objects 10 and 15 are not in the context of other objects for imparting education but solely as standalone objects. Thus, challenging the aforesaid rejection order passed by the respondent, present writ petition is filed.

Submission of learned counsel for the petitioner was that approach of the respondent was narrow and pedantic and in violation of two principles of legal interpretation, namely the object clause must be read as a whole and that the effort should be made to read them in a manner which would fulfil the spirit behind Section 23(C)(vi) of the Income Tax Act. It is argued that ignoring these principles of interpretation and the affidavit filed by the society that its monies have always been used and continue to be used only for education, the respondent ignoring the aforesaid aspect rejected the application.

Learned counsel for the respondent, on the other hand, submits that as per the provisions of Section 23(C)(vi), the exemption can be granted only if the society was being run solely for educational purpose and with the inclusion of other objectives particularly in sub-clauses 10,11,12 and 15



which relate to other objectives, the respondent rightly rejected the application of the petitioner society.

These other objectives, namely, which are contained in Clauses 10,11,12 and 15 read as under:

“ 10. To provide medical relief to the deserving and backward classes.

11. To construct and establish clinics and hospitals for providing such relief and rescue facilities.

12. Grant of medical relief in any form to the destitute orphans and to needy and poor persons who are dumped, blind, infirmed, or handicapped and to similar other persons.

15. To set up “Homes for the aged and poor persons” where in their old age they do not feel, as they have to do now as the cast aways of the Society. These are the people who spend all their lives in single minded pursuit of literature having never enough to meet even the present day requirement. In old age, they are often penniless, friendless, homeless. They are the people whom Society should give due respect and regards.”

We have considered the aforesaid submissions made by the counsel on either side. It is not in dispute that the petitioner is a Society registered under the Societies Registration Act and set up primarily for the purpose of imparting education. It is also not in dispute that it has set up a secondary school which is affiliated to Central Board of Secondary Education. This school is situated in Dwarka, New Delhi which has about 1800 students. It is also not in dispute that apart from the aforesaid educational institutions, no other activity is carried out by the petitioner. Thus, petitioner is carrying out the activity of education only, as of now.

In so far as apprehension of the respondent that in view of other objectives mentioned in the Memorandum of Association, the petitioner may



undertake those activities and channelize the funds generated from the aforesaid school to those activities, it is significant to point out that petitioner had filed affidavit with the respondent specifically undertaking as under:

“ It is customary and general practice to make the objects broad and wide at the time of drafting of objects of the society. The inclusion of the above objects is as a result of the same. However, it is pertinent to note that the society was never engaged in the past in any of the activity stated in the above objectives. The audited accounts are available on record to verify this fact.

We further assure and undertake that we shall not carry out any of the above mentioned activity in future. We are attaching herewith Affidavit to that effect from the President of the Society.”


Learned counsel for the petitioner states that petitioner society shall continue to abide by the undertaking.

The apprehensions of the respondent are thus taken care of by giving of the aforesaid undertaking. Further, in case such an undertaking is violated, the remedial action can always be taken by the respondent by withdrawing the exemption so granted. All these aspects are discussed in detail by the Supreme Court in *American Hotel and Lodging Association Educational Institute Vs. CBDT and Ors.* 301 ITR 86 and by this Court in *Digember Jain Society for Child Welfare Vs. Director General of Income Tax (Exemptions) (2009) 183 TAXMAN 462(Delhi)*, following the aforesaid judgment of the Supreme Court. In view of the aforesaid, we allow this writ petition. Impugned order passed by the Director is set aside and mandamus is issued to the respondent to grant exemption to the



petitioner under Section 10(23C)(vi) of the Income Tax Act for the year  
2007-08 onwards.

No order as to costs.

  
A.K.SIKRI, J

  
VALMIKI J. MEHTA, J

September 23, 2009  
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