



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

WP (C) No. 5587 of 2008

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Decided on 8th October, 2009.

Sanatan Dharam Education Trust, New Delhi . . . Petitioner

through : Mr. K. Santanam, Advocate.

VERSUS

Director General, Income Tax, Delhi . . . Respondent

through: Ms. P.L. Bansal, Advocate.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (Oral)

1. The present writ petition has been filed by the petitioner against the impugned order passed by the Director General of Income Tax (Exemptions) dated 25.03.2008, whereby the commissioner had dismissed the application of the petitioner seeking exemption under section 10(23C)(vi) of the Income Tax act (hereinafter referred to as The Act) holding that the petitioner trust does not exist solely for educational purposes.
2. The observation made by the commissioner while dismissing the application of the petitioner seeking exemption is reproduced below:

“7. I have considered the case of the applicant in the light of above provisions of the Act, and the judgments of the Hon'ble Supreme Court and the High Court of Gujrat in the cases of Sole Trustee Loka Shikshana Trust and Saurashtra Education Foundation respectively. In the case of Applicant, the non-educational objects laid down as per the clause 3 of the MOA are as follows:



Clause (c) To collect, manage and distribute funds.

Clause (i) To propagate healthy literature in various moral, spiritual, philosophical or ethical classics.

8. The above clauses do not relate to the formal education as defined by the Hon'ble Supreme Court and High Court of Gujarat in the cases cited above. Each object is independent of the other and it cannot be said that one of them is the primary object and the others are ancillary to it. It can also be not be said that the main object is education and others are related to it. Each objects exists for a specific purpose for which it has been laid down. By leaving such non-educational object loose ended, the applicant will always be at liberty to apply its income towards these objects. This is not what is envisaged in Section 10(23C)(vi). The applicant must exist solely for education. The word solely as defined in "The Law Lexicon" by P. Ramanatha Aiyer means "alone", "single", "used in contradiction to joint". Further, solely means "exclusive". This shows that the objects, primary or ancillary must be solely for education and not for any other charitable purpose."

3. The commissioner has dismissed the application of the petitioner holding that the clauses enumerated above have taken the activities of the petitioner trust beyond the purview of the word "*existing solely for the purpose for education*".
4. We may also note that the Petitioner trust came into existence in the year 1986. The petitioner trust has claimed this exemption in the earlier years also under section 10(22), now substituted by section 10(23C)(vi) and for the assessment year 1985-86 the trust was granted this exemption vide order of the Tribunal dated 31.08.1994. Now after the substitution of section 10(22) by section 10(23C)(vi) such an exemption has to be taken in every assessment year and therefore the commissioner held that the said order of the tribunal does not help the petitioner due to change in the law.
5. Learned counsel for the petitioner has submitted that the petitioner trust exists solely for the purpose of education and the above clauses are meant for promotion of education only and all the income generated by the trust is solely utilized for the



furtherance of its main object which is education only. *Per Contra*, le counsel for the department has relied on the order of the commissioner and contended that there are apprehensions that after claiming the exemption the petitioner may utilize its income for other purposes under the aegis of the clauses mentioned above.

6. We are unable to accept the contentions of the learned counsel for the Revenue in as much as the apprehension shown by the counsel is preposterous. The exemption available under section 10(23C)(vi) has to be claimed by the petitioner trust on year to year basis and whenever the department finds that the petitioner is utilizing its income for the purpose other than promoting education, then the department is very much empowered to withdraw the exemption so granted. This is so held by the Supreme Court in the case of *American Hotel & Lodging Association Educational Institute v. CBDT & Ors.* 301 ITR 86 wherein the court observed that:

“In order to bind the institutions etc. to properly implement the rigors contained in the third proviso, the Supreme Court provided the solution also in the aforesaid judgment, which is this: on fulfilling the threshold conditions, approval could be granted with the stipulation that conditions mentioned in the third proviso would be carried by the applicant. The Supreme Court also was of the view that while imposing such stipulation, subject to the approval as granted, the prescribed authority may insist on certain percentage of accounting income to be utilized/applied for imparting education in India, as it was a case of a foreign educational institutions.”

7. Following the aforesaid judgment this court has had an occasion to deal with an identical issue in the case titled as *Sri Venkateshwar Educational Society Regd. Vs. Director General Income Tax*, [WP(c)No. 8590/2009, decided on 23.09.2009] wherein this court had observed that the petitioner being a registered society is indulging in educational activities only and for the purpose of utilizing



its fund for educational activities only, the petitioner can give undertaking t
will not utilize its fund for any purpose other than education. Following
observations were made in this behalf:

"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 indulging in 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, 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."

8. The issue involved in the present case is somewhat similar to the case discussed above. Hence, we are of the view that the apprehension of the respondent that the petitioner may utilize its funds for the purpose other than education can be taken care of by taking such an undertaking from the petitioner to the effect that it shall not carry out any activity other than educational activity and in case such an undertaking is violated, the respondent has all the right to withdraw the exemption so granted to the petitioner.



9. 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.

A handwritten signature in black ink, appearing to read 'A.K. Sikri'.

(A.K. SIKRI)
JUDGE

A handwritten signature in black ink, appearing to read 'Siddharth Mridul'.

(SIDDHARTH MRIDUL)
JUDGE

October 08, 2009/pmc