



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

+ **W.P.(C) 9986/2009**

M/S. ALL INDIA J.D. EDUCATIONAL SOCIETY Petitioner
Through: Dr. Rakesh Gupta, Advocate with
Ms. Rani Kiyala, Advocate.

versus

DIRECTOR GENERAL OF INCOME
TAX (EXEMPTIONS) DELHI. Respondent
Through: Ms. Prem Lata Bansal, Advocate.

Reserved on: 25th October, 2010

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Date of Decision: 19th November, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No.
2. To be referred to the Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

J U D G M E N T

MANMOHAN, J :

1. The present writ petition has been filed under Articles 226 and 227 of the Constitution of India seeking issuance of writ of certiorari quashing the order dated 28th November, 2008 of Director General of Income Tax (Exemptions) (in short, "DGIT(E)") passed under Section 10(23C)(vi) of the Income Tax Act, 1961 (for brevity, "the Act").

2. Facts of the present case are that the petitioner is a registered Educational Society (hereinafter referred to as "petitioner society") with



its registered office at Delhi. The petitioner society has been running Ayurvedic Medical College namely, J.D. Ayurvedic Medical College and Hospital situated at Bhankari, G.T. Road, Aligarh, Uttar Pradesh. The petitioner society had made an application before DGIT(E) seeking exemption under Sections 10(23C)(iv) and 10(23C)(via) of the Act. Later on at petitioner society's request the application was confined to seeking exemption under Section 10(23C)(via) of the Act which provides exemption in respect of hospital or other institution for reception and treatment of persons suffering from illness. The DGIT(E) after examining the relevant documents and other submissions of the petitioner society, rejected the grant of exemption under Sec. 10(23C)(vi) of the Act by its order dated 28th November, 2008.

3. Dr. Rakesh Gupta, learned counsel for the petitioner society submitted that DGIT(E) had passed the impugned order without affording an opportunity of being heard to the petitioner society and thus violated the principles of natural justice. Mr. Gupta further submitted that though there was a delay in filing the application on part of the petitioner society and there being no provision for condonation of delay in filing the application, yet the DGIT(E) in exercise of its judicial power of granting approval under Section 10(23C) of the Act should have condoned the delay in the interest of justice as sufficient cause was shown by the petitioner society.

4. Mr. Gupta further submitted that the DGIT(E) had failed to



consider the replies of the petitioner society vide letters dated October, 2008, 07th November, 2008 and 25th November, 2008 wherein the clarifications sought by the DGIT(E) in regard to discrepancies in the records of petitioner society were provided.

5. Lastly, Mr. Gupta submitted that DGIT(E) had failed to appreciate the fact that the activities of the petitioner society had already been examined by the Income Tax Department thrice viz. while granting exemption under Section 12A of the Act in 2004, granting registration under Section 80G of the Act in 2007 and while framing of assessment under Section 143(3) of the Act for the assessment year 2005-2006 in 2007.

6. Ms. Prem Lata Bansal, learned counsel for the respondent submitted that the petitioner society was granted sufficient number of opportunities of being heard and it was not a case of violation of principles of natural justice.

7. Ms. Bansal further submitted that the provisions of Section 10(23C) were amended w.e.f. 01st June, 2006 and as per the amended provision, the application under Section 10(23C) of the Act for the assessment year 2007-2008 could have been filed by the petitioner society on or before 31st March, 2007 and, therefore, the application dated 05th November, 2007 was beyond the prescribed time limit.

8. Ms. Bansal further submitted that clauses 4, 8 and 11 describing



the aims and objects of the petitioner society under the Memorandum Society were other than for hospital as prescribed under Section 10(23C)(via) of the Act. She submitted that according to third proviso to Section 10(23C)(via) of the Act, the prescribed authority granting exemption, had to ascertain as to whether applicant applied its income wholly and exclusively to the objects for which it was constituted or established. She further submitted that in the present case DGIT(E) examined the books of account including the donation account and salary registers and found them to be manipulated. She submitted that DGIT(E) had rightly arrived at the finding that the activities of the petitioner society were not genuine and charitable and the petitioner society was being run for profitable purposes with huge siphoning off money of the petitioner society.

9. Lastly, Ms. Bansal relied upon the decision of the Supreme Court in *American Hotel & Lodging Association Educational Institute Vs. CBDT, 30 ITR 86* to submit that even in cases where approval has already been granted, the prescribed authority is empowered not to renew or even withdraw the approval in case there is a violation of the provisions of the Act. She submitted that therefore, the principle of res judicata does not apply to the facts of the present case.

10. Having heard the learned counsel for the parties and perused the record, we find that the application was admittedly filed beyond the prescribed date and the sole explanation of delay given by the petitioner



society in the letter dated 21st October, 2008 was that the provision a new one. It is a settled position of law that ignorance of law is not an excuse. The question whether DGIT(E)'s power of approval under Sec.10(23C) of the Act is judicial or administrative in nature is immaterial in view of the unconvincing explanation offered by the petitioner society. Consequently, we are of the opinion that the application filed by the petitioner society was barred by limitation. But having regard to the fact that we have heard the matter, we are disposing of the case on merits also.

11. We are of the considered opinion that the petitioner society's contention that there was violation of principles of natural justice is baseless. We gather from the records that the petitioner society was in fact granted opportunities of being heard on six different occasions namely, 13th October, 2008, 21st October, 2008, 31st October, 2008, 04th November, 2008, 07th November, 2008 and 25th November, 2008. Out of these, petitioner society itself sought adjournment on three occasions and the submissions of the petitioner society on the other three hearings are on record vide letters dated 21st October, 2008, 07th November, 2008 and 25th November, 2008. In fact, the petitioner society in its letter dated 25th November, 2008 submitted as under:-

"In view of the above explanation, affidavits submitted by the employees and their personal presence here before Your Goodself for cross examination, it is humbly submitted that the Society has discharged its onus and have reasonably established that the salary was paid to the employees and the signature were appended by the employees while accepting the salary from the Society. All



the employees have owned the signatures appended in front of their name in the Salary Registers.

It is therefore, humbly prayed that the no adverse inference may be drawn out of the alleged irregularities in the Salary Registers as the Society has established and substantiated its claim of salary been paid to the employees.”

12. From the aforesaid quotation, it is apparent that the petitioner society had placed on record before the DGIT(E) all the evidence it had in its possession.

13. Further, we are in agreement with Ms. Prem Lata Bansal, learned counsel for the respondent that the principle of res judicata is not applicable to the facts of the present case. We believe that not finding any discrepancy or inconsistency in earlier years while granting exemption under Section 12A and registration under Section 80G of the Act would not automatically entitle the petitioner society to have approval under Section 10(23C) in subsequent years. In income tax matters, each assessment year is an independent year and the principle of res judicata, in general is not applicable. We may refer with profit the decision of the Supreme Court in *Municipal Corpn. of City of Thane v. Vidyut Metallics Ltd.,(2007) 8 SCC 688* wherein it has been held as under:-

“18. So far as the proposition of law is concerned, it is well settled and needs no further discussion. In taxation matters, the strict rule of res judicata as envisaged by Section 11 of the Code of Civil Procedure, 1908 has no application. As a general rule, each year’s assessment is final only for that year and does not govern later years, because it determines the tax for a particular period. It is, therefore, open to the Revenue/Taxing Authority to



consider the position of the assessee every year for the purpose of determining and computing the liability to pay tax or octroi on that basis in subsequent years. A decision taken by the authorities in the previous year would not estop or operate as res judicata for subsequent year (vide Maharana Mills (P) Ltd. v. ITO; Raja Bahadur Visheshwara Singh v. CIT; Instalment Supply (P) Ltd. v. Union of India; New Jehangir Vakil Mills Co. Ltd. v. CIT; Amalgamated Coalfields Ltd. v. Janapada Sabha; Devilal Modi v. STO; Udayan Chinubhai v. CIT; M.M. Ipoh v. CIT; Kapurchand Shrimal v. Tax Recovery Officer; CIT v. Durga Prasad More; Radhasoami Satsang v. CIT; Society of Medical Officers of Health v. Hope; Broken Hill Proprietary Co. Ltd. v. Broken Hill Municipal Council; Turner on Res Judicata, 2nd Edn., Para 219, p. 193).

(emphasis supplied)

14. In addition, we find that the DGIT(E) has acted within the ambit of second proviso of Section 10(23C) of the Act. The second proviso reads as under:-

“[Provided further that the prescribed authority, before approving any fund or trust or institution or any university or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, and the prescribed authority may also make such inquiries as it deems necessary in this behalf]”

(emphasis supplied)

15. From a perusal of the papers and in particular the impugned order, it is apparent that the petitioner society has neither maintained



proper books of account nor proper receipts of donations. Also sala are shown to have been paid to the employees even though they had resigned. Also the DGIT(E) cross-examined the persons presented as witnesses by the petitioner society and found their statements contrary to the records of the petitioner society. Some of the relevant observations in the impugned order are reproduced hereinabove:-

“3. Thus, the Mittal family has been shown to give donation to the society on 16 occasions. But, the donation receipt books of the applicant did not show a single receipt issue by the society to anyone in the Mittal family for the donations received.....”

4. Considering all these facts, it was obvious that the applicant’s books of accounts were manipulated and its activities were not genuine and charitable.....”

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6. However, the applicant filed the affidavits of following persons but did not produce them for examination:-

- i) Dr. Anurag Dixit
- ii) Sh. Sarvesh Kumar

Further, it did not file any affidavit in the case of Sh. Dinesh Kumar Yadav and also did not produce him for examination. The evidence filed in respect of these three persons and the facts found from Salary Registers of the applicant are discussed hereafter.

7.As per his appointment letter (Annexure B-3 and B-4) filed by the applicant, he was appointed to the post on 17.05.2005 and as per his resignation letter filed before me (Annexure B-5 to the order), he resigned w.e.f. 31.07.2005. However, the examination of the salary Register reveals that he was shown to have been paid salary as under:-

| <u>S.No. in the salary Register</u> | <u>Month/Year</u> | <u>Pay</u> |
|-------------------------------------|-------------------|------------|
| 11 | April, 2005 | Rs.8,500/- |



| | | |
|----|-----------------|-------------|
| 11 | May, 2005 | Rs. 8,500/- |
| 11 | June, 2005 | Rs. 8,500/- |
| 11 | July, 2005 | Rs. 8,500/- |
| 11 | August, 2005 | Rs. 8,500/- |
| 11 | September, 2005 | Rs. 8,500/- |
| 11 | October, 2005 | Rs. 8,500/- |
| 11 | November, 2005 | Rs. 8,500/- |
| 11 | December, 2005 | Rs. 8,500/- |
| 12 | January, 2005 | Rs. 8,500/- |
| 11 | February, 2006 | Rs. 8,500/- |
| 11 | March, 2006 | Rs. 8,500/- |
| 9 | April, 2006 | Rs. 8,000/- |
| 10 | May, 2006 | Rs. 8,000/- |
| 10 | June, 2006 | Rs. 8,000/- |
| 8 | July, 2006 | Rs. 8,000/- |
| 8 | August, 2006 | Rs. 8,000/- |
| 7 | September, 2006 | Rs. 8,000/- |
| 7 | October, 2006 | Rs. 8,000/- |

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10. Thus, comparison of the affidavits, appointment letters, resignation letters of these persons filed by the applicant on 25.11.2008 with the salary registers of the applicant clearly shows that the society is run for profit and not for charitable purpose as the books of accounts are heavily doctored to siphon off money of the society. It is apparent that the income of the applicant society was not applied wholly and exclusively to the objects for which it was established."

(emphasis supplied)

16. Moreover, we are of the opinion that this Court in its writ jurisdiction cannot re-evaluate the evidences presented before DGIT(E). DGIT(E) has reached the factual finding after appreciation of the evidence and cross-examination of witnesses. The petitioner society was given opportunity of being heard before passing the impugned order. In absence of any contravention of fundamental rights or violation of principles of natural justice or gross unreasonableness or arbitrariness, this Court would neither interfere nor substitute its own



views in place of the decision taken by the DGIT(E). The jurisdiction is not intended to be an appellate jurisdiction.

17. Consequently, the present petition, being devoid of merit, is dismissed but with no order as to costs.


MANMOHAN, J


CHIEF JUSTICE

NOVEMBER 19, 2010
js/ms