Reportable

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

\+ **ITA No.454 of 2010**
ITA No.513 of 2010

RESERVED ON: June 03, 2011
% PRONOUNCED On: July 11, 2011

COMMISSIONER OF INCOME TAX . . . APPELLANT

through : Ms. Prem Lata Bansal, Sr. Advocate with Mr. Deepak Anand, Advocate.

VERSUS

ASSOCIATION OF FINANCIAL PLANNERS . . .RESPONDENT

through: Mr. Ajay Vohra, Advocate with Ms. Kavita Jha, Advocate and Mr. Somnath Shukla, Advocate.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

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.

1. These two appeals relate to the Assessment Years 2002-03 and 2003-04 preferred against the impugned order dated 19.02.2009 passed by the Income Tax Appellate Tribunal

(hereinafter referred to as 'the Tribunal') covering both the assessment years by the said common order. The question which arises for consideration was common to both the years which had arisen before the Tribunal to decide the same by a singular order.

2. The issue touches upon the allowability of exemption to the assessee under Section 10(23C)(iiiad) of the Income Tax Act (for brevity 'the Act') and \][has arisen under the following circumstances. For the Assessment Year 2002-03, the assessee filed the income tax return declaring income at 'NIL' claiming exemption under Section 11 of the Act. The assessee, which is a society under the Societies Registration Act, claims to be an "Educational Institution", having been found solely for the purposes of imparting education. The assessment was made under Section 144 of the Act, as the assessee had failed to appear in spite of notices. During the assessment proceedings, it was found by the Assessing Officer (AO) that the assessee Trust was not registered under Section 12A of the Societies Registration Act. Because of non-registration, the benefit of Section 11 of the said Act was admittedly not available and therefore, the AO denied the same to the assessee. He disallowed all the expenditure amounting to

₹16,95,372/- claimed by the assessee and framed the assessment at ₹72,830/-.

3. Against this order of the AO, the assessee preferred an appeal before the CIT(A). Before the CIT(A), it was pleaded by the assessee that along with the income tax return, it had filed audited accounts which carried evidentiary value, but the supporting evidence in respect of expenditure incurred could not be filed before the AO due to gross negligence on the part of Accountant. The assessee impliedly expected the fact that since it was not registered under Section 12A of the Societies Registration Act, it could not claim benefit of Section 11 thereof. However, at the same time, the assessee pleaded for exemption to be granted to it under Section 10(23C)(iiiad) of the Act on the ground that since it was devoted solely to educational activities, it was entitled to exemption under this Section, in any case. Insofar as non-filing of the supporting evidence before the AO due to alleged negligence on the part of the Accountant is concerned, the AO was not justified in disallowing the entire expenditure despite the audited accounts being existed on record before him. He allowed all the expenditure except provisions for bad debts amounting to ₹30,357/- and the amount of ₹1 lac out of total travelling expenses of ₹5,05,131/-. CIT (A) also went into the question of

applicability of provision of Section 10(23C)(iiiad) of the Act, examining the documents filed by the assessee in support of this claim and also invited comments of the AO. The AO, however, reported that various particulars were given to the assessee by him at the time of assessment proceedings by issuing notices, but the assessee had not responded and therefore, there was no question of allowing the assessee to raise such plea for the first time before the appellate authority. The CIT (A) rejected this contention of the AO and analyzed the documents filed before him. On the basis of which, he came to the conclusion that the assessee was existing solely for educational purposes and that its receipts were less than ₹1 Crore and therefore, the assessee was entitled to exemption under Section 10(23C)(iiiad) of the Act.

4. The course of events has travelled the same path insofar as Assessment Year 2003-04 is concerned.

5. The Revenue, thus, filed appeals against the orders of the CIT (A) in respect of both the assessment years which have been dismissed by the Tribunal holding that the assessee fulfils the eligibility conditions contained in Section 10(23C)(iiiad) of the Act and is, thus, entitled to exemption under the said provision.

6. We may also mention that the assessee had also filed appeals against that part of the order of the CIT(A) where expenditure to certain extent was disallowed by the CIT(A). These appeals have been dismissed by the Tribunal and this position has been accepted by the assessee as no appeal has been preferred by the assessee.

7. The grievance of the Revenue in these appeals is two-fold:

(a) CIT(A), qua for that matter the Tribunal, was not competent to go into the exemption under Section 10(23C)(iiiad) of the Act, as no such exemption under the said provision was claimed by the assessee before the AO and the AO had no opportunity to examine the same.

(b) Even on merits, it is the order of the authorities below is assailed that all the conditions are not satisfied for availing exemption by the assessee.

8. In support of the first proposition, the learned counsel for the Revenue relied upon the judgment of the Supreme Court in the case of ***Commissioner of Income Tax Vs. Stepwell Industries Ltd. and Others [228 ITR 171]*** and particularly the following passage therefrom:

> "The Tribunal was wrong in allowing the claim of the assessee for weighted deducted under section 35B without going into the facts of the case. The claim was not made before the Income-tax Officer or the Appellate Assistant Commissioner. No particulars of the expenditures were

> furnished to them. The particulars should have been placed before the Income-tax Officer or the Appellate Assistant Commissioner for examination. The onus of proving the facts and getting the benefit of the deduction lies on the assessee. The assessee not having proved anything either before the Income-tax Officer or the Appellate Assistant Commissioner cannot get this deduction. The Tribunal cannot allow the claim on assumption of facts"

9. We are not convinced by the aforesaid submission by the Revenue in the facts of this case. In the first instance, as already noted above, assessment order passed by the AO is under Section 144 of the Act. No doubt, in the income tax return filed by the assessee, it had claimed exemption under Section 11 of the Act. However, in support of this claim, the assessee had filed the requisite documents and particularly, the Memorandum of Association (MoU) which explains the activities of the assessee. The claim of the assessee was that it is the Trust established for the purpose of "Educational Activities" and therefore, should be treated as a Trust established wholly for the charitable purpose and income derived from property held by the assessee, which is a Trust, wholly for charitable purposes should be exempted under Section 11 of the Act. It is not in dispute that a Trust which carries out pure educational activities would qualify as Trust established for "charitable purposes". However, to claim exemption under Section 11 of the Act, it is a pre-condition that the same is given registration such as under Section 12A of the

Act. For this technical reason, the assessee could not be granted exemption under Section 11 of the Act. At the same time, such educational Trust can seek exemption also under Section 10(23C)(iiiad) of the Act a well. This provision reads as under:

> "**Income not included in total income;**
> **10.** In computation the total income of a previous year of any person, any income falling within any of the following clauses shall not be included –
>
> (23C)(iiiad) – any university or other educational institution existing solely for educational purposes and not for purposes profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed;"

10. As per this provision, income of any person is not to be included in total income if it falls within any of the clauses mentioned in sub-clause (iiiad) of sub-section (23) of Section 10 of the Act, if following two conditions are satisfied:

    (i) It exists solely for educational purposes and not for purposes of profits.

    (ii) Aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed. The prescribed amount is ₹1 Crore.

11. From the aforesaid discussion, it would clearly follow that an educational institution, if it is a Trust, can claim exemption as a Trust established for charitable purposes under Section 11 of

the Act. It is also an option to seek the benefit of Section 10(23C)(iiiad) of the Act if the aforesaid conditions stipulated therein are fulfilled.

12. In the present case, on the basis of some material which were produced for seeking exemption under Section 11 of the Act, the assessee Trust sought exemption under Section 10(23C)(iiiad) before the CIT(A), which was not a new case pleaded before the CIT(A). On the basis of material produced, arguments of the assessee was that if under Section 11 of the Act, benefit is not available, at least benefit under Section 10(23C)(iiiad) was available. That apart before examining this condition, the CIT(A) asked remand report from the AO. However, the AO refused to even comment on merits of the claim of the assessee and simply objected to the plea of the assessee only on the ground that since no compliance was made on various noticed issued by the AO, the claim of the assessee could not be accepted.

13. In these circumstances, this very contention was rightly rejected by the Tribunal. We do not find any merit in the contention of the Revenue assailing the order of the Tribunal.

14. Coming to the second issue, viz., whether the assessee Trust is solely for the purposes of education. We find that the assessee highlighted the following aspects on the basis of which it was claimed that the assessee Trust had been formed solely for imparting education:

> "(a) The Insurance Regulatory Development Authority has approved the appellant's syllabus for insurance and risk planning and has registered the appellants as an approved education body for imparting training.
>
> (b) The appellant had been registered under the Investor Education and Protection Fund by the Department of Company Affairs.
>
> (c) The appellant is an affiliate of the Certified Financial Planner – Board of Standards located at Denver, USA.
>
> (d) The appellant has license to administer the CFP Certification in India and as per the education process all students who are registered with appellant have to undergo training for a minimum prescribed period, in lines with prescribed syllabi before enrolling for examination.
>
> (e) The training is imparting by Education Providers who are approved and appointed by the appellant. The Certification Education Programme (CEP) consists of the following module;
>
> (i) Introduction to Financial Planning
>
> (ii) Insurance Planning & Risk Management
>
> (iii) Retirement Planning & Employees Benefits.
>
> (iv) Investment Planning
>
> (v) Tax Planning
>
> (vi) Financial Plan"

15. In addition to detailed note on educational activities that are being undertaken by the assessee, was also filed. The CIT(A)

went to this question and examined the MoU on the basis of which he concluded that the assessee Trust exists solely for educational purposes and not for profit and therefore, its activities are squarely covered within the expression "educational activity" that would be exempted under Section 10(23C)(iiiad) of the Act. This order has been upheld by the Tribunal after reappreciating the entire evidence.

16. Though these are the findings of facts, to satisfy ourselves, we also went through the documents including the MoU which was filed by the assessee before the authorities below and we are convinced that the activity actually carried out by the assessee was solely for the purpose of educational purpose and not for other purposes.

17. We are, thus, of the opinion that no substantial question of law arises. These appeals are accordingly dismissed.

(A.K. SIKRI)
JUDGE

(M.L. MEHTA)
JUDGE

JULY 11, 2011
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