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

\+ **Writ Petition (Civil) No. 7578/2008**

Reserved on : 5th July, 2011
% **Date of Decision** : 14th July, 2011

Palam Jain Educational & Welfare Society ....Petitioner
Through Mr. Pankaj Jain and
Mr. M.L. Choudhary, Advocates.

VERSUS

Director General of Income Tax (Exemptions) .....Respondent
Through Ms Suruchi Aggarwal, Advocate.

CORAM:
HON'BLE MR. JUSTICE DIPAK MISRA, THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

SANJIV KHANNA, J.:

The petitioner, Palam Jain Educational and Welfare Society, has prayed for issue of writ in the nature of certiorari for quashing the order dated 26th September, 2008, dismissing the petitioner's application under Section 10(23C)(vi) of the Income Tax Act, 1961 (Act, for short). In the impugned order it has been held that

(1) The petitioner has not been solely established educational purposes, as two of its main objects are :

(a) to establish, manage, administer hostels for students who come to Delhi for competitive examinations, taking coaching for competitive examinations;

(b) to establish, administer reading rooms or library for providing facilities for research in spiritualism, yoga, cultures, traditions, folk arts and various schools of philosophy.

(2) That the word 'education' has to be given restrictive meaning and connote process of training and developing knowledge, skilled mind or character of students by schooling/university/formal educational process (refer ***Sole Trustee Loka Shiskhana Trust vs. Commissioner of Income Tax,*** *(1975) 101 ITR 234 (SC)*.

(3) Under the Income Tax Rules 1962, approval under Section 10(23C)(vi) of the Act is not a one time approval but has to be taken periodically. Therefore, earlier

approvals granted under Section 10(23) or 10(23C)(v

the Act are inconsequential.

2. The petitioner is a society which was registered on 31st October, 1974 under the Societies Registration Act, 1860. In 1976, it established Delhi Jain Public School, which has been recognized by Directorate of Education, Govt. of NCT of Delhi and Central Board for Secondary Education, as an unaided recognized minority school. In the same year, the petitioner also established Delhi Jain Nursery School for pre-primary education. In 1997, the petitioner established another Sr. Secondary School viz. Jinvani Bharti Public School which is recognized by Directorate of Education, Govt. of NCT of Delhi and Central Board for Secondary Examination as an unaided recognized minority school.

3. The petitioner claims that it has been all along recongised as a charitable institution and was granted exemption under Section 10(22) and subsequently 10(23C)(vi) of the Act. The petitioner has enclosed along with the writ petition two orders dated 8th June, 2004 and 13th Septmeber, 2005 passed by the Director General of Income Tax (Exemptions) granting exemption under

Section 10(23C)(vi) of the Act for the years 2002-2003 to 2005 and 2005-06 to 2007-08 respectively, subject to certain conditions mentioned therein. This is admitted and accepted as factually correct by the respondent.

4. What has been highlighted and pointed out to us by the learned counsel for the petitioner is that vide letter dated 16th March, 2004, Income Tax Officer (Exemptions) for DGIT (E) had informed the petitioner that they were required to amend their Memorandum of Association and suitably delete non-educational clauses for considering their application for notification under Section 10(23C)(vi) of the Act for the assessment year 2002-03 to 2004-05. Thereafter, by letter dated 3rd June, 2004, the petitioner society informed the respondent that they had amended their object clause in their meeting on 19th December, 2003, which was confirmed on 2nd February, 2004. They also informed that they have removed the non-educational clauses from its aims & objects. It has been emphasized and high-lighted that it is only after this letter that notification/order dated 8th June, 2004 was issued by Director General of Income Tax (Exemptions). It is

submitted by the counsel for the petitioner that this aspect has been wholly ignored in the impugned order dated 26th September, 2008. The amendment of the object clause and the effect thereof has not been examined and gone into by the respondent.

5. This apart, the petitioner has rightly relied upon the decision of the Supreme Court in ***American Hotel & Lodging Association Educational Institute Vs. Central Board of Direct Taxes & Ors.,*** *(2008) 301 ITR 86 (SC)***.** In the said decision, the Supreme Court considered the effect of insertion of provisos to Section 10(23C)(vi) introduced by finance Act (No.2), 1998 and it was observed as under:-

> "We shall now consider the effect of insertion of the provisos to section 10(23C)(vi) vide ht Finance (No.2) Act, 1998. Section 10(23C)(vi) is analogous to section 10(22). To that extent, the judgments of this court as applicable to section 10(22) would equally apply to section 10(23C)(vi). The problem arises with the insertion of the provisos to section 10(23C)(vi). With the insertion of the provisos to section 10(23C)(vi) the applicant who seeks approval has not only to show that it is an institution existing solely for educational purposes (which was also the requirement under section 10(22)) but it has now to obtain initial approval from the prescribed authority, in terms of section 10(23C)(vi) by making an application in the standardized form as mentioned in the first proviso to that section. That condition of obtaining approval from the prescribed authority came to be inserted because

> section 10(22) was abused by some educational institutions/universities. This proviso was inserted along with other provisos because there was no monitoring mechanism to check abuse of the exemption provision. With the insertion of the first proviso, the prescribed authority is required to vet the application."

6. In the said case, Supreme Court also considered and held that the provisions of Section 10(23C)(vi) are analogous to Section 10(22) and thereafter explained the effect by enactment of proviso to the new Section inserted by Finance Act (No. 2), 1998 as under:-

> "The most relevant proviso for deciding this appeal is the thirteenth proviso. Under that proviso, the circumstances are given under which the prescribed authority is empowered to withdraw the approval earlier granted. Under that proviso, if the prescribed authority is satisfied that the trust, fund, university or other educational institution, etc. has not applied its income in accordance with the third proviso or if it finds that such institution, trust or fund, etc. has not invested/deposited its fund in accordance with the third proviso or that the activities of such fund or institution or trust, etc. are not genuine or that its activities are not being carried out in accordance with the conditions subject to which approval is granted then the prescribed authority is empowered to withdraw the approval earlier granted after complying with the procedure mentioned therein. Having analysed the provisos to Section 10(23C)(vi) one finds that there is a difference between stipulation of conditions and compliance therewith. The threshold conditions are actual existence of an

educational institution and approval of the prescribed authority for which every applicant has to move an application in the standardized form in terms of the first proviso. It is only if the pre-requisite condition of actual existence of the educational institution is fulfilled that the question of compliance with the requirements in the provisos would arise. We find merit in the contention advanced on behalf of the appellant that the third proviso contains monitoring conditions/requirements like application, accumulation, deployment of income in specified assets whose compliance depends on events that have not taken place on the date of the application for initial approval.

To make the section with the proviso workable we are of the view that the monitoring conditions in the third proviso like application/utilization of income, pattern of investments to be made, etc., could be stipulated as conditions by the prescribed authority subject to which the approval could be granted. For example, in marginal cases like the present case, where the appellant institute was given exemption upto the financial year ending March 31, 1998 (assessment year 1998-99) and where a application is made on April 7, 1999, within seven days of the new dispensation coming into force, the prescribed authority can grant approval subject to such terms and conditions as it deems fit provided they are not in conflict with the provisions of the 1961 Act (including the abovementioned monitoring conditions). While imposing stipulations subject to which approval is granted, the prescribed authority may insist on certain percentage of accounting income to be utilized/ applied for imparting education in India. While making such stipulations, the prescribed

> authority has to examine the activities in India which the applicant has undertaken in its constitution, memoranda of understanding and agreement with the Government of India/National Council. In this case, broadly the activities undertaken by the appellant are conducting classical education by providing course materials, designing courses, conducting exams, granting diplomas, supervising exams, all under the terms of an agreement entered into with institutions of the Government of India. Similarly, the prescribed authority may grant approvals on such terms and conditions as it deems fit in case where the institute applies for initial approval for the first time. The prescribed authority must give an opportunity to the applicant institute to comply with the monitoring conditions which have been stipulated for the first time by the third proviso. Therefore, cases where earlier the applicant has obtained exemptions(s), as in this case, need not be reopened on the ground that the third proviso has not been complied with. However, after grant of approval, if it is brought to the notice of the prescribed authority that conditions on which approval was given are breached or that the circumstances mentioned in the third proviso exist then the prescribed authority can withdraw the approval earlier given by following the procedure mentioned in that proviso."

7. Referring to this decision another Bench of this Court in ***Digember Jain Society for Child Welfare vs. Director General of Income Tax (Exemption),*** Writ Petition (Civil) No. 5311/2008, decided on 9th October, 2009, has held as under:-

"11. It follows from the aforesaid judgment that when an application for exemption is to be moved by any trust, fund, university or other educational institution, the threshold conditions which are to be examined at that stage are actually existence of an educational institution and approval of the prescribed authority, for which every applicant has to move an application in the standardized form in terms of the first proviso. Insofar as newly added third proviso is concerned, which relates to application of funds, namely to see whether such institution etc. has not invested/deposited its funds, in accordance with the third proviso or that the activities of such institution, etc. are not genuine or that its activities are not being carried out in accordance with the conditions subject to which the approval is granted, would be a matter that would arise for consideration at a later stage as the third proviso contains mandatory conditions/ requirements. It is only in the event that such conditions are not fulfilled, after the grant of exemption, the prescribed authority is empowered to withdraw the approval earlier granted after complying with the procedure mentioned therein.

12. In order to bind the institutions etc. to properly implemented the rigours 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.

13. Significantly, the Supreme Court also drew distinction between those institutions applying for initial approval for the first time and the institutes who had already obtained exemption and their cases were to be examined after the introduction of third proviso. In respect of former category of cases, it was held that the prescribed authority may grant exemption on such terms and conditions as it deems fit. In respect of cases falling in the the latter category, the Supreme Court categorically observed that those cases where exemption had already been obtained need not be reopened on the ground that the third proviso had not been complied with. After grant of approval, if it is brought to the notice of the prescribed authority that conditions on which approval is given are breached or that the circumstances mentioned in the third proviso exist, the prescribed authority could withdraw the approval given earlier by following the procedure mentioned in the proviso.

14. The Supreme Court in Aditanar Educational Foundation v. Additional Commissioner of Income Tax, 224 ITR 310, has held that a society or a trust or other similar body running educational institutions solely for educational purposes and having the overall object of not to make any profit can be regarded as „other educational institution" even if some surplus arises from its activities.

15. When we apply the principles laid down by the Apex Court in the aforesaid judgments, it becomes clear that the petitioner society has mainly been formed with the objective of carrying out educational activity. There is no the purpose of

profit. As of today, its only activity is education, namely, running of various schools and no other activity. It is not the allegation against the petitioner that it has deviated from its aforesaid object, namely, the „education". The petitioner society had been granted exemption till assessment years 2001-02 and the application for and upto the assessment years 2007-08 were pending. The respondent has denied exemption to the petitioner society merely on suspicion that it may deviate from it in future. The income of the petitioner society had been assessed at NIL under Section 11 of the Act till the assessment year 2001-02. For the assessment year 2003-04 and 2004-05, the assessment has been completed under Section 143(3) of the Act vide assessment order dated 28.2.2006 and 24.11.2006 respectively and the total income has been assessed at NIL under Section 11 of the Act. Though for the assessment year 2002-03 the AO had passed orders dated 22.3.2005, denying exemption under Section 11 of the Act to the petitioner, this order was set aside by CIT(A) in appeal holding that the petitioner was entitled to exemption under Section 11 of the Act.

The Revenue accepted that order. Since the CIT(A) had granted certain reliefs also, the Revenue filed appeal thereagainst to the Tribunal and the Tribunal maintained the order of CIT(A). Further, as noted above, the petitioner has been granted approval under Section 80G(5)(vi) of the Act for the period from 1.4.2008 to 31.3.2011 by the Director of Income Tax (Exemptions), New Delhi.

16. We may also note that the petitioner had stated before the respondent (and his counsel also made a statement before us during arguments) that even if

> the petitioner society states some other activities as per its object clause, the surplus arising from the educational activity will not be utilized for any other purpose, but solely for educational purpose. This would take case of the apprehension nurtured in the mind of the respondent."

8. In view of the aforesaid discussion, we allow the present writ petition and issue a writ of certiorari quashing the order dated 26th September, 2008 and remit the matter to the respondent for fresh adjudication in accordance with law. It will be also open to the respondent to incorporate conditions while passing the order and call upon the petitioner society to furnish an undertaking or affidavit that they would not breach any of those conditions.

9. The writ petition is accordingly disposed of. There will be no orders as to costs.

Sd/-

(SANJIV KHANNA)
JUDGE

Sd/-
(DIPAK MISRA)
CHIEF JUSTICE

July 14, 2011
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