

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

+ WP (C) No. 3032 of 2008

% Reserved on : August 13, 2009
Pronounced on : August 28, 2009

ICAI Accounting Research Foundation & Anr. . . . Petitioner

through : Mr. N.K. Poddar, Sr. Adv. with
Mr. Pramod Dayal, Advocate

VERSUS

Director General of Income Tax (Exemptions) & Ors. . . . Respondents

through : Ms. Prem Lata Bansal, Advocate
for the respondent Nos. 1 & 2.
Ms. Sonia Mathur with Mr. Sumit
Kumar Singh, Advocates for UOI/
Respondent No.3.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE VALMIKI J. 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. The Chartered Accountants Act, 1949 was enacted by the Parliament with the purpose of regulating the profession of Chartered Accountants. Under this Act, Institute of Chartered Accountants of India (ICAI) has been set up and, thus, it is a statutory body. It is given the prime function of regulating the profession of Chartered Accountants. It also lays down accounting and auditing standards which are to be followed by all enterprises. The ICAI has set up the

Petitioner No.1, namely, ICAI Accounting Research Foundation (hereinafter referred to as the 'Petitioner Foundation'). The main objective of this Foundation is to make it an academy for imparting, spreading and promoting knowledge, learning education and understanding in the various fields relating to the profession of Accountancy, like accounting, auditing, fiscal laws and policy, corporate and economic laws and policies, economics, financial management, financial services, capital and money markets, management information and capital systems, management consultancy services and allied disciplines. It is formed as a company and was registered on 14.1.1999 with the Registrar of Companies, Delhi vide Registration/Incorporation Certificate bearing No. 55-97935/1998-99 issued under Section 25 of the Companies Act, 1956. It is, thus a deemed company and is having the status of an Academy.

2. The objectives of the Petitioner Foundation are set out in clause (III-A) of its Memorandum of Association and the relevant clause there of reads as under :-

“To conceive, establish, promote, sponsor, take over, own, run, administer, operate, maintain, equip and control an academy for the purpose of imparting, dissemination, spreading and promoting knowledge, learning, education and understanding in the fields of accounting, auditing, fiscal laws and policy, corporate and economic laws and policies, economics, financial management, financial services, capital and money markets, management information and control systems, management consultancy services and allied disciplines by any means whatsoever including –

- (i) Conceiving, formulating, undertaking, conducting, fostering, aiding, promoting and providing facilities for prosecuting, core, fundamental, empirical, applied and other kinds of research work and projects and studies, either on its own or jointly or in collaboration with or at the instance of other persons and entities.

- (ii) Conceiving, organizing, holding, conducting and sponsoring training programmes, study courses, lectures, meetings, workshops, seminars, conferences and symposia either on its own or jointly or at the instance of other persons and entities and also instituting and establishing awards, aid, scholarships and fellowships.
- (iii) Conceiving, preparation, bringing out, printing and publishing either on its own or through or in collaboration with other persons and entities, papers, periodicals, magazines, books, journals either through print or any other media.
- (iv) Starting, establishing, running, maintaining and providing library and electronic database and exchange facilities and other information services.”

3. Clauses (v) and (vi) of the Memorandum of Association specifically provide that income and property of the company shall be applied solely for promotion of its objectives and no portion thereof shall be paid, directly or indirectly, by way of dividend, bonus or otherwise by way of profit to the members. Even remuneration or other benefit in monies is not to be given by the company to any of its members, whether officers or servants of the company or not, without the previous approval of the Central Government. Likewise, members are not to be appointed to any office under the company which is remunerated by salary, fees or in any other manner, without the previous approval of the Central Government. Even the alteration in the Memorandum of Association or Articles of Association of the company is not permitted without submitting the same to the Central Government and obtaining its prior approval.

4. The Petitioner Foundation is also registered under Section 12-A read with Section 12-AA(i) of the Income Tax Act, 1961 (for short, the 'Act') with effect from 14.1.1999, i.e. from the very first day of its incorporation/registration under Section 25 of the Companies Act. It is also recognized as a Scientific and Industrial Organization by the Government of India, Ministry of Science and Technology, Department of Science and Industrial Research, New Delhi under the Scheme of Re-organisation of Scientific and Industrial Research Organizations, 1988 vide Certificate dated 5.10.2006. This recognition was originally granted from 18.11.2003 to 31.3.2006 and was further extended vide Certificate dated 5.10.2006.
5. The Petitioner Foundation made an application dated 15.12.2006 to the Respondent No.1 herein in Form No. 56 for claiming exemption from income tax under Section 10(23C)(iv) of the Act taking the plea that it is covered by the expression "*charitable purposes*", as defined in Section 2(15) of the Act. Certain information was asked by the Respondent No.1, which was supplied by the Petitioner Foundation from time to time. After considering this application, the Respondent No.1 ultimately rejected the request vide its order dated 28.12.2007 stating that the Petitioner Foundation did not qualify for approval under the aforesaid provision. The present writ petition has been filed by the Petitioner Foundation assailing this order.
6. If one is to go by the purpose and objective with which the Petitioner Foundation was created, namely, imparting, spreading and

promoting knowledge, learning education, etc. in the fields related to the profession of Accountancy, it will clearly fall in those category of institutions which are devoted to research and are of charitable nature. Definition of '*charitable purpose*' is contained in Section 2(15) of the Act, which is as under :-

“Charitable purpose includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility.”

The aforesaid objective of the Petitioner Foundation would fall within the expression '*Education*', as appearing in the aforesaid definition. The vision of the Petitioner Foundation is to establish it as a co-research body with facilities to undertake research in the areas of accounting, auditing, capital markets, fiscal policies and other related disciplines and to develop quality pronouncements, documents, research papers on these subjects.

7. The Petitioner Foundation has placed on record its annual reports right from the year of inception, i.e. 1999-2000. A glance of these reports gives sufficient information about the actual activities undertaken by the Petitioner Foundation. In the first year of its establishment, it had identified the following research projects to be undertaken by it :-

- Investment Decision Models of Retail and Institutional Investors – Use of Accounting Information.
- Effect of Accounting Information in Published Annual Reports on Movement in Share Prices.
- Considerations in Deciding Accounting Policies by Listed Companies.

- Current Accounting Practices of Local Bodies and Panchayats.
- Current Risk Management Practices by Indian Companies.
- Current Risk Management Practices by Banking Companies and Financial Institutions.
- Fiscal Law Administration – Concept of Accountability.
- Taxation of E-commerce Business.
- The Structure of Accounting Profession in India – Its Future in WTO Regime.
- Accounting Standards – Expectation Gap.
- Ethical Standards for Professional Accountants/Auditors – A Study of Global Standards including Indian Standards.

8. The Petitioner Foundation also sought affiliation from Guru Gobind Singh Indraprastha University for offering Ph.D. programmes, which was granted. As a result, it enrolls Research Fellows and on successful completion of research study, a Doctoral Degree is granted by the University to those Research Fellows. During the past few years, the other projects and the nature of research conducted by the Petitioner Foundation included the following :-

(a) Corporate Financial Communications; Trends and Practices of Business Groups in India.

This research project seeks to ascertain observable trends in corporate financial reporting practices of companies in India (including MNC's operating in India) to establish how efficiently, clearly and transparently the performance is reflected in the audited financials, is communicated to shareholders and other stakeholders through medium of annual reports, Chairman speeches and Directors' Report.

(b) Issues in Accounting – Valuation of Intangibles:

The Research Project is undertaken with an aim to address the accounting issues in knowledge based industry with particular reference to bio-technology industry which is an emerging knowledge driven industry in India and promises a very high rate of growth. The industry based on high research and knowledge content gives rise to various types of intangible assets like patents, intellectual property rights, technical knowhow and human resources. The study is intended to focus on the accounting principles, policies and practices followed for recognition, measurement and disclosure of such assets.

(c) Developing a code for Governance of Non-Governmental Organisations (NGOs):

The research study primarily focuses on governance in NGO's.

(d) Electronic Commerce and Direct Taxation:

The objective of the research project is to bring out a publication describing the electronic commerce, the significance and the issues which arise in the context of application of existing income tax laws.

(e) Legal protection of Intellectual Property Rights in Information Technology Industry:

The research project titled “Legal protection of Intellectual Property Rights in Information Technology Industry” under the Infosys Fellowship Research Scheme is also taken up. Certain changes have been contemplated in the Infosys Fellowship Scheme

Agreement, with a focus to enlarge the scope of the agreement to include the research scholars pursuing Ph.D. from other reputed Universities, to become eligible under the Infosys Fellowship Research Programme.

(f) Research Study on Recognition, Measurement and Disclosure issues in Bio-Technology and other life science companies, Information Technology (IT) Companies and advertisement companies:

A group of 'Recognition, Measurement and Disclosure issues in Bio-Technology and other life science companies, Information Technology (IT) Companies and Advertisement Companies' was set up with the representatives from the office of Comptroller & Auditor General of India, The Institute of Chartered Accountants of India, Technology Development Board, Technology Networking and Business Development Division (CSIR), Consultants Development Council, and the Industry. Based on the presentation made by the leading companies in the areas, the Study Group circulated a questionnaire covering accounting and disclosure issues to large number of companies. The response received is being collated, analyzed and examined together with accounting policies and practices being followed in other countries.

(g) Developing a code of Governance for Non-Profit Organisations (NPOs):

The study on Code of Governance for Non Profit Organisation (NPOs) Sector is underway. The draft of the study prepared by Investment Information and Credit Rating Agency of India Ltd.

(ICRA) on the above subject is considered by the Expert Group of the Petitioner Foundation. The study proposes to suggest the model code of governance for such organizations and would be brought out as a research publication under the Petitioner Foundation.

(h) Electronic Commerce and Direct Taxation:

In this project the study on Electronic Commerce and Direct Taxation commissioned is undertaken.

(i) Financial and Accounting Reforms, Capacity Building and Related Strategies:

The Petitioner Foundation joined the ICAI as co-partner for submission of proposals for carrying our research in the area of financial statements and accounting reforms to the Small projects Facility programme (European Union Projects). Out of the above proposals submitted, the proposal titled “Financial and Accounting Reforms, Capacity Building and Related Strategies” was accepted. As per the scope of the project, a detailed study on nine shortlisted urban local bodies on development of institutional framework along with strategies directed towards building capacity for undertaking the suggested reforms has been carried out. As a precursor to this project, the Petitioner Foundation has financed a project on evaluating the capacity for financial and accounting reforms in the cities of Amritsar, Jalandhar, Ludhiana, Chandigarh, Shimla, Delhi, Kolkata, Chennai, Mumbai, Nasik, Baroda and Ahmedabad. The research report was circulated to various concerned agencies including the World Bank and Asian Development Bank.

(j) Impact of International Accounting Standards/International Financial Reporting Standards on the wider stakeholders:

Oxford University of Business School (Accounting) has sent a request to Petitioner Foundation for collaborating with them for a research project on “Impact of International Accounting Standards/ International Financial Reporting Standards on the wider stakeholders”.

9. There are various other research projects of varied nature and it would not be necessary to incorporate all these activities as the aforesaid projects give sufficiently fair idea of the activities of the Petitioner Foundation. It has also plans to even set up ICAI University, for which action has already been initiated. It also contemplates to take strategic initiative to carry out the process of research studies and in this behalf move is to launch the promotional campaign for establishing direct contact with the Universities and other bodies on the one hand and reaching out to the potential researcher throughout the country on the other.
10. On the basis of the aforesaid activities, there is not even an iota of doubt that the Petitioner Foundation is involved in education and, thus, meets the description of ‘*charitable institution*’.
11. These aspects are not even disputed by the respondent No.1. Notwithstanding the same, the Respondent No.1 has denied the exemption. What is the reason then? For this, we shall have to advert to the impugned order.

12. When we scan through the impugned order, we find that the main reason given by the Respondent No.1 is that during the financial year 2003-04, 2004-05, 2005-06 and 2006-07, the Petitioner Foundation has mainly done contract work, for which it has received certain payments. These activities are basically the jobs done for third parties, for consideration received. Therefore, the Petitioner Foundation is providing professional services on regular basis, which amounts to doing business of providing professional services. Since professional services is a commercial activity, it cannot be taken as a '*charitable activity*'. Particulars of the various such jobs undertaken by the Petitioner Foundation and the amounts received for those consultancy services are also stated in the impugned orders. Those details indicate that they broadly fall in two categories, which are as under :-

(a) The Petitioner Foundation is providing research and consultancy services to various Government bodies; the payments are made by these Government bodies and have been accounted for by the Petitioner Foundation under the head "Research Contributions". The payments so received are then used for making the payment to Researchers/Consultants hired by the petitioner to carry out the research work. The particulars shown indicate that three Government projects were undertaken by the Petitioner Foundation, namely, that of Municipal Corporation of Delhi (MCD), Kolkata Municipal Corporation (KMC) project and Strengthening Rural Decentralization (SRD) project. The representative of the Petitioner

Foundation had urged before the Respondent No.1 that these were not the business/commercial activities but simply research activities and, in fact, expertise was provided to the aforesaid bodies who wanted to streamline their accounting system. It was, therefore, in the nature of research activity only.

This plea, however, is brushed aside by the Respondent No.1 in the following terms :-

“VI. The contention of the appellant that the Research activities are not any business/commercial activities but simply Research activities provided to various bodies for obtaining the objects of the foundation and are beneficial to the public at large, is not acceptable. The applicant is carrying on business activities of research and consultancy work on consideration received from government and non-government organizations. Activities of the applicant are akin to a contractor providing goods or services to a charitable hospital. The hospital may be doing charity by providing medical services, but contractor providing goods and services for consideration cannot be said to be engaged in charitable activities. Another example could be of a professor in an educational institution. An educational institution may be providing charity but professor rendering services for salary is not doing charity.”

(b) The Petitioner Foundation had also received monies from Infosys Technologies Limited in the form of Infosys Fellowship Fund. Though it is for grant of fellowship to deserving candidates under the Fellowship programme of the foundation in affiliation with Guru Gobind Singh Indraprastha University, the Respondent No.1 was of the view that even from this it would be concluded that the Petitioner Foundation is not doing charitable activity because of the reasons stated in this manner :-

“VII. Regarding the scheme of granting stipend and fellowship to students, it is noticed that funds for the same are being provided by Infosys Technologies Ltd. As per the agreement signed with Infosys Technologies Ltd., it is found that entire Endowment amount of Rs.9,00,000/- per fellow is to be

provided by Infosys Technologies Ltd. if a fellow leaves in the middle of the programme, or finishes early with funds left in the account, Infosys will decide how the money is to be spent. This shows that this stipend and fellowship are being funded by Infosys Technologies Ltd. with the applicant playing only the role of a facilitator. Hence, the applicant cannot be said to be doing any charitable activity in this regard.”

The Respondent No.1 was also of the view that even if it is considered that the Petitioner Foundation was carrying on some other charitable activities, separate books of accounts were required to be maintained in respect of business of providing contractual services to various Government bodies as per proviso Section 10(23C)(iv) of the Act, which was not being done by the Petitioner Foundation.

13. The submission of learned counsel for the petitioner in this behalf was that the main activities of the Petitioner Foundation carried out all along were educational and, thus, charitable in nature. The aforesaid activities are incidental to the attainment of its objective. Explanation of the petitioner is that at the instance of the aforesaid local bodies, namely, MCD, KMC and SRD, the Petitioner Foundation took up three projects with sole aim and endeavour to improve and reform preparation and presentation of accounts and accounting process, financial analysis and management practices in these urban local bodies. It is explained that the MCD project was taken up by the Petitioner Foundation in March 2002 and was successfully completed on 31.5.2006. This project arose out of the decision of the Government of India to implement accrual based accounting reform in the third year of the Government. This was a

new initiative in India where Controller of Accounts and Accountant General (CAG) had no prior exposure. Therefore, there was need for collection and assimilation of data and experience. This body, thus, wanted to utilize the expertise of the Petitioner Foundation by undertaking this project of applied/field research. The nature of work was essentially research. Based on the study undertaken by the Petitioner Foundation, publication titled “Conversion of Accounts of Municipal Bodies to Accrual Basis – Issues, Concerns and Strategies” has been published and made available to the public at large. Thus, according to the Petitioner Foundation, it assisted the MCD in preparing and presenting their annual financial statements, comprehensive annual financial reports, comprehensive reconstructing of the budget heads as well as refining their accounting process in their various zones, hand holding and assistance in setting up the financial management and budget office. The Petitioner Foundation had also carried out number of training programmes for the core group of Nodal Officers of MCD focusing on double-entry accounting system, computer awareness, bank reconciliation and familiarization with new data formats. In the implementation of the Fund Based Accrual System, the Petitioner Foundation also assisted MCD in introducing best practices which are being followed in leading Municipal Corporations world over.

14. Likewise, the Kolkata Municipal Corporation project was taken up by the Petitioner Foundation in July 2004 because it involved further study of some unique characteristics different from the above. This

was successfully completed in September 2007. During this period, the Petitioner Foundation assisted Kolkata Municipal Corporation in the preparation of its financial accounts, carried out number of studies on business process re-engineering, and also conducted various management training programmes for capacity building etc. The Petitioner Foundation demonstrated to the Municipal Corporation the effects of what improved presentation of accounts can achieve, what improved financial analysis and management practices can provide and submitted its findings. The Petitioner Foundation also assisted the Municipal Corporation in preparing report on sustainability, containing specific recommendations of integrated capacity building exercise with organizational changes, and standardized formats of financial statements and established audit trails. The Kolkata Municipal Corporation was also provided by the Petitioner Foundation with a clear road map for strengthening its internal audit department.

15. In Strengthening Rural Decentralization (SRD) project, the team of the Petitioner Foundation carried out field visits to various Gram Panchayats (GPs) and Gram Unnayan Samitis (GUSs) spread across the 6 SRD Districts and other non-SRD Districts of West Bengal. In these field visits, the team of Petitioner Foundation carried out study of and assisted in framing proper accounting, auditing and procurements system and procedure in the case of GPs and GUSs, as a deliverable accounting manual, internal audit manual, as well as the procurement manual.

16. The aforesaid description of the three projects given by the Petitioner Foundation finds support from the annual reports as well as other documents produced and annexed by the Petitioner Foundation with this writ petition.
17. It clearly follows that even these three projects were the research projects which were given to the Petitioner Foundation having regard to its expertise in this field. Therefore, these activities *per se* would not bring out the Petitioner Foundation out of the ambit of Section 2(15) of the Act. It can be said that the activities amounted to “Advancement of an object of general public utility” which also appears in the definition of charitable purpose in Section 2(15) of the Act. The only aspect, in this backdrop, which needs to be considered is as to whether charging of amount from the MCD, KMC etc. for undertaking these research projects would make the activity ‘*commercial*’, as held by the Respondent No.1 in the impugned order. Before we answer this, it would be apposite to take note of some of the judgments defining ‘*charitable purpose*’.
18. The first case, which may be relevant on this aspect, is the judgment of this Court in the case of *Additional CIT v. Hamdard Dawakhana*, (1986) 157 ITR 639 (Del). In that judgment unamended definition of ‘*charitable purpose*’ contained in Section 2(15) of the Act was considered. Following discussion contained in the judgment reproduced unamended definition as well, along with its interpretation :-

“15. The main point urged by Mr. Wazir Singh was based on the definition of "charitable purpose" stated in section 2(15) of the Act. This definition as in the 1961 Act is as follows :

"charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit."

16. Thus, the emphasis is on the fact that this charity is carrying on a business, namely, the Hamdard Dawakhana. In fact, the dedication is of a business because the dedicated property is neither any building, nor any trade mark, but the business of the Hamdard Dawakhana. It is, therefore, urged that this is not a charitable purpose at all and hence no exemption can be granted. It is pointed out that out of the business of this trust, the khandani income is being earned by the mutawallis themselves, so there is no scope for saying that this is a charitable purpose.

17. We find that on a proper construction of the Act, this is not the meaning to be given to the definition. In order to have a charity, you must have a source of income. The income may come from gifts, or it may come from running a business. In this case, the trust is of a portion of the income of the Hamdard Dawakhana. Although the source of the income is a business, the object of the trust is not to run that business, but to utilise the income of that business for a charitable purpose. The income has been divided into two portions, i.e., khandani income and the qaumi income. That portion of the income which is not earmarked for charity is subject to tax, but the remaining portion has to be used for charitable purposes.

18. In our view. the entire point is now covered by the Supreme Court's judgment in Addl. CIT v. Surat Art Silk Cloth Manufacturers Association, (1980) 121 ITR 1. The court pointed out in that case that when the object of a trust was the carrying on of an object of general public utility, it is that object of general public utility which must not involve the carrying on of an activity for profit. It was pointed out that it was immaterial how the money for achieving or implementing such purpose was found. Whether that money was obtained by the running of an activity for profit or not, did not make the charity not charitable. Thus, in the present case, no doubt, the trust earns the money from the Hamdard Dawakhana. If that money is used for charitable purpose and not for the carrying on of any business at a profit, then the object of the trust is charitable, not with standing the source of the income.

19. It is hardly possible for a charitable trust to work with no source of income. So, the makers of the trust in the present case, dedicated a portion of the income of the business for being used for charitable purpose As long as the user of that money is charitable, then the exemption has to be granted.

19. The Madras High Court in *CIT v. K.S. Venkatasubbiah Reddiar*, (1996) 221 ITR 18 (Mad) had the occasion to discuss in detail as to what would constitute 'business' and 'profits and gains of business or profession'. Taking note of the definition of the term 'business' under Section 2(13) of the Act and some other statutes giving similar definitions, the Court expressed the following view :-

“In that connection, while dealing with the same question under the Hyderabad General Sales-tax Act, the Supreme Court in *State of Andhra Pradesh vs. H. Abdul Bakshi & Bros.*, (1964) 15 STC 644, observed as follows (headnote) :

"The expression 'business' though extensively used is a word of indefinite import. In taxing statutes it is used in the sense of an occupation or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business, there must be a course of dealings either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure."

It is, therefore, clear that the two essential requirements for an activity to be considered as "business" are : (i) it must be a continuous course of activity; and (ii) it must be carried on with a profit motive..."

20. The principles which are laid down in both the aforesaid cases provide complete answer to the issue at hand. It is to be noted that the aforesaid projects undertaken on behalf of these local bodies is not a regular activity of the Petitioner Foundation. Primary activity remains the same, namely, research in accounting related fields. Even these projects which were taken up on behalf of those local bodies fit in the description of 'research projects', which can be termed as ancillary activity only. The circumstances under which the projects were undertaken make it clear that it was at the instance of the

Government of India or the State Government for improving the accounting and budgetary systems in these local bodies. The expertise of the Petitioner Foundation in carrying out research in this field was sought to be utilized. Therefore, it cannot constitute '*business/commercial activity*'. Merely because some remuneration was taken by the Petitioner Foundation for undertaking these projects would not alter the character of these projects, which remained research and consultancy work. It is so categorically held in *Hamdard Dawakhana* (supra). The important test is the application of the amounts received from those projects. It is nowhere disputed that the receipts are utilized by the Petitioner Foundation for advancement of its objectives. The Memorandum of Association specifically stipulates that these are not to be distributed to the Members as dividends or profits. It is clear that most of the amount received qua these projects was spent on the project and surplus, if any, is used for advancement of the objectives for which the Petitioner Foundation is established.

21. The amended definition of '*charitable purpose*' would not alter this position. No doubt, proviso to this definition clarifies that advancement of any other object of general public utility will not be treated as charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering service in relation to trade, commerce or business. However, what is not appreciated by the respondent No.1 is that the merely on undertaking those three research projects at the instance of

the Government/local bodies. The essential character of the Petitioner Foundation cannot be converted into the one which carries on , cannot be treated as the activity which carries on trade, commerce or business or activity of rendering any service in relation to trade, commerce or business.

22. The only aspect which remains to be considered relates to the scholarships introduced by the Infosys Technologies Ltd. The amount received from this company is in the form of Infosys Fellowship Funds, which has been created for granting fellowships to the deserving candidates under the proposed Fellowship Programme in affiliation to the Guru Gobind Singh Indraprastha University. The annual reports give details of the working of this fellowship. The Petitioner Foundation has constituted an expert committee for selection of candidates for Infosys Fellowship Research Programme. For this purpose, advertisements are issued and applications invited from candidates interested in pursuing the research with the Petitioner Foundation under the said scheme. On that basis, the candidates are selected to conduct research, who are assigned research projects. For example, one candidate was awarded this fellowship on the research project *“Legal Protection of Intellectual Property in Information Technology Industry”*. The completion of such research projects lead to award of doctoral degree by the Guru Gobind Singh Indraprastha University. Surprisingly, only on the figment of imagination that a fellow leaves in the middle of the programme or finishes early with funds left in the account, as Infosys

is to decide as to how the money is to be spent, with the Petitioner Foundation playing the role of a facilitator, the respondent No.1 has concluded that the Petitioner Foundation could not be said to be doing any charitable activity in this regard. It is too presumptuous a reasoning. What is ignored is that even if such eventuality occurs money has to be spent for the purpose for which it is allocated, namely, fellowship. The essential character of this fellowship is that a student is given the fellowship/scholarship for undertaking research projects. We fail to understand as to how this essential character of the fellowship would alter merely because of distant possibility of a fellow leaving in the middle of the programme or finishing his research early.

23. One significant aspect which is totally ignored by the respondent No.1 is that the Petitioner Foundation is a deemed company under Section 25 of the Companies Act. This section reads as under :-

“25. Power to dispense with “Limited” in name of charitable or other company. – (1) Where it is proved to the satisfaction of the Central Government that an association –

(a) is about to be formed as a limited company for promoting commerce, art, science, religion, charity or any other useful object, and

(b) intends to apply its profits, if any, or other income in promoting its objects, and to prohibit the payment of any dividend to its members,

the Central Government may by licence, direct that the association may be registered as a company with limited liability, without the addition to its name of the word “Limited” or the words “Private Limited”.

xx xx xx”

24. Thus, the status which is granted by the Government itself is the recognition of the fact that the Petitioner Foundation is essentially established for the purpose of education and/or for advancement of any other project of general public utility.

25. The impugned order of the Respondent No.1 is, accordingly, set aside. Rule is made absolute. Allowing this writ petition, direction/mandamus is given to the Respondent No.1 to accord requisite exemption to the Petitioner Foundation under Section 10(23C)(iv) of the Income Tax Act.

No costs.

(A.K. SIKRI)
JUDGE

(VALMIKI J. MEHTA)
JUDGE

August 28, 2009
nsk