

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

+ W.P.(C) No.12897/2009

% **Date of Decision : 9th January, 2012.**

THE SYNODICAL BOARD OF HEALTH SERVICES Petitioner
Through Mr. Ajay Vohra, Ms. Kavita Jha, Mr.
Somnath Shukla and Mr. Amit Sachdeva, Advs.

versus

DIRECTOR GENERAL OF INCOME TAX Respondent
Through Mr. Anupam Tripathi, sr. standing
counsel with Ms. Anusha Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

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

SANJIV KHANNA,J: (ORAL)

The Synodical Board of Health Services has invoked writ jurisdiction under Article 226/227 of the Constitution of India to challenge and question the order dated 30th April, 2009 passed by the

Director General of Income Tax(Exemptions), respondent herein. By the impugned order respondent has dismissed the application filed by the petitioner in Form No.56D dated 11.4.2008 for registration under Section 10(23C)(iv) of the Income Tax Act, 1961 ('Act', for short) for assessment years 2009-2010 onwards. The respondent in the impugned order has referred to the accounts and details which were furnished by the petitioner for the assessment years 2005-06, 2006-07 and 2007-08. He has observed that there was variation of administrative expenses in the three assessment years. Under the heads 'administrative expenses', 'community health wing' and 'aids wing', the following expenses have been noticed :

A. Administrative Expenses :

	Asstt.Year 2007-08	Asstt.Year 2006-07	Asstt.Year 2005-06
CNI Synd Evaluation Commission	3,00,000	Nil	Nil
Building Rent	86,880	28,960	43,760
Committee Meeting Exp.	1,29,748	34,523	10,829
Legal & Professional fees	2,56,278	1,61,000	13,000
IEC Material	1,53,734	1,07,336	Nil
Repairs & Maintenance	2,53,144	1,62,458	22,189
Stationary & Printing	1,39,743	1,59,291	35,689

Telephone Expenses	1,30,683	1,88,092	38,093
--------------------	----------	----------	--------

B. Community Health Wing :

	Asstt. Year 2007-08	Asstt. Year 2006-07	Asstt. Year 2005-06
Travel and Conveyance	2,09,673	5,33,593	5,21,620
Legal & Professional fees	83,000	--	--
Training & Reorientation	---	2,30,828	4,50,091
Meeting, Travel & Field	---	1,98,969	5,54,836
Coordinator's Salary	---	1,43,000	2,14,000
Coordinator's Travel	---	42,632	1,90,708
Rent	86,880	28,960	1,90,000
Audit Fees	38,998	16,530	69,335
Evaluation Committee Exp.	---	85,295	1,78,681

C. Aids Wing :

	Asstt. Year 2007-08	Asstt. Year 2006-07	Asstt. Year 2005-06
Salary & Allowance	7,55,375	8,51,425	8,67,100
Rent	86,880	28,960	Nil
External Consultancy	70,000	Nil	Nil
Legal & Professional Charges	80,000	79,360	Nil
Core Committee Meeting Exp.	4,27,290	96,643	1,947
Staff Travel & Conveyance	5,74,139	7,60,596	3,82,407
Stationery & Printing	1,49,434	2,36,678	90,998

2. Respondent has observed that there are fluctuations and abnormal increase and decrease. The aforesaid observations are hardly justified. Expenses are incurred keeping in view the day-to-day needs and requirements e.g. professional/legal fee is required to be paid if there is a legal case/proceeding. It need not be paid in all years. Similarly, expenditure on repair and maintenance is required to be incurred depending upon needs and requirements. The expenses can vary from year to year depending upon the factual matrix, but this by itself cannot be a ground to hold that the fluctuations are abnormal and therefore, the registration should not be granted.

3. The respondent thereafter, has referred to vouchers of Chairman's office who was paid Rs.10,000/- in cash on 1.12.2004, 27.5.2005, 19.9.2005, 7.12.2005, 6.2.2006 and so on and so forth. He has observed that the external vouchers for such expenses incurred were not available, or the name and address of the recipient was not mentioned, or the amounts in the receipt were not mentioned in figures and words, or revenue stamp had not been affixed etc. Similarly, he has referred to vouchers relating to committee meeting expenses in which delegates were

paid cash to meet travel expenses. These payments to the delegates of Rs.17,586/-, Rs.39,600/-, Rs.41,307/- and Rs.1,12,831/- paid on 20.9.2005, 20.9.2005, 20.9.2005 and 16.10.2005 respectively, have been adversely commented upon as the actual travelling expenses of the delegates were not ascertainable, external vouchers like air, bus, train tickets were not attached in all cases etc. Similar adverse comments have been made in respect of other travel expenses to Mumbai, Hyderabad, Chennai etc. It is noticeable that the expense involved varied between Rs.5,000/- to about Rs.20,000/-. These were paid in cash. The name and details of the persons who had undertaken the travel were mentioned/stated. The respondent had examined professional and legal expenses and has stated that external vouchers were not obtained or revenue stamp was not affixed on the receipt portion. In some cases, payment was made in cash. However, the purpose of payment was indicated. Similarly, with regard to the external consultancies, other services, extra work, gifts and other payments, similar objections have been recorded.

4. Thereafter, the respondent has observed as under :

“From the above details, it can be seen that the applicant does not maintain proper accounts as expenses are not supported by external vouchers. In case of cash payments, the name and address of the recipient have not been mentioned on various vouchers. In some cases, even internal vouchers were not produced. The counsel for the applicant failed to offer any explanation for non-apparent that the books of account and vouchers were not properly maintained and it depended solely upon the sweet will of the applicant to debit whatever amount it chose to debit as expenses and no verification of the genuineness of these expenses was possible. Thus, the income of the society is being siphoned off by debiting bogus expenditure and, therefore, it can not be said that the applicant society applied its income wholly and exclusively to the objects for which it was established.”

5. The contention of the petitioner is that the aforesaid findings by the respondent are incorrect and he has specifically drawn our attention to the explanation averred by the petitioner in their letter dated 28.4.2009. The said letter is very detailed and gives explanations and justifies the details furnished as sufficient. It may be noted that the impugned order was passed immediately thereafter on 30.4.2009. The letter dated 28.4.2009 and the details and explanation given by the assessee have not been examined and dealt with in the order dated 30.4.2009. In this

connection we may also reproduce the observations of the Supreme Court in the case of *American Hotel and Lodging Association Educational Institute Vs. Central Board of Direct Taxes and Others* (2208) 301 ITR 86 (SC) wherein it has been observed as under :

31. We shall now consider the effect of insertion of provisos to Section 10(23C)(vi) vide Finance 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 PA, 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 PA 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 exemption provision. With the insertion of the first proviso, the PA is required to vet the application. This vetting process is stipulated by the second proviso. It is important to note that the second proviso also indicates the powers and duties of the PA. While considering the approval application in the second proviso, the PA is empowered before giving approval to call for such documents including annual accounts or information from the applicant to check the genuineness of the activities of the

applicant institution. Earlier that power was not there with the PA. Under the third proviso, the PA has to ascertain while judging the genuineness of the activities of the applicant institution as to whether the applicant applies its income wholly and exclusively to the objects for which it is constituted/established. Under the twelfth proviso, the PA is required to examine cases where an applicant does not apply its income during the year of receipt and accumulates it but makes payment therefrom to any trust or institution registered under Section 12AA or to any fund or trust or institution or university or other educational institution and to that extent the proviso states that such payment shall not be treated as application of income to the objects for which such trust or fund or educational institution is established. The idea underlying the twelfth proviso is to provide guidance to the PA as to the meaning of the words "application of income to the objects for which the institution is established". Therefore, the twelfth proviso is the matter of detail. The most relevant proviso for deciding this appeal is the thirteenth proviso. Under that proviso, the circumstances are given under which the PA is empowered to withdraw the approval earlier granted. Under that proviso, if the PA 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 funds 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 PA is empowered to withdraw the approval earlier granted after complying with the procedure mentioned therein.

33. Having analysed the provisos to Section 10(23C)(vi) one finds that there is a difference between stipulation of conditions and compliance thereof. 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 of 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.

34. 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 PA subject to which approval could be granted. For example, in marginal cases like the present case, where appellant-Institute was given exemption up to financial year ending 31.3.1998 (assessment year 1998-99) and where an application is made on 7.4.1999, within seven days of the new dispensation coming into force, the PA 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 PA may insist on certain percentage of accounting Income to be utilized/applied for imparting education in India. While making such stipulations, the PA has to examine the activities in India which the applicant has undertaken in its Constitution, MoUs, and Agreement with 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 PA 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 PA 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 exemption(s), as in this case, need not be re-opened 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 PA that conditions on which approval was given are breached or that circumstances mentioned in the thirteenth proviso exists then the PA can withdraw the approval earlier given by following the procedure mentioned in that proviso. The view we have taken, namely, that the PA can stipulate conditions subject to which approval may be granted finds support from Sub-clause (ii)(B) in the thirteenth proviso.”

6. It has been brought to our notice that the petitioner as a society was formed in the year 1975 and registered under Societies Registration Act, 1860. The petitioner is operating and managing hospitals and providing medical facilities and training, community health work, diffusion of medical knowledge etc. It also conducts family welfare programmes.

7. Ld. counsel for the respondent has relied upon decision of this Court in *All India J.D. Educational Society Vs. Director General of*

Income Tax (Exemptions) 2010(10)AD (Delhi) 113. In the said case it was held that the principle of *res judicata* does not apply and for each period the question of grant of exemption has to be examined separately. The competent authority in the said case had brought on record evidence to show that the records and accounts were not properly maintained and were obviously subjected to manipulation which was decipherable. In the present case, we have examined the observations recorded by the respondent and we are not satisfied that the present case can be treated on par with the factual matrix in the cited case. The reasons given by the respondent in the impugned order do not appear to us to be germane to the conclusion he has reached. As indicated the explanation/justification of the petitioner has not been considered.

8. Keeping in view the aforesaid aspects we set aside the impugned order dated 30th April, 2009 and pass an order of remit and direct the respondent to decide the application for registration under Section 10(23C)(iv) afresh after giving hearing to the petitioner/authorized representative while deciding the matter the respondent will keep in mind the observations made in the case of *American Hotel and Lodging*

Association Educational Institute (supra). The petitioner/authorized representative will appear before the respondent on 5th March, 2012 when a date of hearing in the matter will be fixed. No costs.

SANJIV KHANNA, J

R.V.EASWAR, J

JANUARY 09, 2012
vld