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

\+ W.P.(C) 1254/2010

ST.LAWRENCE EDUCATIONAL SOCIEITY (REGD.)& ANOTHER
..... Petitioner
Through Mr. V.P. Gupta and Mr. Basant Kumar, Advocates.

versus

COMMISSIONER OF INCOME TAX DELHI (CENTRAL) & ANOTHER ..... Respondent
Through Mr. Sanjeev Sabharwal, Advocate.

\+ W.P.(C) 2463/2010

THE BAPTIST EDUCATIONAL SOCY & ANR .... Petitioner
Through Mr. V.P. Gupta and Mr. Basant Kumar, Advocates.

versus

CHIEF COMMISSIONER OF INCOME TAX .... Respondent
Through Mr. Sanjeev Sabharwal, Advocate.

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

O R D E R

% 04.02.2011

Regard being had to the similitude of the issue involved in both the writ petitions, they were heard together and are being disposed of by a singular order. For the sake of clarity and convenience the facts in

W.P.(C) 1254/2010 are adumbrated herein.

2. The assessee-petitioner, a society registered under the Societies Registration Act, 1860 filed an application in Form No.56D for grant of approval for exemption under Section 10(23C)(vi) of the Income Tax Act, 1961 (for brevity, the Act) on 30th September, 2008 for the financial year 2008-09 before the Chief Commissioner of Income Tax, Delhi (Central). The authorized representative on behalf of the assessee-petitioner appeared and a query was made by the authority why the application should not be rejected in view of the decision rendered by the Uttarakhand High Court in ***CIT Vs. Queens' Educational Society & Another*** *(2009) 319 ITR 160*. A written submission was filed contending, inter alia, that the assessee-society is basically engaged in imparting education inasmuch as it is running a school from nursery to 10th standard and the principal and primary objective of the society is to impart education and not to earn profit. It was also contended that the surplus that is generated is less than 7% of the gross receipt and the same was utilized for development of facilities, infrastructure, etc.

3. The authority concerned required the assessee to file the audit report in Form No.10BB and eventually came to held that the assessee was engaged in running a primary school i.e. Lawrence Public School;

that on a perusal of the audit reports for the assessment years 2006-07 and 2007-08 and Form No.10BB for the assessment year 2008-09 and the income-expenditure statement for the aforesaid periods, it was clear that the assessee-society had shown surplus income of 3.35%, 7.40% and 2.06% respectively in its gross receipts after deducting all expenses including depreciation in the relevant assessment years. In case of the petitioner in W.P.(C) No.2463/2010, the Baptist Educational Society the surplus was 7.57%, 8.23% and 4.04% for the assessments years 2006-07, 2007-08 and 2008-09 respectively. The authority thereafter came to opine that the educational institutions run by the assessee-applicants were generating surplus out of their gross receipts year after year and it cannot be accepted that the surplus generated is merely incidental. An opinion was expressed that the surplus generated as above has been utilized by the educational institutions for making addition to building and purchase of furniture, electrical equipments etc. Thereafter, a reference was made to the decision in ***Aditanars Educational Institution Vs. Additional CIT*** *(1997) 224 ITR 310* . Further the authority referred to the decision in ***Municipal Corporation of Delhi Vs. Children Book Trust*** *(1992) 3 SSC 390* and came to held as follows:-

> "To sum up, for the grant of approval to an

> educational institution seeking exemption u/s 10(23C)(vi), the basic requirement of sub-clause(vi) of clause (23C) of Section 10 is that the educational institution seeking exemption should be existing solely for the purpose of education and not for the purpose of profit. Here emphasis is laid on the word solely. Considering the facts of the present case in entirety as discussed above and respectfully following the ratio of the aforesaid judgment of the Hon'ble High Court of Uttrakhand, it cannot be said that the assessee-applicant society and the educational institutions run by it are existing solely for the purpose of education and not for the purpose of profit. Hence, the application for the assessee-applicant, seeking grant of approval for the purpose of exemption under Section 10(23C)(vi) of the Income Tax Act, 1961 for the financial year 2008-09 is hereby rejected."

4. Mr. V.P. Gupta, learned counsel for the petitioner submitted that the respondent has fallen into a grave error by expressing opinion solely on the basis of the decision rendered in ***Queens' Educational Society (supra)***. Learned counsel also submitted that the decision in the case of ***Queens' Educational Society (supra)*** has been distinguished by the Bombay High Court in ***Vanita Vishram Trust Vs. Chief Commissioner of Income-Tax and Another*** *(2010) 327 ITR 121(Bom)*, ***Himachal Pradesh High Court in Maa Saraswati Trust Vs. Union of India*** *(2010) 194 Taxman 84 (HP)* and ***Punjab and Haryana High Court in Pinegrove International Charitable Trust Vs. Union of India and Others*** *(2010) 327 ITR 73 (P&H)*.

5. Mr. Sanjeev Sabharwal, learned counsel for Revenue supported the order passed by the competent authority.

6. In ***Aditanars Educational Institution (supra)*** the Apex Court while dealing with the factum of exemption has held thus:-

> "The language of section 10(22) of the Act is plain and clear and the availability of the exemption should be evaluated each year to find out whether the institution existed during the relevant year solely for educational purposes and not for purposes of profit. After meeting the expenditure, if any surplus results incidentally from the activity lawfully carried on by the educational institution, it will not cease to be one existing solely for educational purposes, since the object is not one to make profit. The decisive or acid test is whether, on an overall view of the matter, the object is to make profit. In evaluating or appraising the above, one should also bear in mind the distinction/difference between the corpus, the objects and the powers of the concerned entity."

6. In ***American Hotel and Lodging Association Educational Institute Vs. CBDT*** *(2008) 301 ITR 86(SC)*, their Lordships have laid down the principal on following terms:-

> "In Addl. CIT v. Surat Art Silk Cloth Manufacturers Association reported in [1980] 121 ITR 1, it has been held by this court that the test of predominant object of the activity is to be seen whether it exists solely for education and not to earn profit. However, the purpose would not lose its character merely because some profit arises from the activity. That, it is not possible to carry on educational activity in such a way that the

> expenditure exactly balances the income and there is no resultant profit, for, to achieve this, would not only be difficult of practical realization but would reflect unsound principles of management. In order to ascertain whether the institute is carried on with the object of making profit or not it is duty of the prescribed authority to ascertain whether the balance of income is applied wholly and exclusively to the objects for which the applicant is established."

7. In the case of ***Pinegrove International Charitable Trust(supra)***, the Punjab and Haryana High Court after referring to the decision in the field has expressed the following opinion:-

> (2) The provisions of Section 10(23C)(vi) of the Act are analogues to the erstwhile Section 10(22) of the Act, as has been laid down by Hon'ble the Supreme Court in the case of American Hotel and Lodging Association (supra). To decide the entitlement of an institution for exemption under Section 10(23C)(vi) of the Act, the test of predominant object of the activity has to be applied by posing the question whether it exists solely for education and not to earn profit [See 5-Judges Constitution Bench judgment in the case of Surat Art Silk Cloth Manufacturers Association (supra)]. It has to be borne in mind that merely because profits have resulted from the activity of imparting education would not result in change of character of the institution that it exists solely for educational purpose. A workable solution has been provided by Hon'ble the Supreme Court in para 33 of its judgment in American Hotel and Lodging Association's case (supra). Thus, on an application made by an institution, the prescribed authority can grant approval subject to such terms and conditions as it may deems fit provided that they are not in conflict with the provisions of the Act. The parameters of earning profit beyond 15% and its

investment wholly for educational purposes may be expressly stipulated as per the statutory requirement. Thereafter the Assessing Authority may ensure compliance of those conditions. The cases where exemption has been granted earlier and the assessments are complete with the finding that there is no contravention of the statutory provisions, need not be reopened. However, after grant of approval if it comes to the notice of the prescribed authority that the conditions on which approval was given, have been violated or the circumstances mentioned in 13th proviso exists, then by following the procedure envisaged in 13th proviso, the prescribed authority can withdraw the approval.

(3) The capital expenditure wholly and exclusively to the objects of education is entitled to exemption and would not constitute part of the total income.

(4) The educational institutions, which are registered as a Society, would continue to retain their character as such and would be eligible to apply for exemption under Section 10(23C)(vi) of the Act. [See para 8.7 of the judgment - Aditanar Educational Institution case (supra)]

(5) Where more than 15% of income of an educational institution is accumulated on or after 01.04.2002, the period of accumulation of the amount exceeding 15% is not permissible beyond five years, provided the excess income has been applied or accumulated for application wholly and exclusively for the purpose of education.

(6) The judgment of Uttrakhand High Court rendered in the case of Queens Educational Society (supra) and the connected matters, is not applicable to cases fall within the provisions of Section 10(23C)(vi) of the Act. There are various reasons, which have been discussed in para 8.8 of the judgment, and the judgment of Allahabad

High Court rendered in the case of City Montessori School (supra) lays down the correct law."

8. In view of the aforesaid decisions, the opinion expressed by the respondent that the educational institutions seeking exemption should not generate any quantitative surplus is legally untanable and incorrect. The Chief Commissioner has erred in assuming that for exemption there should not be any surplus, otherwise the institution society exists for profit and not charity i.e. education in the present case. In view of the aforesaid judgments of the Supreme Court, Bombay High Court and Punjab and Haryana High Court, reasoning inscribed by the competent authority solely on the foundation that there has been some surplus profit is unjustified.

9. In the result, we allow the writ petition and set aside the order passed by the competent authority and remit the matter to the said authority for fresh adjudication in accordance with law in the light of the aforesaid decisions.

CHIEF JUSTICE

SANJIV KHANNA, J.

FEBRUARY 04, 2011
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