

**SURAJMAL MEMORIAL EDUCATION SOCIETY,**

**NEW DELHI..... Petitioner**

**Through: Mr. M.S. Syali, Sr. Advocate with Mr. Satyen Sethi and Mr. Johnson Bara, Advocates**

**Versus**

**DIRECTOR GENERAL OF INCOME TAX(EXEMPTIONS) and ANR. ....**

**Respondent**

**Through: Ms Prem Lata Bansal, Mr. M.P. Gupta, Mr. Sanjeev Rajpal and Ms Anshul Sharma, Advocates**

**CORAM**

**HON BLE MR. JUSTICE VIKRAMAJIT SEN**

**HON BLE MR. JUSTICE RAJIV SHAKDHER**

**O R D E R**

**11.05.2009**

**This writ petition assails the order of the Director General Income Tax (Exemptions), Delhi passed on 30.01.2009 (in short Director General). By the said order the petitioner's application for renewal of exemption under Section 10(23C)(vi) of the Income Tax Act, 1961 (in short the Act ) for assessment year 2008-09 onwards stands rejected. The case of the petitioner which is a Society is that some of the students who were on the rolls Jawahar Public School, run by it had to be transferred to another school because of the closure of the school.**

**This had resulted on account of the fact that earlier the policy to allot lands at fixed or concessional rates had been changed and lands were to be purchased through auction. Because of the closure of the school some students from whom fees had been collected by the petitioner were transferred to St. Kabir Modern School and Holy Convent Senior Secondary School. It has been emphasized before us that it is beyond cavil that these students have actually appeared for entering the C.B.S.E. examination through these two schools. For this purpose the petitioner claimed that it had incurred teaching expenses. Unfortunately, the manner of payment or accounting is not only dubious but is also made deliberately complex. *The petitioner claims that it had withdrawn amounts, credited to its principal, and thereafter paid sums to these two schools in cash. The petitioner is not in possession of any documentary proof or receipts of these payments. The Director General came to the conclusion that it was necessary in these circumstances that the books of accounts of these two schools be produced and confirmations be obtained in the absence of documentary proof/ receipts available with the petitioner. The petitioner failed to produce the books of accounts of those two schools and instead***

requested for issuance of summons under Section 131 of the Income Tax Act, 1961. This request was turned down by the Director General. Thus by virtue of the failure on the part of the petitioner to supply proof of payment of teaching expenses to said schools, the Director General concluded that: examination of accounts for financial year 2004-05 to 2006-07 had revealed withdrawal of amounts, and at times curiously in the name of the Headmistress of Jawahar Public School, without requisite receipts of the recipient and consequently the vouchers filed were false; issued only to cover up siphoning of funds. Thus taking recourse to the 3rd proviso to Section 10(23C) the Director General rejected the application for renewal for exemption on the ground that the petitioner had not applied its income wholly and exclusively to objects for which it was set up. Mr. M.S. Syali, learned Sr. Advocate appearing for the petitioner on the other hand contended that it was incumbent on the part of the Director General to issue process under Section 131 of the Act since a conclusion had already been arrived at that it was necessary that the books of accounts be produced.

So far as the Department is concerned they have taken the view that there was no evidence available even to arrive at the prima facie conclusion that these payments have been made by the petitioner to the two schools. Mr. Syali while conceding that there may be a violation of Rule 11 of the Affiliation Bye Laws of the Central Board of Secondary Education(CBSE) points out that the infraction would be of the two other schools which should not logically or otherwise visit the petitioner with the dire consequences of being denied exemption under Section 10(23C)(vi). We are unable to accede to the submissions made by Mr. Syali. *The responsibility for maintaining proper accounts rests exclusively with the petitioner. This is not a case where the petitioner had either filed confirmation or made available the books of accounts maintained by St. Kabir Modern School and Holy Convent Senior Secondary School. It is the petitioner's case that these books of accounts must be summoned by the Department. This would indeed be a very dangerous precedent fraught with possibilities of harassment at the behest of the assessee, if, without any foundation the Department insists on a third party to produce its books of accounts. It is this aspect of the case which has persuaded us not to exercise the extraordinary powers vested in us under Article 226 of the Constitution. Whether or not there has been an infraction of the Affiliation Bye-laws is altogether a different point.*

**Dismissed**

**VIKRAMAJIT SEN, J.  
RAJIV SHAKDHER, J.**

**MAY 11, 2009**