

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP No. 21542 of 2008

Date of Decision: August 4, 2009

M/s Ajanta Educational Centre

...Petitioner

Versus

Chief Commissioner of Income Tax and another

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. V.K. Jain, Senior Advocate, with
Mr. J.L. Malhotra, Advocate,
for the petitioner.

Ms. Naveender P.K. Singh, Advocate,
for the respondents.

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

M.M. KUMAR, J.

Challenge in this petition filed under Article 226 of the Constitution is to the notice dated 22.10.2008 (P-4) issued by the Chief Commissioner of Income Tax, Amritsar-respondent No. 1. A further prayer has been made for directing the respondents to grant benefit of exemption to the petitioner Society under Section 10(23C) of the Income-tax Act, 1961 (for brevity, 'the Act') in respect of Financial Years 2004-05, 2005-06 and 2006-07.

2. Brief facts of the case are that the petitioner is a Society

registered under the Societies Registration Act (XXI) of 1860. It is claimed that the aim and the objects of the petitioner Society is to provide intellectual, moral and physical education on national level and as such it is entitled for exemption under clause 23C of Section 10 of the Act. It had been claiming and granted exemption under Section 10(23C) of the Act prior to assessment year 2004-05. In that regard the petitioner Society has placed on record two orders passed by the Chief Commissioner of Income-tax-respondent No. 1. In respect of assessment years 1999-2000 to 2001-02 exemption has been granted vide order dated 12.12.2005 (P-1) and for the subsequent assessment years from 2002-03 to 2004-05 exemption has been granted vide order dated 30.3.2006 (P-2).

3. On 5.12.2007, the petitioner Society filed Form 56D claiming exemption under Section 10(23C) of the Act in respect of the Financial Years 2004-05, 2005-06 and 2006-07 (P-3). The petitioner Society also filed an application for exemption in terms of Rule 2CA of the Income-tax Rules, 1962, in respect of previous three financial years prior to Financial Year 2004-05, which is stated to be disposed off by the revenue authorities.

4. An amendment was carried out in the Finance Act, 2006 w.e.f. 1.6.2006 whereby XIVth proviso was added to Section 10(23C) of the Act. The assent of the President to the said amendment was granted on 13.7.2006. As per the amendment, the assessee was required to file the application at any time during the financial year immediately preceding the assessment year for which the exemption was to be sought. On 17.12.2007, an application was filed by the

petitioner Society under Section 10(23C)(vi) and (via) of the Act. On 22.10.2008, the Chief Commissioner of Income-tax, Amritsar-respondent No. 1 passed an order rejecting the claim of the petitioner Society for grant of exemption under Section 10(23C) of the Act in respect of Financial Years 2004-05, 2005-06 and 2006-07, holding that if approval is granted then XIVth proviso to Section 10(23C) of the Act would become redundant (P-4). The observations made by the Commissioner of Income-tax reads thus:-

“4. I have considered the aforesaid contention made on behalf of the assessee. If the said contention is accepted, then the 14th proviso to clauses (vi) and (via) of Section 10(23C) of the Income-Tax Act becomes redundant. However, it can never be the intention of the legislation to make any of its provisions redundant by another provision. In fact, the 9th proviso to clauses (vi) and (via) of Section 10(23C) of the Act only ensures that the applications received as per the provisions of the 14th proviso to these clauses are disposed of within a period of 12 months from the end of the month in which the applications are received.

5. In view of the above, the application made by the assessee on 17th December, 2007 for approval under clauses (vi) and (via) of Section 10(23C) of the Income Tax Act for financial years 2004-05 to 2006-07 cannot be acted upon.”

5. It has been asserted by the petitioner Society that on 28.12.2006, the Central Board of Direct Taxes (CBDT) issued

Circular No. 14 of 2006 clarifying that the aforementioned amendment would be applicable from the assessment year 2007-08 and onwards (P-5). Thus, it has been contended that the amendment in question cannot be made applicable retrospectively.

6. In the reply filed on behalf of the respondents the stand taken is that the application dated 17.12.2007 has been rejected summarily without examining the same on merits. It has been submitted that a consolidated application for exemption in respect of Assessment Years 2005-06, 2006-07 and 2007-08 was filed by the petitioner Society and it was not possible to segregate the same into parts as it had to be decided as a whole. If the application is allowed it would amount to granting approval from the Assessment Year 2005-06 onwards including Assessment Year 2007-08, for which the application under Section 10(23C)(vi) was beyond the period of limitation. It has also been pointed out that on 26.11.2008, the petitioner Society has also filed an application before the CBDT for condonation of delay in filing the application dated 17.12.2007 (R-2).

7. In the replication the petitioner Society has pleaded that due to ignorance of new amendment, it could not file application for exemption under Section 10(23C) in time in respect of assessment year 2007-08. It has been claimed that it has never filed any application for condonation of delay as has been portrayed by the respondents and as a matter of fact document Annexure R-2 is a forged document.

8. We have heard learned counsel for the parties and perused the paper book with their able assistance. It would be first profitable to refer to the relevant provisions of the Act. The

petitioner Society has claimed that exemption was granted to it under sub-clause (vi) & (via) of clause 23C of Section 10 of the Act. In the Finance Act, 2006, proviso was added to Section 10(23C) of the Act w.e.f. 1.6.2006 and the assessee was required to move an application at any time during the financial year immediately preceding the assessment year from which the exemption was sought. The assessee-petitioner Society had claimed that its case is covered by proviso IX appended to sub-clause (vi) and (via) of Section 10(23C) of the Act. The relevant proviso of sub-clause (vi) and (via) of clause (23C) of Section 10 of the Act are reproduced as under:-

Proviso I

“Provided that the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of the exemption, or continuance thereof, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via).”

Proviso IX

“Provided also that where an application under the first proviso is made on or after the day on which the Taxation Laws (Amendment) Bill, 2006 receives assent of the President, every notification

under the sub clause (iv) or sub clause (v) or sub clause (vi) or sub clause (via) shall be passed within the period of twelve months from the end of the month in which the application was received.”

Proviso XIV

“Provided also that in case the fund or institution or any university or other educational institution or any hospital or other medical institution referred to in the first proviso makes an application on or after the 1st Day of June, 2006 for the purposes of grant of exemption or continuance thereof, such application shall be made at any time during the financial year immediately preceding the assessment year from which the exemption is sought.”

9. A careful reading of the aforesaid proviso shows that the same cannot have any application in respect of the assessment years 2005-06 and 2006-07 because those financial years had already gone by. This position is also evident from Circular No. 14 of 2006, dated 28.12.2006 (P-5) issued by the CBDT and the relevant portion of the same is extracted as under:-

“6. Providing a time limit for grant/continuance of exemption for certain charitable and religious trusts and institutions and certain educational and medical institutions.

6.1 Section 10(23C)(iv), (v), (vi) and (via), a fund,

trust or institution or university or other educational institution or hospital or other medical institution is required to make an application for grant of exemption under the said clauses to the prescribed authority.

6.2 A new proviso has been inserted in Section 10 (23C) to provide that such application made on or after June 1, 2006 shall be made at any time during the financial year immediately preceding the assessment year from which the exemption is sought.

6.3 Applicability – Assessment year 2007-08 onwards.” (emphasis added)

10. It is well settled enunciation of law that the circulars issued by the CBDT are binding on the revenue authorities. In that regard reliance is placed on the judgments of Hon'ble the Supreme Court rendered in the cases of **P.R. Prabhakar v. Commissioner of Income Tax, Coimbatore, [2006] 284 ITR 548**; **Union of India v. Azadi Bachao Andolan, (2004) 10 SCC 1**; and **Commissioner of Customs, Calcutta v. Indian Oil Corporation Ltd., (2004) 3 SCC 488**.

11. The stand of the respondents is that since a consolidated application for exemption in respect of assessment years 2005-06, 2006-07 and 2007-08 was filed it could not be segregated into parts. It is claimed that it was required to be dealt with and decided as a

whole. It is conceded position that the petitioner Society never claimed any exemption in respect of assessment year 2007-08. Moreover, no bar has ever been created either by the statute or by the instruction/circulars that such type of consolidated applications could not have been dealt with in parts in respect of each assessment year/financial year while adjudicating. A perusal of Rule 2CA provides for detailed guidelines. According to Rule 2CA, an application for approval has to be made in Form 56D by any university or educational institution. The approval of the Chief Commissioner granted before 1.12.2006 shall at any one time have effect for a period not exceeding three Assessment Years. The maximum limit of three years is fixed. The stand of the respondents in the face of Rule 2CA is wholly unwarranted.

12. The Chief Commissioner-respondent No. 1 has passed the impugned order dated 22.10.2008 (P-4) in a mechanical manner and without application of judicious mind which is expected from a quasi judicial authority. Accordingly, we have no hesitation to quash the impugned order dated 22.10.2008.

13. As a sequel to the above discussion, the instant petition is allowed. Impugned order dated 22.10.2008 (P-4) passed by the Chief Commissioner-respondent No. 1 is quashed. The Chief Commissioner-respondent No. 1 is directed to consider the case of the petitioner Society on merit for grant of exemption under Section 10 (23C)(vi) and (via) of the Act in respect of assessment years 2005-06 and 2006-07 afresh.

(M.M. KUMAR)
JUDGE

August 4, 2009

**(JASWANT SINGH)
JUDGE**

Pk Kapoor