

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE CIVIL JURISDICTION**

**WRIT PETITION NO. 4879 OF 2009**

Indian Planetary Society,  
B-204, Vishnu Apartments,  
L.T. Road, Borivali (W),  
Mumbai 400 092

... Petitioner

Versus

1. Central Board of Direct Taxes  
having its office at Ministry of Finance,  
C.S. Building, North Block,  
Parliament Street,  
New Delhi 110 001.
2. Income Tax Officer (Exemption)-II(1),  
5<sup>th</sup> Floor, Piramal Chambers,  
Mumbai 400 012
3. Director of Income Tax (Exemption),  
616, 6<sup>th</sup> Floor, Piramal Chambers,  
Mumbai 400 012.
4. Director General of Income Tax,  
(Exemption), having his office at Plot  
No. 15, 2<sup>nd</sup> Floor, Laxmi Nagar,  
Delhi 110 092.
5. Union of India,  
through Ministry of Finance,  
North Block, Central Secretariat,  
New Delhi.

... Respondents

Mr. S.C. Tiwari for the Petitioner.

Mr. Parag Vyas with Mr. P.S. Sahadevan for Respondents.

**CORAM : FERDINO I. REBELLO &  
J.H. BHATIA, JJ.  
DATED : JULY 10, 2009**

**ORAL JUDGMENT (Per Ferdino I. Rebello,J.):**

Rule. By consent heard forthwith.

2. The Petitioner is registered under the Bombay Public Trust Act, 1950. The aims and objects of the society inter alia includes research in planetary science, astronomy – astrophysics, solar physics and allied subjects. Apart from that other objects are to popularize science among the general public of our country, to conduct short courses on science, astronomy, geography for students and teachers in schools, colleges and universities, to Publish news letters/magazines etc. and other activities as per the ‘Trust Deed including to arrange conferences and seminars on science and planetary science, astronomy and astrophysics etc. The society was established on 12<sup>th</sup> December, 2000. It has two wings (i) Research Wing and (ii) Wing for popularization of Science. According to Petitioner, they are publishing two popular science magazines (Virat Surya (ii) Kids’ Science. It has also five powerful telescopes, mini planetarium and exhibition of a large number of frames. In 2005, the Department of Science and Technology, Ministry of Science and Technology, Government of India has awarded the Indian Planetary Society its very prestigious National Award for carrying out scientific activities. It has been organizing international conferences. It has published various research publications as set out in the Petition and it is not necessary for us to refer to them in extenso. The Petitioners have also placed before us other material to show the research work in the form of publication that they are carrying on.

3. Petitioner made their first application for recognition as Scientific and Industrial Research Organization (SIRO) vide letter dated 24.08.2001 to the Ministry of Science and Technology New Delhi, Department of Scientific and Industrial Research for the period of 01.04.2001 to 31.3.2004. This application was

followed by the application for approval u/s. 35(1)(ii) of the Income Tax Act, 1961 dated 28.8.2001 for the period 01.04.2001 to 31.3.2004 addressed to Director General of Income Tax (Exemption), Kolkata, through Director of Income Tax (Exemption), Mumbai and submitted in the latter's office on 29.08.2001. The Ministry of Science and Technology, New Delhi, Department of Scientific and Industrial Research, accorded to the Petitioner, recognition as Scientific and Industrial Research Organization (SIRO) vide letter No. 11/401 /2001-TU-V Dated 29.08.2003, recognizing for the period from 01.08.2003 to 31.03.2006. After receipt of the recognition from the Department of "Scientific and Industrial Research in Ministry of Science and Technology for the period from 1.8.2003 to 31.3.2006 the petitioner made another application to the Director of Income Tax (Exemption), Mumbai on 26.12.2003 for approval u/s. 35(1)(ii) of the Act for the period 1.4.2003 to 31.3.2006 with a view to cover the period of recognition granted by DSIR i.e. 01.08.2003 to 31.3.2006. Subsequently, the Petitioner submitted to the Central Board of Direct Taxes (CBDT) by its letter dated 29.12.2004 drafts of Research Papers that were about to be sent for publication and a note on Proposed and Ongoing Research as documents supporting the Petitioner's application for approval under section 35(1)(ii) for the period 1.4.2003 to 31.3.2006 along with various documents. Correspondence thereafter ensued between the Petitioner and C.B.D.T.

4. Petitioner on 1.4.2006 made an application in the prescribed form No. 3CF to Department of Scientific and Industrial Research (DSIR) for renewal of recognition as Scientific and Industrial Research Organization (SIRO). Thereafter, the Petitioner also applied to the Director of Income Tax

Mumbai for renewal of approval under section 35(1)(ii) for the period 1.4.2006 to 31.3.2009.

5. It is the case of the Petitioner that they were shocked to receive a communication dated 14.8.2006 by Respondent No. 1 rejecting the application for the period 1.4.2003 to 31.3.2006, stating "the basic requirement under section 35(1)(ii) of the I.T. Act of undertaking adequate scientific research activity is not fulfilled". It is the case of the Petitioner that C.B.D.T. has not given any reason or basis or explanation for the same. On 21.8.2006 the D.S.I.T. accorded to the Petitioner renewal of recognition as Scientific and Industrial Research Organization (SIRO) for the period 1.4.2006 to 31.3.2009. The Petitioner after that wrote to C.B.D.T. for review of the order. That was rejected on the ground that there was no provision for review. Petitioner thereafter received communication seeking information about the Petitioner's application for the period 1.4.2006 onwards which the Petitioner has submitted. Correspondence thereafter ensued between the Petitioner and C.B.D.T. By communication of 24.3.2008 the Petitioner's application for the period 1.4.2006 to 31.3.2009 has been rejected. A review Petition filed has also been rejected and hence, the present petition.

5. It may be pointed out that for the period from 1.4.1962 to 31.3.1969 the Prescribed Authority under Section 35 of the I.T. Act was C.S.I.R., I.C.A.R. and I.C.M.R. From 1.4.1969 to 31.3.1975 apart from the three earlier mentioned bodies, it also included the Indian Council of Social Science Research. From 1.4.1975 to

31.10.1977, in so far as research in the fields of agriculture, animal husbandry and fisheries, the Indian Council of Agricultural Research was so designated and in so far as research in the field of other natural or applied science the prescribed authority was the Secretary, department of Science and Technology, Government of India or any other officer of that Department nominated by him in this behalf. The three other organizations namely ICAR, INCMR and ICSSR were designated as prescribed authorities in their respective field. The same was practically repeated for the period 1.11.1977 to 31.8.,1980. Similarly prescribed authority was designated between the period from 1.9.1980 to 5.1.1985 without much changes. Between 6.1.1985 to 22.8.1989 the prescribed authority was notified as Secretary, Department of Scientific and Industrial Research, Government of India. From 23.8.1989 to 30.09.1986 it was Director General (Income Tax Exemptions) in concurrence with the Secretary, Department of Scientific and Industrial Research, Government of India. From 1.10.1986 to 24.6.1999 it was the Director General (Income Tax Exemptions) in concurrence with the Secretary, Department of Scientific and Industrial Research, Government of India.

6. The relevant provisions of section 35 may now be examined.

“35. (1) In respect of expenditure of scientific research, the following deductions shall be allowed -

- (i) any expenditure (not being in the nature of capital expenditure) laid out or expended on

scientific research related to the business.

Explanation – Where any such expenditure has been laid out or expended ;before the commencement of the business (not being expenditure laid out or expended before the 1<sup>st</sup> day of April, 1973) on payment of any salary (as defined in Explanation 2 below sub section (5) of section 4(A) to an employee engaged in such scientific research or in the purchase of materials used in such scientific research, the aggregate of the expenditure so laid out or expended within the three years immediately preceding the commencement of the business shall, to the extent it is certified by the prescribed authority to have been laid out or expended on such scientific research, be deemed to have been laid out or expended in the previous year in which the business is commenced;

(ii) an amount equal to one and one-fourth times of any sum paid to a scientific research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific

research;

Provided that such association, university, college or other institution for the purposes of this clause -

(A) is for the time being approved, in accordance with the guidelines in the manner and subject to such conditions as may be prescribed; and

(B) such association, university, college or other institution is specified as such, by notification in the Official Gazette, by the Central Government.

(iii).....

Provided.....

Provided .....

Provided further that the Central Government may, before granting approval under clause (ii) or clause (iii), call for such documents (including audited annual accounts) or information from the scientific research association, university, college or other institution as it thinks necessary in order to satisfy itself about the genuineness of the activities of the scientific research association,

university, college or other institution and that Government may also make such inquiries as it may deem necessary in this behalf;

Provided that any notification issued, by the Central Government under clause (ii) or clause (iii), before the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, shall, any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification....”

7. It will thus be clear that under section 35(1)(ii) it must be approved in accordance with the guidelines in the manner and subject to such conditions as may be prescribed under the second proviso after Section 35(1)(iii), Petitioners application had to be to the Central Government in the prescribed form. The third proviso provides that the Central Government can call for such information and also make such enquiries as it may deem necessary in this behalf. The second and third provisos were inserted by the Direct Tax Laws Amendment 1989 with effect from 1.4.1989.
8. We asked the learned counsel for the revenue whether the Government of



India had issued any guidelines as contemplated by section 35(1)(ii)(a). The learned counsel was unable to show any guidelines that were issued. Section 43 contains the definitions of certain terms. Section 43(4) defines Scientific Research to mean any activities for the extension of knowledge in the field of natural or applied science including agriculture, animal husbandry or fisheries. (ii) reference to expenditure incurred on scientific research include all expenditure incurred for the prosecution, or the provision of facilities for the prosecution of scientific research, but does not include any expenditure incurred in the acquisition of rights in, or arising out of, scientific research; It is not necessary to refer to other parts.

8. We may only mention that the recognition by the Government of Ministry of Science and Technology to the Petitioner as ISRO entails the Petitioner to avail of customs/excise duty exemption for the activities set out therein. Considering the above, we may now consider the reliefs prayed for and the challenge to the rejection of the application moved by the Petitioners herein.

9. On perusal of provisions of section 35(1)(ii) and the proviso it would be clear that the authority to grant permission is Government of India. In the instant case rejection has been by the Central Board of Direct Taxes. Nothing has been shown before us to show that Central Board of Direct Taxes under the Business Rules of Government of India has been allowed to discharge functions of the Government under section 35(1)(ii). If the provisos of section 35(1) are seen C.B.D.T. Is the prescribed authority in certain cases. However, it certainly is not the organization

covered under Section 35(1)(ii). In the absence of any material on this count alone, the order is liable to be set aside and the matter remanded to the Government of India for reconsideration according to law.

10. The other aspect of the matter is while considering application under section 35(1)(ii), the amendments have been made from time to time as set out in the earlier part of our order. The earlier prescribed authority were the organizations concerned with science and technology or Agricultural or medicine. In other words a body of persons who would be conversant with the subject. In so far as scientific research association is concerned, this has undergone various changes and now the power has been conferred on the Central Government. Even here we find that the Central Government whilst deciding the matter is empowered to make such inquiries as it may think necessary in this behalf. In our opinion, the application of mind in the absence of the person discharging the function having the expertise must be to make inquiries with the body conversant with the subject and having knowledge of the subject including research that can be done in the subject. In the absence of such an examination the action will be vitiated as being a nullity being by a person having no expertise in that particular field of science or research;. The power to make inquiries has advisedly been conferred so that the person discharging the function has the advise of persons in the field conversant with the field of science and research. In a case where the appellant is a person like the Petitioner herein who claim to be doing research in the field of Astro Physics etc, the Government is duty bound to make inquiries with bodies like Council of Scientific Research. In the field of medicines may be by the Council of Medical

Research, in Agricultural by Indian Agricultural Research and so on. These are the aspects which must be borne in mind while considering the application.

11. C.B.D.T. by its very nature is composed of the officers from income tax department. By their very nature though they may read and consider some aspects, will really not be in a position to arrive at the finding as to whether the activities carried on by bodies like the Petitioner amount to research as may be required. In our opinion, therefore, the Central Government which has the authority, before considering the application of a body like the Petitioner, ought to bear this in mind. In the instant case, no such material was available with the C.B.D.T. Apart from that C.B.D.T. was not the competent authority. On this count also the order is liable to be set aside.

12. For the aforesaid reasons, petition will have to be allowed. Rule made absolute in as much as the orders dated 14.8.2006 and 24.8.2006 are set aside and the Central Government is directed to consider the matter afresh bearing also in mind the recognition granted to the Petitioner by the Ministry of Science and Technology. The entire exercise to be completed within six months from today. Rule made absolute accordingly. No order as to costs.

**(J.H. BHATIA,J.)**

**(FERDINO I. REBELLO,J.)**