

Charitable institution, society or trust should 'solely' engage itself in educational activities and not in any activity of profit to enjoy tax exemption

The Hon'ble Supreme Court in *M/s. New Noble Educational Society, v. The Chief Commissioner of Income Tax 1 [Civil appeal no. 3795 of 2014 dated October 19, 2022]* has held that for tax exemption, the charitable institution, society or trust should 'solely' engage itself in educational activities and not in any activity of profit.

Facts:

M/s New Noble Educational Society ("**the Appellant**") has applied for the registration for trust which has been set up for the charitable purpose of education under the Income Tax Act, 1961 ("**the IT Act**") and also claimed benefit of exemption under Section 10(23C) of the IT Act.

The Revenue Department ("**the Respondent**") has denied the Appellant's claim for registration on the ground that the Appellant was not registered under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 ("**the A.P. Charities Act**") as condition precedent for grant of approval.

Additionally, the Appellant's claim was denied on the ground that the Appellant's trust who has claimed benefit of exemption under Section 10(23C)(vi) of the IT Act, but the Respondent found that the concerned trust was not created 'solely' for the purpose of education and further to check its genuineness, examined the memorandum of association or the rules or the constitution of the concerned trust.

Argument by the Respondent:

As per Section 10(22) of the IT Act, income of university or other educational institutions existing 'solely' for educational purposes, and not for the purpose of profit, and it was excluded from the tax liability.

The Respondent further submitted that, there were two key elements to the definition of what could be excluded from the ambit of taxation – (i) that the institution should exist 'solely' for the purpose of education; and (ii) it should not exist for the purpose of profit.

Argument by the Appellant:

The Appellant contended that, the precondition was absent in the provisos to Section 10(23C) (vi) of the IT Act, and that since the IT Act was a complete code in itself, other Acts such as the A.P. Charities Act could not form the basis for denying approval.

It was urged that there was no bar or restriction imposed by law on trusts involved or engaged in activities other than education, from claiming exemption under Section 10(23C)(vi) of the IT Act, provided their motive was not-for-profit.

It was submitted that the Appellant had other objects apart from education which were charitable and that did not mean that it ceased to be an institution existing 'solely' for educational purposes. Consequently, the denial of registration by the Respondent was contrary to law.

Being Aggrieved by the Judgement of the Respondent, the Appellant file an appeal before the Supreme Court.

Issue:

Whether the issue passed by the Respondent is in accordance with the law or not?

Held:

The Hon'ble Supreme Court in ***Civil appeal no. 3795 of 2014 dated October 19, 2022*** held as under:

- The Court observed that in construing the term 'any university or other educational institution existing solely for educational purposes and not for purposes of profit' and the other negative reference to profit, in respect of educational institutions, is in the seventh proviso to Section 10(23C) (vi) of the IT Act which states that incomes which are profits of business, cannot be exempt, "unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business".
- The Court stated that, the basic provision granting exemption, thus enjoins that the institution should exist 'solely for educational purposes and not for purposes of profit'. This requirement is categorical. While construing this essential requirement, the proviso to Section 10(23C)(vi) of the IT Act, which carves out the exception, so to say, to a limited extent, cannot be looked into. The expression 'solely' has been interpreted, as noticed previously, by other judgments as the 'dominant/ predominant /primary/ main' object.
- The Court opined that if the language is unambiguous and capable of one meaning, that alone should be applied and not any other, based under surmise that the Parliament or the legislature intended it to be so. In other words, it is only in cases of ambiguity that the Court can use other aids to discern the true meaning. Where the statute is clear and the words plain, the legislation has to be given effect in its own terms.
- The Court further opined that while considering applications for approval under Section 10(23C) of the IT Act, the Respondent may be under the second proviso to Section 10 (23C)(vi) is not bound to examine only the objects of the institution. To ascertain the genuineness of the institution and the manner of its functioning, the Respondent is free to call for the audited accounts or other such documents for recording satisfaction where the society, trust or institution genuinely seeks to achieve the objects which it professes.

- The Court stated that wherever registration of trust or charities is obligatory under state or local laws, the concerned trust, society, other institution etc. seeking approval under Section 10(23C) of the IT Act should also comply with provisions of such state laws. This would enable the Respondent to ascertain the genuineness of the trust.
- Hence, dismissed the appeal filed by the Appellant.

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