

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2825/Mds/2016

निर्धारण वर्ष / Assessment Year : 2007-08

The Income Tax Officer
(Exemptions),
No.2, V.P. Rathinasamy Nadar
Road, Bibikulam,
Madurai.

(अपीलार्थी/Appellant)

v. M/s Pimasugam Educational Trust,
No.15, R.R. Nagar,
Kumaraswamy Raja Nagar Post,
Rajapalayam – 626 117.

PAN : AABTP 5206 A

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Nataraja, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri M. Muthusubramanian, CA

सुनवाई की तारीख/Date of Hearing : 04.07.2017

घोषणा की तारीख/Date of Pronouncement : 27.07.2017

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) – 2, Madurai, dated 30.03.2016 and pertains to assessment year 2007-08.

2. Shri S. Nataraja, the Ld. Departmental Representative, submitted that the assessee claimed exemption under Section 10(23C) of the Income-tax Act, 1961 (in short 'the Act'). According

to the Ld. D.R., the assessee is an educational institution. For the purpose of claiming exemption under Section 10(23C) of the Act, the assessee has to establish that the educational institution exists solely for educational activities and not for profit. In this case, according to the Ld. D.R., the educational institution does not exist for educational activity only. The other activities carried on by the assessee are brought on record by the Assessing Officer at para 7.4 of his order. According to the Ld. D.R., the assessee has distributed sarees to the so-called poor, computers were said to be given to school children. The assessee has claimed that it distributed 3-wheeler cycle to handicapped people. According to the Ld. D.R., these activities of the assessee are not educational activities, therefore, the assessee does not solely exist for educational activities. Therefore, according to the Ld. D.R., the CIT(Appeals) is not justified in allowing the claim of the assessee.

3. On the contrary, Shri M. Muthusubramanian, the Ld. representative for the assessee, submitted that one of the objects of the assessee-society is to establish and run educational institution. On a query from the Bench what are the objects of the assessee-society? The Ld. representative submitted that there are several

objects including establishment of educational institution, distribution of free food and clothing to the poor and needy, establishment of libraries, establishment of hostel for the students, extending help to poor people affected by natural calamity, etc. The Ld. representative further submitted that the assessee has established a nursing college in the name and style of "Suran College of Nursing" at Virudhunagar District. This college is affiliated to Tamil Nadu Dr. M.G.R. Medical University, Chennai. Therefore, the institution is solely existing for educational activities. On a query from the Bench when the assessee has several objects apart from education, can it be said that it was existing solely for educational purpose? The Ld. representative submitted that the CIT(Appeals) by referring to the judgment of Bombay High Court in Chief Commissioner of Income Tax v. Vanita Vishram Trust (2010) 192 Taxman 389 and the judgment of Allahabad High Court in Union of India v. C.P. Vidya Niketan Inter College Shikshan Society (2013) 40 taxmann.com 76, has allowed the claim of the assessee.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee claims that it was existing solely for educational activities even

though it engaged in other activities of extending help to poor people, distribution of sarees to the poor, computers to the students, etc. However, the Revenue claims that when the assessee is engaged in other activities, the assessee is not eligible for exemption under Section 10(23C) of the Act. The CIT(Appeals) by placing reliance on the judgment of Bombay High Court in Vanita Vishram Trust (supra) and Allahabad High Court in C.P. Vidya Niketan Inter College Shikshan Society (supra), allowed the claim of the assessee without any discussion in the order. This Tribunal is of the considered opinion that the CIT(Appeals) is bound to discuss the matter and bring on record how the judgments of Bombay High Court and Allahabad High Court are applicable to the facts of the case. Since such an exercise was not by the CIT(Appeals), this Tribunal is of the considered opinion that the matter needs to be reconsidered. Accordingly, the orders of the authorities below are set aside and the issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter in the light of the material that may be available on record and decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

5. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on 27th July, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 27th July, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-2, Madurai
4. आयकर आयुक्त / CIT(Exemption), Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.