

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**



D.B. Civil Writ Petition No. 3487/2014

Chandigarh Manav Vikas Trust C/o Chandigarh Hospital, Opposite  
Bus Stand, Hanumangarh Junction.

-----Petitioner

Versus

1. Chief Commissioner Of Income Tax, Ayakr Bhawan, Paota C Road, Jodhpur.
2. Commissioner of Income Tax, Rani Bazar, Bikaner.
3. Income Tax Officer, Ward-I, Hanumangarh.

-----Respondents

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For Petitioner(s) : Mr. Sharad Kothari  
For Respondent(s) : Mr. K.K. Bissa

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**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI  
HON'BLE MR. JUSTICE MUNNURI LAXMAN**

**Judgment**

**Reserved on 28/02/2024**

**Pronounced on 07/03/2024**

1. This writ petition under Articles 226 & 227 of the Constitution of India has been preferred claiming the following reliefs:

*"It is, therefore, humbly prayed that the Writ Petition may kindly be allowed and by an appropriate, order or direction:-*

*(i) the impugned Order dated 26/11/2023 (Annexure 13) passed by Respondent No.1, Chief Commissioner of Income Tax, Jodhpur may be quashed and set-aside.*

*(ii) respondent may be directed to issue Registration Certificate to the Petitioner Trust.*

*(iii) Any other order or direction which this Hon'ble Court deems just and proper may kindly be passed."*

2. The petitioner is a Charitable Trust, registered with the Sub-Registrar, Hanumangarh on 28.11.2023 and with Devasthan Department, Bikaner on 22.12.2009. The petitioner is also registered as a Society under Section 12(A) of the Income Tax Act, 1961 (*hereinafter referred to as 'Act of 1961'*). Owing to such dual nomenclature of the petitioner i.e. Trust as well as Society, it shall be henceforth referred in the present judgment as 'the petitioner' only.

2.1. Thereafter the petitioner had filed an application on 28.09.2012 seeking exemption under Section 10 (23C) (vi) of the Act of 1961 in the prescribed Form No. 56D for the year 2011-12 before the Office of Commissioner of Income Tax, Bikaner, Range Bikaner, and the said application was forwarded to the officer of the respondent-Chief Commissioner. Thereafter, due to certain defects/discrepancies in the application, the petitioner filed a fresh application and the same was considered, while also keeping into consideration the aspect of limitation.

2.2. Subsequently, during the proceedings, the respondent no.3 issued a communication dated 28.01.2013, the petitioner was asked to furnish certain documents in relation to the application in question, and was further asked information regarding the educational institution. The petitioner submitted a reply to the said communication. Thereafter, the respondents issued a communication and asked the petitioner to appear in person alongwith certain documents, pursuant to which the petitioner has put in his appearance, and furnished the required information. The respondents also issued another communication dated 14.08.2013

to the petitioner, and again called upon him to furnish certain information, as mentioned in the said communication.

2.3 Thereafter, the respondents vide the impugned order dated 26.11.2013 rejected the petitioner's application for granting the exemption under Section 10 (23C) (vi) of the Act of 1961.

3. Learned counsel for the petitioner submitted that the petitioner is engaged solely in the educational purposes, and therefore, the petitioner falls under Section 10 (23C) (vi) of the Act of 1961.

3.1. It was further submitted that the respondents issued various query letters to the petitioner and the petitioner acted upon each and every such letter and provided the requisite information, to the satisfaction of the respondents, to the effect that the petitioner is engaged exclusively in imparting of education and no other purpose is being carried out by the petitioner, and therefore, the impugned order is not justified in law.

3.2. It was also submitted that in the impugned order, a finding was recorded regarding the figures of surplus of income over and above the expenditure to infer that the petitioner is being run for the purpose of profits, but even for carrying on an education institution for charity, some surplus is bound to follow for various reasons, and therefore, the impugned action of the respondents in not extending the exemption to the petitioner is arbitrary and illegal, and thus, the impugned order deserves to be quashed and set aside.

3.3. In support of such submissions, learned counsel relied upon the following judgments :

(a) *Queen's Educational Society Vs Commissioner of Income Tax (2015) 8 SCC 47;*

(b) *Delhi Bureau of Text Books Vs Director of Income Tax (E) (ITA 807, 810, 811/2015 decided on 03.05.2017) by the Hon'ble High Court of Delhi;*

(c) *C.P. Vidya Niketan Inter College Shikshan Society Vs Union of India & Ors. (Civil Misc. Writ Petition No.1185/2011, decided on 16.10.2012) by the Hon'ble High Court of Allahabad;*

(d) *Neeraj Janhitkari Gramin Sewa Sansthan Vs Chief Commissioner of Income Tax & Ors. (Writ Tax No.1714/2010, decided on 04.07.2013) by the Hon'ble High Court of Allahabad;*  
*and*

(e) *Indus Technical Education Society Vs Union of India & Ors. (Civil Misc. Writ Petition (Tax) No.447/2012, decided on 18.12.2015) by the Hon'ble High Court of Allahabad.*

4. On the other hand, learned counsel appearing on the behalf of the respondents, while opposing the aforesaid submissions made on behalf on the petitioner, submitted that the petitioner does not fall under Section 10 (23C) (vi) of the Act of 1961 for the purposes of exemption, because the surplus being generated is not incidental to educational purposes.

4.1. It was further submitted that the petitioner is being run on commercial lines, as it is evident by the expenditure incurred on the advertisement by the petitioner during the financial year 2008-09, amounting to Rs. 41,074/-; an institution, like a coaching center or a private school, which is being run with the

business/profitable purposes does not come under the exemption category.

4.2. It was also submitted that for grant of exemption under Section 10 (23C) (vi) of the Act of 1961, it is required that the institution concerned is engaged solely in the education purposes and the word 'solely' here means 'exclusively', meaning thereby, the sole object of the charitable institution must be pertaining to imparting education, as has been held by the Hon'ble Apex Court in case of ***The Sole Trustee, Lok Shikshana Trust Vs The Commissioner of Income Tax, Mysore (1976) 1 SCC 254.***

5. Heard learned counsel of the parties as well as perused the record of the case alongwith the judgments cited at the Bar.

6. This Court observes that the petitioner, owing to it being a registered Trust, filed an application seeking the exemption under Section 10 (23C) (vi) of the Act of 1961 in the prescribed Form No. 56D for the year 2011-12 before the respondents; whereafter, during the proceedings in question, the respondent no.3 issued various communications to the petitioner calling upon it to furnish certain documents in relation to the application in question, which as per the petitioner was duly furnished. Subsequently, the respondents vide the impugned order dated 26.11.2013 rejected the petitioner's application in question.

7. This Court further observes that the respondent-Chief Commissioner gave a finding in the impugned order that the petitioner is being run as an institution for the profitable purposes and regularly earning a surplus income out of its activities, and thus, the petitioner's case does not fall under the exemption



category. In furtherance, the respondent, while passing the impugned order, relied upon the judgment rendered by the Hon'ble High Court of Uttarakhand in case of **CIT Vs Queen's Educational Society (Uttarakhand) 177 Taxmann 321**. This Court also observes that the said judgment was challenged before the Hon'ble Apex Court in case of **Queen's Educational Society Vs Commissioner of Income Tax (2015) SCC 47**, and the same was overruled vide judgment dated 16.03.2015 passed by the Hon'ble Apex Court.

Relevant portion of the said judgment dated 16.03.2015 is reproduced as hereunder:-

*"19. It is clear, therefore, that the Uttarakhand High Court has erred by quoting a non-existent passage from an applicable judgment, namely, Aditanar and quoting a portion of a property tax judgment which expressly stated that rulings arising out of the Income Tax Act would not be applicable. Quite apart from this, it also went on to further quote from a portion of the said property tax judgment which was rendered in the context of whether an educational society is supported wholly or in part by voluntary contributions, something which is completely foreign to Section 10(23C) (iiiad). The final conclusion that if a surplus is made by an educational society and ploughed back to construct its own premises would fall foul of Section 10(23C) is to ignore the language of the Section and to ignore the tests laid down in the Surat Art Silk Cloth case, Aditanar case and the American Hotel and Lodging case. It is clear that when a surplus is ploughed back for educational purposes, the educational institution exists solely for educational purposes and not for purposes of profit. In fact, in **S.R.M.C.T.M. Tiruppani Trust v. Commissioner of Income Tax (1998) 2 SCC 584**, this Court in the context of benefit claimed Under Section 11 of the Act held:*

*9. In the present case, the Assessee is not claiming any benefit Under Section 11(2) as it cannot; because in*



*respect of this assessment year, the Assessee has not complied with the conditions laid down in Section 11(2). The Assessee, however, is entitled to claim the benefit of Section 11(1)(a). In the present case, the Assessee has applied Rs. 8 lakhs for charitable purposes in India by purchasing a building which is to be utilised as a hospital. This income, therefore, is entitled to an exemption Under Section 11(1). In addition, Under Section 11(1)(a), the Assessee can accumulate 25% of its total income pertaining to the relevant assessment year and claim exemption in respect thereof. Section 11(1)(a) does not require investment of this limited accumulation in government securities. The balance income of Rs. 1,64,210.03 constitutes less than 25% of the income for Assessment Year 1970-71. Therefore, the Assessee is entitled to accumulate this income and claim exemption from income tax Under Section 11(1)(a).*

*We set aside the judgment of the Uttarakhand High Court dated 24th September, 2007. The reasoning of the ITAT (set aside by the High Court) is more in consonance with the law laid down by this Court, and we approve its decision."*

8. This Court also observes that the Ministry of Finance, Department of Revenue, Central Board of Direct Tax issued a Circular bearing No. 14/2015 (F.No.197/38/2015-ITA-I) dated 17.08.2015, stating therein that representations have been received seeking clarification on certain issues relating to grant of approval and claim of exemption under Section 10 (23C) (vi) of the Act of 1961, and vide the said circular, it was clarified that the mere generation of surplus from year to year cannot be a basis for rejection of application under Section 10(23C) (vi) of the Act of 1961.

Relevant portion of the said Circular is reproduced hereunder:-

**"3. Generation of surplus out of gross receipts**

*A doubt has been raised whether generation of surplus out of gross receipts would necessarily 'breach' the threshold condition that the educational institution should exist 'solely for educational purpose and not for the purpose of profit'. **Perusal of prescribed provisions clearly reveal that mere generation of surplus cannot be a basis for rejection of application u/s 10(23C)(vi) on the ground that it amounts to an activity of the nature of profit making.** In fact, the third proviso to the said clause clearly provides that **accumulation of income is permissible subject to the manner prescribed therein provided such accumulation is to be applied "wholly and exclusively to the objects for which it is established"**. Hence, it is clarified that mere generation of surplus by education institution from year to year cannot be a basis for rejection of application u/s 10(23C)(vi) if it is used for education purposes unless the accumulation is contrary to the manner prescribed under law."*

9. This Court also observes that the petitioner is claiming that it is being run as a Trust solely for educational purposes, and thus, seeking the exemption under Section 10 (23C) (vi) of the Act of 1961, and the generation of surplus from year to year cannot be bar in seeking such exemption under the said provision of law. This Court further observes that after the judgment rendered by the Hon'ble Apex Court in case of **Queen's Educational Society (Supra)** and issuance of the aforementioned clarificatory Circular, the case of the present petitioner needs to be duly considered by the respondents.

10. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case, particularly, the precedent of Queen's Educational Society (supra) and the aforementioned clarificatory circular, the present petition is **partly allowed**;



accordingly, while quashing and setting aside the impugned order 26.11.2013 (Annexure-13), the matter is remanded back to the respondents with a direction to re-consider and decide the application in question preferred by the petitioner under Section 10 (23C) (vi) of the Act of 1961, strictly in accordance with law, including due adherence to the aforesaid precedent law as well as the aforementioned clarificatory circular. Such an exercise shall be undertaken and completed by the respondents within a period of three months from the date of receipt of a certified copy of this judgment. All pending applications stand disposed of.

**(MUNNURI LAXMAN),J**

**(DR. PUSHPENDRA SINGH BHATI),J**

SKant/-