

Before Adarsh Kumar Goel & Alok Singh, JJ.

HARYANA STATE COUNSELLING SOCIETY—Petitioner

versus

**CHIEF COMMISSIONER, INCOME TAX,
PANCHKULA—Respondent**

CWP No. 8349 of 2009

26th May, 2010

Constitution of India, 1950—Art. 226—Income Tax Act, 1961—S. 10(23C)(iv)—State Government setting up a Society to facilitate and simplify admission procedure to Technical Institutes—Society granting scholarships to toppers, poor and needy students—Application for grant of exemption u/s 10(23C)(iv) disallowed on ground of commercial activities—Challenge thereto—Neither State Government nor Society indulging in any commercial activity—Merely because Society has accumulated some profit does not mean that society is not achieving its object for which it was established—Merely because society has earned some profit, does not make society disentitle for exemption—Order passed by Chief Commissioner rejecting application of Society for grant of exemption not sustainable—Petition allowed.

Held, that in view of the fact that the petitioner-society is set up by the Government of Haryana, neither the Government of Haryana nor the petitioner-society indulge in any commercial activity and merely because the society has accumulated some profit, does not mean that the petitioner-society is not achieving its object for which it was established. Merely because the society has earned some profit, does not make the society disentitle for the exemption. In view of this, order dated 18th February, 2009 passed by the Chief Commissioner, Income Tax, Panchkula cannot be sustained.

(Para 9)

Ms. Manisha Gandhi, Advocate, *for the petitioner.*

S. K. Garg Narwana, Advocate, *for the respondent.*

ALOK SINGH J.

(1) This is a writ petition filed invoking jurisdiction of this Court under Articles 226/227 of the Constitution of India, assailing the order dated 18th March, 2009 passed by the Chief Commissioner, Income Tax, Panchkula, rejecting the application of the petitioner for grant of exemption under Section 10(23)(iv) of the Income Tax Act, 1961.

(2) Brief facts of the present case are that the petitioner-society was set up by the Government of Haryana to facilitate and simplify the admission procedure to the Technical Institute in the University Departments, Government/Government aided/Private Institutions located in the State of Haryana. Petitioner-society is a self funding society conducting entire admission procedure for admission to all technical courses including post-graduate, under-graduate and diploma education in all Technical Institutes in the University Departments, Government/Government aided/Private Institutions located in the State of Haryana. Petitioner-society also provides scholarships to the topper students of each branch of every course in every institute for the entire duration of the course. Petitioner-society also grants scholarships to poor and needy students from general or reserved category. The entire funds are used for students for promoting technical education. The Society has also set up a toll free call centre where students can call for any query or information.

(3) Petitioner-society applied for grant of exemption under Section 10(23C) (iv) of the Income Tax Act, 1961. The Chief Commissioner, Income Tax, Panchkula, has disallowed the application of the Society on the ground of commercial activities. Order of the Chief Commissioner, Income Tax, Panchkula, dated 18th March, 2009 is under challenge before this Court.

(4) We have heard learned counsel for the petitioner and perused the record.

(5) The Chief Commissioner, Income Tax, Panchkula, in paras 13 and 15 of the order has held as under :—

“13. From the above amendment in the definition of ‘Charitable purpose’, it is seen that with effect from 1st April, 2009 i.e. from the assessment year 2009-10 onwards, the scope of the term ‘advancement of any other object of general public utility’ as a ‘charitable purpose’ has been

considerably restricted by excluding from its ambit any activity in the nature of the trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application or retention of income from such activity.

15. *A perusal of the income and expenditure amount of the assessment applicant for the financial year 2007-08 i.e. 2007-08 i.e. assessment year 2008-09 reveals that during this year, the applicant society has earned income from registration fee/counselling fee of Rs. 12,42,47,115 and also sliding fee (for second/subsequent counselling) of Rs. 3,05,26,500. Apart from this, the applicant society has also earned Bank interest of Rs. 1,38,36,099 during this year. Its Incomes and Expenditure Account shows that from the gross income totalling Rs. 16,86,09,722, the applicant society has shown a surplus of Rs. 6,12,82,168. Thus in the very first year of its activities, the applicant society had earned a huge surplus/profit of Rs. 6,12,82,168 (36.34%) on the gross income of Rs. 16,86,09,722. No satisfactory explanation is forthcoming from its submissions as to how and why it has earned such a huge surplus profit if its object and activities are really charitable. Its balance sheet shows an amount of Rs. 5,87,05,000 lying with Punjab National Bank, Sector 17C, Chandigarh, an FDR of Rs. 7,00,00,000 with Punjab and Sind Bank, Indl. Area, Phase-I, Chandigarh and it has earned bank interest of Rs. 1,38,36,099 as per its Income and Expenditure Account as mentioned above. It is also charging fees for its service and activities which, as is evident from the figures given above, have produced a huge margin of profit and, its activities are, therefore, akin to being commercial with profit motive and cannot be regarded as charitable. Merely because the society has ex-officio members from the Government of Haryana/University and that it has to furnish reports to Haryana Government cannot entitle it to claim exemption. For considering whether the purposes*

of an institution are charitable, real nature of its activities has to be seen which as discussed in detail above, are in essence, of commercial nature with profit motive.”

(6) There is no dispute that the petitioner-society is set up by the Government of Haryana in order to facilitate and simplify the admission procedure to the Technical Institutes. There is also no dispute that the petitioner-society is granting scholarships to the general/reserved category students for the course.

(7) The Apex Court in **American Hotel and Lodging Association Educational Institute versus Central Board of Direct Taxes and others (1)** in paras 38, 44 and 51 has held as under :—

38. *In deciding the character of the recipient it is not necessary to look at the profit of each year, but to consider the nature of the activities undertaken in India. If the Indian activity has no co-relation to education, exemption has to be denied, (see judgment of this Court in Oxford University Press [supra]). Therefore, the character of the recipient of income must have character of educational institution in India to be ascertained from the nature of the activities. If after meeting expenditure, surplus remains incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes. In other words, existence of surplus from the activity will not mean absence of educational purpose (see judgment of this Court in **Adianar Educational Institution versus ACIT**, (1997) 224 ITR 310). The test is-the nature of activity. If the activity like running a printing press takes place it is not educational. But whether the income/profit has been applied for non-educational purpose has to be decided only at the end of the financial year.*
44. *Having analysed the provisos to Section 10(23C)(vi) one finds that there is a difference between stipulation of conditions and compliance thereof. The threshold conditions are actual existence of an educational institution and approval of the prescribed authority for which every*

(1) (2008) 10 S.C.C. 509

applicant has to move an application in the standardized form in terms of the first proviso. It is only if the pre-requisite condition of actual existence of the educational institution is fulfilled that the question of compliance of requirements in the provisos would arise. We find merit in the contention advanced on behalf of the appellant that the third proviso contains monitoring conditions/requirements like application, accumulation, development of income in specified assets whose compliance depends on events that have not taken place on the date of the application for initial approval.

51. *For the sake of clarity, we may reiterate that items such as application of income or accumulation of income or investment in specified assets indicated in clauses (a) and (b) in the third proviso are a part of compliance/monitoring conditions. As stated, however, there is a difference between application/utilization of income and outward remittance of income out of India. As discussed above, with the insertion of the provisos in Section 10(23C) (vi) of the 1961 Act, it is open to PA to stipulate, while granting approval, that the approval is being given subject to utilization/application of certain percentage of income, in the accounting sense, towards impartation of education in India. Such exercise would be based on estimation. There is difference between accounting income and taxable income. At the stage of Section 10, we are concerned with the accounting income. Therefore, it is open to the PA, if it deems fit, to stipulate that certain percentage of accounting income would be utilized for impartation of education in India. Therefore, in our view, it is always open to the PA to impose such terms and conditions as it deems fit. The interpretation we have given is based on harmonious construction of the provisos inserted in Section 10 (23C)(vi) by the Finance Act, 1998. Lastly, we may reiterate that there is a difference between stipulation by the PA of such terms and conditions, as it deems fit under the provisos, and the compliance of those conditions by the appellant. The compliance of the terms and conditions stipulated by*

the PA would be a matter of decision at the time of assessment as availability of exemption has to be evaluated every year in order to find out whether the institution existed during the relevant year solely for educational purposes and not for profit.”

(8) **In Dera Baba Jodh Sachiar versus Union of India and another** (C.W.P. No. 68 of 2006 decided on 22nd February, 2010), we, after placing reliance on the judgment of the Supreme Court in **American Hotel and Lodging Association Educational Institute versus Central Board of Direct Taxes and others** (2), have held as under ;—

“Having perused the order impugned, we find that learned Commissioner has not recorded any finding on the question, as to whether income derived by the petitioner trust is being used for charitable purposes, as per the object of trust or not. Learned Commissioner refused to grant renewal of exemption only on the ground of the source of income. From the perusal of the judgments cited above by learned Counsel for the petitioner, we are of the view that it is not the source of income which is to be seen, but investment of the income. If income is being utilised for charitable purposes as per the object of the trust/society, then exemption ordinarily cannot be refused.”

(9) In view of the fact that the petitioner-society is set up by the Government of Haryana, neither the Government of Haryana nor the petitioner-society indulge in any commercial activity and merely because the society has accumulated some profit, does not mean that the petitioner-society is not achieving its object for which it was established . Merely because the society has earned some profit, does not make the society disentitle for the exemption. In view of this, order dated 18th March, 2009 passed by the Chief Commissioner, Income Tax, Panchkula cannot be sustained.

(10) Writ petition is allowed. Order dated 18th March, 2009 passed by the Chief Commissioner, Income Tax, Panchkula is set aside. The Chief Commissioner, Income Tax, Panchkula is directed to decide the application of the petitioner—society in the light of observations made hereinabove, within three months from the date of production of certified copy of this order, before him.

R.N.R.