

Madras High Court

Mr. Ar. Educational Society vs Cit on 4 December, 2000

Equivalent citations: 2002 253 ITR 589 Mad

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JUDGMENT R. Jayasimha Babu, J.

Counsel for the revenue contends that no referable question of law arises, as in his submission, the findings recorded by the Tribunal and the authorities below are findings of fact, and a binding decision of this court has already answered the question sought to be raised.

The question sought to be raised is regarding the true construction of section 10(22) of the Income Tax Act, 1961. That clause refers to "any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit".

It is the case of the revenue that the word "existing" in this clause mandates that the institution which the benefit of this provision must have been functioning as an educational institution in the previous year relevant to the assessment year.

Learned counsel referred to the decision of this court in the case of CIT v. Devi Educational Institution (1985) 153 ITR 571. The question there was as to whether the Tribunal was right on the facts of that case in excluding the donations paid to Devi Educational Institution on the ground, that an educational institution had not been established by it in the previous year relevant to the assessment year in question in that case, viz., 1973-74. The court held that the objects of the society, to which the donation had been made were clearly such as to render it an educational institution, and that the terms of the memorandum also showed that the institution was not one which had for its object the making of profit. The Division Bench of this court, construing the word "existing" in section 10(22) of the Act, held that the existence of the institution, such existence being construed as imparting of education during the relevant year, was an essential precondition for claiming the benefit under that provision. On the facts, the court remanded the matter to the Tribunal to ascertain as to whether any educational activity was being carried on by the assessee in that year.

Counsel for the revenue also relied on the decision, of the Bombay High Court in the case of CIT v. Oxford University Press (1996) 221 ITR 77, wherein, the court held that a printing press functioning in India as an arm of the university established abroad cannot be regarded as an educational institution in India, as the activity of the press is only that of selling the supply of books for profit.

Counsel for the assessee submitted that the construction placed by this court on the word "existing" in section 10(22) of the Act in the case of Devi Educational Institution (1985) 153 ITR 571 (Mad), is much too narrow and requires reconsideration. It was also submitted that some of the other High Courts have placed a broader construction on the provision. Attention was invited to the decision of the Calcutta High Court in the case of CIT v. Doon Foundation (1985) 154 ITR 208. It was found by the court in that case, that the assessee therein had taken all the preliminary steps including purchase of books and periodicals for imparting education though the actual conduct of the classes had not begun during the relevant previous year. Having regard to the fact that the objects of the

society were solely educational, and the society was not established for the purpose of making profit, and the further fact that the preliminary steps had been taken to commence the educational activity, it was held that the institution was entitled to the benefit of section 10(22) of the Act.

Counsel also invited attention to the decision of the Kerala High Court in the case of CIT v. Sree Narayana Chandrika Trust (1995) 212 ITR 456. It was held that the works of the assessee for establishing a hospital had commenced in the relevant previous year, though the hospital became functional much later. It was held that denial of exemption under section 10(22A) to the institution would defeat the object of the Act, as it would deplete the resources required for bringing into existence the activity, for which the exemption was provided for in the statute.

Though, ordinarily we would not call for a reference of a question which has been considered by this court in an earlier judgment which has become final, we do not find it necessary to impose any further fetters on our discretion, where after consideration of the earlier judgment, it is possible to take the prima facie view that the judgment required reconsideration.

The judgment of this court in the case of Devi Educational Institution (1985) 153 ITR 571 laid emphasis on the word "existing" in section 10(22) of the Act, and concluded that the institution must have been functional in the relevant previous year. The word "existing" is not the same thing as being functional. There is no doubt at all that the educational institution exists in the sense that the society has been formed, the society is a legal entity, its objects are clearly intended to bring into existence educational institution, for which preliminary steps have been taken, and the object of the institution is not profit. We are of the prima facie view that the width of the provision is not required to be cut down by insisting that the educational activity must have been carried on in the relevant previous year, even though there is no doubt whatsoever, that the society was engaged in taking the steps required to make the educational activity operative, the steps so taken being the construction of the buildings and other facilities in which the task of imparting the education was to be carried out.

We also see considerable force in the view expressed in the judgment of the Kerala High Court, which has rightly pointed out that the means with which the educational activity is to be carried on are not to be depleted by denying the exemption even when there is no doubt, that the institution is a genuine one, that it is not established for the purpose of profit, and it is indeed engaged in bringing the facilities required for imparting education.

It has been found in this case that the society was established in July, 1981, that it had in its report of the activities for the period 11-7-1981, to 31-3-1982, reported, inter alia, that the society proposed to establish MR. Arunachalam Vocational Training Centre at Kanadukathan, Ramanathapuram District, from the academic year 1982-83. This new venture aims at grooming prospective industrial employees and even entrepreneurs. The Commissioner has found that the institution was actually set up in August, 1982.

Having regard to these facts, and in the light of our prima facie view that the earlier judgment of this court requires reconsideration, we direct the Tribunal to refer the following question of law :

"Whether, on the facts and in the circumstances of the case, the Tribunal is right in law in holding that during the previous year, relevant to the assessment year 1982-83, the assessee-society was not an educational institution, and was not entitled to exemption under section 10(22) of the Act ?"

The Tribunal shall submit a statement of the case together with the materials relevant for the purpose of answering the question.