

SUPREME COURT OF INDIA

Assam Text Book Produn.& Pubn.Corp.Ltd.

Vs.

Commr.of Income Tax,Gauhati

C.A.No.2879 of 2007

(S.H. Kapadia and Aftab Alam JJ.)

20.10.2009

ORDER

1. Heard learned counsel on both sides.

2. Appellant-Corporation [Assessee] was initially constituted as 'Central Text Book Committee', which was attached to the office of the Director of Public Instruction. In 1950, the name was changed to 'Assam Text Book Committee' with ten members nominated by the State Government. In the year 1968, the Government re-constituted the said Committee as 'Board of Text Book Production and Research'. The said Board was converted into Corporation in 1972 and the name was changed to 'Assam State Text Book Production and Publication Corporation Limited' vide Notification dated 26th July, 1972 [for short, "the Corporation"]. All the assets of the said Board stood transferred to the Corporation with effect from 1st July, 1972. The Corporation had paid-up share capital of Rupees one crore and the break-up of the share holding was as follows:

“NAME SHARES FACE VALUE

1. Governor of Assam, 9998 nos. Rs.99,98,000/- represented by the Secretary, Education Department, Govt. of Assam

2. Financial Commissioner & 1 nos. Rs.1,000/- Secretary, Finance Department, Govt. of Assam

3. The Chairman, Board of 1 nos. Rs.1,000/- Secondary Education, Assam As can be seen from the share holding pattern, quoted above, almost the entire share capital of the Corporation was owned by the Government of Assam and, consequently, the said Corporation became a Government Company, as defined under Section 617 of the *Companies Act, 1956*. In other words, the control of the Government ceased to exist after 26th July, 1972, and the erstwhile Board came to be corporatorised under the *Companies Act, 1956*. The main object of the Government Company was to do

research, printing and publishing of text books for school students as per the norms prescribed and approved by the Education Department, State of Assam.”

4. In these appeals, we are concerned with Assessment Years 1981-1982 to 1996-1997, except Assessment Year 1989- 1990. The question which arose before the Assessing Officer was whether the Corporation could be termed as an 'Educational Institution' in terms of Section 10(22) of the 1961 Act"? According to the Assessing Officer, since the assessee, during the relevant years, had income exclusively from publication and selling of text books to the students, exemption under Section 10(22) of the *Income Tax Act, 1961* [for short, "the Act"], as it stood at the material time, was not admissible. According to the Assessing Officer, the assessee did not exist solely for educational purposes, particularly in view of Clause 21 of the Memorandum of Association which provides for distribution of dividends, hence, its income was not exempt under Section 10(22) of the Act. This decision of the Assessing Officer was upheld by Commissioner of Income Tax (Appeals). In the Tribunal, there was difference of opinion between Member [Judicial] and Member [Accountant].

5. By decision of the majority, it was held that the Corporation was an Educational Institution and, consequently, the Corporation was entitled to the benefit of exemption under Section 10(22) of the Act for the relevant Assessment Years in question. However, in appeal filed by the Department, the High Court came to the conclusion that the income of the Corporation, during the relevant Assessment Years, was not exempt, particularly in view of the fact that the assessee did not exist solely for educational purposes; that it did not solely impart education and that its income during the relevant assessment years was only from publishing and sale of text books, which, according to the High Court, constituted a profit earning activity. Against the said decision, the assessee has come to this Court by way of civil appeals.

6. On going through the records, we find that the High Court has not taken into account the prior history of the case, particularly in the context of incorporation of the Corporation under the Companies Act, 1956, as a Government Company. Initially, as stated above, the assessee was a State-controlled Committee and Board, which were attached to the office of the Director of Public Instruction, State of Assam. It is only in the year 1972 that the Government Company got constituted under Section 617 of the Companies Act, 1956. That, prior to 1972, the entire funding for the working of the Committee/Board was done by the State of Assam and that even the ownership of the assets remained vested in the State of Assam which stood transferred to the Corporation in 1972 when it got incorporated under Companies Act, 1956. It is important to note that the assessee is a Government Company. It is controlled by the State of Assam. The aim of the said Corporation is to implement the State's policy on Education. That, Clause 21 of the Memorandum and Articles of Association provides a Return on Investment to the State of Assam. That, in the year 1975, in a similar situation, Central Board of Direct Taxes [for short, "C.B.D.T."] had granted exemption under Section 10(22) of the Act vide letter dated 19th August, 1975, to Tamilnadu Text Books Society, which performed activities similar to those of the assessee.

7. The letter dated 19th August, 1975, is referred to in the judgement of the Rajasthan High Court in the case of *Commissioner of Income Tax vs. Rajasthan State Text Book Board*¹. As can be seen from the facts of that case, a similar question came up for consideration before the Rajasthan High Court, namely, whether Rajasthan State Text Book Board was entitled to exemption under Section 10(22) of the Income Tax Act, 1961? One of the arguments advanced in that case on behalf of the Revenue was that the assessee was making profit on account of publishing and sale of text books and, consequently, it was not entitled to the benefit of exemption under Section 10(22) of the Act. However, the High Court noticed the letter issued by C.B.D.T. on 19th August, 1975 in the case of Tamilnadu Text Book Society which, as stated above, in similar circumstances had granted exemption to the Tamilnadu Text Book Society as an Educational Institution within the meaning of Section 10(22) of the Act. The judgment of the High Court further recites that, under a similar situation, the C.B.D.T. had also extended benefit of exemption under Section 10(22) of the Act to the Orissa Secondary Board Education, as reported in *Secondary Board of Education vs. Income Tax Officer*². Following these circulars/letters issued by C.B.D.T., the Rajasthan High Court came to the conclusion that the assessee in that case, namely, Rajasthan State Text Book Board, was entitled to claim the benefit of exemption under Section 10(22) of the Act. The operative part of the Rajasthan High Court's judgement reads as under:

“It is not disputed before us that the aims and objects of the Tamil Nadu Text Book Society and those of the respondent-assessee are almost identical. It is also not shown to us that the surplus amount, if any, of the respondent- assessee, is used for any other purpose or distributed to other members. The Commissioner of Income-tax (Appeals) as well as the Tribunal have noticed that even if some amount remains surplus, that is utilised only for the purposes of education. Thus, having regard to the concurrent findings of fact recorded by the Commissioner of Income-tax (Appeals) and the Tribunal and also taking note of the letter of the Central Board of Direct Taxes itself, it is not possible for us to say that the order of the Tribunal is erroneous in any way. In this way, no question of law arises for consideration much less a substantial question of law.”

8. Following the judgement of the Rajasthan High Court, we are of the view that, in this case, the High Court, in its impugned judgement, has not considered the historical background in which the Corporation came to be constituted; secondly, the High Court ought to have considered the source of funding, the share-holding pattern and aspects, such as Return on Investment; thirdly, it has not considered the letters issued by C.B.D.T. which are referred to in the judgement of the Rajasthan High Court granting benefit of exemption to various Board/Societies in the country under Section 10(22) of the Act; fourthly, it has failed to consider the judgements mentioned hereinabove; and lastly, it has failed to consider the letter of the Central Government dated 9th July, 1973, to the effect that all State- controlled Educational Committee(s)/Board(s) have been constituted to implement the Educational policy of the State(s), consequently, they should be treated as Educational Institution.

9. For the afore-stated reasons, we are of the view that, instead of remanding the matter to the High Court, it would be in the fitness of things that the matter stands remitted to the

Assessing Officer to consider it de novo in the light of the judgements of the Rajasthan High Court and the Orissa High Courts, particularly, with reference to the letter of C.B.D.T. dated 19th August, 1975, referred to in the judgement of the Rajasthan High Court in the case of Rajasthan State Text Book Board (supra) as also the letter of Central Government dated 9th July, 1973, referred to above.

Accordingly, the appeals stand allowed with no order as to costs.

¹244 I.T.R. 667

²86 I.T.R. 408