SUPREME COURT OF INDIA

Visvesvaraya Technological University

Vs.

Assistant Commissioner of Income Tax

C.A.No.4361-4366 of 2016

(Ranjan Gogai and Prafulla C.Pant,JJ.,)

22.04.2016

JUDGMENT

Ranjan Gogoi, J.,

SLP(Civil)No.5354-5359 of 2014

1. Leave granted.

2. The appellant - University, namely, Visvesvraya Technological University (VTU) has been constituted under the Visveswaraiah Technological University Act, 1994 (for short "VTU Act"). It discharges functions earlier performed by the Department of Technical Education, Government of Karnataka. The University exercises control over all Government and Private Engineering Colleges within Karnataka.

3. For the Assessment Years 2004-2005 to 2009-2010 notices under Section 148 of the Income Tax Act, 1961 (for short "the Act") were issued to the appellant - University - Assessee. Eventually returns were filed for the Assessment Years in question declaring 'Nil' income and claiming exemption under Section 10(23C)(iiiab) of the Act. The aforesaid claim of exemption was negatived by the Assessing Officer who proceeded to make the assessments. The same view has been taken by all the Authorities under the Act and also by the High Court in the order under challenge in the present proceedings.

4. The question, therefore, that arises in the present appeals is the entitlement of the appellant - University - Assessee to exemption from payment of tax under the provisions of Section 10(23C)(iiiab) of the Act which is in the following terms:

> "10. Incomes not included in total income. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included-
>
> (23C) any income received by any person on behalf of-

(iiiab) any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government"

5. The entitlement for exemption under Section 10(23C) (iiiab) is subject to two conditions. Firstly the educational institution or the university must be solely for the purpose of education and without any profit motive. Secondly, it must be wholly or substantially financed by the government. Both conditions will have to be satisfied before exemption can be granted under the aforesaid provision of the Act.

6. The relevant principles of law which will govern the first issue i.e. whether an educational institution or a university, as may be, exists only for educational purpose and not for profit are no longer res integra, having been dealt with by a long line of decisions of this Court which have been elaborately noticed and extracted in a recent pronouncement i.e. *Queen's Educational Society vs. Commissioner of Income Tax*[1] . The principles that emanate from the views expressed by this Court are set out in paragraph 11 in Queen's Educational Society (supra), which are extracted below:

"11. Thus, the law common to Section 10(23C) (iiiad) and (vi) may be summed up as follows:

(1) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.

(2) The predominant object test must be applied - the purpose of education should not be submerged by a profit making motive.

(3) A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.

(4) If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes.

(5) The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons."

7. To the above principles, one further test as laid down in CIT vs. Surat Art Silk Cloth Manufacturers' Assn. and culled out in American Hotel and Lodging *Association Educational Institute vs. Central Board of Direct Taxes and Others*[2] may be added which is as follows:

> "In order to ascertain whether the institute is carried on with the object of making profit or not it is the duty of the prescribed authority to ascertain whether the balance of income is applied wholly and exclusively to the objects for which the applicant is established." (Paragraph 37)

The above principle has been specifically reiterated in paragraph 19 of the decision in Queen's Educational Society (supra) in the following terms:

> "The final conclusion that if a surplus is made by an educational society and ploughed back to construct its own premises would fall out of Section 10(23-C) is to ignore the language of the section and to ignore the tests laid down in Surat Art Silk Cloth case [*CIT v. Surat Art Silk Cloth Manufacturers' Assn*[2] Aditanar case *[Aditanar Educational Institution v. CIT*[3] and American Hotel & Lodging case *[American Hotel & Lodging Assn. Educational Institute v. CBDT*[4] 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."

8. In the present case, we find that during a short period of a decade i.e. from the year 1999 to 2010 the appellant University had generated a surplus of about Rs.500 crores. There is no doubt that the huge surplus has been collected/accumulated by realizing fees under different heads in consonance with the powers vested in the University under Section 23 of the VTU Act. The difference between the fees collected and the actual expenditure incurred for the purposes for which fees were collected is significant. In fact the expenditure incurred represents only a minuscule part of the fees collected. No remission, rebate or concession in the amount of fees charged under the different heads for the next Academic Year(s) had been granted to the students. The surplus generated is far in excess of what has been held by this Court to be permissible (6 to 15%) in *Islamic Academy of Education and another vs. State of Karnataka and others*[5] though the percentage of surplus in Islamic Academy of Education (supra) was in the context of the determination of the reasonable fees to be charged by private educational bodies.

9. As against the above, the amount of direct grant from the Government has been meagre, details of which are being noticed separately later in a different context. The University nevertheless has grown and the number of private engineering colleges affiliated to it had increased from about 64 to presently about 194. The infrastructure of the University has also increased offering educational avenues to an increasing number of students in different and varied subjects. Materials have been brought on record before the High Court as well as before this Court to show the several number of work orders/tenders issued by the University for infrastructure expansion. It is emphatically contended by the appellant in the written submissions filed that between 1994 and 2009 the University had actually spent about Rs.504 crores on infrastructure and the available surplus in the year 2010 which was in the range of Rs.440 crores was also intended to be applied for different infrastructural work, details of which have also been brought on record. However, the said amount was attached by the Revenue pursuant to the demands raised in terms of the assessments made. Even in a situation where direct government grants have not been forthcoming and allocation against

permissible heads like salary, etc. had not been made the University has thrived and prospered. There can, however, be no manner of doubt that the surplus accumulated over the years has been ploughed back for educational purposes. In such a situation, following the consistent principles laid down by this Court referred to earlier and specifically what has been said in paragraph 19 in Queen's Educational Society (supra), extracted above, it must be held that the first requirement of Section 10(23C) (iiiab), namely, that the appellant University exists "solely for educational purposes and not for purposes of profit" is satisfied. The exemption granted in respect of the University under Section 80G of the Act, qua the donations made to it also cannot be ignored in view of an inbuilt recognition in such exemption with regard to the charitable nature of the institution i.e. the appellant University.

10. The above would require the Court to go into the further question as to whether the appellant University is wholly or substantially financed by the Government which is an additional requirement for claiming benefit under Section 10(23C)(iiiab) of the Act. It is not in dispute that grants/direct financing by the Government during the six (06) Assessment Years in question i.e. 2004-2005 to 2009-2010 had never exceeded 1% of the total receipts of the appellant - University- Assessee. In such a situation, the argument advanced is that fees of all kinds collected within the four corners of the provisions of Section 23 of the VTU Act must be taken to be receipts from sources of finance provided by the Government. Such receipts, it is urged, are from sources statutorily prescribed. The rates of such fees are fixed by the Fee Committee of the University or by authorized Government Agencies (in cases of Common Entrance Test). It is, therefore, contended that such receipts must be understood to be funds made available by the Government as contemplated by the provisions of Section 10 (23c) (iiiab) of the Act.

11. Universities and Educational Institutions entitled to exemption under the Act have been categorized under three different heads, namely, those covered by Section 10(23C) (iiiab); Section 10(23C)(iiiad) and 10(23C)(vi) of the Act. The requirement of the University or the educational institution existing "solely for educational purposes and not for purposes of profit" is the consistent requirement under Section 10(23C) (iiiab), 10(23C)(iiiad) and 10(23C)(vi). However, in cases of Universities covered by Section 10(23C)(iiiab) funding must be wholly or substantially by the Government whereas in cases of universities covered by Section 10(23C)(iiiad) the aggregate annual receipts should not exceed the amount as may be prescribed. Universities covered by Section 10(23C)(vi) are those other than mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which are required to be specifically approved by the prescribed authority.

12. Having regard to the text and the context of the provisions of Section 10 (23c) (iiiab), 10 (23c) (iiiad) and 10 (23c) (vi) it will be reasonable to reach a conclusion that while Section 10 (23c) (iiiab) deals with Government Universities, Section 10 (23c) (iiiad) deals with small Universities having an annual "turnover" of less than Rupees One Crore (as prescribed by Rule 2 (BC) of the Income Tax Rules). On a similar note, it is possible to read Section 10 (23c) (vi) to be dealing with Private Universities whose gross receipts exceeds Rupees One Crore. Receipts by way of fee collection of different kinds continue to a major source of income for all Universities including Private Universities. Levy and collection of fees is

invariably an exercise under the provisions of the Statute constituting the University. In such a situation, if collection of fees is to be understood to be amounting to funding by the Government merely because collection of such fees is empowered by the Statute, all such receipts by way of fees may become eligible to claim exemption under Section 10 (23c) (iiiab). Such a result which would virtually render the provisions of the other two Sub-sections nugatory cannot be understood to have been intended by the Legislature and must, therefore, be avoided.

13. It will, therefore, be more appropriate to hold that funds received from the Government contemplated under Section 10(23c)(iiiab) of the Act must be direct grants/contributions from governmental sources and not fees collected under the statute. The view of the Delhi High Court in *Mother Diary Fruit & Vegetable Private Limited vs. Hatim Ali & Anr* [13]. which had been brought to the notice of the Court has to be understood in the context of the definition of 'public authority' as specified in Section 2(h)(d)(ii) of the Right to Information Act, 2005 which is in the following terms:

> "(h) "public authority" means any authority or body or institution of self-government established or constituted,-
>
> (a)
> (b)
>
> (d) by notification issued or order made by the appropriate Government, and includes any
> (i)
>
> (ii) non-Government Organization substantially financed, directly or indirectly by funds provided by the appropriate Government."

14. Reliance has been placed on the judgment of the High Court of Karnataka in *Commissioner of Income-tax, Bangalore vs. Indian Institute of Management*[7], particularly, the view expressed that the expression "wholly or substantially financed by the Government' as appearing in Section 10(23C) cannot be confined to annual grants and must include the value of the land made available by the Government. In the present case the High Court in paragraph 53 of the impugned judgment has recorded that even if the value of the land allotted to the University (114 acres) is taken into account the total funding of the University by the Government would be around 4% - 5% of its total receipt. That apart what was held by the High Court in the above case, while repelling the contention of the Revenue that the exemption under Section 10(23c) (iiiab) of the Act for a particular assessment year must be judged in the context of receipt of annual grants from the Government in that particular year, is that apart from annual grants the value of the land made available; the investment by the Government in the buildings and other infrastructure and the expenses incurred in running the institution must all be taken together while deciding whether the institution is wholly or substantially financed by the Government. The situation before us, on facts, is different leading to the irresistible conclusion that the appellant University does not satisfy the second

requirement spelt out by Section 10 (23c) (iiiab) of the Act. The appellant University is neither directly nor even substantially financed by the Government so as to be entitled to exemption from payment of tax under the Act.

15. For the aforesaid reasons, we do not find the present to be a fit case for interference. The appeals, consequently, are dismissed however without any order as to costs.

Judgment Referred.

[1]*(2015) INSC 0216*
[2]*(1980) 2 SCC 0031*
[3]*(2008) 10 SCC 0509*
[4]*(1997) 3 SCC 0346*
[5]*(2003) 6 SCC 0697*
[6]*W.P.(Civil)No.3110/2011*
[7]*ITA.No.26/2008*