

CALCUTTA HIGH COURT

Commissioner of Income Tax

Vs

Doon Foundation

(Ajit K.Sengupta, J.)

07.01.1985

JUDGEMENT

Ajit K.Sengupta, J.

(1.) THE question in this reference under Section 256(1) of the I.T. Act, 1961, is whether the assessee is an educational institution and entitled to exemption under Section 10(22) of the I.T. Act, 1961, THE assessee is a society registered under the West Bengal Societies Registration Act, 1961. THE society has been established as an educational society and had been granted registration under Section 12A of the I.T. Act, 1961. In the assessment for the assessment years 1973-74 and 1974-75, the ITO did not allow the exemption claimed by the assessee under Section 10(22) as he found that the assessee had other charitable objects within education and the benefit of Section 80G had also been granted to the assessee as also the exemption under Section 11 was allowed to it. THE assessee appealed to the AAC. Before the AAC, it was contended that the assessee trust was created for educational purposes and it has also been affiliated as an educational institution. THE AAC examined the relevant clauses of the trust deed and came to the finding that the assessee was entitled to the exemption under Section 10(22) of the Act. THE AAC held as follows : "It is seen that the assessee is a society which was formed as an educational institution and existing solely for educational purposes. Some funds have been raised and some donations had also been received by the society for this purpose. THE assessee had invested the fund available in some investments as indicated in the balance-sheet. It has earned income from dividend and interest during the year under consideration. It appears that these assets are assets of the educational institution. THE assessee had just begun its activity and during the year under consideration had started preparation of regular classes for teaching of Hindi and purchased some books and periodicals for library."

(2.) THE Revenue preferred an appeal before the Tribunal. It was contended on behalf of the Revenue that since the assessee was not a recognised educational institution like a university, the ITO was justified in rejecting the assessee's claim for exemption under Section 10(22). It was pointed out that the assessee had other charitable objects within education for which benefit

under Section 80G had already been granted. It was, therefore, submitted that the assessee was not entitled to exemption under Section 10(22). It was, however, contended on behalf of the assessee that in view of the various judicial pronouncements on the point at issue, the AAC was justified in allowing the assessee's claim for exemption under Section 10(22). THE Tribunal considered the objects of the assessee trust and held that the AAC was justified in allowing the assessee's claim for exemption under Section 10(22). THE Tribunal was of the opinion that the objects for which the trust was established were purely for educational purposes. THE Tribunal also found that Clause 7 of the trust deed provided that if any activity or object of the trust is found to be outside the scope of solely educational purpose, it should be deemed as non est and shall be deemed to be excluded from the objects of the foundation. THE Tribunal, therefore, took the view that the mere fact that the assessee trust had other charitable objects within the educational purpose cannot disentitle the assessee from the benefit of Section 10(22). On the aforesaid facts, the following question was referred to this court under Section 256(1) of the I.T. Act, 1961 : "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that M/s. Doon Foundation was an educational institution and entitled to exemption under Section 10(22) of the Income-tax Act, 1961 ?" Mr. A. C. Maitra, the learned advocate appearing for the Commissioner, has submitted that the educational institution of the assessee is not affiliated to any University. It is not different from a tutorial home or coaching institution which is unaffiliated to any university or board and which is run for profit purpose. This institution is not existing solely for educational purpose. It has also purposes of profit. He has further submitted that, in any event, the educational institution having not started functioning and being in the preparatory stage, the assessee cannot get the benefit of exemption. It is further submitted that the Tribunal has relied on the deed of trust but the relevant clauses have not been set out in the appellate order of the Tribunal and it is, therefore, not clear what the real object of the trust is. It is also contended that the entire income of the trust was not spent wholly for educational purposes and the Tribunal was, therefore, not right in allowing exemption to the assessee under Section 10(22) of the Act.

(3.) MR. R. N. Bajoria, learned advocate for the assessee, has submitted that the assessee is an educational institution which exists solely for educational purposes. For obtaining the benefit under Section 10(22), an educational institution is not required to be affiliated to any university nor is it necessary for it to spend the entire income for educational purposes. It is his contention that so long as the institution exists not for the purposes of any profit and such institution is an educational institution, the assessee is entitled to relief under Section 10(22). Learned advocates appearing for the parties have relied on several decisions in support of their respective contentions. ;