

W.P. No. 246 of 2014

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Swar Sangam & Ors.
Vs.
Chief Commissioner of Income Tax, Kolkata-III & Ors.

Appearance:

Mr. R. N. Bajoria, Sr. Adv., Mr. Akhilesh
Gupta, Adv., Mr. Moley Seal, Adv.
..Advocates for the petitioner

Mr. R.N. Bandopadhyay, Adv., Ms. Soma
Chatterjee, Adv.(for I.T.Department)
... Advocates for the Respondents

Heard On: - 04.09.2014

Judgement On: - 12.09.2014

I.P. MUKERJI, J.

The aggrieved parties in this writ application are a trust and its trustees. The trust was created by a Deed of Trust dated 1st April, 1977. It runs an institution which the trustees claim to be an educational institution, by the name of “ Swar Sangam”.

To adjudicate the issues involved in this writ application a scrutiny of the objects of the trust is most important. Its objects are as follows:-

- (i) *Advancement of education in music both vocal and instrumental, dance, painting and science, commerce as well as any other fine arts and languages and for such purpose to hold classes.*
- (ii) *To run regular courses in various subjects, conduct examinations at regular intervals and grant degrees and/or Diplomas.*

- (iii) To co-operate with other institutions in India having objects for advancement of education, if desired, to affiliate, amalgamate or merge them with the institution or vice versa.***
- (iv) To establish, maintain schools, colleges, libraries, reading rooms, lecture halls, museums and other establishments and institutions for the development of education and diffusion of knowledge.***

Another clause of the Trust Deed stipulated that the trust property and its income would be applied only towards public charity.

The problem relates to assessment of income of the trust under the Indian Income Tax Act, 1961 (hereafter “the Act”).

Section 10 of the Act provides for incomes not included in the total income of an assessee. In other words income which is exempted.

The following sub-sections of Section 10 are involved in this case and are set out below:-

“10(23C) (iiiad) any university or other educational institution existing solely for education purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed; or

10(23C) (vi) any university or other educational institution existing solely for education purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause

(iiiad) and which may be approved by the prescribed authority ;or”

If the aggregate annual receipts of an educational institution not for profit purposes does not exceeds Rs. 1 crore (which is the prescribed amount), its income is exempt from taxation.

If it is more than Rs. 1 crore it is also exempt, but the exemption has to be approved by the prescribed authority.

Swar Sangam, according to the trustees, is an educational institution not for profit purpose and having a gross annual receipt of more than Rs. 1crore. It is engaged in teaching fine arts, Indian music and dance to its students. The institution claims that the entire course is graded and divided into years and classes. Each class has regular teaching hours. A course is for a specific length of time. Successful candidates are granted certificates and diplomas.

The case of the institution for Income Tax exemption was recommended by the Joint Director of Tax (Exemption) Kolkata by his note dated 7th June, 2012. Thereafter, it came up before the Chief Commissioner of Income Tax (iii) Kolkata who is the prescribed authority under Section 10 (23d) (vi) for granting approval.

By an order dated 28th September, 2012 he rejected the application of the trust for exemption.

The reasoning process of the Chief Commissioner was as follows.

The trust was having income from other sources. By providing fee relaxation to candidates related to employees of the Birla group there was business promotion and obliteration of the charitable purpose. Music, dance, art and craft have a limited scope in the education of a child.

Instruction which the trust was imparting was not “normal education”. The instruction imparted by the trust was not in consonance with the definition of education in **Sole Trustee, Loka Shikshana Trust Vs. Commissioner of Income-Tax, Mysore** reported in **101 ITR 234**.

The most radical conclusion made by the Chief Commissioner of Income Tax was that by being lured into this institution, students were being deprived of regular instruction which was against the “constitutional mandate.” The poor who were entitled to free education were being diverted to this institution.

It is a cardinal rule of statutory interpretation that for the purpose of understanding the meaning of a particular word or phrase in a statute, the ordinary or grammatical meaning of that word has to be first applied, unless a special context in which the word is used is indicated in the statute expressly or impliedly. In the above provisions of the Act under consideration nothing has been indicated by the legislature to suggest that any special or extended or restricted meaning of the word education is implied. The word “education” is defined in the Concise Oxford English Dictionary, 11th Edition as follows:-

“education-n. 1. the process of educating or being educated. The theory and practice of teaching. Information about or training in a particular subject. 2. (an education) informal an enlightening experience”.

The word “educate” is defined as follows:-

“educate-v. give intellectual, moral and social instruction to train or give information on a particular subject”.

We find from the above definition that “education includes information about or training in a particular subject”. The word “educate” includes

“intellectual instruction”. 10 (23C) (iiiad) and 10(23C) (vi) of Section 10 clearly specify that they cover 1. educational institution 2. An educational institution which exists for educational purpose only and not for the purpose of profit.

The Hon’ble Supreme Court in the case of **Sole Trustee, Loka Shikshana Trust Vs. Commissioner of Income-Tax, Mysore** reported in **101 ITR 234** was considering whether a trust for running newspaper and journals was for charitable purpose while it was considering the meaning of charitable purpose in Section 2(15) of the Act which *inter alia* stipulated that charitable purposes included education. While interpreting the use of the word “education” in that sub-section the Court specifically said that the word had been used in a narrow context. The Court remarked as follows:-

“The word “education” has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, traveling is education, because as a result of traveling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club,

you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word “education’ is used in clause (15) of section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling.”

A Division Bench of the Delhi High Court in the case of **Delhi Music Society Vs. Director General of Income-Tax** reported in (2013) 357 ITR 265 (Delhi) was concerned with the interpretation of the exact provisions which are the subject matter of this case. It considered **Sole Trustee, Loka Shikshana Trust Vs. Commissioner of Income-Tax, Mysore** reported in 101 ITR 234 (SC) and gave the word “education” in Section 10(23) (iii)(ad) and 10(23C)vi of the Act a very wide construction. In that case also the society was engaged in teaching, promoting and encouraging all forms of music and dancing, western, Indian and others. The Division Bench held as follows:-

“It is seen from the above, that the petitioner is being run like any school nor educational institution in a systemic manner with regular classes, vacations, attendance requirements, enforcement of discipline and so on. These provisions in the rules and regulations satisfy the condition laid down in the judgment of the Hon’ble Supreme Court , Sole Trustee, Loka Sikshana Trust, cited (Supra) that there should be a process of training and developing the knowledge, skill, mind and character of the students by “normal schooling”. It cannot be

doubted that, having regard to the manner in which the petitioner runs the music school, that there is imparting of systematic instruction, schooling or training given to the students so that they attain proficiency in the field of their choice—vocal or instrumental in western classical music”.

What is important is that the Hon’ble Delhi High Court took into account a judgment of this court in **CIT Vs. Doon Foundation** reported in (1985) **154 ITR 208 (Cal)**. It said that education may be imparted in a school or college or institution which may not be affiliated or recognised by a University or Board.

Regrettably, the Chief Commissioner of Income Tax neither considered the facts nor the law properly. He was required to consider whether some form of information about or training regarding a subject was being imparted by the petitioner institution. Secondly, whether such instruction resulted in intellectual, moral or social benefit in keeping with the definition of the word “education” in the Concise Oxford Dictionary. He was also required to take into account the above judicial pronouncement of the Hon’ble Delhi High Court with the Hon’ble Supreme Court decision as the background. Now, to arrive at a finding regarding this the Chief Commissioner Income Tax was required to consider, on the basis of the above decisions whether the educational process was being carried on in a systematic way by its arrangement into courses, classes, a specific number and length of classes in a day, following set syllabi etc. The system of promotion, gradation, granting of diploma certificates etc. had also to be gone into.

No such details are to be found in the impugned order of the Chief Commissioner. Neither is there any justification in support of the finding that the society has other sources of income.

The source of gross receipts and the aggregate gross receipts have not been analysed.

For all those reasons, the impugned order of the Chief Commissioner Income Tax dated 28th September, 2012 is set aside. He is directed to pass a fresh speaking order upon giving an opportunity of hearing to the writ petitioner within a period of three months from the date of communication of this order.

Certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(I. P. MUKERJI, J.)