

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I' : NEW DELHI

1063

BEFORE SHRI A.D.JAIN, JM AND SHRI R.C.SHARMA, AM

ITA No.1853/Del/2010
Assessment Year : 2005-06

The Institute of Chartered
Accountants of India,
ICAI Bhawan,
Indraprastha Marg,
Post Box No.7100,
New Delhi - 110 002.
PAN No.AAAAT7798M.
(Appellant)

Vs. Director of Income Tax (Exemption),
Delhi.

(Respondent)

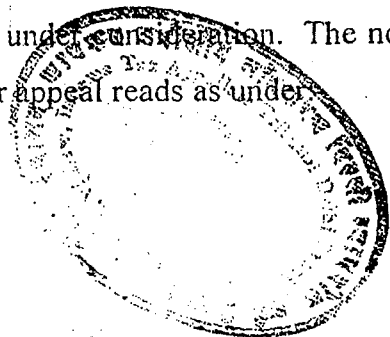
Appellant by : Shri Ved Jain and Shri Rajesh Jain, CAs.
Respondent by : Shri Mohanish Verma, CIT-DR.

ORDER

PER R.C.SHARMA, AM :

This is an appeal filed by the assessee against the order of CIT passed u/s 263 dated 29.3.2010 for the AY 2005-06.

2. Rival contentions have been heard and record perused. Facts in brief are that assessee, The Institute of Chartered Accountants of India, (in short ICAI) is a statutory body established under the Chartered Accountants Act 1949 for the purpose of regulating profession of Chartered Accountants in India. The main object of the ICAI inter-alia includes enrolling the students who aspire to become Chartered Accountants, to impart education/training and also holding coaching classes before the examination so that there may be direct interaction between the teachers and the students. The ICAI has also been notified by the CBDT, in exercise of the powers conferred by sub-clause (iv) of clause (23C) of Section 10 of IT Act since the AY 1996-97, exempting the income of ICAI u/s 10(23C)(iv) for the AY 1996-97 till the assessment year under consideration. The notification dated 18.10.2004..relevant for the year under appeal reads as under.



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~~"TO BE PUBLISHED IN PART-II, SECTION 3, SUB-SECTION
(II) OF THE GAZETTE OF INDIA~~

Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, the 18th October, 2004

S.O. "In exercise of powers conferred by the sub-clause (iv) of clause (23C) of section 10 of the Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby approves "The Institute of Chartered Accountants of India, New Delhi" for the purpose of the said sub-clause for the AY 2003-04 to 2005-06 subject to the following conditions, namely:

- (i) the assessee will apply its income, or accumulate for application, wholly and exclusively to the objects for which it is established;
- (ii) the assessee will not invest or deposit its fund (other than voluntary contributions received and maintained in the form of jewellery, furniture etc.) for any period during the previous years relevant to the Assessment Years mentioned above other wise than in any one or more of the forms or modes specified in sub section (5) of section 11;
- (iii) this order will not apply in relation to any income being profits and gains of business, unless the business is incidental to the attainment of the objectives of the assessee and separate books of accounts are maintained in respect of such business;
- (iv) the assessee will regularly file its return of income before the Income tax authority in accordance with the provisions of Act, 1961;
- (v) that in the event of dissolution, its surplus and the assets will be given to a charitable organization with similar objectives."

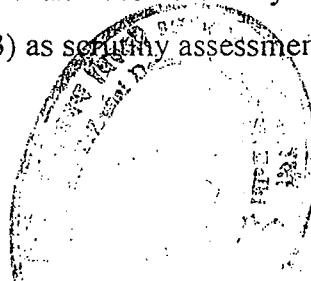
(Deepak Garg)

Under Secretary to the Govt. of India
F.No.197/115/2004-ITA-I

Notification No.261/2004."

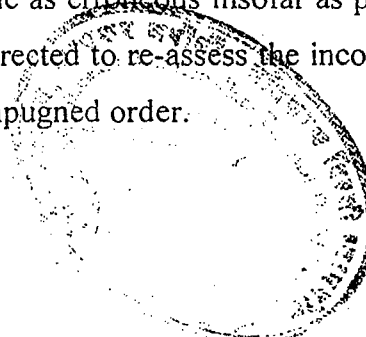
3. Assessment for the relevant assessment year under consideration was completed under Section 143(3) as scrutiny assessment on 21.8.2007 at nil income

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by the DDIT (Exemption). Thereafter, on the basis of proposal received from the AO informing that the order has become erroneous on certain issues, the CIT initiated proceedings u/s 263. In the notice so issued, the CIT raised doubts about five issues dealt with by the AO, but finally agreed with three issues and set aside the order of the AO with regard to two issues namely income shown by the assessee as having been obtained for coaching classes were business income and secondly, the expenditure shown by the assessee on overseas relations which consists of traveling, membership fee of foreign professional bodies etc. were without CBDT permission, therefore not deductible. The CIT observed that assessee was earning income and incurring expenditure on coaching classes, whereas Chartered Accountants Act 1949 nowhere provides for such coaching classes. He further observed that running of coaching classes is a business and not a charitable activity and for this purpose, the assessee ought to have maintained separate books of account in respect of coaching classes. As per CIT, since the assessee has not maintained separate books, the profits and gains of the Institute could not be exempt. He accordingly held that AO has failed to examine whether provisions of coaching classes is an activity approved by the Chartered Accountant Act 1949.

4. With regard to expenditure incurred on overseas relations, the CIT observed that assessee has not obtained permission from CBDT, therefore income of the institution cannot be allowed to be exempt u/s 10(23C). As per CIT, Section 10(23C) provides that application of income for charitable purposes has to be in India only, in view of the expenditure incurred by the assessee on overseas relations, the AO ought to have examined whether assessee is carrying on any charitable activity outside India. Accordingly, grant of exemption u/s 10(23C) was held to be wrongly allowed. Finally on these points, the DIT(Exemption) set aside the order of the AO by holding the same as erroneous insofar as prejudicial to the interest of the Revenue and AO was directed to re-assess the income of the assessee in terms of discussion made in the impugned order.



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Aggrieved by the above order, the assessee is in appeal before us.

5. Shri Ved Jain, Chartered Accountant appeared on behalf of the assessee and submitted that The Institute of Chartered Accountants was created by the Act of Parliament in the year 1949 to regulate the profession of accountancy and for that purpose to provide education, training, monitor, regular and to award Chartered Accountants degree. Recognizing these objects, the Government of India, Ministry of Finance, Department of Commerce granted it a status of an institution established for charitable purposes having regard to the objects of the institution and its importance throughout India u/s 10(23C)(iv). He further submitted that institute is filing its return of income regularly and carrying on the same activity since inception and there is no change in the activity, assessments were carried out u/s 143(3) in respect of various years involved. Even for the AY 2005-06, the return was accompanied by audited balance sheet, income and expenditure account. The return was taken under scrutiny and detailed questionnaire dated 12.7.2007 was issued by the AO. Our attention was drawn to the various questionnaire asked by the AO and the respective replies filed by the assessee. The AO after examination of all the details and explanation completed the assessment on 21.8.2007. He further submitted that even before CIT, the assessee has furnished reply and explanation to each issue raised by the DIT. After considering the assessee's reply, the CIT agreed with three objections out of total five objections raised by him. On the issue of coaching fee, it was submitted that it is a part of education being provided by the Institute to the chartered accountancy students and as such cannot be called a business and is the main activity of the institute. The overseas expenses are in respect of the activities being carried on by the institute. As per learned AR, there is no change in the facts and circumstances nor in the activities of the institute as compared to the earlier years and each year, the exemption has been granted therefore on the principle of consistency, no fault can be found in the order of the AO which has dealt with each issue. He contended that certificate of exemption was renewed by the Government of India after thorough investigation at each time as per the

conditions stipulated in the second proviso found below Section 10(23C)(via), where before approval all such documents including audited annual accounts of assessee is called for and verified to satisfy the genuineness of the activities of the institute.

6. Shri Jain also drawn our attention to Regulation 21(b) of the Institute of Chartered Accountants which provides for condition to become members and give council the power to specify syllabus etc. As per the regulation, a student has to undertake practical training before passing the examination as per the syllabus and required to attend the course as provided in these regulations. Our further attention was drawn to the following regulations:-

"21. Conditions to become a member"

Except as otherwise provided in the Act or these Regulations, a person in order to qualify himself for membership of the Institute should have-

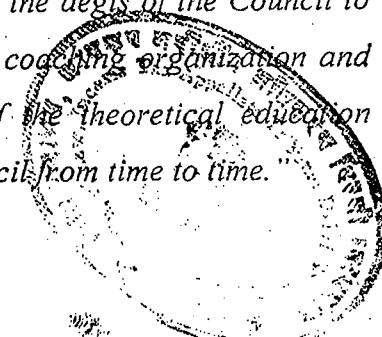
- (b) completed the practical training, passed the Final examinations as per the syllabus as may be specified by the Council and attended the course as provided in these Regulations".

The various Regulation giving wide power to the institute to provide for coaching, etc to the students of chartered accountancy course reads as under:

25B. Admission to the Professional Education (Examination - I), Fees and Syllabus.

(1) No candidate shall be admitted to the Professional Education (Examination-I) unless he produces a certificate from the head of the coaching organization (i.e. Board of Studies of the Institute) by whatever name designated, set up under the aegis of the Council to the effect that he is registered with the coaching organization and has complied with the requirements of the theoretical education scheme, as may be specified by the Council from time to time.

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(3) *A candidate for the Professional education (Examination-I) shall pay such fees may be fixed by the Council from time to time."*

26. Admission to the Intermediate Examination

(iii) *he produces a certificate from the head of the coaching organization to the effect that he has complied with the requirements of the postal tuition scheme"*

28B. Admission to the Professional Education (Examination-II), Fees and Syllabus

(1) *No candidate shall be admitted to the Professional Education (Examination-II) unless he produces a certificate from the had of the coaching organization, by whatever name designated, set up under the aegis of the Council, to the effect that he is registered with the coaching organization and has complied with the requirements of the theoretical education scheme"*

29A. Admission to the Final Examination

(iii) *he produces a certificate from the head of the coaching organization by whatever name designated, set up under the aegis of the Council, to the effect that he has complied with the requirements of the theoretical education scheme"*

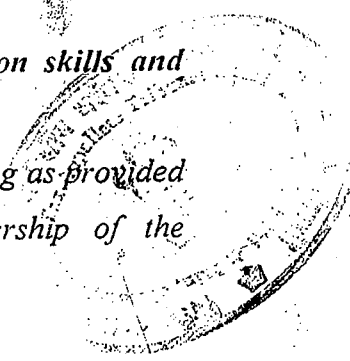
51A. Course on General Management and Communication Skills and period thereof

An articled clerk who has completed the practical training as provided in these Regulations, before applying for membership of the Institute, shall be required to attend a course on General Management and Communication Skills or any other course as may be specified by the Council from time to time and in the manner so specified"

72A. Course on General Management and Communication skills and period thereof.

An audit clerk who has completed the practical training as provided in these Regulations, before applying for membership of the

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Institute, shall be required to attend a course on General Management and Communication Skills or any other course as may be specified by the Council from time to time and in the manner so specified."

130. Duties and functions of regional councils

(2) The duties and functions of a Regional Council shall be :-

(xi) to arrange, if found practicable, for coaching candidates for the aforesaid examinations at convenient centres in its region".

7. Our attention was also drawn to the facts and figures with regard to provisions and regulations under which education and training to more than 8 lakh students was given out of which more than 1,75,000 have qualified to become Chartered Accountants and rest of the students were aspiring to become Chartered Accountants. As per learned AR, the major activity of the institute revolves around chartered accountancy education and training and as such, the observation of the DIT(Exemption) that coaching activity is not allowed, is contrary to the facts on record. With regard to overseas expenses, learned AR submitted that CIT has wrongly observed that the assessee has not brought on record as to whether permission of CBDT as is required u/s 11(1)(c) has been obtained for incurring such expenditure. As per ld AR the observation of the DIT(E) on this issue is not correct and assessee is eligible for exemption under Section 10(23C)(iv). There is no such condition in Section 10(23c)(iv) as is being further read by the DIT(E) section 11(1)(a).

8. Shri Jain further contended that even for Section 11(1)(a) there is no bar on overseas expenses. On going through the above it is to be noticed that this clause is not applicable. This clause is applicable when any expenditure is incurred which tends to promote international welfare. The institute does not have any such welfare; nor any expenditure has been incurred for that purposes. The expenditure has been incurred on overseas travel, etc. and is for the purposes of its

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object. The mere fact that the expenditure has been incurred on foreign travel will not mean that has been incurred for purposes which are not for India. This can be best understood with an example of buying books from abroad for library, or software, equipment for hospital etc. Simply because payment has been made abroad for these expenditure the same will not mean that it is for purposes outside India. The purpose continues to be for India. Reliance for this is being placed on following judgements :

- (i) **Gem & Jewellery Export Promotion Council Vs ITO 68 ITD 95 (Bom)** where it has been held that :

Before us, it was contended that section 11 provides for exemption where the application of income of a Trust is for the purposes in India. It was further contended that the requirement under section 11 (1)(a) is not that the expenditure should be incurred in India, but on the other hand, the condition for exemption is that for the charitable or religious purpose for which the income is applied should be in India. It was further contended that in this case the public utility purpose that was sought to be achieved by sending a Trade Delegation was for the Indian traders and, therefore, the application of income was for purposes in India. The mere fact that the expenditure has been incurred abroad, according to the learned counsel, does not disqualify the Trust from claiming that the expenditure has been incurred for the purposes in India. Citing an example, the learned counsel pointed out that where a Library functioning in India purchases books for it from abroad and makes the payment for such purchases, the purpose for which the expenditure has been incurred would be in India, though the expenditure has been incurred outside India. Citing another example, the learned counsel pointed out that where a charitable hospital purchases equipment from abroad for the purpose of use in the hospital, it cannot be said that the amount spent for purchase of machinery from abroad would not qualify for exemption under section 11(1)(a). According to the learned counsel, the expenditure incurred by the assessee is for purposes in India and, therefore, the revenue was not justified in denying the benefit under section 11(1)(a) of the said expenditure.

In our considered view, the assessee deserves to succeed. It may be useful to reproduce section 11(1)(a).

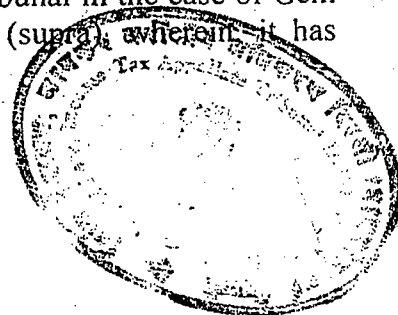


"11(1)(a) Income derived from property held under Trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent of the income from such property;"

A bare reading of the subsection 11(1)(a) does not leave us in doubt that the requirement under section 11 is for application of income for purposes in India and it does not restrict the application of income within the territory of India. The charitable purpose for which the income should be applied for claiming exemption under section 11(1)(a) should be in India. In this case, it is not disputed that the Trade Delegation had been sent abroad for the benefit of the entire trade in India. The exports are made from India and the purpose for sending the Delegation was to increase the possibilities of exports out of India. We accordingly hold that since the assessee has applied the income for charitable purposes in India, the mere fact that the expenditure has been incurred out of India, does not disqualify the expenditure from exemption under section 11(1)(a).

(ii) Reliance was also placed on the case of **National Association of Software and Services Companies (NASSCOM) vs DDIT 130 TTJ 377 (Delhi)** it has been held that :

"A perusal of the provisions of s. 11(1)(a) of the Act clearly shows that the words used are "is applied to such purpose in India". The words are not "is applied in India". The fact that the legislature has put the words "to such purpose" between 'is applied' and 'in India' shows that the application of income need not be in India, but the application should result and should be for the purpose of charitable and religious purpose in India. Undisputedly, the assessee is registered under s. 12A as a charitable institution. It is also not disputed that the activities of the assessee are charitable. It is also not the case of the Revenue that the expenditure incurred by the assessee in Hanover, Germany has not resulted in the benefit being derived in India. In these circumstances, it cannot be said that the expenditure incurred by the assessee in Hanover, Germany, which resulted in and which was for the purpose of attaining the charitable object in India, is not application of income. This view is also supported by the decision of a Co-ordinate Bench of this Tribunal in the case of Gem and Jewellery Export Promotion Council (*supra*), wherein it has been held as follows:-

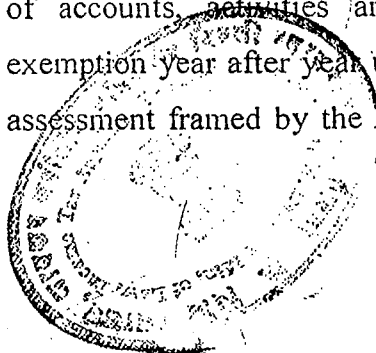


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"A bare reading of the sub-s. 11(1)(a) does not leave us in doubt that the requirement under s. 11 is for application of income for purposes in India and it does not restrict the application of income within the territory of India. The charitable purpose for which the income should be applied for claiming exemption under s. 11(1)(a) should be in India. In this case, it is not disputed that the trade delegation had been sent abroad for the benefit of the entire trade in India. The exports are made from India and the purpose for sending the delegation was to increase the possibilities of exports out of India. We accordingly hold that since the assessee has applied the income for charitable purposes in India, the mere fact that the expenditure has been incurred out of India, does not disqualify the expenditure from exemption under s. 11(1)(a)."

9. It was further contended that the institute has obligation under section 15(2)(j) of the Chartered Accountants Act, 1949 to maintain status and standard of professional qualification of chartered accountancy and for that purpose it is important to observe developments taking place in the world. Then the expenditure incurred would be for purposes in India and not international welfare as is being alleged by the DIT(E). Even otherwise it may further be stated that assessee is claiming exemption under section 10(23C)(iv), where there is no such condition and hence DIT(E) otherwise was also not justified in invoking section 11(1) (c) of the Act. Thus whether it is exemption under Section 10(23C)(iv) or exemption under Section 11 overseas expenses will not come in the way of allowing exemption.

10. Ld. AR further stated that Institute has come into existence since 1949. There is no change in its activities and the facts. The facts of this year are identical to the facts in all the earlier years and the tax department consistently has accepted and approved the assessee's stand after due application of mind. This stand consistently has not only been approved and accepted by the AO but by Director General of Income Tax (Exemption) [DGIT] who has after thorough examination of accounts, activities and other material has been granting certificate of exemption year after year u/s 10(23c)(iv). So there being no change in facts, the assessment framed by the AO following the consistent stand is neither erroneous



nor prejudicial to the interest of revenue. For this reliance is being placed on following judgements :-

11. In the case of **Radha Swami Satsang Vs CIT 193 ITR 321 (SC)** has been held that :

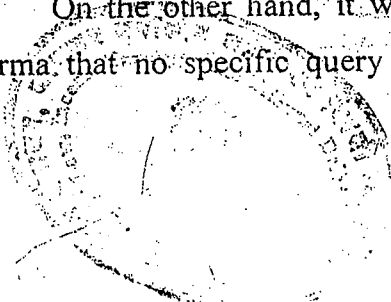
We are aware of the fact that, strictly speaking, res judicata does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

On these reasonings, in the absence of any material change justifying the Revenue to take a different view of the matter and, if there was no change, it was in support of the assessee-we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income-tax in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income derived by the Radhasoami Satsang was entitled to exemption under sections 11 and 12 of the Income-tax Act of 1961.

12. In view of the above arguments duly supported by the documents on record, learned AR contended that there was no mistake in the order of the AO and DIT(Exemption) was not justified in setting aside the issue back to the file of the AO for deciding afresh, in terms of discussion made in the impugned order.

13. On the other hand, it was contended by learned CIT-DR Shri Mohanish Verma that no specific query relating to coaching classes and expenditure on

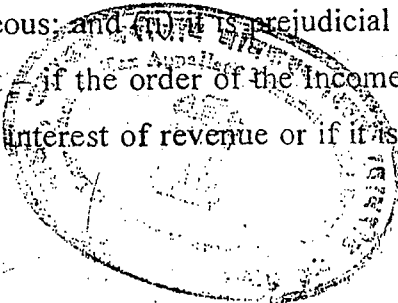
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overseas relations were raised by the AO during the course of assessment proceedings. As per learned DR, the AO has failed to examine the application of income outside India and also coaching classes being run in India generating income and incurring expenditure. He further submitted that assessee did not bring on record any object which would allow the assessee to carry on coaching activity and receipts from such coaching classes is business income and separate books of account should have been maintained. With regard to overseas expenditure, contention of learned CIT-DR was that permission of CBDT has not been brought on record for incurring such expenditure outside India, therefore such expenditure cannot be allowed as admissible expenditure. Further reliance was placed on the judicial pronouncements in the cases of Gee Vee Enterprises – 99 ITR 375 (Del), Duggal & Co. – 220 ITR 456 (Del), Malabar Industrial Co. – 243 ITR 83 (SC), Deepak Kumar Garg – 299 ITR 435 (MP), South India Shipping Corporation – 233 ITR (Mad), Renu Gupta – 301 ITR 45 (Raj), Toyota Motors – 306 ITR (2008) (SC) and Ralson Industries Ltd. – 288 ITR 322 (SC), in support of the proposition that order of the AO was erroneous and prejudicial to the interest of the Revenue justifying action u/s 263.

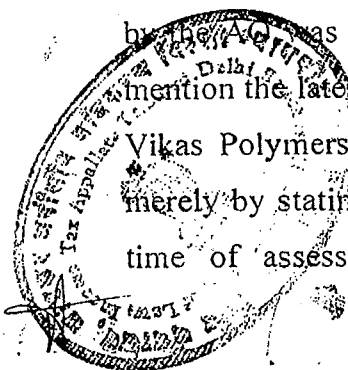
14. We have considered the rival contentions, carefully gone through the orders of the authorities below and also deliberated upon the ratio laid down in judicial pronouncements cited by learned AR and learned DR, in the context of factual matrix of the instant case. From the record, we found that assessee, The Institute of Chartered Accountants of India, came into existence in the year 1949 by the Act of Parliament. The institute was created to regulate the profession of accountancy and for this purpose, to provide education, training, monitor and regulate and award chartered accountants degree. The Act provided the exclusive right of chartered accountants degree to the institute. Ministry of Finance, Department of Commerce, granted to it the status of an institution established for charitable purposes having regard to the objects of the institution and its importance throughout India u/s 10(23C)(iv). The return for the relevant assessment year was filed within the prescribed time and the same was taken under scrutiny. During

the course of scrutiny assessment, the AO issued detailed questionnaire dated 12.7.2007 which was placed by the assessee in the paper book at page 114, wherein the AO has asked the assessee with regard to instrument by which institute was created, government notification with regard to institution, balance sheet, income and expenditure account of last two years. The AO has also asked the details of activities of the institution and copies of various resolutions passed during the year. Details of all expenditure exceeding Rs.10,000/- under each head was also asked by the AO. Whether any activity/intended business carried by the assessee and details with regard to various books of account maintained by the assessee was also enquired by the AO. We have gone through the detailed reply filed by the assessee as placed at page 117 giving all the information and explanations sought by AO. The AO has examined all the details and explanations and completed the assessment as on 31.8.2007. The CIT has treated this order as erroneous and prejudicial to the interest of revenue by exercising his powers u/s 263 against which assessee is in further appeal before us. Section 263 empowers the CIT for revision of the orders in a case where after calling for and examining the record of any proceedings under the Act, he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue. In that case he is empowered to pass order u/s 263 by which he can enhance or modify the assessment or cancel the assessment and direct the Assessing Officer to make a fresh assessment, after giving the assessee an opportunity of being heard. In the case of Malabar Industrial Company vs. CIT (243 ITR 83), while interpreting Section 263, it has been held by Hon'ble Supreme Court that for exercising power u/s 263 it is essential that the assessment order which is passed by the Assessing Officer and which is subject to Section 263 should be erroneous as well as prejudicial to the interest of revenue. It was observed that in order to invoke Section 263, the Commissioner has to be satisfied on two conditions: (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interest of the revenue. If one of them is absent, if the order of the Income-tax Officer is not erroneous, but is prejudicial to the interest of revenue or if it is not erroneous, but is prejudicial to the interest

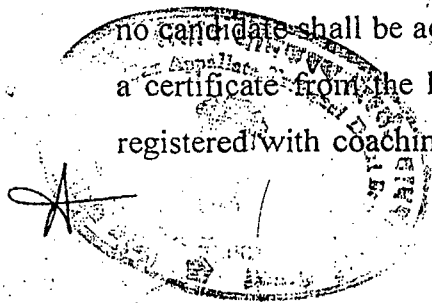


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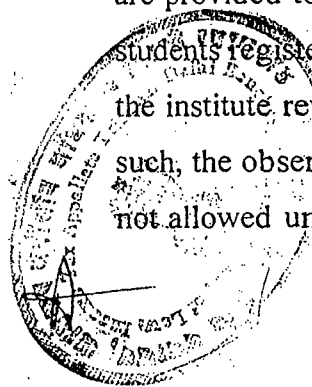
of revenue – recourse cannot be taken to Section 263 (1) of the Act. It was observed that the provisions of Section 263 cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer. It is only when an order is erroneous, Section 263 will be attracted. Defining the word 'erroneous', it was observed that an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. Therefore, in order to hold an order to be erroneous, it must be passed either on an incorrect assumption of facts or there must be an incorrect application of law. While defining the term 'prejudicial to the interest of revenue', it was observed by Hon'ble Supreme Court that it is not an expression of art and is not defined in the Act. The said term, understood in its ordinary meaning, is of wide import and is not confined to mere loss of tax. The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and such task is entrusted to the revenue. If due to an erroneous order of the Assessing Officer the revenue is losing tax payable by a person, it will certainly be prejudicial to the interest of the revenue. It was observed that the phrase 'prejudicial to the interest of revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interest of revenue. Further clarifying, it was observed that when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views were possible and the Assessing Officer has taken one view with which Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of revenue unless the view taken by the Assessing Officer is unsustainable to law. With respect to the reliance placed by Id. CIT DR on the proposition of Delhi High Court in the case of Gee Vee Enterprises (supras) wherein non making of inquiry by the Assessing Officer was stated to justify the action of CIT u/s 263, it is very pertinent to mention the latest decision of Hon'ble Jurisdictional High Court in the case of M/s Vikas Polymers in ITR 3/1991 dated 16.8.2010, wherein it was observed that merely by stating that assessee has not filed certain documents on record at the time of assessment, it does not justify the conclusion arrived at by the



Commissioner that AO has shirked his responsibility of examining and investigating the case. It was further observed that in view of the fact that assessee has explained the capital investment made by the partners, which had been called into question by the Commissioner, during the course of proceedings before him, the CIT was held to be not justified in passing order u/s 263. In view of the above judgment, as per our considered view when the assessee has filed all the information as called by the CIT before him, he should have examined the same and if nothing is found wrong, he should have dropped the proceedings rather than restoring the matter back to the file of the AO for examining again. The primary condition with regard to the order of the AO being prejudicial to the interest of the Revenue is not satisfied in this case, therefore Hon'ble Court has held that the order of CIT u/s 263 was bad in law. Accordingly it was held that where the CIT has stated in his order that AO has not examined certain items, assuming this to be so, the order will only be erroneous, but it cannot be said to be prejudicial to the interest of the Revenue till the CIT dealt with the explanation given by the assessee with regard to the items alleged by him in the course of proceedings u/s 263. Meaning thereby the CIT should have appreciated the reply filed by the assessee and merely by stating that AO has not examined certain points, he cannot exercise his revisionary jurisdiction u/s 263, insofar as such order can be branded as erroneous but cannot be said to be prejudicial to the interest of the Revenue. Since both the conditions of order being erroneous and also prejudicial to the interest of revenue is required to be satisfied while passing the order u/s 263. Merely on the plea that order of the AO is erroneous, power u/s 263 cannot be exercised unless the order is also found to be prejudicial to the interest of the revenue. In the instant case first objection of the CIT was with regard to coaching classes being run by the institute and income derived therefrom. We have gone through the various regulations of ICAI which provide for coaching etc. to the students of chartered accountancy course. These regulations inter-alia provide that no candidate shall be admitted to the professional examination unless he produces a certificate from the head of the coaching organization to the effect that he is registered with coaching organization and has complied with the requirements of



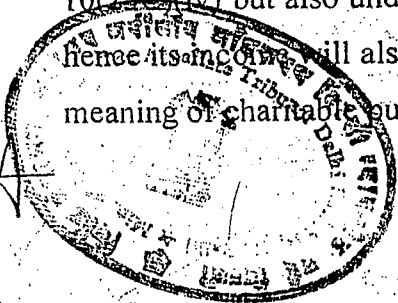
the theoretical education scheme. The candidate is also required to pay such fees as may be fixed by the council for such professional education. Before a student is eligible for appearing in the examination, he has to produce a certificate from the head of the coaching organization to the effect that he has complied with the requirements of postal tuition scheme. An articled clerk who has completed the practical training as provided in these regulations, before complying for membership of the institute, shall be required to attend a course on general management and communication skills. Similarly, an audit clerk who has completed the practical training is also required to attend the course on general management and communication skill or any other course as may be specified in the council from time to time. For this purpose, the council is to arrange funds for coaching candidates for the examinations at convenient centers in its region. For this purpose, the institute is also conducting classes for chartered accountancy students registered with it. We found that these classes are conducted for which nominal fee is charged from the students registered with the institute. These classes are provided to the students registered with the institute to train and prepare them for appearing in the main examination. Thus, we found that institute is discharging its statutory function as required by the Parliament, which does not amount to any commercial activity. From the detailed brochure, we also found that institute provides a comprehensive study package including large question bank for which no separate cost is charged from the students. The board of studies also provides a CD for self-assessment and model test papers. Expenditure is being incurred for preparation of the study package, CD etc., salary of the faculty and other professionals, printing and stationery, research and development etc. The students registered for chartered accountancy are also provided on-line guidance through institute's own website. At a very nominal cost, these services are provided to the students. The institute also provides computer training to the students registered with it, at a very low fee. Thus, we found that major activity of the institute revolves around chartered accountancy education and training and as such, the observation of the DIT(Exemption) to the effect that coaching activity is not allowed under the Act is incorrect and against the facts. However, this is far



more important activity of the institute and the institute is considered to be one of the best educational institutions of the world providing chartered accountancy education in India. Shri Jain further submitted that the Institute of Chartered Accountants of India is an educational institute falling within the meaning of charitable purpose as defined in the section 2(15) of the Act and as such all these activities fall within the education and coaching income cannot be held to be a different activity as held by Gujarat High Court in the case of Saurashtra Education Foundation vs CIT 273 ITR 139 at page 146 has observed as under :

"As regards the illustration of the Institute of Chartered Accountants of India, although the institute was earlier not running formal classes and there was no geographical proximity when instructions were being imparted through postal tuitions, the Institute of Chartered Accountants of India has always been an institution set up, inter alia for imparting formal education in accountancy and connected subjects in an organized and systematic manner. The institute is accountable as per the provisions of the Act establishing it and the institute also has disciplinary control over the students who are required to be registered with its in the first place and who appear at the exams being held by the institute..."

15. The Institute as such merely it is receiving coaching fee from students for imparting education, cannot be said to have been carrying on business and accordingly it is not required to maintain separate books of accounts as alleged by DIT(E). The income of the coaching classes earned by the assessee institute is within its objects and its Regulations and further these activities are educational activity within the definition of section 2(15) of the Income Tax Act, 1961, and consequently therefore cannot be activity of business for which separate books of accounts are required to be maintained. The order of the learned DIT(E) is therefore not sustainable as the income of the Institute is exempt not only u/s 10(23C)(iv) but also under section 11. The institute is an educational institute and hence its income will also be exempt under section 11 as education falls within the meaning of charitable purpose under section 2(15) of the Act.

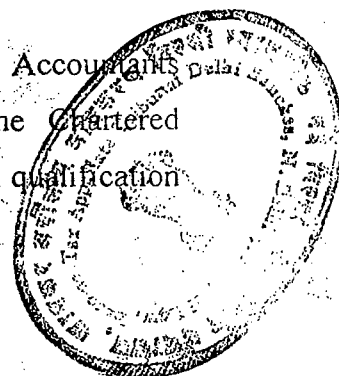


16. The second objection of the DIT(Exemption) is in respect of overseas expenses. The allegation of the DIT(Exemption) was that assessee has not obtained permission of the CBDT which is required u/s 11(1)(c) of the IT Act before incurring such expenditure. As per our considered view, the observation of the DIT(Exemption) on this issue is not correct insofar as assessee is eligible for exemption u/s 10(23C)(iv) which reads as under:-

*“(23C) any income received by any person on behalf of—
[(iv) any other fund or institution established for charitable purposes which may be approved by the prescribed authority, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States”*

17. It is quite clear from the above provisions that there is no such condition as being stated by the DIT(Exemption) in Section 10(23C)(iv). Furthermore, Section 11(1)(c) is applicable only with reference to those trusts which are claiming exemption u/s 11, and it is not applicable to exemption u/s 10(23C)(iv). Due clarification was given to the DIT(Exemption) during the course of proceedings u/s 263 as stated above. However, the objection raised by the DIT(Exemption) with regard to CBDT permission is applicable when any expenditure is incurred which tends to promote international welfare. However, the institute does not have any welfare nor any expenditure has been incurred for that purpose. However, the expenditure has been incurred on overseas travel etc. which was for the purpose of its object. Mere fact that expenditure has been incurred on foreign travel will not mean that institute has incurred such expenses for purposes which are not for India.

18. After going through various provisions under the Chartered Accountants Act, we found that institute has obligation u/s 15(2)(j) of the Chartered Accountants Act 1949 to maintain status and standard of professional qualification



of chartered accountancy and for that purpose, it is necessary to observe developments taking place in the world. The expenditure so incurred would be for the purpose in India and not international welfare as alleged by the DIT(Exemption). Furthermore, since the assessee was claiming exemption u/s 10(23C)(iv), where there is no such condition, thus DIT(Exemption) otherwise was also not justified in invoking Section 11(1)(c) of the Act. As per our considered view, whether it is exemption u/s 10(23C)(iv) or exemption u/s 11, overseas expenses will not come in the way of allowing exemption.

19. In view of the above discussion, DIT(Exemption) was not justified in setting aside the order of AO even in respect of these two issues.

20. In the result, the appeal of the assessee is allowed.

Decision pronounced in the open Court on 18th October, 2010.

(A.D.JAIN)
JUDICIAL MEMBER

(R.C.SHARMA)
ACCOUNTANT MEMBER

- Dated : 18-10-2010.
VK.

Copy forwarded to :-

1. Appellant *By Home*
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar
Assistant Registrar
आयकर अपील अयोग
Income Tax Appellate Tribunal
नई दिल्ली/ New Delhi