

No denial of sec. 10(23C) relief merely because society had provided medical treatment on subsidized basis

Summary – The High Court of Delhi in a recent case of Venu Charitable Society., (the Assessee) held that where objects of assessee society were solely for purpose of education and medical care, merely because it charged fees for educational courses or that it entered into arrangements to set up satellite centers and provided medical treatment on subsidization programme, it could not be denied exemption under section 10(23C)

Facts

- The assessee society was formed with the objective of rendering comprehensive eye care services, inclusive of all forms of ophthalmic services. To further its objects, it established the 'Venue Eye Institute and Research Centre', with five satellite hospitals and seven vision centers. The assessee applied for grant of exemption under section 10(23C)(via).
- The Director General of Income-tax rejected the exemption application on the grounds that; firstly, the petitioner did not exist solely for philanthropic purposes but for purpose of profit; secondly, it had entered into collaboration agreements with one SBSMCH and OIJCT for running satellite hospitals with profit motive; thirdly, that it provided educational courses such as Medical Training Programmes, long term super specialty medical programme in ophthalmology, etc. and was earning profit from those activities; fourthly, the memorandum of the petitioner society contains objects other than health care; and lastly that it made no application for renewal of exemption under section 10(23C)(via) for assessment years 2007-08 to 2010-11.
- On appeal to the High Court:

Held

- Section 10(23C) exempts any hospital or other institution for treatment of illness or mental deficiencies or treatment during convalescence requiring medical attention or rehabilitation solely for philanthropic purposes and not for purposes of profit. If the government does not fund it, then, its annual receipts should not exceed the prescribed limit. Section 2 (15) defines 'Charitable Purpose' and includes the following (i) Relief of the poor; (ii) Education; (iii) Medical relief and (iv) advancement of any other object of general public utility. An entity with such a purpose is eligible for exemption from tax under section 11 or alternatively under section 10(23C). There was a proviso inserted in 2008 which prescribed that 'Advancement of any other object of general public utility shall not be a charitable purpose if it involves the carrying on of- (a) any activity in the nature of trade, commerce or business; (b) any activity of rendering any service in relation to trade, commerce or business; for a cess or fee or any other consideration.' However, this proviso was inapplicable to the first three limbs of the section 2(15) and they continue to constitute a charitable purpose even if incidentally involved the carrying on of commercial activities.

- The incidental carrying on of commercial activities is subject to certain conditions stipulated under the seventh proviso to section 10(23C). They are - (a) The business should be incidental to the attainment of the objectives of the entity and (b) Separate books of account should be maintained in respect of such business. The memorandum of the petitioner's society clearly states its main objective is to render comprehensive eye care services inclusive of all forms of ophthalmic services. All other activities are incidental to carrying out of this purpose. The petitioner does not carry out any other business but only collaborates with other trusts and institutions. It has maintained its books of account as well. So the conditions have been met with. Exemption under the provisions mentioned above will be granted if the main objective of the society is relief of poor, education, medical relief and carrying on of a business with a view to fulfil these objects would not deprive them from such exemption.
- Once the prescribed authority is satisfied about fulfilment of this criteria *i.e.*, the threshold pre-condition of actual existence of an educational institution under section 10(23C)(vi), it would not be justifiable in denying approval on other grounds.
- In the present case, the petitioner provides training courses to students and nursing staff, which qualify for exemption. The main objective of the program must be the availability of such a training to the public at large and imparting some kind of knowledge through it. The fact that some of the beneficiaries pay for the benefits they get from the institution would not be fatal to the charitable character of the institution. Accordingly, where an association, which was in charge of a nursing home and hospital, charged its patients for the services rendered, it was held it would not cease to be charitable. The petitioner's providing medical facilities on wholly charitable, or partly subsidized basis to some patients and charging others at rates par with other institutions *per se* cannot debar it from the benefit of being treated as charitable. The dominant purpose test presupposes that as long as the activity answers the description of charity and conforms to the objects of the trust or society, that profits or surpluses are generated, incidentally cannot rob it of the benefits. If the profits from business feed charitable objects, then it is not an activity for profit, so the exemption need not be lost. Therefore, total charity to some poor and deserving patients, partial subsidization of some others and charging of full rates from some, does not rob the essential and dominant object of the society, *i.e.* medical service and education. Indeed, in the case of medical facilities, a nuanced subsidization through a cross subsidization scheme (*i.e.* charging market rates from some and subsidizing some entirely and a few partly) would fit with the purpose of the petitioner society, which might be able to thus provide greater service to a larger number of people. It renders its existence economically viable and expands its reach and scope.
- It is now well established that an educational institution existing solely for educational purposes would not cease to be so only for the reason that some of its activities have yielded surpluses. In the present case, it is observed that profit earned is incidental to the main objective of charity. It earns profit after carrying out activities which are to achieve the main purpose.

- In the facts of the present case, it is seen that the objects of the assessee society are solely for the purposes of education and medical care and not for purpose of profit. It is only if it is found that the assessee has been carrying on its activities for the purposes of profit, contrary to its objects, the prescribed authority would be justified in rejecting the application for approval under section 10(23C)(vi). Merely because it charges fees for educational courses (as in the case of any school or college) or that it entered into arrangements with other institutions (again charitable) to set up satellite centers, to give medical treatment, or that its treatment involves a layered subsidization programme, would not justify rejection of its application. For these reasons, the impugned order, denying exemption under section 10(23) was not justified. The revenue is directed to consider the petitioner's application, process it and pass necessary orders in accordance with law, within four weeks from today.