

Rejection of Sec. 10(22) exemption is correct since assessee-society purchased property in name of secretary and manager

Summary – The High Court of Kerala in a recent case of Sree Chithra Educational Cultural and Film Society, (the Assessee) held that rejection of Sec. 10(22) exemption is correct since assessee-society purchased property in name of secretary and manager

Facts

- The assessee-society was formed with the objective to impart education amongst other objectives and was registered under section 12A. The society started a school in 1995 from a rented premises and in 1997 the Society purchased land and constructed a permanent building for running the school.
- The claim of the assessee for exemption under section 10(22) was denied by the Assessing Officer (A.O.) since the property had been purchased in the name of the Secretary and the Manager of the society and not in the name of the society.
- The Commissioner (Appeals) allowed the assessee's appeal holding it was the Assessing Officer who had to establish the existence of profit motive in the activities of the society.
- The Tribunal agreed with the action of the Assessing officer.
- On appeal to HC:

Held

- Before the HC it was stated that exemption under section 10(22) is available in respect of income earned by educational institutions, and therefore, the same was not included in the return of income. Only income from cultural activities was included for taxation.
- The HC on examination of the provision of section 10(22) stated that the exemption granted is not to the income derived from any educational institution, but to institutions existing 'solely for educational purposes and not for the purpose of profit'. Since the school is functioning in a property, which was purchased in the name of the Secretary and his wife, and not in the name of the Society; the Assessing Officer was right in concluding that the funds of the Society were diverted to purchase immovable property in the name of persons managing the society. Thus the institution was existing for profit and not solely for educational purposes.
- From the objectives of the society also it is clear that the society had many objectives, one of which was imparting education and in such case the assessee cannot be treated as an institution established and existing solely for educational purposes. Further, since the assessee has declared income from cultural activities, it goes to prove that the object is not solely education.

- Therefore, the HC concluded that it had no reason to interfere with the finding of the Tribunal and the dismissed the appeal.