IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10511 OF 2013

UNION OF INDIA & ORS. **Appellant(s)**

VERSUS

BABA BANDA SINGH BAHADUR EDUCATION TRUST **Respondent(s)**

O R D E R

1. Feeling aggrieved and dissatisfied with the impugned judgment and order 20.05.2010 passed by the High Court of Punjab & Haryana at Chandigarh passed in CWP No. 18251 of 2009, by which the High Court has allowed the said Writ Petition preferred by the respondent-assessee and has set aside the order passed by the Commissioner denying the exemption under Section 10(23C)(vi) of the Income Tax, Act, 1961 (for short "the Act"), the Revenue has preferred the present Appeal.

2. The dispute is with respect to the Assessment Year 2006-2007. The respondent-assessee was indulged in the activity of imparting the education. Therefore, the respondent-assessee claimed the exemption under Section 10(23C)(vi) of the Act by submitting an application before the Jurisdictional Commissioner. On appreciation of evidence and considering the material on record, it found that the assessee has been earning systematic profits year after year and, in the year in question, earned profit to the extent of 67.81% without depreciation and therefore, the

Commissioner was of the opinion that the activity of the respondent-assessee cannot be said to be solely for imparting the education and, therefore, not entitled to the benefit/exemption under Section 10(23C)(vi) of the Act and consequently dismissed the said application. The order passed by the Jurisdictional Commissioner denying the exemption under Section 10(23C)(vi) was the subject-matter of Writ Petition before the High Court. By the impugned judgment and order and relying upon its earlier order in the case of *Shri Atmanand Jain Gurukul Educational Society (Gujranwala)* vs. *Chief Commissioner of Income Tax* dated 15.03.2010 in CWP No. 1509 of 2010, the High Court has disposed of the Writ Petition, which has given rise to the present Appeal.

3. At the outset, it is required to be noted that, by deciding the Writ Petition in the case of Shri *Atmanand Jain Gurukul Educational Society* (supra), the Punjab & Haryana High Court relied upon its earlier decision dated 29.01.2010 in CWP No. 6031 of 2009 in the case of *Pinegrove International Charitable Trust* vs. *Union of India and Others*. It is also required to be noted that, while rejecting the application of the assessee in the present case for exemption under Section 10(23C)(vi), the Commissioner, as such, heavily relied upon the decision of the Uttarakhand High Court in the case of *Queen's Educational Society, Haldwani* vs. *Commissioner of Income Tax* (2009) 319 ITR 160. It is required to be noted that the decision of the Uttarakhand High Court in the case of *Queen's Educational Society* (supra) and in the case of *Pinegrove International Charitable Trust* (supra), as such, were the subject-matter of Appeals before this Court and by a judgment and order

dated 16.03.2015 in *Queen's Educational Society* vs. *Commissioner of Income Tax*, reported in (2015) 8 SCC 47, this Court has set aside the order passed by the Uttarakhand High Court in the case of *Queen's Educational Society* (supra) and also approved the decision of the Punjab & Haryana High Court in the case of *Pinegrove International Charitable Trust* (supra). Therefore, by the reported judgment, this Court approved the decision of the Punjab & Haryana High Court in the case of *Pinegrove International Charitable Trust* (supra).

4. However thereafter, the decisions of this Court in the case of *Queen's Educational Society* (supra) again fell for consideration before this Court in the recent decision of this Court in the case of *New Noble Educational Society* vs. Chief Commissioner of Income Tax 1 and Another, 2022 SCC OnLine 1458 wherein a three-Judge Bench of this Court has not approved the decision of this Court in the case of *Queen's Educational Society* (supra).

The relevant paras are para 50, 51, 52, 55, 56 & 68, which are as under:-

> **"50. The next judgment is that of Queen's Education Society (supra). In that case, the society was engaged in imparting education through its schools. For two successive assessment years the society recorded some profits. It was denied exemption, on the ground that the society's objects included not only education, but others as well, and that its aim was to make profit. The Uttarakhand High Court affirmed the view of the revenue. On appeal, this court after considering the previous judgments (discussed above), held that the High Court was in error. After quoting extensively from the judgment in *Surat Art Silk* (supra), this court recorded its conclusions, entirely affirming the 'predominant object' test:"**
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> **11. Thus, the law common to Section 10 (23C)(iiiad)**

and (vi) may be summed up as follows:

(1) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.

(2) The predominant object test must be applied - the purpose of education should not be submerged by a profit making motive.

(3) A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.

(4) If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes.

(5) The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons."

51. The court disapproved the Uttarakhand High Court's view that generating surplus was prohibited and adversely commented on the inferences drawn by the High Court. It was held that the High Court had misconstrued the judgment in Aditanar (supra). It then discussed the appeal directed against the judgment of the Punjab and Haryana High Court in Pinegrove International Charitable Trust Vs. Union of India, where the exemption application was denied by the revenue on the ground that the level of fees collected and the surplus generated consistently for several years indicated that the trust was essentially engaging itself in profitable activity under the garb of imparting education. The High Court had held that the generation of profits could not be the only reason to deny exemption, and what was relevant was the 'predominant' or main object of the society, which in that case was to impart education. The High Court also held that after granting approval, if the PA notices that the conditions in which approval had been granted were violated under the circumstances detailed in the thirteenth proviso (as it existed then), approval could be withdrawn after following the procedure

prescribed.

52. This court in Queens Educational Society (supra) approved the judgement of the Punjab and Haryana High Court in Pinegrove International (supra). By the same judgement, it also approved other judgements of High Courts which had followed Pinegrove and disagreed with the Uttarakhand High Court's judgement.

55. The basic provision granting exemption, thus enjoins that the institution should exist 'solely for educational purposes and not for purposes of profit'. This requirement is categorical. While construing this essential requirement, the proviso, which carves out the exception, so to say, to a limited extent, cannot be looked into. The expression 'solely' has been interpreted, as noticed previously, by other judgments as the 'dominant/predominant/primary/main' object. The plain and grammatical meaning of the term 'sole' or 'solely' however, is 'only' or 'exclusively'. P.Ramanath Aiyar's Advanced Law Lexicon explains the term as,"'Solely' means exclusively and not primarily". The Cambridge Dictionary defines 'solely' to be, "Only and not involving anyone or anything else". The synonyms for 'solely' are "alone, independently, single-handed, single-handedly, singly, unaided, unassisted" and its antonyms are "inclusively, collectively, cooperatively, conjointly etc."

56. It is, therefore, clear that term 'solely' is not the same as 'predominant/ mainly'. The term 'solely' means to the exclusion of all others. None of the previous decisions–especially American Hotel (supra) or Queens Education Society (supra)–explored the true meaning of the expression 'solely'. Instead, what is clear from the previous discussion is that the applicable test enunciated in Surat Art (supra) i.e., the 'predominant object' test was applied unquestioningly in cases relating to charitable institutions claiming to impart education. The obvious error in the opinion of this court which led the previous decisions in American Hotel (supra) and in Queens Education Society (supra) was that Surat Art (supra) was decided in the context of as ociety that did not claim to impart education. It claimed charitable status as an institution set up to advance objects of general public utility. The Surat Art (supra) decision picked the first among the several objects (some of them being clearly trading or commercial objects)

> **as the 'predominant' object which had to be considered while judging the association's claim for exemption. The approach and reasoning applicable to charitable organizations set up for advancement of objects of general public utility are entirely different from charities set up or established for the object of imparting education. In the case of the latter, the basis of exemption is Section 10(23C) (iiiab), (iiiad) and (vi). In all these provisions,the positive condition 'solely for educational purposes' and the negative injunction' and not for purposes of profit' loom large as compulsive mandates, necessary for exemption. The expression 'solely' is therefore important. Thus, in the opinion of this court, a trust, university or other institution imparting education, as the case may be, should necessarily have all its objects aimed at imparting or facilitating education. Having regard to the plain and unambiguous terms of the statute and the substantive provisions which deal with exemption, there cannot be any other interpretation.**
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> **68. In the light of the above discussion,this court is of the opinion that the interpretation adopted by the judgments in American Hotel (supra) as well as Queens Education Society (supra) as to the meaning of the expression 'solely' are erroneous. The trust or educational institution, which seeks approval or exemption, should solely be concerned with education, or education related activities. If, incidentally, while carrying on those objectives, the trust earns profits, it has to maintain separate books of account. It is only in those circumstances that 'business' income can be permitted-provided,as stated earlier, that the activity is education, or relating to education. The judgment in American Hotel (supra) as well as Queens Education Society (supra)do not state the correct law, and are accordingly overruled."**

5. In the recent decision of this Court in the case of *New Noble Educational Society (supra)*, it is specifically observed and held by the three-Judge Bench of this Court that for claiming the benefit/exemption under Section 10(23C)(iii)(ab) which is *para materia* to Section 10(23C)(vi) the activity of the assessee must be be solely for educational purposes and if ultimately it is found

that the activity is for profits the assessee is not entitled to the exemption under Section 10(23C)(vi) of the Act.

6. Applying the law laid down by this Court in the case of *New Noble Educational Society* (supra) referred to hereinabove to the facts of the case on hand, the impugned judgment and order passed by the High Court is unsustainable. At this stage, it is required to be noted that taking into consideration the entire material on record, in fact, the Commissioner, while considering the application of the assessee for grant of exemption under Section 10(23C)(vi) specifically observed and held that the activity of the assessee cannot be said to be solely for imparting the education and that the assessee is indulging into the profit which was found to be 67.81% without depreciation and 44.48% with depreciation. The finding of fact recorded by the Commissioner, as such, not been upset by the High Court in the impugned judgment and order.

In view of the above and for the reasons stated above, the present Appeal succeeds. The impugned judgment and order passed by the High Court deserves to be quashed and set aside and is, accordingly, quashed and set aside.

The present Appeal is, accordingly, allowed. No costs.

.....J
(M.R. SHAH)

.....J
(C.T. RAVIKUMAR)

New Delhi;
April 26, 2023

ITEM NO.107 COURT NO.4 SECTION IV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 10511/2013

UNION OF INDIA & ORS. Appellant(s)

VERSUS

BABA BANDA SINGH BAHADUR EDUCATION TRUST Respondent(s)

Date : 26-04-2023 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Appellant(s) Mr. Balbir Singh, A.S.G.
Mr. Raj Bahadur Yadav, AOR
Mr. Shashank Bajpai, Adv.
Mr. Rupesh Kumar, Adv.
Mr. Manish Pushkarna, Adv.
Mr. Samarvir Singh, Adv.
Mrs. Gargi Khanna, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

The present Appeal is allowed in terms of the signed order.

(R. NATARAJAN) (NISHA TRIPATHI)
ASTT. REGISTRAR-cum-PS ASSISTANT REGISTRAR
(Signed order is placed on the file)