THE HON'BLE SRI JUSTICE B.SUDERSHAN REDDY

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.24307 OF 2004

JUDGMENT :

DATE : 01-08-2005

Between:

Muslim Education Social Cultural Organization (MESCO) … Petitioner

And

The Director of Income Tax (Exemptions),

"Olympic Bhavan" Inside Fateh Maidan Stadium,

Basheer Bagh, Hyderabad

And another …. Respondents

The order, of the 1st respondent – Director of Income Tax (Exemptions), Hyderabad dated 15-7-2004, passed under Section 80G(5)(vi) of the Income Tax Act read with Rule 11AA(5) of the Income Tax Rules, 1962, rejecting the application of the petitioner and denying it continuance of approval under Section 80G(5)(vi) of the Income Tax Act, is challenged in this writ petition.

Muslim Education Social Cultural Organization (MESCO), the petitioner herein, is an institution registered under Section 12-A of the Income Tax Act, and under Section 11(1)(a) its income from property, held for charitable purposes, was hitherto not being included in its total income. It was initially granted approval under Section 80-G of the Income Tax Act vide proceedings dated 25-10-1995 for a period of three years from 1-4-1995 to 31-3-1998 and the said approval was renewed for two 3 year periods up to 31-3-2004. The petitioner submitted its application on 12-2-2004 seeking renewal of approval of exemption under Section 80 G of the Income Tax Act for the period commencing from 1-4-2004. The 1st respondent passed the impugned order dated 15-7-2004 rejecting the petitioner's application for renewal.

The 1st respondent, on examination of the accounts of the petitioner's society, noted that substantial amounts to an extent of Rs.60,20,276-45 ps. had been parted with as payment of share in medical examination fees to one Dr.M.A.M.Khan and that no

measures had been taken to recover these amounts from Dr.Khan. The 1st respondent disbelieved the contention of the petitioner – society that it was contemplating action for recovery of the said amounts from Dr.Khan. The 1st respondent also noted that Dr.Khan, who was enriched at the expense of the society, was one of the founders of the society having held the designation of Secretary at the time of its formation, that as one of the founders of the society and in his capacity as Secretary of the Society, Dr.M.A.M.Khan was a member of the Executive body and held wide powers concerning general administration, appointment and removal of employees, sanction of expenditure, legal matters etc. and that Dr.Khan was one of the signatories to the memorandum of association of the society, as one of its founders.

The 1st respondent held that payment of substantial amounts as share in Medical examination fee to Dr.Khan, even after his resignation, was violative of the provisions of Section 13(1)©(ii) and Section13(2) read with Section 13(3)(a) of the Income Tax Act, that the payments in question were not in compliance with any mandatory term or rule governing the society, that the memorandum of understanding entered into by the society was not in conformity with its constitution and the rules enshrined therein and that the payments made under the said memorandum of understanding were in clear violation of the provisions under Section 13 of the Income Tax Act.

The 1st respondent disbelieved the contention of the petitioner – society that it was compelled to enter into a memorandum of understanding with Dr.M.A.M.Khan or that it was forced to make payments in accordance therewith. The 1st respondent also held that the share in the funds belonging to the society was passed on to Dr.Khan, which not only amounted to mis-utilization/misapplication of the society's funds and enrichment of an individual at the expense of the society, but was also in violation of the provisions of Section 13 of the Income Tax Act.

Having regard to the irregularities and mis-utilization of funds and contravention of provisions of Section 13 of the Income Tax Act by the petitioner – society, the 1st respondent concluded that the income of the society had not been applied properly and entirely for charitable purposes and that the provision of Section 11 of the Income Tax Act did not operate so as to exclude this income, derived by the petitioner – society, from its total income. As a result, the application filed by the petitioner – society on 12-2-2004 was rejected by the 1st respondent and continuance of approval of exemption under Section 80-G of the Income Tax Act was denied to them.

Section 13(1)©(ii) of the Income Tax Act provides that nothing contained in Section 11 or Section 12 shall operate so as to exclude from the total income of the previous year of a trust established for charitable purposes or a charitable institution, any part of such income or any property of the trust or the institution which is, during the previous year, used or applied directly or indirectly for the benefit of any person referred to in sub-section (3). Under Section 13 (3), the persons referred to in clause © of sub-section (1) and sub-section (2) of Section 13 include the author of the trust or the founder of the institution. Section 80(G)(5) restricts the application of Section 80-G to donations made to any institution or fund, only if it is established in India for a charitable purpose and fulfils the conditions prescribed therefor. The 1st respondent, in his order dated 15-7-2004, held that Dr.M.A.M.Khan was the founder of the petitioner – society and therefore payment of substantial amounts as share of medical examination fee to Dr.Khan was violative of the provisions of Section 13(1)©(ii) and Section 13(2) read with Section 13(3)(a) of the Income Tax Act.

Learned counsel for the petitioner sought to place reliance on certain proceedings dated 30.8.2000, (letter allegedly addressed by Dr.Khan to the petitioner Society insisting that he shall be paid medical examination fee) and proceedings dated 18-8-2000, to contend that the petitioner was forced to make

these payments to Dr.Khan. As referred to supra, the 1st respondent, for just and valid reasons, disbelieved these contentions of the petitioner – society.

Needless to state that this Court, in exercise of its Certiorari jurisdiction under Article 226 of the Constitution of India, does not sit in appeal over decisions of statutory authorities nor would it re-appreciate or re-examine the adequacy or sufficiency of the evidence on record. It is only if the order is based on no evidence, the findings are perverse or there is an error apparent on the face of the record that the Certiorari jurisdiction of this Court can be invoked. The impugned order dated 15-7-2004 is a reasoned order, setting forth in detail the reasons for rejecting the application of the petitioner and denying it continuance of approval of exemption under Section 80-G of the Income Tax Act, and as such does not call for any interference from this Court under Article 226 of the Constitution of India.

It is also clear from the order of the 1st respondent dated 15-7-2004 that the funds of the petitioner – society were mis-utilized and that serious irregularities were committed by the petitioner – society in contravention of the provisions of section 13 of the Income Tax Act. In the light of these findings, this Court under Article 226 of the Constitution of India, in any event, would not exercise its discretion in favour of the petitioner – society.

We see no reason to interfere with the order of the 1st respondent dated 15-7-2004. The writ petition fails and it is accordingly dismissed. No order as to costs.

(B.SUDERSHAN REDDY,J)

Dt. –06-2005.

(RAMESH RANGANATHAN,J)

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