

HIGH COURT OF ORISSA: CUTTACKW.P.(C) No.2467 of 2011

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Xavier's Institute of Management,
A Society registered under the Societies
Registration Act, 1860, represented through
its Director Mr. Joseph Puliparamisil,
AT : Xavier Square, Bhubaneswar-751013
Dist : Khurda

... Petitioner

-Versus-

State of Orissa and others

... Opp. Parties

For Petitioner : Mr. B.K. Mahanti,
Senior Advocate

For Opp. Parties : Mr. A. Mohapatra,
Senior Standing Counsel

P R E S E N T:

**THE HONOURABLE THE CHIEF JUSTICE SHRI.V.GOPALA GOWDA
AND
THE HONOURABLE SHRI JUSTICE B.N.MAHAPATRA**

Date of Judgement: 24.11.2011

B.N. Mahapatra, J. This Writ Petition has been filed challenging the order dated 25.01.2008 passed under Annexure-1 by Opposite Party No.1-Chief Commissioner of Income Tax, Bhubaneswar (for short, 'CCIT') refusing approval under Section 10(23C) (vi) of the Income Tax Act, 1961 (for short, 'IT Act') for the financial year 2006-07 on the ground that the said order has been passed illegally, arbitrarily, without application of mind and in violation of provisions of the I.T. Act. In Annexure-1 the CCIT has refused to grant approval under Section 10(23C)(vi) of the I.T. Act on the ground that the petitioner-institution is not existing solely for educational

purpose and it is engaged in business which is not incidental to the attainment of its objective of education and also no separate books of accounts are maintained in respect of its business.

Further challenge has been made by the petitioner to the order dated 22.12.2010 (Annexure-1/H) passed by the CCIT rejecting the petition made under Section 154 of the IT Act on the ground that the same has been passed without hearing the petitioner which amounts to violation of the principles of natural justice.

2. Petitioner's case in a nutshell is as follows:

Petitioner is a Society registered under the Registration of Societies Act, 1860 on 06.03.1987. Some educationalists, philanthropists along with President of Orissa Jesuit Society, Professor, Director and Administrator of XLRI, Jamshedpur with an object to establish a Business School (for short 'B School') joined together with a view to impart education on business management. The State of Orissa allotted land measuring Ac.20.0 acres and funds of Rs.2.14 crores. The said Society from the aforesaid fund coupled with other donations built the Xavier Institute of Management, Bhubaneswar (for short 'XIMB') to impart B School education to educate and train the efficient and able Manager to man and manage industries, organisations and other organizations such as medical college for Doctors, Engineering College for Engineers and Law College for Lawyers. Apart from class room interaction, the students in non-classes or in classes are encouraged to analyse, anticipate, innovate and otherwise prepare themselves for better career through the qualified

able faculties. The Institute prepares its own curriculum/courses of study, which is approved by All India Council of Technical Education (for short 'AICTE') and has built up a reference library with books/periodicals/journals, research and other publications, planned education in the class room, seminar and other types of trainings by lectures and Socratic method of discussions holding examinations and awarding Diploma and Post-Graduate Degrees as well as Certificates to the successful candidates. In course of time, it has been found that 'B' Schools are good source to produce able managers in the field of business, finance, human resources, systems and operation management and other fields of social science for which every year the business and other management houses come to the campus to conduct interviews and recruit promising students for which the petitioner institute is a catalyst.

3. The institute admits the eligible students from every strata of the society and even from the under-privileged groups where 50% seats are reserved for students from State with the help of bank finance to educate students. The institute has very able faculties who are involved in every aspect of education in the above fields and as a part of practical training it trains the students to make them to take up their career effectively to serve the Nation in their different capacities and it has also its objects in clauses (a) to (i) in paragraph 'B' of its Memorandum of Association. The institute with the above objects admit students after holding entrance test at Post Graduate level.

4. Within a very short span of its inception various other reputed Organisations approved the institute and assigned it to prepare

programmes to be undertaken, researches to be conducted, to transfer knowledge to those persons and to provide on spot training to the class of people for whom they were conducting programmes or researches. The institute conducts core courses and elective courses which are broadly divided into three categories such as (i) development and social entrepreneurship, (ii) rural business development, and (iii) rural finance.

5. The petitioner created a Centre for Development Research & Training (for short, 'CENDERET') in the institute as much as it created departments for disciplines to educate the students and appointed non-faculty staff and had opened Zonal Centres in different parts of the State where such trainings are undertaken. Depending on the person and the manner and their object, the petitioner institute through its academic faculties had to receive fees, incurred expenses, prepare projects and in some cases debited the expenses either to the projects or to the institute, but all the fees and expenses are recorded, audited by reputed internal and statutory auditors and full disclosure were made not only for admission fees and tuition fees of the students but also of those classes of others who paid for their projects and with the help of the petitioner upgraded their knowledge which broadly came under the concept of imparting education.

6. For the purpose of Accountancy in respect of the receipts, the petitioner puts them into a broad head of training and consultancy. The petitioner also for most of the years, receives the grants and donations unrelated to any specific assignments. Since the financial year 1987-88,

the heads of income were recorded under the heads students' fee, training and consultancy, grants and donations, other income.

7. Since the petitioner institute is a charitable institution under Section 2(15) of the IT Act and was receiving donations, it applied for necessary registration under the Act which has been granted and the registration is still subsisting. The petitioner also applied for Section 80G certificate which enabled a donor a deduction of the amount from its total income. The petitioner is registered under the Foreign Contribution (Regulation) Act, 1976 under the Ministry of Home Affairs with effect from 13.09.2001. The Memorandum of Association of the petitioner provides in paragraph 'L' that no portion of the income shall be distributed among its members by way of profit dividends or bonus. Those who donated were exempted from tax and those who advanced money for the aforesaid reasons deducted taxes at source either voluntarily or being compelled by the Department. Petitioner for the assessment year 2009-10 applied for Nil deduction certificate under Section 197 of the IT Act and was granted on 19.03.2009. Subsequent application for the assessment year, 2010-11 was filed but no action was taken, possibly for the reason for non-approval by the authority in Annexure-1.

8. After the registration was granted under Section 12A of the IT Act, the petitioner has been submitting returns for the assessment years from 1990-91 to 2010-11. Assessment for the assessment years 2004-05, 2005-06 and 2006-07 were completed under Section 143(1) of the IT Act and refunds wherever due were given along with interest. In the assessment order passed under Section 143(3) for the assessment year

2004-05 the Assessing Officer held that the petitioner is a charitable institution under Section 2(15) of the IT Act and treated its income exempted under Sections 11 and 12 of the IT Act as charitable educational institution.

9. While the assessment was being completed it was suggested that the petitioner might make an application under Section 10 (23C)(vi) of the IT Act before the appropriate authority, in view of the Taxation Laws Amendment Bill 2006, as its gross receipts were more than rupees one crore. But the Assessing Officer allowed the benefit without any approval by the authority. The petitioner without verifying its veracity applied to the concerned authority on 25.01.2007, which is in the statutory form and gave requisite information to justify its activities to indicate that it is an educational institution existing solely for educational purposes and not for purposes of profit. The said approved authority gave a hearing, and as required by the said approved authority various details were filed before it. After hearing the petitioner, the CCIT passed the impugned order under Annexure-1 holding that the petitioner is imparting education in Post Graduate level, but the receipts which have been made under head training and consultancy which the petitioner explained to be incidental to education and caters solely to the institute's main object for educational purposes is not correct for the reasons stated in the said order.

10. On receipt of the impugned order under Annexure-1, the petitioner filed a petition under Section 154 of the IT Act before the CCIT on 16.12.2010 which was within time to revise the order passed under

Annexure-1 on the ground that the CCIT while passing the order has made a mistake in considering the main and subsidiary objects of the institute and the nature and genuineness of the activities of the petitioner as the execution of the projects was a part of practical training for 'B' School as the curriculum of the said School. Learned authority without hearing the petition rejected the same ex parte on 22.12.2010 holding that there is no mistake apparent on the face of the record.

11. As a consequence of erroneous order passed under Annexure-1, the petitioner shall be prejudiced as the assessing authority has started making assessment for the years that were not time barred by reopening assessments and taking up the pending assessment being influenced by the order passed under Annexure-1. The assessments already completed for the assessment years 2005-06 and 2007-08 are pending in appeals. The Assessing Officer has issued notices under Sections 142(1) and 143(2) of the IT Act for making assessment for the assessment year 2009-10. Hence, the writ petition.

12. Mr. B.K. Mahanti, learned Senior Advocate appearing for the petitioner submitted that the object of establishing educational institution is not to make profit. Imparting education in the case of the petitioner is charitable in nature. The charitable nature of the occupation of establishing and running an educational institution has been recognized by the Hon'ble Supreme Court in the cases of *T.M.A. Pai Foundation and other vs. State of Karnataka and others*, AIR 2003 SC 355 and *Unni Krishnan, J.P. and others vs. State of Andhra Pradesh and others*, AIR 1993 SC 2178. However, the Authority having completely lost sight of the

aforesaid aspects, passed the impugned order without considering the main objects and the nature of the alleged other activities undertaken by the petitioner. Short duration management development programmes, feasibility study and research activities and training as conducted by the petitioner cannot by any means be construed to be taxable under the Act even though the petitioner earns some amounts out of such programmes after meeting all the expenditures. The surplus is spent for the purpose of student's education without distributing among the members. The Opposite Party No.1 was in error in not following the judgment of the Hon'ble Supreme Court in the case of *American Hotel & Lodging Association Educational Institute vs. CBDT*, (2008) 301 ITR 86 (SC) and *Additional Commissioner of Income Tax vs. Surat Art Silk Cloth Manufacturers' Association*, (1980) 121 ITR 1, wherein the principles of main and subsidiary objects are explained.

13. Mr. Mahanti, learned Senior Advocate further contended that the order under Annexure-1 is a nullity as the prescribed authority misunderstood the relevant provisions of law. Opposite Party No.1 misconstruing his powers under proviso (1) to Section 10(23C)(vi) of the I.T. Act, passed the impugned order. Further the prescribed authority has also misunderstood the English word "solely" for educational purposes. Ascribing a narrow meaning to the word "education" and relying on the principle decided in *Sole Trustee, Lok Shikshan Trust vs. CIT, Mysore*, AIR 1976 SC 10, which was beneficial to the Revenue, the prescribed authority treated the income from the petitioner's activities from "consultancy and training" and "grants and donations" imparted as part

of its courses of study as non-educational activities. The interpretation given to the word 'education' by the prescribed authority is contrary to the principles of interpretation of fiscal statute. Thus, the order impugned in this writ petition is irrational. Taking judicial notice of many factors without confrontation, the prescribed authority rejected many papers without assigning any reason. For every project there were separate agreements and there were separate ledger accounts for training and consultancy and grants and donations. Opposite Party No.1 rejected most of the explanations offered by the petitioner high-handedly. The authorized officer misunderstanding the accountancy principles held that no separate account is maintained and no proper accounting system has been adopted by the petitioner. He has also disposed of the petition filed under Section 154 C of the I.T. Act without giving opportunity of hearing to the petitioner which is required under laws as declared by the Hon'ble Supreme Court in the case of *Sahara India (Firm), Lucknow vs. Commissioner of Income Tax, Central-I and Another*, (2008) 14 SCC 151.

14. The finding of fact is vitiated on many grounds, particularly by placing reliance on irrelevant materials, excluding relevant law as well as on complete ignorance of latest judgments. The prescribed authority committed grave error of law and procedure as his order was hit by *per incuriam* rule and by rule of *res-judicata*. He has also misunderstood his power under Section 10(23C)(vi) of the I.T. Act to grant continuance of the benefit to the institution, which is already registered under Section 12A of the said Act. On the point of *per-incuriam* rule, Mr. Mahanti, learned Senior Advocate relied on the judgment of the Hon'ble Supreme Court in

the case of *Punjab Land Development and Reclamation Corporation Ltd., Chandigarh vs. Presiding Officer, Labour Court, Chandigarh and others* (1990) 3 SCC 682; *Government of Andhra Pradesh and Another vs. B.Satyanarayan Rao and others* (2000) 4 SCC 262; and *State of Orissa vs. Nalinikanta Muduli*, (2004) 7 SCC 19. While canvassing the argument on the rule of res-judicata, Mr. Mahanti submitted that when the set of Memorandum of Association of the petitioner-institution in its entirety was registered under Section 12A of the I.T. Act holding that the petitioner institute is existing for charitable purpose of imparting education under Section 2(15) of the said Act and certificate under Section 80G was granted, the prescribed authority was precluded from reopening the same issue. In support of his contention, Mr. Mahanti, learned Senior Advocate relied upon the decisions of the Hon'ble Supreme Court in the cases of *Bharat Sanchar Nigam Limited and Another vs. Union of India and others*, (2006) 3 SCC 1; *M/s. Radhasoami Satsang, Saomi Bag, Agra vs. Commissioner of Income Tax*, (1992) 193 ITR 321, *Director of I.T. vs. Escorts*, (2008) 300 ITR 75 (Delhi) and *Sardar Kehar Singh* (1992) 195 ITR 769 (Raj). In the impugned order, the prescribed authority has taken into consideration some irrelevant materials and has not followed the guidelines laid down in the case of *American Hotel Case (supra)*, which on principle follows *Surat Art Silk* (1980) 2 SCC 31.

15. Placing reliance on the judgment of the Hon'ble Supreme Court in the case of *Ujjambai*, AIR 1962 SC 1621, Mr. Mahanti submitted that orders which are ex facie nullity are not protected as they are orders passed without jurisdiction. It was further argued placing reliance on

Animiscc, 1969 (1) ALLER 208 (HL) that such an order can be challenged in a court. The aggrieved party is entitled to protection of a court where the authority by reason of misconstruction or omission of the law or for any other reason uses his discretion to counter the policy. Reliance was also placed in the case of *R (Electrocal Commissioner) vs. West Minister Mag Ct.*, (Lord Brown), (2011) 1 ALL ER 1, *Padfield vs. Minister of Agriculture Fisheries and Food*, (1968) 1 ALL ER 694 : (1968) AC 997 and the decision in *Tower Hamlets London BC vs. Chetnik Developments Ltd.*, (1988) 1 ALLER 691 and the judgment of the Hon'ble Supreme Court in the case of *Akhil Bharatiya Upbhokta Congress vs. State of Madhya Pradesh and others*, (2011) 5 SCC 29.

16. In the petitioner's case, policy behind the law is to encourage establishment of educational institutions by non-government organizations and entities and to keep them under control and discourage spurious ones. They must be understood by reading the history, so that such institutions are not only encouraged but also controlled. The institutes which are registered under Section 12-A of the I.T. Act are not to be treated as new ones.

17. In any event the words "Education" and "incidental" are not defined under the Statute. But the prescribed authority has chosen narrower interpretation as against the wider meaning of "education". Learned authority created an ambiguity deliberately in the language employed where under the rules of statutory interpretation, the provisions must be construed in a manner that benefits the assessee. Placing reliance on the decision of the Hon'ble Supreme Court in *Surat Art Silk*

(*supra*), it was submitted that an adverse decision might have serious repercussion on large number of public trusts in the country. Further, placing reliance upon the judgment of the Hon'ble Supreme Court in *T.M.A. Pai Foundation (supra)*, Mr. Mahanti submitted that the Hon'ble Supreme Court recognized the right to establish and maintain "educational institutions". Education is a recognised head of charity. Therefore, those who are not within the special categories carved out in Articles 29(1)/30(1) have their right to establish and maintain *inter alia* educational institutions. The right was *inter alia* conceded to establish private educational institution, in contradiction to Government institutions. It was further submitted by Mr. Mahanti that in the aforesaid case, the Hon'ble Supreme Court further held that while other private educational institutions impart education their right cannot be taken away for their choice in the matter of (i) selection of students, (ii) fixation of fees and (iii) affiliation and recognition to be available to them. The Hon'ble Supreme Court following the decision in *Unnikrishnan*, AIR 1993 SC 2178 : (1993) 1 SCC 645 held that they are of necessity in the present day context as it is not possible to do without them because the Government is not in a position to meet the demand.

18. Mr. Mahanti submitted that to teach the students, the petitioner has to rely on model projects prepared by past practices or experiences of business corporate or create artificial models and spend its own money. But a management institute, having able faculties in many disciplines, may be approached for consultancies and training and entered into agreements, sanctioned budgets etc. The petitioner

maintains separate books of account for each project. In *M/s. Dharmaposhanam Company, Kerala vs. Commissioner of Income Tax, Kerala*, (1978) 3 SCC 414, the Hon'ble Supreme Court held that the limiting condition does not apply to educational institute. A citizen has a fundamental right for education for a medical, engineering or other professional degree.

19. The prescribed authority is not justified to apply the rule of interpretation for claim of exemption and also the principle of interpretation of fiscal laws to be construed strictly so long as the provision is free from ambiguity and strict interpretation rules are not applicable in machinery provision. In support of his contentions, Mr. Mahanti further relied upon the judgments of the Supreme Court in *CIT V. Naga Rills Ltd.*, (1973) 89 ITR 236 (SC); *CED v. R. Kanakasabai and others*, (1973) 89 ITR 251 (SC); *CIT v. Kulivalley*, (1970) 77 ITR 578 and *Radha Kishan Bhatia vs. Union of India and others*, AIR 1965 SC 1072. The educational institutions are not defined either in 1922 or 1961 Act. Learned prescribed authority following Lokshikan construed the meaning of education in a narrow sense even though the Supreme Court did not agree with the view in *Surat Art's case*, 1980 (2) SCC 31. The Supreme Court in *State of Orissa v. Mamata Mohanty*, (2011) 3 SCC 436, recognized education as the process of systematic instruction which a person has received.

20. The objects as delineated in Pr. 3E, 3F, 3G & 3H which are really common and solely for the purpose of education need not be clinically pure without contamination of anything else. It is submitted

that when the law considering other educational institution existing solely for education had consistently permitted businesses earlier even as a primary object permits educational institution to be exempted at different times, the learned prescribed authority is silent about the objective of the petitioner-institution stated in paragraphs A & B of its objects and silent about its courses of study which are covered under clause-3B(d) (e)(f) of the objects.

21. The petitioner institution maintains separate accounts such as CENDERET-FCR Books of Account, CENDERET-General Books of Account, Education Unit Books of Account. The day to day financial transactions are recorded in (a) Day Book Bank Book, Cash Book & Journal Book, (b) General Ledger, (c) Project' activity wise Ledger, (d) Separate computerised (Customized) pay roll package & (e) Separate Computerized (Customized) fee collection package at the end of each financial year financial statements viz. Income & Expenditure Account and balance sheet are prepared for each set of books. The individual statements are consolidated to generate a complete set for the institute as a whole on which auditor signs after being approved by the Governing Body of the Institute. Prescribed authority is not justified to describe some of the activities of the petitioner-institute as business activities giving a restricted meaning to the word "Education" taking into consideration the magnitude of expenses and that the petitioner can meet its expenses from receipt from fees for admission and tuition as these reasons are irrelevant. Not the magnitude of expenses but gross receipt is the criteria for approval. The magnitude of expenses and the

meeting of the expenses for running the educational institution are not relevant nor provided under Section 10(23C) (vi), and proviso (i), (ii) and (iii) to said Section. The prescribed authority created a self created policy for a subjective satisfaction without objective standard. Opposite Party No.1 is silent if profits are earned from activities alleged are in the nature of business and application of those incomes, but avoided as they are not necessary.

22. Soon after the passing of the impugned order, assessment for the assessment year 2005-2006 was reopened u/s. 147 and the assessment for the assessment year 2007-2008 was completed. Assessment for the assessment years 2006-2007, 2009-2010 and 2010-2011 are pending for assessment. In the order under Annexure-1 the CCIT relied on *Lok Shikshan* (supra) the ratio of which decision was disapproved by a larger bench and not being aware of the legal meaning of the word “incidental as decided by the Supreme Court in *Thanti Trust* 247 ITR 785, 795 has resulted in error apparent on the record as indicated in the Boards circular (Annexure-7 of the rejoinder), and the petitioner filed a petition u/s. 154 of the I.T. Act which was disposed of without hearing the petitioner.

23. The order under Section 154 of the I.T. Act was passed in violation of the principle of natural justice as no opportunity of hearing was given to the petitioner. In support of his contention Mr. Mahanti relied upon the judgments in *Rupa Ashoka Hurra v. Ashok Hurra and another*, (1999) 2 SCC 103 approved in *Bharat Sanchar*, 2006 (3) SCC 1, *Maneka Gandhi*, (1978) 1 SCC 248 and *S.L. Kapoor*, (1980) 4 SCC 379.

Reliance was also placed in *Mercury Energy Ltd. vs. Electricity Corporation, Newzealand*, (1994) 1 WLR 521, where the Court declared an order of the Minister to be a nullity, as it was passed without hearing. In support of his contention, Mr. Mahanti also relied upon the cases of *Shri Bhagwan vs. Ramchand*, AIR 1965 SC 1767, *State of Orissa vs. Binapani*, AIR 1967 SC 1269, *SDO vs. Gopal Chandra Khound*, AIR 1971 SC 1190, *State of Kerala vs. K.G. Madhavan Pillai & Ors.*, (1988) 4 SCC 669, *Sahara India vs. CIT*, (2008) 14 SCC 151, and *Rajesh Kumar vs. Dy. CIT & Others*, (2007) 2 SCC 181. Requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute particularly when the order has adverse civil consequence for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi judicial authority. Reliance was also placed on the judgment of the Hon'ble Supreme Court in *C.B. Gautam vs. Union of India and others*, (1993) 1 SCC 78 in support of the contention.

24. The Hon'ble Supreme Court in the case of *American Hotel (supra)*, observing the importance of the subject, specifically examined "extent of power taken under Section 10(23C)(vi)" and reversed the refusal of prior approval for the reason that the said institute was having surplus income and diverted funds to its head office. In granting the approval u/s. 10(23C) (vi) of the Act, the principles decided in *Surat Art's case (supra)*, (even if it was not education, but an institution having objects of general public utility) shall apply. It was held that the test is the nature of activity. The prescribed authority may grant exemption under section

10(23C) (vi) putting the stipulation to the effect that subject to fulfilment of the stipulation, approval be given than denying the approval. This Court in the case of *S.J. Charitable Trust v. Chief Commissioner of Income Tax* in W.P.(C) No.11811 of 2010 judgment of which was pronounced on 26.7.2010, placed reliance on the judgment of the Hon'ble Supreme Court in the case of *American Hotel* (supra), while considering the order of rejection of the petition filed by the petitioner u/s. 10(23C)(vi) of the Act, 1961 and remanded the matter to the Chief Commissioner, Income Tax.

25. Mr. Mahanti, further submitted that in the matter of judicial review, when an authority decides the matter relying on many materials, some of which are treated as irrelevant, the review court has to quash it as it cannot know as to what extent the mind of the authority was influenced by the irrelevant materials. Placing reliance on the judgments in the case of *AG vs. De Keysore Hotel*, (1920) AC 508 and *Burma Shell*, (1965) AC, Mr Mahanti submitted that the discretionary power should be exercised by (i) taking all relevant factors, (ii) excluding all irrelevant factors, and (iii) passing orders which are neither perverse nor irrational.

26. It was submitted that proviso VII to Section 10(23C)(vi) of the I.T. Act permits the other educational institution to carry on business. The limiting conditions are (a) the business shall be incidental to attainment of objectives of education, (b) what is incidental is defined in *AC vs. Thanti Trust*, (2001) 247 ITR 785 (SC) and (c) it requires separate books of account to be maintained. Maintenance of separate accounts is not prior or precondition but limiting condition. Profits and gain of business should not

be incidental to the attainment of its objects. Incidental is not sub-ordinate to something of greater importance, having a minor role, but incidental because its income is utilized by the institution for the purpose of achieving its end. Each project has separate books of account reflecting either surplus or deficit which were ultimately added up and reflected in the P & L account under head consultancy and training as well as grants and donations and other receipts. The later receipts were also for consultancy and training, but being in foreign currency were to be separately reported to a statutory authority.

27. Placing reliance on the judgments of the Hon'ble Supreme Court in the case of *Bangalore Medical Trust vs. B.S. Muddappa and others*, (1991) 4 SCC 54 and *U.P. State Road Transport Corporation and another vs. Mohd. Ismail and others*, (1991) 3 SCC 239, Mr. Mahanti, submitted that when a statute provides guidelines, rules or regulations framed for exercise of discretion then the action should be in accordance with it. Even where statutes are silent and only power is conferred to act in one or the other manner, the authority cannot act whimsically or arbitrarily. It should be guided by reasonableness and fairness. The legislature never intends its Authority to use it unfairly. The prescribed authority in passing the order relies on his power under Section 10(23C) (vi) instead of renewing it, refuses approval, ignoring the order of another authority under the self same Act under Section 12A in evaluating the same MoA, the discretion of the former under Section 12A is bound to control the later under Section 10(23C)(vi) of the I.T. Act so as to avoid its conflict. The Courts have prescribed limits, so that there is no existence of

arbitrary powers and unfettered discretion. The authority must use his discretion, based on the policy and objects of the governing law.

28. Placing reliance in the case of *Egyptian Salt*, AIR 1931 PC 182, *Deucher vs. Gaslight & Coke Company*, 1925 AC 69, Mr. Mahanti submitted that the MoA like any other document must be read fairly and its import derived from a reasonable interpretation of the language which it implies. Decision in *Bell Houses vs. City Wall*, (1966) 2 ALL ER 674, indicates the modern practice which waters down the ultra vires doctrine as regards the Companies dealings with third parties provided the dealings are honest.

29. It was further submitted that over a period of time, management has become a distinct profession along side the traditional liberal professions, i.e. medicine, law and church. B' School is in contrast to a University degree in humanities for instance, history, politics, economics, anthropology, sociology, etc. where such need for translating knowledge into specific skills does not arise at all. The Management theories and practices in vogue some 20 years ago have become obsolete, which means the faculty members should be in constant touch with the real works and get a hand of the changing trends in the business and management, without which they become inadequate or irrelevant to the changing times. It was the Government of Orissa, which enlisted the services of petitioner-XIMB to study and submit a report on "Reforms in Electricity Sector" during the year 2001-02. The report submitted by the petitioner-XIMB was accepted and implemented by the Government resulting in increasing profitability of the State-controlled Electricity

Companies by reducing transmission losses and other avoidable wastages. With 25 years standing, petitioner-XIMB has been ranked in the first 15-B' Schools of the country, which speaks volumes about the hard work put into maintain high academic standards. Thus, the activities such as, training, research, development, consultancy, publications, etc. should not be considered as business initiatives divorced from the academic aspects of the B-School, as profit oriented in the strict sense of the term, but should be viewed inherent activities which are indispensable in the enrichment/improvement of the quality of management education, without which the very existence/survival of the B-School itself would be in peril. Concluding his argument, Mr. Mahanti, learned Senior Advocate requests this Court for quashing the impugned order under Annexure-1 and directing opposite party No.1 for fresh consideration.

30. Per contra, Mr. A. Mohapatra, learned Senior Standing Counsel appearing on behalf of the Income Tax Department vehemently argued that there is no illegality in the order of the CCIT. The order of the CCIT is a speaking order. As per Clause (vi) of Section 10 (23C) of the I.T. Act, an educational institution must exist solely for educational purposes. As the petitioner-institution has other objects, which are not connected with education, the CCIT has correctly taken the view for not according approval under Section 10(23C)(vi) of the I.T. Act. Therefore, the allegations made by the petitioner in this writ petition are not only frivolous but also based on erroneous appreciation of law and an attempt to mislead this

Court with wrong set of facts and placing reliance on decisions which have no relevance.

31. The projects/programs implemented through Centre for Development Research and Training (for short, 'CENDERET'), a wing of the petitioner-institution is headed by an independent faculty member. It has separate staff and structure and also several zonal centres are operating in various parts of the States under CENDERET. Various faculty members of the institution, who are regularly associated in teaching activities, are also involved in execution/implementation of these programs/projects or training programs as per the requirement and the nature of each project. Perusal of some of the project proposals shows that the agreements are sometimes entered directly for CENDERET. The nature of the activities has to be understood in the overall context of the present economic and management scenario in the country and world at large. A very large number of projects/programs are undertaken by the Government as well as the private organizations or international organizations in various stages of business expansion. In the above context, the role of a business management institute like that of the petitioner-institution has to be understood. The various programs/projects/ trainings etc. undertaken by the institute are in the nature of business suitable for such an institute. The nature of various programs under head "Training and Consultancy" and "Grants and Donations" is more or less similar as is apparent from various project reports of these programs submitted during the course of hearing of its case. They are related to doing programs connected with Human

Resources Development, Testing of fields for particular economic activities or implementation and education of specific projects in the field. There are heavy expenses incurred on execution of these programs/projects.

32. No separate books of accounts for CENDERET have been maintained. Although details for each project are available separately, a very large portion of expenses including administrative expenses for these programs are merged in the general account of petitioner-institution. The accounts of Management Development Centre (MDC), which caters to lodging, boarding and other related expenses of these programs and projects, are at time directly accounted for in the combined accounts of the petitioner and sometimes routed through various projects. Even, where project wise details are maintained, the debits for contribution of the institute in the form of use of premises, building and equipments of the institute have been made, which are later adjusted by the book entry under various heads. Evidently, a very large amount of money has been spent for the purposes other than education. Thus, the programs/projects implemented through its unit called CENDERET come under the concept of business activities and not educational activities as claimed by the petitioner.

33. According to Mr. Mohapatra, grant of registration under Section 12-A of the I.T. Act is governed by a set of statutory provisions different from what governs grant of approval of application filed under Section 10(23C)(vi) of the I.T. Act. Therefore, petitioner's reference to grant of registration under Section 12-A is not relevant to the present issue. There is nothing to preclude the Commissioner from re-examining the

issue already considered at the assessment stage for the purpose of grant of approval under Section 10(23C)(vi) of the I.T. Act. The impugned order under Annexure-1 has been passed by CCIT after careful consideration of the submissions and details furnished by the petitioner. The objects mentioned in the Memorandum of Association reveal that the petitioner is involved in several non-educational activities.

34. Placing reliance on the judgments in the cases of *Commissioner of Income Tax vs. Sorabji Nusserwanji Parekh*, (1993) 201 ITR 939, *Aditanar Educational Institution vs. Additional Commissioner of Income Tax*, (1997) 224 ITR 310 and judgment of Andhra Pradesh High Court in the case of *Commissioner of Income-Tax, Hyderabad vs. Gurukul Ghatkeswar of Hyderabad* in R.C. No.35 of 1996 dated 29.09.2010, *Commissioner of Income Tax vs. Maharaja Sawai Mansinghji Museum Trust*, (1988) 169 ITR 379(RAJ), *Oxford University Press vs. CIT*, (2001) 247 ITR 658, *Vanita Vishram Trust vs. Commissioner of Income Tax*, (2010) 327 ITR 121 (Bombay) and *American Hotel & Lodging Association Educational Institute (supra)*, Mr. Mohapatra, contended that since the petitioner-institution does not exist solely for the educational purposes and the nature of activities undertaken by it amounts to carrying on business, it is not entitled for exemption and the CCIT has rightly rejected its application made under Section 10(23C)(vi) of the Act.

35. The stand of the petitioner that the entire surplus income of the educational institution has been spent for educational activities and nothing else, is of no consequence inasmuch as non-educational objects would enable the petitioner-Society, at their discretion, to apply the funds

of the society for such non-educational objects also. Non-educational activities carried on by the petitioner cannot be characterized as ancillary or incidental to, or to be integrally connected with the object of imparting education since the petitioner also has non-educational objects as part of their objects. The CCIT after examining the case of the petitioner in minute details passed the impugned order. Therefore, he prays for dismissal of the writ petition.

36. The petitioner filed a rejoinder in response to the counter affidavit filed by the Income Tax Department. In the rejoinder, it is stated that the counter affidavit should have been filed by opposite party No.1, who has passed the impugned order. The affidavit filed by an officer of the Income Tax Department, other than opposite party No.1, without leave of this Court is not valid and is liable to be rejected, unless this Court condones it or is pleased to direct for filing a fresh counter.

37. In the counter affidavit, no reply has been given to the averments made in the additional affidavit dated 21.02.2011 filed by the petitioner. Therefore, the statements made in the additional affidavit are admitted by opposite party No.1.

38. According to Mr. Mahanti, the objects of the Society were already decided under Section 12A of the I.T. Act that its main object is to impart education. The impugned order passed under Annexure-1 is hit by rule of *per-incuriam* as opposite party No.1 takes a restricted meaning of the word 'education' relying on the principle which a larger Bench of the Hon'ble Supreme Court has disapproved. Certain observations made in the impugned order are not correct. All the receipts and expenditures are

as per budget and any balance at the end of the year is carried forward to the next year. Any surplus arising thereof is adjusted against the administrative expenses such as infrastructure, communication, energy charges etc. and any loss thereof is adjusted against the surplus of other programmes. Separate accounts are maintained and they are ultimately reflected in the P & L account and balance sheet.

39. Opposite party No.1 dismembers the activities of the petitioner's institute into two parts; one that educates (which has got able faculties and bright students) and another part where the institute receives grants and donations and fees for training and consultancy to take up projects/programs as a business venture. The learned authority failed to appreciate that the later activities and experience improve quality of the former and the later is taken up to aid and assist the former. Therefore, the reasoning given by opposite party No.1 is fallacious.

40. Opposite party no.1 is not justified to say that the income from trainings and consultancies as well as grants and donations are not necessary to meet its expenses for teaching. Such observation is without materials and the result of non-application of mind. This statement can only happen if a person does not look to the object clauses, in (A), (B) with Sub-clauses (a) to (f) and paragraphs C to N which are powers to achieve (A) and (B).

41. Opposite party No.1 has not taken into consideration the fact stated in paragraph 3(a) of the writ petition, where the petitioner asserts that the State of Orissa allotted lands measuring 20 Acres and a fund of Rs.2.14 Crores and joined in incorporating the society.

42. The object of giving training is to expose the students to the practical aspects of management and to enable them to study specific problems in the organization. In order to learn from the people, the Institute sees that the students cultivate the culture of learning in order to learn and also to associate with the rural people. The best way to provide this process of learning is to help them to learn with the people. Therefore, rural living and learning experience is an integral pedagogical component of rural management, which the Institute follows through its various projects and programs.

43. The institute being purely a charitable institute imparting education, it undertook the job activities which are related to education to students either directly or indirectly through research, graining, consultancy, grants and donations. The jobs in the name of projects undertaken are useful to the students even in their class room studies. The students are awarded marks for their programs undertaken under the guideline of faculties in the names of the projects. The research and consultancy work is a part and parcel of every B' School and through consultancy undertaken by the institute in the fields of study of management of banking sector, it was found a subject i.e. Banking Management can support the students in their job and also preparation of their projects. Initially, in the institute, Banking Management was not a subject because from consultancy and research it was found there were some scopes as well as the requirements of education in that field. Therefore, though research and consultancy supplements and enhances the knowledge, these activities are in every management institution.

44. It is further stated that once Section 10(22) of the I.T. Act is accorded, Sections 11 and 13 did not apply. Non-grant of application under Section 10(22) of the I.T. Act does not affect the claim under Sections 11 and 13 of the said Act, which will continue because of the fact that the educational institution has already been granted benefit. Section 10(23C)(vi) of the I.T. Act, by its very language other educational institution, means those who are not covered under Section 2(15) and whose computation of total income shall be made under Section 11 of the said Act. The other approved educational institutions shall be governed under Section 10(23C)(vi) of the I.T. Act and its proviso.

45. On the rival, factual and legal contentions advanced by learned Senior Counsel and Standing Counsel for the parties, the questions which fall for consideration by this Court are as follows:

- (i) Whether the petitioner-Xavier Institute of Management, Bhubaneswar is existing solely for educational purpose and not for purpose of profit so as to the income received by it shall not be included in computing its total income for the financial year 2006-07 and thereby it is eligible for exemption ?
- (ii) Whether the petitioner-Xavier Institute of Management, Bhubaneswar is engaged in business and the same is incidental to the attainment of its object of education?
- (iii) Whether the CCIT is justified in not granting approval under Section 10(23C)(vi) of the I.T. Act for the financial year 2006-07 ?
- (iv) Whether the CCIT is justified in holding that the application for rectification made under Section 154 of the I.T. Act to revise the order under Section 10(23-C)(vi) for the financial year 2006-07 is not entertainable?

46. Since question Nos.(i), (ii) and (iii) are interlinked, they are dealt with together.

47. To deal with the aforesaid three questions, it is necessary to know what is contemplated in Section 10(23C)(vi) of the I.T. Act. The same is extracted below:

“10. Incomes not included in total income

In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included —

xx xx xx

(23C) any income received by any person on behalf of —

xx xx xx

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiid) and which may be approved by the prescribed authority”.

xx xx xx

(Underlined for emphasis)

48. A plain reading of Section 10(23C)(vi) of the I.T. Act makes it amply clear that any income received by any person on behalf of any university or other educational institution existing solely for educational purposes and not for purposes of profit, which may be approved by the prescribed authority shall not be included in computing the total income of a previous year of any such person. Thus, in order to be eligible for exemption under Section 10(23C)(vi) of the I.T. Act, the following conditions are to be satisfied:

(i) there must be an educational institution,

- (ii) such university or other educational institution must exist solely for educational purposes,
- (iii) it should not exist for the purposes of profit, and
- (iv) approval by the prescribed authority.

The prescribed authority as per Rule 2CA(1) of the Income Tax Rules, under sub-clause (vi) of Section 10(23C) shall be the Chief Commissioner or Director General, to whom application shall be made.

49. At this juncture, it is necessary to know some of the relevant provisos of Section 10(23C)(vi) of the I.T. Act for our present purpose.

The first proviso provides that the other educational institution shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of exemption or continuance thereof.

The second proviso provides that the prescribed authority before approving the other educational institution may call for such documents including audited annual account or information from the educational institution as it thinks necessary in order to satisfy itself about the genuineness of the activities of the other educational institution. The prescribed authority may also make such inquiries as it deems necessary in that behalf.

The third proviso provides that the income of a university or educational institution should be applied or accumulated for application wholly and exclusively to the objects for which it is established. Clause (b) of the third proviso states that the cash must be invested or deposited in one or more of the forms or modes specified in sub-section (5) of Section 11.

The seventh proviso to section 10(23C) provides that nothing contained in sub-clause (vi) shall apply in relation to any income of the university or educational institution, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business.

The 12th proviso provides that where the other educational institution does not apply its income during the year of receipt and accumulates it, any payment or credit out of such accumulation to any trust or institution registered under Section 12AA or to any fund or trust or institutions or any university or other educational institution or hospital or other medical institutions shall not be treated as application of income to the objects for which such fund or trust or institution or university or other educational institution or hospital or other medical institutions as the case may be is established.

50. The Hon'ble Supreme Court referring to its earlier decision in the case of *Surat Art Silk (supra)*, considered the provision of Section 10(23C)(vi) in *American Hotel and Lodging Association Educational Institute (supra)* and made the following observations:

“With the insertion of the first proviso, the prescribed authority is required to vet the application. This vetting process is stipulated by the second proviso. It is important to note that the second proviso also indicates the powers and duties of the prescribed authority. While considering the approval application in the second proviso, the prescribed authority is empowered, before giving approval, to call for such documents including annual accounts or information from the applicant to check the genuineness of the

activities of the applicant-institution. Earlier that power was not there with the prescribed authority.

Under the third proviso, the prescribed authority has to ascertain while judging the genuineness of the activities of the applicant-institution, as to whether the applicant applies its income wholly and exclusively to the objects for which it is constituted/established.

Under the 12th proviso, the prescribed authority is required to examine cases where an applicant does not apply its income during the year of receipt and accumulate it but makes payment there from to any trust or institution registered under section 12AA or to any fund or trust or institution or University or other educational institution and to that extent the proviso states that such payment shall not be treated as application of income to the objects for which such trust or fund or educational institution is established. The idea underlying the 12th proviso is to provide guidelines to the prescribed authority as to the meaning of the words “application of income to the objects for which the institution is established”. Therefore, the 12th proviso is the matter of detail. The most relevant proviso for deciding this appeal is 13th proviso. Under that proviso the circumstances are given under which the prescribed authority is empowered to withdraw the approval earlier granted. Under that proviso, if the authority is satisfied that the trust, fund, University or other educational institution etc. had not applied its income in accordance with the 3rd proviso or if it finds that such institution, trust or fund etc. has not invested/deposited its funds in accordance with the 3rd proviso or that the activities of such fund or institution or trust etc. are not genuine or that its activities are not being carried out in accordance with the conditions subject to which approval is granted then the prescribed authority is empowered to withdraw the approval earlier granted after applying with the procedure mentioned therein.”

51. In the above case the Hon’ble Supreme Court further held that it is only if the prerequisite condition of actual existence of the educational institution is fulfilled, the question of compliance with requirements in the provisos would arise. To make the section with the proviso workable, monitoring conditions in the third proviso like application/utilization of

income, pattern of investments to be made, etc., could be stipulated as conditions by the prescribed authority subject to which approval could be granted. While imposing stipulations subject to which approval is granted, the prescribed authority may insist on certain percentage of accounting income to be utilized/applied for imparting education in India.

However, the prescribed authority must give an opportunity to the petitioner-institution to comply with the monitoring conditions which are stipulated for the first time as mentioned in the third proviso to Section 10(23C). After grant of approval, if it is brought to the notice of the prescribed authority that conditions on which approval was given have been breached or that circumstances mentioned in the thirteenth proviso exist, then the prescribed authority can withdraw the approval earlier given by following the procedure mentioned in that proviso.

The Hon'ble Supreme Court further held that on the issue of deciding whether an institution is existing for profit or not, the mere excess of income over expenditure cannot be decisive. An institution cannot be considered to be existing for profit, if some surplus is generated over expenditure. According to the Hon'ble Supreme Court, it is not possible to carry on educational activity in such a way that the expenditure exactly balances the income and there is no resultant profit.

52. The Hon'ble Supreme Court in the case of *Oxford University Press vs. CIT*, (2001) 247 ITR 658 (SC), has held that non profit qualification in Section 10(23C)(vi) of the I.T. Act has to be tested against Indian activities.

53. In Section 10(23C)(vi) of the I.T. Act, emphasis has been given on the word “solely” for educational purposes. Solely means exclusively. Thus, the expression “solely” appearing in Section 10(23C)(vi) makes it clear that only the income of the institution established solely for educational purposes and not for commercial activities is entitled for exemption. Therefore, the Hon’ble Supreme Court in the case of *American Hotel & Lodging Association Educational Institute (supra)*, held that even one of the objects enables the institution to undertake the commercial activities, it will not be entitled to approval under Section 10(23C)(vi) of the I.T. Act.

54. The Hon’ble Supreme Court in the case of *Aditanar Educational Society (supra)*, held that in deciding the character of the recipient of the income, it is necessary to consider the nature of the activities undertaken. If the activity has no co-relation to education, exemption has to be denied. The recipient of the income must have the character of an educational institution to be ascertained from its objects.

55. At this juncture, it is necessary to know the objects of the association. As per the Memorandum of Association (MoA), the following are the objects of the Institute:

“3(A) *Teach* : To conduct research in the fields of management, social, economic, industrial, rural, scientific and to diffuse knowledge through instruction, lectures, seminars, conferences, publications and consultancies with a view to contribute to the orderly growth and development of Orissa and the Country.

(B) *Establish* : To own, conduct, equip and carry on the administration and Management of the Xavier Institute of Management, Bhubaneswar:-

(a) To provide for training in management and related subjects to persons from industries in both the public and private sectors, public systems, institutions, bodies and associations both public and voluntary connected with industry, rural development and social uplift of all kinds, and to individuals in such a way as to equip them to practise the art and profession of management in which they have trained, or, in appropriate cases, to instruct others in the practice of management;

(b) To select and prepare outstanding and talented mature young persons including those from underprivileged groups for careers leading to management responsibilities in all types of organizations and to form them in the knowledge, skills, values and attitudes which make for effectiveness in management efficiency in organizations, honesty in transactions and give a powerful orientation to the social and economic growth of Orissa and the country;

(c)

(d) To meet the needs of Indian industry and development agencies in respect of up-to-date information on administrative, social and organizational management through research and publications of bulletins, newsletter, manuals, journals, reports, books and periodicals;

(e) To assist, institute and carry out research into matters concerning the use of management and allied techniques and methods conducive to the improvements of productivity and social well-being;

(f) To provide consultancy to various organizations involved in industry or development so as to give them result orientation and improve their all round performance; to undertake projects in rural development in collaboration with government and other agencies for the purpose of instruction and modeling;

(g) To collaborate and network with industrial, social developmental and professional organizations having objectives similar to those of the Association;

(h) To institute and award fellowships, prizes and medals and to confer honorary awards and distinctions in accordance with the Rules and By-laws of the Association; and

(i)

(C) *Staff* :

(D) *Succession* : To have perpetual succession by the corporate name having a common seal

(E) *Buildings* : To erect buildings, dormitories, hostels, bungalows, play-fields, stadium and any other type of building or structure whatsoever to Association and to maintain, to deal with, manage, control, administer develop, improve, alter, repair, demolish or reconstruct the same or any portion or portions thereof.

(F) *Acquire* : To the same extent as natural persons might or could do, to acquire by purchase, lease, mortgage, loan, grant, legacy, bequest, exchange, right, privilege or otherwise, from any person, company, society, government institution or body whatsoever and to hold all or any part of the movable or immovable properties of all descriptions now or hereafter vested in the Xavier Institute of Management, Bhubaneswar.

(G) *Gift-Trusts* :

(a) To take or to receive any gift, whether moneys or property, movable or immovable or donations in the form of debentures, stocks or shares in any company or society, whether incorporated or not or whether by gift of the person living or by legacy, bequest, will or foundation, for any of the objects of the Association, and moreover to take such steps for the securing of such contributions to the funds of the Associations, as may from time to time be deemed expedient;

(b)

(H) *Alienate* :

(a) To alienate by way of sale, mortgage, lease, release, loan, charge, hypothecation, pledge,

exchange, hiring out, gift or otherwise, with or without security, the properties or funds of the Association or any portion or portions thereof including the making or giving of subscriptions, contributions or assistance pecuniary or otherwise to institutions, bodies or persons as from time to time may seem necessary or appropriate in furtherance of the objects of the Association.

(b)

(c) If, on winding up or dissolution of the Association, there shall remain, after satisfaction or all its debts and liabilities, any asset and property whatsoever, the same shall not be paid to or distributed among the members of the Association but shall be disposed with the approval of the Government or Orissa subjects to the provisions contained in section 14 of the Societies Registration Act, 1860.

(I) *Invest* : To invest, lay aside, open bank accounts, deposit in banks, to subscribe for, purchase, acquire, hold, sell, endorse and negotiate the securities or every description on the money market; or otherwise deal with the moneys or funds of the Association not immediately required for the objects of the Association and for the purposes mentioned herein before.

(J) *Funds* :

(K) *Grants* : To negotiate with and to enter into arrangements with any government or authority whether Central, State, District, Municipal, University or other public or private body as may seem conducive to the promotion or accomplishment of the objects of the Association or any of them; and to apply for, obtain, collect, receive or recover from any such government or authority or body such grants, allowances, rights, concessions, and privileges, as may seem, from time to time, desirable and to carry out, exercise, comply with and utilize the same.

(L) *Income* : To use all the income from the property, movable and immovable or from the works of the Association as such, whenever desired, for the objects of the Association, but to distribute no

portion thereof among its members by way of profits dividends or bonuses.

(M) *Accounts* :

(a) To deposit all moneys credited to the Fund in such banks or to invest them in such manner as the Association decides;"

56. According to prescribed authority, provisions of clauses 3B(d), 3B(e), 3B(f), 3(E), 3(G) and 3(H) etc. of the MoA show that the objects of the institute are not in the nature of education, but the institute has been established with various other aims and objectives which are clearly in the nature of business. Sub-clause (b) of the third proviso of Section 10(23C)(vi) of the I.T. Act provides that the institution cannot invest otherwise than the modes specified in Section 11(5) of the said Act, but clause 3(1) of MoA provides to invest, lay aside, open bank accounts, deposit in banks, to subscribe for, purchase, acquire, hold, sell, endorse and negotiate in securities or every description on the money market; or otherwise deal with the moneys or required for the objects of the Association and for the purposes mentioned therein. Clause 3 (M)(a) states "to deposit all moneys credited to the fund in such banks or to invest them in such manner as the Association decides". This is nothing but business activity.

57. The learned prescribed authority on perusal of the account for the financial years 2003-04 and 2004-05 observed that the investments have been made in the share market by the institute and thus, the provisions of sub-clause (b) of the third proviso to Section 10(23C)(vi) of the I.T. Act are not adhered to by the institution. The learned prescribed authority further observed that Clause-3(H)(c) which provides for disposal of assets, on winding up or dissolution of the

association, is not as per the spirit of requirement of Section 10(23C)(vi) of the I.T. Act. According to him, such a provision allows for passing of the assets of the institution to any person/organization (not among the members of the society) as per the decision of three-fifth of members present and voting.

58. The prescribed authority has extracted various heads of income and expenditure of the petitioner-institution in different financial years in the impugned order on the basis of the books of account maintained by the petitioner-institution. The details of various heads of income and expenditure are as follows:

HEADS OF INCOME

Financial Year	Admission Income	Fees	Training & Consultancy	Grants & Donations	Other Income
2006-07	1,63,69,399	9,88,46,533	1,42,06,118	4,66,39,648	94,88,672
2005-06	1,03,76,436	6,74,05,710	1,61,37,590	4,43,87,048	69,10,488
2004-05	96,79,640	5,98,25,600	4,54,30,738	3,91,57,719	60,44,879
2003-04	77,44,650	5,52,70,725	3,92,02,754	3,49,93,340	27,33,629
2002-03	1,00,18,470	5,17,52,208	4,72,61,506	4,00,49,897	33,01,621

HEADS OF EXPENDITURE

Financial Year	Personal Cost	Education related expenses	Training & Consultancy	Grants & Donations	Administrative Expenses
2006-07	3,75,35,162	3,81,18,746	99,87,108	4,79,32,652	1,22,32,245
2005-06	3,05,19,827	2,42,48,255	1,24,08,351	4,47,00,153	1,16,98,840
2004-05	2,68,42,386	1,84,13,737	3,78,15,630	3,87,84,699	1,21,56,167
2003-04	2,51,65,656	1,62,40,795	3,17,39,905	3,52,94,907	1,15,61,586
2002-03	2,16,73,956	1,57,11,196	3,84,27,392	3,88,93,659	98,33,696

59. From the above figures of income and expenditure, as observed by prescribed authority there is significant income from “Training and Consultancy” and “Grants and Donations” for development work and other income for various years. Similarly, there is heavy expenses incurred under the head “Training and Consultancy”, “Grants and Donations” and “Administrative Expenses”. The finding of CCIT on

the basis of the details of various heads of income submitted before him during the course of hearing revealed that these incomes were received for undertaking various programs/projects/ studies etc. by the institute from various Private or Government or International Organizations or various foreign agencies. Training and Consultancy includes projects for Coromondal Fertilizers, UNIDO, IFS Training Program, NFFWP, Deogarh, UNCEF, CALPI-LSM Training Program, Vedanta Alumina, PDW Consultancy, Tata Tele Services, ONGC, Sterlite Energy Pvt. Ltd., LST-II, NFI OPEPA Study, Sambalpur Bastralaya, UNDP, UNCEF Ankur Program etc. In the grants and donations, the projects are (1) Sustainable Livelihood Option for Rural People, (2) Panchayatiraj Empowerment of Tribal People, (3) Mapping & Ensuring Food Security, (4) UFSAI-XISS Joint Research Program, (5) Self Reliance of Women, (6) Cyclone Rehabilitation, (7) Project Appraisal Monitoring & Evaluation, (8) Women Empowerment through Self-Help, (9) Village Electricity Study, (10) M & E of Rehab. Projects, (11) UFSIA – XIM Exchange Prog., (12) NEIGHBOUR, (13) Institutional Initiative for Food Security (IIFS), (14) R & R Study, (15) Sustainable Initiative for the Devp. of People, (16) Linking Local Governance, (17) Centre for World Solidarity, (18) XIMB Tower, (19) World Social Forum, (20) International Joint Research, and (21) Other Projects.

60. Further, the findings of facts are that these projects/ programs are implemented through CENDERET, which is a wing of the institute. There is an independent faculty member heading this centre. It has separate staff structure, also several zonal centers are operating in various parts of state under CENDERET. Apart from this, the prescribed

authority further observed that various faculty members of the institute (those who are regularly associated in teaching activity) are also involved in execution/implementation of these programs/projects or the training programs as per the requirement and the nature of each project. Perusal of some of the project proposals and agreements obtained during the course of hearing, shows that the agreements are, sometimes, entered directly with the CENDERET.

61. Opposite Party No.1, who is a fact finding authority has made certain observations with regard to the books of account maintained by the petitioner-institution. According the prescribed authority-CCIT, no separate books of account for CENDERET which is a wing of the petitioner-institution and catering implementation and execution of various projects have been maintained. Although the details for the each project are available separately, a very large portion of expenses including administrative expenses for these programs are merged in the general accounts of the petitioner-institution. The accounts of Management Development Centre (MDC), which caters to lodging, boarding and other related expenses of these programmes and projects, are at times directly accounted for in the combined accounts of the petitioner-institution and sometimes routed through various projects. Further even where project wise details are maintained, the debits for the notional contribution of the institute in the form of use of premises, buildings and the equipments of the institute have been made, which are later adjusted by the book entry in the various heads. According to prescribed authority, a very large amount of money has been spent for the purpose other than education.

While examining the accounts of the petitioner for the financial year 2006-07, for which application under Section 10(23C)(vi) of the I.T. Act has been filed, prescribed authority noticed that expenditure of Rs.99,87,108/- for training and consultancy and Rs.4,79,32,652/- for grants and donations have been made. The income under these two heads was Rs.1,42,06,188/- and Rs.4,66,39,648/- respectively. Apart from this, various expenditures incurred on this project and programs are merged in the administrative expenses and personal cost forming part of over all expenditure of the institute. These income and expenditure of financial year 2006-07 follow the same pattern and nature of income and expenditure of earlier years. Therefore, the learned prescribed authority came to the conclusion that they are related to the business of the institute which is not incidental to education and for which no separate books of account are maintained.

62. Factual dispute regarding maintenance of the books of account cannot be gone into by this Court in exercise of power under Articles 226 and 227 of the Constitution.

63. In *American Hotel & Lodging Association Educational Institute (supra)*, the Hon'ble Supreme Court held that to make the section with the proviso workable, the monitoring conditions in the third proviso like application/utilisation of income, pattern of investments to be made, etc. could be stipulated as conditions by the Prescribed Authority (CBDT) subject to which approval could be granted. For example, in marginal cases like that of the appellant Institute where exemption was given up to assessment year 1998-1999 and where an application was made within

seven days of the new dispensation coming into force, the Prescribed Authority can grant approval subject to such terms and conditions as it deems fit provided they are not in conflict with the provisions of the 1961 Act (including the said monitoring conditions). While imposing stipulations subject to which approval is granted, the Prescribed Authority may insist on certain percentage of accounting income to be utilised/applied for imparting education in India. The Prescribed Authority must give an opportunity to the applicant institute to comply with the monitoring conditions which had been stipulated for the first time by the third proviso. However, after grant of approval, if it is brought to the notice of the Prescribed Authority that condition on which approval was given were breached or that circumstances mentioned in the thirteenth proviso existed then the Prescribed Authority can withdraw the approval earlier given by following the procedure mentioned in that proviso.

64. In the case at hand, an application for approval under Section 10(23-C) (vi) was made for the assessment year 2006-07. The petitioner applied to the concerned authority seeking for approval under Section 10(23-C)(vi) of the I.T. Act on 25.01.2007 i.e. towards fag end of the financial year 2006-07. The CCIT after examining the case of the assessee-petitioner has come to the conclusion that the petitioner-educational institution is not existed solely for educational purposes. For this purpose he has called for documents including books of accounts maintained by the petitioner in order to satisfy itself about the genuineness of the activities of the petitioner-institution as required

under second proviso to Section 10(23-C) of the I.T. Act. The CCIT also examined various provisions of clauses of MoA. The Prescribed Authority on perusal of accounts for the financial years 2003-04 and 2004-05 noticed that investments have been made in the share market by the institute and the provisions of sub-clause (b) of the third proviso to Section 10(23-C) of the I.T. Act are not adhered to by the Institution. No separate books of account is maintained by the petitioner-institution. According to the Prescribed Authority, a very large amount of money has been spent for the purpose other than education. The Prescribed Authority also came to the conclusion that for the financial year 2006-07 in which application under Section 10(23-C)(vi) of the I.T. Act has been filed, a significant amount of receipt and expenditure are related to the business of the Institution which is not incidental to education and for which no separate books of account are maintained. Therefore, law laid down in the *American Hotel & Lodging Association Educational Institute's case (supra)* has no application to the case of the assessee-petitioner.

65. The facts of the case of the petitioner-assessee are also different from the facts of the case of *M/s. Black Diamond Technical Education vs. Chief Commissioner of Income Tax & Anr., [W.P.(C) No.8593 of 2009]*.

66. In *Black Diamond Technical Education's case (supra)*, this Court noticed that the CCIT without assigning proper and valid reasons and only extracting certain objects of the petitioner-assessee came to the conclusion that those objects are not connected with education. This Court further held that the said conclusion of the CCIT without reasons is

erroneous in law. In that case, this Court observed that whether gross receipt received by the petitioner-society has been utilized for educational purposes which is the pre-dominant object is required to be examined. The same has not been examined by the CCIT with reference to the statistics regarding gross income and total expenditure. Therefore, this Court remanded the matter to the CCIT to re-examine the same with reference to the books of account of the petitioner-assessee, gross receipt received by the assessee from various heads and the expenditure incurred for the purpose. On the other hand, in the case at hand, as stated above, the CCIT has examined the case in detail from above angles with reference to books of account and did not grant approval under Section 10(23-C)(vi) of the Act.

67. For the reasons stated above, various other decisions relied upon by Mr. Mahanti, learned Senior Advocate in support of his contentions have no application to the facts of the present case.

68. Law is well settled that the taxation under the Act is the rule and exemption is an exception. Provisions governing exemption from taxation must be given a strict interpretation. The subject can receive only such benefits as is given by the legislation.

69. The Hon'ble Supreme Court in ***Goodyear India Limited & Ors. V. State of Haryana & Ors. & State of Maharashtra & Ors.***, (1990) 2 SCC 71, held as fiscal laws must be strictly construed, words must say what these means, nothing should be presumed or implied, these must say so. True test must always be language used. Assumptions and presumptions are not permissible under fiscal provision.

70. In ***Petron Engineering Construction (P) Ltd., vs. Central Board of Direct Taxes***, (1989) 175 ITR 523 (SC), the Hon'ble Supreme Court held that it is true that an exemption provision should be liberally construed, but this does not mean that such liberal construction should be made doing violence to the plain meaning of such exemption provisions of the Act, which would defeat the object and intent of the Act.

71. One of the major arguments of the petitioner is that materials have been utilized without confronting the same to the assessee. There are basically two types of materials, i.e., (i) material furnished by the assessee and (ii) material collected behind back of the assessee. It is the latter type of material which needs confrontation, because he is unaware of it. The position is entirely different where inference is drawn on the materials furnished by the assessee which is an admitted fact. In the instant case, CCIT, the fact finding authority has drawn inference from the materials/copy of the accounts furnished by the petitioner-assessee. Therefore, there is no substance in the above said plea of the petitioner.

72. For the reasons stated in the preceding paragraphs, we are of the view that the CCIT is justified in not granting approval under Section 10(23C)(vi) of the I.T. Act for the financial year 2006-07.

73. Question No.(iv) is with regard to validity of the order passed under Annexure-1/H. The petitioner made an application under Section 154 of the I.T. Act to revise the order passed under Section 10(23-C)(vi) of the I.T. Act for the year 2006-07. The grievance of the petitioner is that learned CCIT without hearing it held that the issue raised in the

application is not a matter covered under Section 154 and there is no mistake apparent from the record.

74. On perusal of the petition filed under Section 154 of the I.T. Act, we don't find any substance in the argument of Mr. Mahanti to interfere with the order of the CCIT passed under Annexure-1/H holding that the application for rectification under Section 154 is not entertainable as the issue raised in the application is not a matter covered under Section 154 of the I.T. Act and mistakes apparent from the records.

75. In the result, the writ petition is dismissed.

No order as to costs.

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B.N.Mahapatra,J.

V. Gopala Gowda, C.J. *I agree.*

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Chief Justice