

Centre for Development of Telematics and anr. Vs. Uoi and ors.

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Court : Delhi

Decided On : Mar-19-2013

Judge : Badar Durrez Ahmed

Appellant : Centre for Development of Telematics and anr.

Respondent : Uoi and ors.

Judgement :

THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment delivered on:

19. 03.2013 W.P.(C) 9016/2011 CENTRE FOR DEVELOPMENT OF TELEMATICS AND ANR. versus UOI AND ORS. .Petitioners Respondents
Advocates who appeared in this case: For the Petitioner : Mr Ajay Vohra with Ms Kavita Jha and Mr Somnath Shukla, For the Respondent Advocates. : Ms Maneesha Dhir with Ms Geeta Sharma and Ms Priya Singh, Advocates for R-1. Mr N. P. Sahni, Sr. Standing Counsel for Revenue. CORAM:HONBLE MR JUSTICE BADAR DURREZ AHMED HONBLE MR JUSTICE R.V.EASWAR JUDGMENT
BADAR DURREZ AHMED, J (ORAL) 1. In this writ petition the question that has been raised is whether the petitioner (Centre for Development of Telematics C. DoT) is a scientific research association for the purposes of clause (ii) of subsection (1) of section 35 of the Income Tax Act, 1961 (hereinafter referred to as the said Act). If the petitioner is regarded as such a research association, any income of the petitioner would be not included in the total income by virtue of section 10(21) of the said Act.

2. Section 35(1)(ii) deals with two categories of institutions. One category is that of a scientific research association which has as its object the undertaking of scientific research and the other category is that of a University, College or other institution which undertakes some amount of scientific research. The petitioner is aggrieved by the fact that it has been placed in the second category of other institutions partly engaged in scientific research. According to the petitioner, it should be placed in the former category of a scientific research association in as much as according to the petitioner its sole object is of undertaking research. The case of the petitioner is that while it receives certain royalty and support services fee and consultancy charges, those are ancillary to its sole object of undertaking scientific research. As such, it ought to be categorised in the category of a scientific research association as contemplated in section 35(1)(ii) of the said Act.

3. The learned counsel for the petitioner drew our attention to section 35(3) of the said Act and submitted that if any question arises as to whether and, if so, to what extent any activity constituted scientific research, the Board is required to refer the question to the central government and that the decision of the central government would be final. According to the learned counsel for the petitioner, in the present case, the Board has not made any such reference to the central government and the central government has also not taken a definitive decision as to why the petitioner does not fall within the category of scientific research association. He, therefore, submitted that the stand of the central government in categorising the petitioner as other institution partly engaged in scientific research has been done without considering and rejecting the petitioners claim that it falls in the category of scientific research association. He also submitted that the petitioners case was only considered from the standpoint of whether the petitioner was an other institution and not from the standpoint of whether the petitioner fulfilled the criteria for being recognised as a scientific research association.

4. Mr. Sahni appearing on behalf of respondents has produced the relevant file before us and has argued at length to demonstrate that the issue had been considered by the central government as to whether the petitioner fell in the category of scientific research association or in the category of other institutions as mentioned in section 35(1)(ii) of the said Act. However, on going through the said

file, we do not find any clear cut reference from the Board to the central government requiring the central government to decide as to whether the petitioner fell within the category of a scientific research association or in the second category of other institution partly doing scientific research as referred to in section 35(1)(ii) of the said Act. We also observe that in the note prepared at page 10 of the relevant file and in particular paragraph 7(b) thereof, it appears that the fact that in the process of activities engaged in part by the petitioner, the petitioner also received some payments, reimbursements and royalties based, weighed heavily with the central government in deciding that the petitioner fell into the category of other institutions. However, we find that this may not be the correct approach inasmuch as section 10(21) and in particular the third proviso thereto recognises a situation where the research association could have profit and gains from business also. In fact, the proviso goes to the extent of saying that the exemption under section 10(21) would apply even to profits and gains of business of a research association provided the business was incidental to the attainment of its object and separate books of accounts were maintained in respect of such business. Therefore, the fact that the petitioner also received certain payments towards royalty, service charges, etc. would not in itself mean that the petitioner was not a scientific research association. This factor also needs to be kept in mind while determining as to whether the petitioner was a scientific research association or it fell in the category of other institution partly engaged in scientific research.

5. For the sake of clarity, we feel that the issue of whether the petitioner fell within the category of a scientific research association or in the category of other institution partly doing scientific research should be considered by the central government afresh in the manner indicated above and in accordance with law. To enable this, we are setting-aside the notification dated 12.04.2007 and direct the central government to decide this question afresh within three months. The central government will examine the observations above as also the requirements of Rule 5D of the Income Tax Rules, 1962. The writ petition is disposed of accordingly. BADAR DURREZ AHMED, J R.V.EASWAR, J MARCH 19 2013 hs