THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Writ Petition No.31892 of 2015

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ORDER:

Heard Sri Vedula Srinivas, learned counsel for the petitioner, and Sri J.V.Prasad, learned Senior Standing Counsel for the Income Tax Department, and, with their consent, the writ petition is disposed of at the stage of admission.

The order of the 1st respondent (Principal Chief Commissioner of Income Tax) dated 08.09.2015, rejecting the petitioner's request for exemption under Section 10(23C)(vi) of the Income Tax Act, 1961 (for short "the Act"), for the assessment year 2014-15, is under challenge in this writ petition. The aims and objects of the petitioner-society, prior to its amendment on 30.07.2015, were as under:

1. To give the basic knowledge of education among the illiterate people;
2. To conduct sports and games and cultural activities;
3. To provide national integration;
4. To teach the student as a true citizen; and
5. To conduct welfare activities for orphans.

In the impugned order, the 1st respondent referred to the judgment of this Court in ***New Noble Educational Society vs. CCIT***[1] and held that objects 2, 3 and 5 (referred to hereinabove) are not solely for educational purposes; and existence of these objects, which were non-educational, made it amply clear that the society was not existing solely for the purposes of education.

The order of the 1st respondent, in holding that objects 2, 3 and 5 are not "solely for educational purposes", cannot be faulted. However his conclusion that existence of these objects, which are non-educational, makes the society as not existing "solely for the educational purposes" cannot be accepted, in view of the judgment of the Supreme Court, in ***Surat Art Silk Cloth Manufacturers' Association***[2], interpreting a similar provision under Section 10(22) of the Act as it then stood. It is necessary, in this context, to read Section 10(22) of the Act as it then stood, and Section 10(23C)(vi) of the Act as is now existing, in juxtaposition with each other:-

Section 10(22)	**Section 10(23C)(vi)**
10(22) any income of a university or other educational institution existing solely for educational purposes and not for purposes of profit.	**10(23C)(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 (*iiiad)* and which may be approved by the prescribed authority

The words "***educational institution existing solely for educational purposes and not for purposes of profit***" are to be found both in Section 10(22) as it then stood, and Section 10(23C)(vi) of the Act as is now existing.

In ***C.I.T. (Addl.) vs. Surat Art Silk Cloth Manufacturers' Association***[2] the Supreme Court held as under:

> *".......But even if such a contention were permissible, we do not think there is any substance in it.* ***The law is well settled that if there are several objects of a trust or institution, some of which are charitable and some non- charitable and the trustees or the managers in their discretion are to apply the income or property to any of those objects, the trust or institution would not be liable to be regarded as charitable and no part of its income would be exempt from tax. In other words, where the main or primary objects are distributive, each and everyone of the objects must be charitable in order that the trust or institution might be upheld as a valid charity Vide Mohd. Ibrahim v. Commissioner of Income-tax and East India Industries (Madras) Ltd. v. Commissioner of Income-tax. But if the primary or dominant purpose of a trust or institution is charitable, another object which by itself may not be charitable but which is merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity: Vide Commissioner of Income-tax, Madras v. Andhra Chamber of Commerce(3) The test which has, therefore, to be applied is whether the object which is said to be non-charitable is a main or primary object of the trust or institution or it is ancillary or incidental to the dominant or primary object which is charitable.*** *It was on an application of this test that in Commissioner of Income-tax v. Andhra Chamber of Commerce (supra), the Andhra Chamber of Commerce was held to be a valid charity entitled to exemption from tax. The Court held that the dominant or primary object of the Andhra Chamber of Commerce was to promote and project trade, commerce and industry and to aid stimulate and promote the development of trade, commerce and industry and to watch over and protect the general commercial interests of India or any part thereof and this was clearly an object of general public utility and though one of the objects included the taking of steps to urge or oppose legislation*

affecting trade, commerce or manufacture, which, standing by itself, May be liable to be condemned as non-charitable, it was merely incidental to the dominant or primary object and did not prevent the Andhra Chamber of Commerce from being a valid charity. The Court pointed out that if "the primary purpose be advancement of objects of general public utility, it would remain charitable even if an incidental entry into the political domain for achieving that purpose e.g. promotion of or opposition to legislation concerning that purpose, was contemplated." The Court also held that the Andhra Chamber of Commerce did not cease to be charitable merely because the members of the chamber were incidentally benefitted in carrying out its main charitable purpose. The Court relied very strongly on the decisions in Commissioner of Inland Revenue v. Yorkshire, Agricultural Society and Institution of Civil Engineers v. Commissioner of Inland Revenue for reaching the conclusion that merely because some benefits incidentally arose to the members of the society or institution in the course of carrying out its main charitable purpose, it would not by itself prevent the association or institution from being a charity. ***It would be a question of fact in each case "whether there is so much personal benefit, intellectual or professional, to the members of the society or body of persons as to be incapable of being disregarded......"*** *(emphasis supplied)*

The test which the 1st respondent was required to apply was whether the objects, which are said to be solely for educational purposes, are the main or primary objects of the trust or institution or are ancilliary or incidental to the dominant or primary object. If the dominant or primary object of the society is solely for educational purposes, and not for the purposes of profit, the mere fact that the ancilliary or incidental objects are not solely for educational purposes would not disable grant of exemption under Section 10(23C)(vi) of the Act.

In ***New Noble Educational Society[1]***, on which reliance is placed by the 1st respondent, a Division Bench of this Court observed:

"…….***If there are several objects of a society some of which relate to "education", and others which do not, and the trustees or the managers, in their discretion, are entitled to apply the income or property to any of those objects, the institution would not be eligible to be regarded as one existing solely for educational purposes, and no part of its income would be exempt from tax. In other words, where the main objects are distributive, each and everyone of them must relate to "education" in order that the institution may be held entitled for the benefits under Section 10(23-C)(vi) of the Act. But if the primary or dominant purpose of an institution is "educational", another object which is merely ancillary or incidental to the primary or dominant purpose would not disentitle the institution from the benefit. The test which has, therefore, to be applied is whether the object, which is said to be non-educational, is the main or primary object of the institution or it is ancilliary or incidental to the dominant or primary object which is "educational". (Surat Art Silk Cloth Manufactures Association, (1980) 12 ITR 1 (SC)).*** *The test is the genuineness of the purpose tested by the obligation is there, the income becomes entitled to exemption. (Sole Trustee, Loka Shikshana Trust, (1975) 10 ITR 234)…….." (emphasis supplied)*

Objects 2, 3 and 5 are evidently not solely for educational purposes. If, however, the 1st respondent were to be satisfied that objects 1 and 4 are solely for educational purposes and these two objects are the primary and dominant objects of the petitioner-society, the 1st respondent, or the appropriate authority under the Act, would then be required to examine whether objects 2, 3 and 5 are ancilliary to the primary objects or not.

While Sri J.V.Prasad, learned Senior Standing Counsel for Income Tax Department, would refer to objects 1 and 4 to submit that even these objects are not solely for educational purposes, he would fairly state that the 1st respondent had neither examined this aspect nor has he recorded a finding that these two objects are not solely for educational purposes. It would be wholly inappropriate for us, in proceedings under Article 226 of the Constitution of India, to take upon ourselves the task of examining whether objects 1 and 4 are the primary or dominant objects of the petitioner-society, and whether these two objects would fall within the ambit of Section 10(23C)(vi) of the Act, as these are matters which either the 1st respondent, or the appropriate authority under the Act, is required to consider.

While a feeble submission is made by Sri Vedula Srinivas, learned counsel for the petitioner, relying on the judgment of the Supreme Court in ***Om Prakash Shiksha Prasar Sqamiti vs. Chief Commissioner of Income Tax***[3], to submit that the amended objects which came into force from 30.07.2015 would apply retrospectively, even for the earlier assessment year 2014-15, learned counsel would later submit that the petitioner does not wish to press for an adjudication on this question.

In view of what is stated above, the impugned order is set aside and the matter is remanded to the 1st respondent, or the appropriate authority under the Act, to consider whether the pre-amended objects 1 and 4 are the primary or dominant objects of the society; if so, whether these two objects are "***solely for educational purposes and not for profit***"; and whether objects 2, 3 and 5 are ancilliary or incidental to the main objects of the society, which must be solely for educational purposes and not for profit. The petitioner shall be afforded an opportunity of personal hearing before an order is passed afresh by the 1st respondent or the appropriate authority under the Act.

The writ petition is disposed of accordingly. The miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M. SATYANARAYANA MURTHY, J

Date: 29.12.2015.
JSU

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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Date: 29.12.2015

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[1] 2010 LawSuit (AP) 933

[2] (1980) 2 Supreme Court Cases 31

[3] 2014 LawSuit(SC) 749