THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
Writ Petition No.8375 of 2016

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ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

The order of the 1st respondent dated 30.09.2015 rejecting the petitioner's application for approval under Section 10(23C) of the Income Tax Act, 1961 (for short "the Act") is questioned in this writ petition as being arbitrary and illegal.

The 1st respondent rejected the petitioner's application on the ground that the three objects viz., *a) to encourage sportsman and adventurous spirit in the pupils and those connected with the institution; b) to print, publish and exhibit films, journals, periodicals, books for the diffusion of useful knowledge; and c)to provide residential accommodation either free of cost and educate, train, assist financially the social workers, staff, students orphans,* were indicative of non-educational objects; all the objects, including the non-educational objects as set out in the Memorandum of Association dated 01.10.2007, must necessarily be taken into account for the purpose of examining the merits of the applicant-society's prayer for approval under Section 10(23C)(vi) of the Act; and as the society does not espouse pure educational objects alone, but has also non-educational objects, it cannot be said to exist solely for the purpose of "education" as contemplated under the provisions of Section 10(23C)(vi) of the Act.

Sri A.V.Krishna Kowndinya, learned Senior Counsel appearing on behalf of the petitioner, would draw our attention to the Memorandum of Association of the petitioner-society, more particularly to the objects prescribed therein, which include running and administering a school, and to impart education to students from V to X standard. According to the Learned Senior Counsel, the other objects, on which the 1st respondent had placed reliance upon, are ancillary and incidental to the main object of running a school.

On the other hand, Sri J.V.Prasad, learned Senor Standing Counsel for Income Tax, would draw attention of this Court to the counter affidavit filed by the Commissioner of Income Tax wherein placing reliance on the judgment of this Court in ***New Noble Educational Society vs. CCIT***[1] the Commissioner states that the prescribed authority was satisfied that the aims and objects of the assessee-society were 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 the aforesaid three objects 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 ***C.I.T. (Addl.) vs. 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 ***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)*

It is evident that the aforesaid three objects are not solely for educational purposes. If they are held ancillary and incidental to the primary and dominant object of the petitioner-society, then merely because such objects, which are ancillary and incidental objects, are also being pursued would not disentitle the petitioner-society from claiming exemption under Section 10(23C)(vi) of the Act. The submission of the learned Senior Standing Counsel for Income Tax, however, is that the aforesaid three objects are primary objects independent of the other objects and, as these three objects were not for the purposes of education, the petitioner is not entitled for grant of exemption. The impugned order does not record any such finding having been arrived at by the 1st respondent. The power to grant exemption is conferred on him alone, and the order passed by him should reflect his consideration in this regard. Subsequent averments, in the counter affidavit, would not suffice.

While Sri A.V.Krishna Kowndinya, learned Senior Counsel appearing on behalf of the petitioner, would submit that, even if three objects were held not be for educational purposes, it is always open to the 1st respondent to grant conditional exemption, requiring the petitioner not to pursue these three objects, these are again matters for the 1st respondent, and not for this Court, to consider. Learned Senior Counsel requests that the petitioner be afforded an opportunity of personal hearing.

We consider it appropriate, in such circumstances, to set aside the impugned order and direct the 1st respondent/appropriate authority to consider the matter afresh after affording the petitioner an opportunity of a personal hearing. The writ petition stands 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:22.03.2016

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<u>THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN</u>

AND

<u>THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY</u>

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[1] [1] 2010 LawSuit (AP) 933

[2] (1980) 2 Supreme Court Cases 31