

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2018

Reserved on 27.09.2018

Delivered on 10.10.2018

C O R A M

THE HON'BLE Mr.JUSTICE K.RAVICHANDRABAABU

W.P.No.11301 of 2018

and

WMP No.13199 of 2018

Sri Sai Educational Trust,
Rep. by its Managing Trustee,
R.Pavadiappa,
137/2, Kusinipalayam H.C.F. Post,
Mathigiri, Hosur.

...Petitioner

vs

1.The Commissioner of Income Tax (Exemption),
No.121, (Annexe Bldg), 3rd Floor,
Mahatma Gandhi Salai, Chennai-34.

2.Income Tax Officer
(Exemptions) Ward,
No.3, Gandhi Road, Salem.

...Respondents

Prayer:Writ petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records of the first respondent in PAN: AALTS7244P dated 28.03.2018 issued under Sect.264 of the Income Tax Act, 1961 for the assessment year 2014-15 and quash the same and further direct the second respondent to grant exemption under Sec.11 or Sec.10(23C) (iiiad) of the Income Tax Act.

For petitioner : Mr.T.Vasudevan

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel (I.T)

O R D E R

The petitioner is aggrieved against the order dated 28.03.2018 passed by the first respondent in rejecting the revision filed under Section 264 of the Income Tax Act, 1961.

2.The case of the petitioner is as follows:

a) The petitioner is a Trust established predominantly with an object of providing school education to all sections of society. The only activity of the petitioner Trust is running of an educational institution called Sri Sathya Sai Balagurukulam Matriculation School in Hosur. For the assessment year 2014-15, the petitioner filed its return of income declaring income under other sources as Rs.18,80,804/-. This comprised of Tuition fees - Rs.16,66,950 + Special fees - Rs.10,130 + Transport fee - Rs.1,14,569 + Uniform fee - Rs.61,455 and Contributions - Rs.27,700. Against these gross receipts, the petitioner had debited total amount of Rs.15,85,422/- spent under various heads for running of the school. Added to this, the amount of Rs.2,95,383/- spent in prior years was considered towards expenditure of current year. The entire amounts spent on running the school was considered as applied for charitable objects and claimed as exempt under Section 11 of the Act. This return was processed under Section 143(1) and by intimation dated 28.2.16, the CPC, Bangalore determined the taxable income at Rs.18,80,804/- and a tax liability of Rs.8,17,675/- was computed towards tax and interest. Later, on 06.05.16, a revised return was filed revising the income to Rs.20,22,000/-. This included the income originally returned and Rs.1,41,196/- received as donations in the Trust account. The petitioner filed two letters before the second respondent on 27.06.16 and 05.07.16 stating that there was mistake in the order of the CPC, Bangalore by taxing the amount that has been spent towards the charitable objects of the Trust and sought to rectify the same under Section 154 of the Act. Even otherwise, it was submitted that the petitioner was granted registration under Section 12AA with effect from 01.04.2015 and hence the charitable nature of the petitioner's activity had been given approval by the authority. In another letter dated 19.07.2016, submitted to the second respondent, it was stated that, alternatively the petitioner satisfied all the conditions for exemption under Section 10(23C)(iiiad) of the Act. The second respondent vide order dated 05.10.2016, rejected the petition for rectification filed by the assessee. Thereafter, the petitioner approached the first respondent by way of filing a petition under Section 264 of the Act, seeking to revise the order of the second respondent dated 05.10.16 and provide the benefit of exemption under Section 11 of the Act or in the alternative to grant the benefit of exemption under Section 10(23C)(iiiad).

b) The petitioner, thus referring to the amended provisions of the Act and also the intention of legislature as is evident from the Board Circular, submitted before the first respondent that the first proviso to Section 12A(2) was brought in the statute with a view not to affect charitable trusts and

societies carrying on genuine charitable objects in the earlier years and also satisfy the conditions for exemption as per Section 11. Thus, it was submitted that the benefit of registration granted in subsequent year has to be made applicable in the earlier assessment years for which assessment proceedings are pending and prayed for grant of the benefit of exemption under Section 11 for the assessment year 2014-15.

c) Before the first respondent, the petitioner also raised an alternative submission stating that, being an educational institution and wholly engaged in providing elementary education through its school and also that the gross receipts of the petitioner-trust, being less than the statutory threshold limit of Rs.1 crore, it is entitled to the benefit of Sec.10(23C)(iiiad) of the Act. It was submitted that the one-off expenditure of Rs.54,300/- on women welfare project cannot be considered to be a non-charitable activity in order to deny the benefit of exemption. The petitioner also stated that in the event of the amount of Rs.54300 treated as not for educational purposes and in violation of the requirement of the provision for grant of exemption, it was prayed not to grant exemption on the violated portion of the amount and thus grant exemption on rest of the amounts which had duly been spent towards the educational objects of the petitioner. However, the first respondent passed the impugned order under Section 264 dated 28.03.2018, wherein he rejected the petition filed by the petitioner.

3.The respondents filed a counter affidavit, wherein it is stated as follows:

For the assessment year 2014-15, the petitioner Trust filed the original return belatedly on 11.01.2016. It was processed by the CPC, Bangalore on 28.02.2016, raising tax liability of Rs.8,17,675/-. Subsequently, the assessee filed revised return on 06.05.2016, revising the income of Rs.20,22,000/-. The assessee had stated that during the year, it had incurred revenue expenditure of Rs.16,57,221/- and capital expenses of Rs.12,86,851/- resulting in a loss of Rs.9,22,072/- and thus, not taxable. The return itself is invalid in law, as it was filed belatedly. Even otherwise, the expenses shown as revenue expenditure of Rs.16,57,221/- and capital expenses of Rs.12,86,851/- cannot be allowed. As they are liable as application for charitable purposes only if the assessee in the first place is entitled for exemption under Section 11 of the Act. In this case, the CPC, Bangalore, while processing the return under Section 143(1) as well as the second respondent, while rejecting the petition under Section 154, did not allow the exemption under Section 11 of the Act, as the petitioner was not registered under Section 12AA of the Act on the date of processing return of income. Thus, the revised return of income filed, was not entertained by the first

respondent. The registration under Section 12AA was granted to the petitioner on 30.05.2016 with effect from 01.04.2015. The first proviso to sub section 2 of Section 12A clearly specifies that the registration granted under Section 12AA shall apply for earlier assessment years only if the assessment proceedings in the said earlier years are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust remain the same for such earlier years. In this case, the date of registration was on 30.05.2016 and no assessment proceedings for the assessment year 2014-15 or for any other assessment year, was pending before the Assessing Officer as on that date. The return was processed on 28.02.2016 prior to the date of registration granted on 30.05.2016. Therefore, the retrospective effect referred to under first proviso to Section 12A is not applicable to the case of the petitioner. Reliance placed by the petitioner on CBDT Circular No.1/2015 dated 21.01.2015 is misplaced. The circular says that after 01.06.2007, the registration under Section 12AA shall be effective only prospectively. The said circular does not say even if the proceedings are not pending the registration granted will have retrospective effect. The alternate claim of exemption under Section 10(23C)(iiiad) of the Act is also not permissible. The application of such exemption under Section 10(23C)(iiiad) would arise only in respect of the educational institutions, which are existing solely for education purposes. The assessee in its own admission in the petition filed under Section 264 stated that it has few other clauses to aid public charity and had carried out such charitable acts like providing clothing and food to mothers and grandmothers of the school going children to encourage them to send the children to pursue education without dropping out. The phrase used in the Act "existing solely for education purposes" thus prevents the petitioner from seeking exemption under Section 10(23C)(iiiad), as the above charitable activity of the petitioner does not fall within the purview of "solely for educational purposes". Even if the education is predominant object, "solely" cannot mean to include both predominant as well the other objects. Therefore, the petitioner is not entitled to any relief.

4. Learned counsel appearing for the petitioner submitted as follows:

The petitioner Trust, a Public Charitable Trust, having been granted registration under Section 12AA of the said Act with effect from 01.04.2015, is entitled to get the benefit of such registration extended even for the subject matter Assessment Year 2016-17, by applying the first proviso to Section 12A(2). Even otherwise, if the benefit of registration is not extended retrospectively, alternatively, the exemption is to be granted to the petitioner by extending the benefit under Section 10(23C)(iiiad) of the said Act. The petitioner Trust is solely existing for educational purposes and therefore, a meagre

sum spent on distributing sarees to mothers and grandmothers to children, that too for the purpose of inducing them to send their wards to the school regularly, cannot be termed as a purpose outside the purview of educational purpose. Atleast the Assessing Officer should have proportionately granted exemption to the other sum spent on educational purposes by leaving the sum of Rs.54,300/- spent on distribution of sarees to tax.

5.Learned Senior Standing Counsel appearing for the respondents contended as follows:

First proviso to Section 12A(2) will not apply to the petitioner's case, since no proceeding was pending before the Assessing Officer on the date of grant of registration under Section 12A. In order to attract benefit under Section 10(23C)(iiiad), the petitioner should establish that all expenses were made solely for educational purposes. In this case, admittedly a sum of Rs.54,300/- was spent on distribution of sarees to mothers and grandmothers of the children studying in the school. Therefore, such spending is not for educational purpose. Consequently, the Assessing Officer has rightly assessed the entire receipts to tax.

6.Heard both sides.

7.The petitioner is an educational trust. It is evident from the Trust Deed registered as Document No.367 of 2009 on the file of the Sub-Registrar, Kelamangalam that the predominant object of the trust is to administer, establish and maintain schools and other educational institutions and to impart education without any restrictions as to caste, community or religion. The petitioner was granted a registration under Section 12AA of the Income Tax Act, 1961 as a public charitable trust, by an order dated 30.05.2016 issued by the Commissioner of Income Tax Act (Exemptions) with effect from 01.04.2015. Thus, there is no dispute to the fact that the petitioner trust, having been declared as a public charitable trust and granted registration under Section 12AA of the said Act, is entitled to all the benefit that will flow out of such registration from the date on which it takes effect.

8.The dispute between the parties is in respect of the assessment year 2014-2015. The petitioner filed their return of income for the said assessment year 2014-2015 on 11.01.2016 admitting nil income. The return was processed under Section 143(1) on 28.02.2016, computing an aggregated income of Rs.18,80,834/- and tax liability of Rs.8,17,675/- including interest. The petitioner filed revised return on 06.05.2016, revising the income of Rs.20,22,000/-. The petitioner had stated that during the year it had incurred revenue expenditure of Rs.16,57,221/- and capital expenses of Rs.12,86,551/- resulting a loss of Rs.9,22,072/- and thus not taxable. The Assessing

Officer did not agree. Thus, the petitioner aggrieved by the intimation issued under Section 143(1) dated 28.02.2016, determining a sum of Rs.18,80,804/- as taxable income and Rs.8,17,675/- as the liability towards tax and interest, filed rectification petition under Section 154 of the Income Tax Act, 1961 before the Income Tax Officer (Exemptions). The said petition was rejected on the reason that the petitioner trust was established with several objects which include running of the educational institution providing medical relief to the poor, conduct medical camps like eye camp, blood camp, diabetic camp and such other medical camps and other charitable activities in public utility and thus the exemption under Section 10(23C)(iiiad) of the Income Tax Act, 1961 is not available to the petitioner as it is not existing solely for educational purposes. The other reasons stated for rejection is that the registration under Section 12AA was not in existence during the period of the assessment year 2014-2015 and therefore the registration granted subsequently on 30.05.2016, though with effect from 01.04.2015, cannot have retrospective effect for the assessment year 2014-2015. Challenging the said order, the petitioner filed revision petition under Section 264 before the first respondent, who in turn rejected the same by reiterating the findings/views expressed by the second respondent.

9. The first contention raised by the petitioner is that in view of the registration granted under Section 12AA with effect from 01.04.2015 and in view of the first proviso to Section 12A(2), effect of such registration has to be applied retrospectively in respect of the subject matter assessment year 2014-2015 also and consequently, the Assessing Officer ought not to have assessed the income to tax.

10. Let me first consider the sustainability of the above contention. There is no dispute to the fact that the registration under Section 12AA dated 30.05.2016 was granted with effect from 01.04.2015 only. Therefore, admittedly such registration was not in force during the assessment year 2014-15. It is contended that the first proviso to Section 12A(2) entitles the petitioner to get the benefit of the exemption even in respect of the previous assessment year namely the subject matter assessment year 2014-15.

11. The learned counsel for the petitioner relied on the Circular 1/15 dated 21.01.2015 in support of his contention that the registration granted to a trust is to be applied retrospectively to earlier years also. I do not think that the reliance placed on the above said circular would serve any purpose more particularly, when the position of law is very clear that on the date of registration, assessment proceedings for previous assessment year/years should be pending before the Assessing Officer to extend the benefit of registration.

Section 12A(2) first proviso is very specific on that aspect. Hence, I do not think that the petitioner is entitled to rely upon the said circular.

12. Further, perusal of Section 12A(2) and its first proviso would show that the effect of registration granted to the trust under Section 12AA will have a bearing effect in respect of any income derived from the property held under trust of any assessment year preceding the aforesaid assessment year, for which "the assessment proceedings are pending before the Assessing Officer" as on the date of the registration and that the object and activity of the trust should also remain the same for such preceding assessment year. Thus it is very clear that intent of legislation is that the any stage of pendency of the assessment proceedings before any authority would not attract benefit of extension of registration and on the other hand, it should be particularly pending before the Assessing Officer. In other words, the assessment should not have been completed at the relevant point of time. In this case, admittedly, the assessment order was already passed on 28.02.2016 and therefore, on the date of such registration under Section 12AA, admittedly, no assessment proceedings was pending before the Assessing Officer. Therefore I do not think that the petitioner is entitled to seek shelter under first proviso to Section 12(A)2 to get the benefit of registration retrospectively.

13. This leads me to consider the next alternative plea raised by the petitioner as follows.

14. According to the petitioner, if the exemption is not allowed with retrospective application of the registration as contemplated under Section 12A(2), the petitioner should have been granted the benefit of exemption by applying Section 10 (23C) (iiiad) of the said Act, which reads as follows:
Incomes not included in total income:

10. 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 -

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

...(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed, or"

15. Perusal of the above said provision would show that any income received by any University or educational institution existing solely for educational purposes and not for purposes of

profit, shall not be included in total income. In other words, such income is not taxable and on the other hand, gets exempted from levy of tax. It is the contention of the petitioner that since the petitioner trust is existing solely for educational purposes without having any purpose of profit, the respondent is not entitled to bring the disputed income to tax.

16. On the other hand, it is submitted by the revenue that the petitioner has not satisfied the mandatory requirement that it should exist solely for educational purposes, as other activities of the trust do not relate to educational purpose. Therefore, it is contended that the income brought to tax is just and proper.

17. There is no dispute to the fact that the petitioner trust is running an educational institution by name "Sri Sathya Sai Balagurukulam Matriculation School" in Hosur for providing elementary school education without distinction of caste and creed, from 1997. Though the Trust Deed refers few other charitable activities such as providing medical relief to the poor, relief to orphans, etc., the pre dominant object of the trust is evidently seen as administering, establishing and maintaining schools and other educational institutions to impart education to poor students without any restriction as to caste, community or religion. This noble object of the petitioner trust cannot be looked into with magnifying glass to find out as to whether any meagre expenditure spent by them on any allied charitable purpose, so as to project, as though by doing such activity, the petitioner trust is not existing solely for educational purposes. In this case, the objection of the revenue relates to a sum of Rs.54,300/- spent by the petitioner for providing sarees to mothers and grandmothers of the children studying in the school. This free distribution of clothes to the mothers and grandmothers of the children is considered by the revenue as the one not related to educational purposes.

18. On the other hand, it is contended by the petitioner that such distribution was made only to encourage those mothers and grandmothers to send their ward to the school without discontinuation. This purpose is not doubted by the Revenue. Nor any contra material is available before the Assessing Officer to draw adverse inference. Therefore, the main object behind the distribution of the sarees to those persons is evidently for ensuring the continuance of study at the petitioner School and not solely for providing clothes to needy persons totally unconnected with the school.

19. At this juncture, it is better to understand the scope of Section 10(23C) (iiiad). The term "any university or educational institution existing solely for educational purpose" used under the above provision is heavily relied on by the

Revenue to deny the benefit of exemption to the petitioner on the sole ground that a portion of the income spent on other charitable purpose, viz., distribution of sarees to the mothers and grandmothers of the children studying in the school was not for educational purpose. There is no dispute to the fact that the sum spent on such purpose is very minimal, compared to the total income.

20. The question as to whether an educational institution is existing solely for educational purposes or not, has to be considered and decided not merely by mechanically reading and reproducing the relevant provisions of law but by considering the nature of the activity and the hidden principles behind it, which in my considered view, is essential.

21. While the nature of existence of the institution is to be derived only by considering the predominant activity of the institution, the nature of spending the money so received by such institution to its various activities, has to be ascertained and adjudged going by the ultimate purpose for which it was spent. If the event of spending and the purpose for which such event took place, have some nexus to achieve the main object viz., the predominant activity of the institution, then such spending on an allied activity cannot be looked in isolation from the main object.

22. An institution solely existing for educational purposes, if indulges in certain allied charitable activities, such as feeding and clothing poor, giving some medical aid to those people, etc., certainly, such activities cannot alter the predominant object of such institution. While 'the imparting education' is like the water flowing in the main channel, certain incidental other charitable activities done by such institution, here and there, cannot be considered as major breach of the channel, but as the reach of the 'overflown' water from the main channel to the adjacent lands. So long as the desired destination of the channel (the institution) is evidently existing and being achieved to reach the predominant object and not disputed, the nature or character of the institution run by the trust cannot be doubted, as it will always fit into the above term "institution existing solely for educational purposes" and consequently, is entitled to protection under Section 10(23C)(iiiad).

23. Further, strictly speaking, Section 10(23C) contemplates and excludes any income "received by" and not "the spending" of such money received under Section 10(23C). At the same time, if the spending is totally on a deviated object or an object, which is totally opposite or opposed to the main object for which the trust is created, certainly such spending cannot have any protection under Section 10(23C)(iiiad). Thus, the

sole purpose of existence is to be gathered, derived and construed based on overall predominant activity and not from certain isolated activity, especially when such activity also happens to be charitable in nature, more particularly, when a meagre sum is spent on such activity. At the same time, proportionality of the money spent on such activity, other than the predominant activity, also plays a major role in deciding the nature of existence of the institution. If major portions of the money received by the Trust is spent on certain objects other than the predominant object, certainly the sole purpose of the Trust for which it was created, can be doubted. On the other hand, if such spending is meagre and does not shake the conscience of the Assessing Officer, being the quasi judicial authority, is at liberty to bring such expenditure also under the exemption clause.

24. The allied activities for which such spending was made, must be in such a way that it is not a one way travel without an intention to return back to the main fold or with an idea to abandon the predominant object. On the other hand, if such spending was meant to retain the main object in tact and strengthen the same further, I do not think that such minor deviation would in any way stand in the way of the Assessing Officer to deny exemption.

25. In addition to the above legal aspects of the matter, I would like to point out one more aspect on the responsibility of the Government and Court to encourage, philanthropy and charity, more particularly, when such tendencies among the people, of late, unfortunately, have become very minimal. I do not think that this emphasis is either out of place or context. Therefore, if somebody come forward to do some charity to the needy poor, the Revenue, instead of applying hypertechnical objections to deny exemption on such activities, which, in effect, would only discourage such noble object, should find a way out to sustain such spending and grant exemption, so as to encourage and allow the said noble object to continue and survive forever.

26. At this juncture, I am reminded of the 'Midday Meal Scheme' started by the Great Leader Sri K.Kamarajar in the schools of this State. The object behind such Scheme is known to everyone. Only in order to attract and invite the students to attend the school, the great Leader thought that if the starving stomach of the poor children is fed, there will not be any difficulty for them to attend the school regularly. Such forethought, undoubtedly, was aimed only for educating the poor children. Therefore, no one can say that such feeding the poor student was not for educational purposes. Therefore, the object behind such kind of activity cannot be decided on the face of

such activity, but by considering overall aspect of such activity.

27. It is relevant to quote a division bench decision of the Bombay High Court at this juncture. The case before the Bombay High Court arises out of an order passed by the Chief Commissioner of Income Tax, Mumbai, declining the grant of approval under Section 10(23C)(vi) of the Income Tax Act, 1961. It is to be noted that Section 10(23C)(iiiad) and 10(23C)(vi) are having similar effect, while the former deals with the institution without approval by the prescribed authority, whereas the latter deals with the institution with approval by the prescribed authority. The said application was rejected by the Chief Commissioner on the reason that the objects from the trust therein apart from running schools also permitted construction of Ashrams for Gujarati Hindu Women and hence, the trust existed for the objects other than the education. The Bombay High Court considered the said objection in detail and rejected the same by observing at paragraph Nos.10 and 11 as follows:

"10. Now, it is not in dispute before the Court that the Petitioner has been conducting primary and secondary schools and colleges for Arts, Science, Commerce and Technical courses in Mumbai since 1929 and in Surat since 1940. Nor is there any dispute before the Court that save and except for conducting these educational institutions, the Petitioner has not carried on any other activities right since 1929. In this background, it would be necessary to advert to the objects set out in the Memorandum of Association. Clause III(b) spells out as the object, amelioration of the condition of Gujarati Hindu women of the then Bombay Presidency and other places and alleviation of their social status by educating to them in subjects tending to their material, moral and spiritual advancement, opening out for them proper and suitable fields of work, lawfulness and influence in Hindu society. From this object, it is abundantly clear that the amelioration of the condition of Gujarati speaking Hindu women was sought to be improved, when the Trust was founded in March 1928, by providing for the education of this class of women. The means by which this object is sought to be achieved is by conducting Ashrams or homes for women and girls, particularly for widows and orphaned girls either as free or as paying inmates and by conducting schools for imparting religious, secular and industrial education and training in fine arts. A number of ancillary objects have been adverted therein including provision of libraries and gymnasiums, publication of books and by means of pecuniary and other help to students of the

institution. A holistic reading of the object clause would establish beyond doubt that the sole purpose for the establishment of the Petitioner was to further the cause of education amongst women belonging to a particular class, as stated therein. Though the objects clause contained varied objects including the management and development of movable and immovable properties, the statement of fact before the Court which is not disputed is that the only activity which has been carried out by the Trust ever since its inception is the conduct of educational institutions. The Court, it must be emphasized, is not dealing with an institution which has sought approval for the first time or which has been set up in the proximate past. The Trust has a history of over eighty years during the course of which the only activity is of conducting educational institutions.

"11. The fact that the Trust exists solely for educational purposes is evidenced from the assessment orders for Assessment Years 2000-01 and 2006-07, copies of which form a part of the record before the Court. Both these orders which have been made under [Section 143\(3\)](#) of the Act, contain a statement to the effect that the assessee is running schools with Gujarati and English as media of instruction at the primary and secondary stage and that the assessee also conducts a college for girls with the sole intent of imparting education. The record of these proceedings also contains a judgment of a Division Bench of this Court dated 29 June 2005 in a Reference under [Section 256\(1\)](#) to which the Petitioner was the applicant. The issue before the Court in the Reference was whether the assessee was entitled to exemption under [Section 10\(22\)](#) on interest earned on surplus funds of the school run by the Trust for Assessment Years 1979-80 and 1980-81. The Division Bench observed that merely because a certain surplus arose from the operations of the Trust, it could not be held that the institution was run for the purpose of profit, so long as no person or individual was entitled to any portion of the profit and the profit was utilized for the purpose of promoting the objects of the institution. The income of the Trust was, therefore, held to be exempt under [Section 10\(22\)](#). The Division Bench followed the decision of the Supreme Court in [Aditanar Educational Institution vs. Additional CIT](#),¹ and noted as a principle of law that if after meeting the expenditure, a surplus results incidentally from an activity lawfully carried on by the educational institution, the

institution would not cease to be one which is existing solely for educational purposes since the object is not to make profit. The Division Bench also observed that if the Trust exists solely for educational purposes and conducts an educational institution, the fact that it had other objects would not disentitle it to the exemption so long as the activity carried out by it in that assessment year was that of running an educational institution and not for profit. The Court observed that the assessee had existed only for educational purposes which consisted of running educational institution and not for earning profits. The observations of the Division Bench which have been made in the context of [Section 10\(22\)](#) would furnish a cogent answer to both the issues on which the applications for approval were rejected by the First Respondent. Firstly, though the Memorandum of Association contains varied objects, so long as the record demonstrates that the assessee only conducts educational institutions, 1 (1997) 224 ITR 310 it must be regarded as existing solely for the purpose of education. No other activity is carried on. Secondly, the fact that a surplus may incidentally arise from the activities of the Trust, after meeting the expenditure incurred for conducting educational activities would not disentitle the Trust of the benefit of the provisions of [Section 10\(23-C\)](#)."

(emphasis supplied)

28. The Karnataka High Court in 2015(5) TMI 260, The Commissioner of Income Tax vs Karnataka, has observed that providing hostel to the students/staff working for the Society is incidental to achieve the objection of providing education, namely, object of the Society.

29. In 2018(8) TMI 382, Navadisha Educational Trust vs The Chief Commissioner of Income Tax, the learned Judge of this Court, while disposing W.P.No.5560 of 2012 dated 20.07.2018, has observed at paragraphs 4 and 6 as follows:

"4. The first respondent has passed the impugned order stating that [Section 10\(23C\)\(vi\)](#) of the Act stipulates that the institution/trust should exist solely for educational purpose and not for any other purpose including objects of general public utility. Further the first respondent stated that he has taken a stand in several cases that for the purpose of approval under [Section 10\(23C\)\(vi\)](#), the objects of the Trust/Institution should include only educational purpose and not for any other purpose. Therefore, the application made by the petitioner Trust was found not eligible for granting approval under [Section 10\(23C\)](#)

(vi) of the IT Act and hence the application was rejected. Challenging the same, this writ petition has been filed.

...6. I am of the considered view that the impugned order is an outcome of narrow and pedantic approach on the part of the first respondent, namely the Chief Commissioner of Income Tax. Though the first respondent in the impugned order has referred to the objects Trust, it lost sight of the fact that objects of Trust cannot be read in a truncated fashion. The first respondent was carried away by one of the objects of the Trust, namely to work for the integrated development of children. Unfortunately, the first respondent did not take note of the documents, which were called for from the petitioner and furnished by the petitioner along with a letter dated 04.02.2011, after which there was personal hearing which was fixed and further documents were given and the petitioner has submitted a representation styled as response to the notice dated 08.03.2011, wherein they have given a detailed write up on as to how the children participate and learn. Without considering all these aspects, the respondent, has mechanically passed the impugned order and also by stating that he has taken a stand in several cases that for the purpose of approval under Section 10(23c)(vi), the objects of the Trust should include only educational purpose. There is no finding by the first respondent that one of the objects of the Trust that to work for the integrated development of children does not include educational activity, more particularly, based on the materials furnished by the petitioner. There is not even a whisper that the materials furnished by the petitioner is either been found incorrect or is a false statement. Therefore, these observations would be sufficient to set aside the impugned order.

30. Perusal of the above decisions would show that the contention raised by the Revenue against the petitioner with regard to their entitlement under Section 10(23C)(iiiad) is liable to be rejected.

31. The learned counsel for the Revenue relied on 2012(20) taxmann 269 (AP.), R.R.M.Educational Society vs Chief Commissioner of Income Tax, a Division Bench decision of the Andhra Pradesh High Court in support of her contention. Perusal of the facts and circumstances of the said case would show that the question raised before the Andhra Pradesh High Court was

whether the object of the 'eradicating unemployment' adopted by the assessee was integrally connected with or as being ancillary to provide education. The Andhra Pradesh High Court found that they are two different objects and that eradicating unemployment, though may be charitable in nature, is not to be construed as solely for the educational purposes, as required under Section 10(23C)(vi) of the Income Tax Act. I do not think that the above decision, which is factually distinguishable, can be applied to the facts and circumstances of the present case.

32. It is not established by the revenue that the petitioner is carrying on any other activities for profit other than running the school. Therefore, when the only predominant activity is being carried on by the petitioner trust, viz., the running of the school as stated supra, I do not think that mere spending a meagre amount, out of the total income derived by the trust, towards the distribution of sarees to mothers and grandmothers of children studying in the school, can stand in the way of the Assessing Officer to deny the benefit under Section 10(23C)(iiiad). Thus I find that the respondents are not justified in rejecting the claim of the petitioner under Section 10(23C)(iiiad) of the said Act.

33. Accordingly, the writ petition is allowed and the impugned order is set aside. Consequently, the respondents are directed to consider the claim of the petitioner under Section 10(23C)(iiiad) in respect of the assessment year 2014-15 and pass appropriate orders granting such exemption and other relief if any, within a period of four weeks from the date of receipt of a copy of this order. No costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vri

To

1.The Commissioner of Income Tax (Exemption),
No.121, (Annexe Bldg), 3rd Floor,
Mahatma Gandhi Salai, Chennai-34.

2.Income Tax Officer
(Exemptions) Ward,
No.3, Gandhi Road, Salem.

+lcc to Mrs.Hema Muralikrishnan, Advocate sr.no.70311

ORDER IN
W.P.11301 of 2018

nm(co)
nr 26/10/2018



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