

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.01.2020

Pronounced on : 23.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.Nos.29475/2012, 34234/2013 & 1739/2015
and M.P.Nos.1 of 2012, 1 of 2013 and 1 of 2015

M/s.Rajah Sir Annamalai
Chettiar Foundation,
No.603, Anna Salai,
Chennai 600 006

.. Petitioner in all W.Ps.

vs.

1.The Chief Commissioner of Income Tax,
Chennai - III,
121, Mahatma Gandhi Road,
Chennai 600 034.

2.The Director of Income Tax (Exemptions)
Ayakar Bhawan, Annex III Floor,
121, Mahatma Gandhi Road,
Chennai 600 034.

3.The Deputy Director of Income Tax
(Exemptions)
Ayakar Bhawan, Annex III Floor,
121, Mahatma Gandhi Road,
Chennai 600 034.

.. Respondents in both W.Ps.

Prayer in W.P.No.29475 of 2012 : Writ Petition is filed under article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in C.No:CCIII/7/10(23C)(vi)/12-13 dated 26.09.2012 and quash the same and direct the 1st respondent to grant exemption to the petitioner trust under Section 10(23C)(vi) of the Income Tax Act, 1961.

Prayer in W.P.No.34234 of 2013 : Writ Petition is filed under article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in C.No:CCIII/10 (23C) (vi)/13-14/8 dated 27.09.2013 from the file of the 1st respondent and quash the same and consequently direct the 1st respondent to grant exemption to the petitioner trust under Section 10(23C) (vi) of the Income Tax Act, 1961.

Prayer in W.P.No.1739 of 2015 : Writ Petition is filed under article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in C.No:CCIT-III/10(23C) (vi)/13-14/11 dated 29.09.2014 from the file of the 1st respondent and quash the same and consequently direct the 1st respondent to grant exemption to the petitioner trust under Section 10(23C) (vi) of the Income Tax Act, 1961.

For Petitioner : Mr.G.Ashokpathy for
M/s.Pass Associates(in all W.Ps.)
For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

COMMON ORDER

By this common order, all the three writ petitions are being disposed.

2. The petitioner has challenged the following three impugned orders passed by the 1st respondent namely the Chief Commissioner of Income Tax Chennai-III.

Sl.No.	Reference No.	Date	Assessment Year
1	C.No.C.C.III/7/10(23C)vi)/12-13	26.9.2012	2011 - 2012
2	C.No.CC.III/10(23C) (vi)/13-14/8	27.9.2013	2012 - 2013
3	C.No.CC IT-III/10(23C) (vi)/13-14/11	26.9.2014	2013 - 2014

3. By the said impugned orders, the 1st respondent has denied the benefit of Section 10 (23C) of the Income Tax Act, 1961.

4. Petitioner is a registered Trust. The Deed of Declaration of Charitable Trust of the petitioner dated 11.2.2009 was registered as Document No.146 of 2009 dated 11.2.2009.

5. Earlier the petitioner had filed an application before the 2nd respondent on 09.02.2010 for registration under Section 12 AA of the Income Tax Act, 1961 to claim exemption from payment of income tax. Later a clarification deeds dated 03.08.2012/16.08.2012 were signed. In the said clarification to the Trust Deed, the petitioner has removed the words 'future Development' from clause 11 of deed of trust declaring it to be operative from 11.02.2009

6. By an order dated 30.08.2010, the 2nd respondent rejected the application on the ground that as per clause 11 of the Trust Deed, the trustees were empowered to fix fees and charges to be collected from student was to be after taking into account the cost of running schools including future development of the institutions and that such fees will be fixed without an element of profit.

7. As per the Trust Deed, the fees collected would be used for future expansion of the schools and that the petitioner trust would establish a hundred schools before 2014. The 2nd respondent noticed that the fee structure was not governed by the government regulations and as such it cannot be said that the objective of the petitioner's trust was Charitable in nature as has been envisaged in Section 2 (15) of the Income Tax Act, 1961.

8. Aggrieved by the order of the 2nd respondent, the petitioner had preferred an appeal before the Income Tax Appellate Tribunal, Chennai. By an order dated 20.6.2011, the order dated 30.8.2010 passed by the 2nd respondent was upheld. The learned counsel for the petitioner submits that an appeal under Section 260 (A) of the Income Tax Act, 1961 is pending before the Division Bench of this Court in T.C.A.No.665 of 2011 against the said order 20.06.2011 of the Income Tax Appellate Tribunal, Chennai.

9. The reasoning in the three impugned orders bearing

reference C.No.CC. III/7/10(23C) (vi)/12-13; C.No.CC.No.III/10 (23C) (vi)/13-14/8 and C.No. CC IT-III/10 (23C) (vi)/13-14/11 dated 26.9.2012, 27.9.2013 and 26.9.2014 passed by the 1st respondent namely the Chief Commissioner of Income Tax Chennai-III are identical save that in the last mentioned order , it has been mentioned that since the petition has closed down its schools, the application cannot be considered.

10.In the impugned order dated 26.9.2014 bearing reference C.No. CC IT-III/10 (23C) (vi)/13-14/11 passed by the 1st respondent namely the Chief Commissioner of Income Tax Chennai-III which has been impugned in W.P.No. 1739 of 2015, it has been recorded that the petitioner was constrained to close down the schools pursuant to directions of this Court in the order dated 3.6.2014 in W.P.Nos. 34709 of 2013 and 40470 2014.

11.Challenging the impugned orders passed by the 1st respondent in the first two writ petitions, the learned counsel for the petitioner submits that the petitioner's school qualified as an educational institution solely for educational purpose and not for the purpose of profit .

12.The learned counsel for the petitioner further submits that under 13th proviso to section 10 (23C) (vi) only where it is found that the funds of the trust are not applied in accordance with provisions contained in clause (a) of the proviso or where the activities of such funds or institution or trust or any university or other educational institutions are not carried out in accordance with all or any of the conditions subject to which it was notified or approved, it may, at any time after giving reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or any other medical institution, rescinding the notification or by an order to withdraw the approval as the case may be.

13.The learned counsel for the petitioner further submits that the application for approval under the above provision for exemption cannot be denied at the threshold itself merely because the petitioner has been declared to be a Non-Charitable Trust by the 2nd respondent. He submits that such order of the 2nd respondent ipso facto cannot justify the decision to deny the approval contemplated under Section 10 (23C) of the Income Tax

Act, 1961.

14. In support of the present writ petition, the learned counsel for the petitioner drew my attention to the following decisions of the courts:-

- i) Aditanar Educational Institution Etc., vs. Additional Commissioner of Income Tax (1997) 139 CTR (SC) 7 : (1997) 224 ITR (SC)
- ii) American Hotel & Lodging Association Educational Institute vs Central Board of Direct Taxes & Ors. (2008) 216 CTR (SC) 377 : (2008) 301 ITR 86
- iii) St.Lawrence Educational Society (REGD) vs Commissioner of Income Tax & Anr(2011) 53 DTR (Del)130 : (2013) 353 ITR 320 (Delhi)
- iv) Digember Jain Society For Child Welfare vs Director General of Income Tax (Exemptions) (2010)228 CTR (Del) 517 : (2010)329 ITR 459
- v) Vanitha Vishram Trust vs Chief Commissioner of Income Tax & Anr.(2010) 233 CTR (Bom) 90: (2010) 327 ITR 121
- vi) City Montessori School (Regd.) vs Union of India & Ors.(2009)225 CTR (All) 188: (2009) 315 ITR 191
- vii) MAA Saraswathi Educational Trust vs Union of India& anr.(2010)236 CTR (HP)400 : (2010) 46 DTR 360
- viii) Pinegrove International Charitable Trust & Ors. Vs Union of India & Ors. (2010)230 CTR (P&H) 477
- ix) All India Personality Enhancement & Cultural Centre for Scholars, Aipes Society vs Deputy Commissioner of Income Tax (2004) 85 TTJ (Del)514 : 91 ITD 240 (Del)
- x) Assistant Commissioner of Income Tax vs Bal Bharti Nursery School (2002) 76 TTJ (All) 602 : (2002) 82 ITD 71 (All)

xi) Vodithala Education Society vs Assistant Director of IT (2008) 20 SOT 353 (Hyd)

15. The learned counsel specifically referred to the decision of the Hon'ble Supreme Court in Queen's Educational Society Versus Commissioner of Income Tax (2015) 372 IT 699 in support of the present writ petitions. He submits that the Hon'ble Supreme Court has considered all the above decisions and has approved the decision/judgements of the Punjab and Haryana, and the Bombay High Court. He submits that merely because there were surplus of income over the expenditure incurred cannot by any stretch of imagination allow an inference to be taken that the educational institution had profit motive.

16. The learned counsel for the petitioner submits that dominant nature of the activity of the petitioner trust was in the field of education and profit was not the motive and merely because the trust deed envisaged creation of hundred schools by 2014 itself does not mean that the intention was to make profit.

17. Per contra, the learned counsel for the respondents submits that the writ petitions are liable to be dismissed as the issue as to whether the petitioner was charitable institution or not is subject matter of T.C.A.No.665 of 2011 before this Court. It is submitted that the basis on which the 1st and 2nd respondent can conclude whether an institution is a Charitable institution or is meant for educational purpose with no proper motive is the trust deed.

18. The learned counsel for the respondents submits that both for the purpose of Sections 12AA and 10 (23C)(vi) of the Income Tax Act, 1961, the Trust Deed is the document based on which registration or approval can be granted. She further submits that the impugned orders are well reasoned and requires no interference and therefore these writ petitions are liable to be dismissed .

19. I have considered the impugned orders and the submission of the learned counsel for the petitioner and the respondent. Under 10(23C) (vi) of the Income Tax Act, 1961, while computing total income of any person during the previous year, any income received by any person on behalf of any university or educational institution existing solely for educational purposes and not for purposes of profit may be approved by the prescribed

authority can be excluded.

20. Prima facie it appears that the petitioner's schools are run with a profit motive though its activities are carried out under the Trust Deed which has been registered as a Charitable Trust. Further, the Board of Trustees of the petitioner are authorised to construct or acquire or take on lease or rent, buildings, land or other immovable properties from the funds of the Trust for the purposes and the objects of the Trust.

21. The relevant document that would be relied upon by the prescribed authority for the purpose of grant of approval under the aforesaid provision would be the constitution of such a person. In this case, it is the Trust Deed. It states that the objective of the petitioner's trust was to provide an organisation that supports the cause of education, including promotion and encouragement of training methods to improve the quality of education by starting institutions to support kindergartens, primary, high and higher secondary education schools. The Board of Trustees are empowered to collect fees or charges from students and others for running educational institutions for carrying out the objects of the Trust.

22. The fact that Clause 10 of the Trust Deed states that the fees and charges shall be fixed taking into account the cost of running including future development thereof though without an element of profit motive indicates that the actual intention of the trust is only to generate income by charging fees while admitting children's to their schools.

23. The Deed of Trust has also not declared the source of fund for achieving the purpose. It merely stipulates the Trustees are authorised to borrow monies for the purposes of the trust with or without security from banks, financial institutions or otherwise and also have the power to offer a security of any immovable or movable property or other security.

24. The fact that there is no clause for providing free education for children coming from different social and educational backgrounds and the scholarship to under privileged children shows that there is only profit motive and the institutions are to be run only out of fees collected by admitting children's to their schools.

25. The Trust Deed also seems to indicate that the source of funds of the petitioner's trust is only from the school fees to be collected during these financial years. Therefore, it cannot be construed that the petitioner's Trust's Schools were not for the purpose of profit.

26. I find the impugned orders in W.P.Nos.29475 of 2012 and & 34234 of 2013 are well reasoned and requires no interference at this stage. I therefore I do not find any merits in these writ petitions filed by the petitioner as well.

27. In any event, if the petitioner succeeds in T.C.A.No. 665 of 2011, the petitioner would be entitled to claim exemption as a Charitable Institution.

28. Since the schools run by the petitioner were directed to be closed, pursuant to the above directions I do not find any merits in W.P.No.1739 of 2015. Presence of educational institution is sine qua non for grant of approval under Section 10 (23C) (vi) of the Income Tax Act, 1961. The impugned order passed by the 1st respondent is therefore sustainable. Accordingly, W.P.No.1739 of 2015 is dismissed.

29. In view of above discussion, these three writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

kkd

To

1.The Chief Commissioner of Income Tax,
Chennai - III,
121, Mahatma Gandhi Road,
Chennai 600 034.

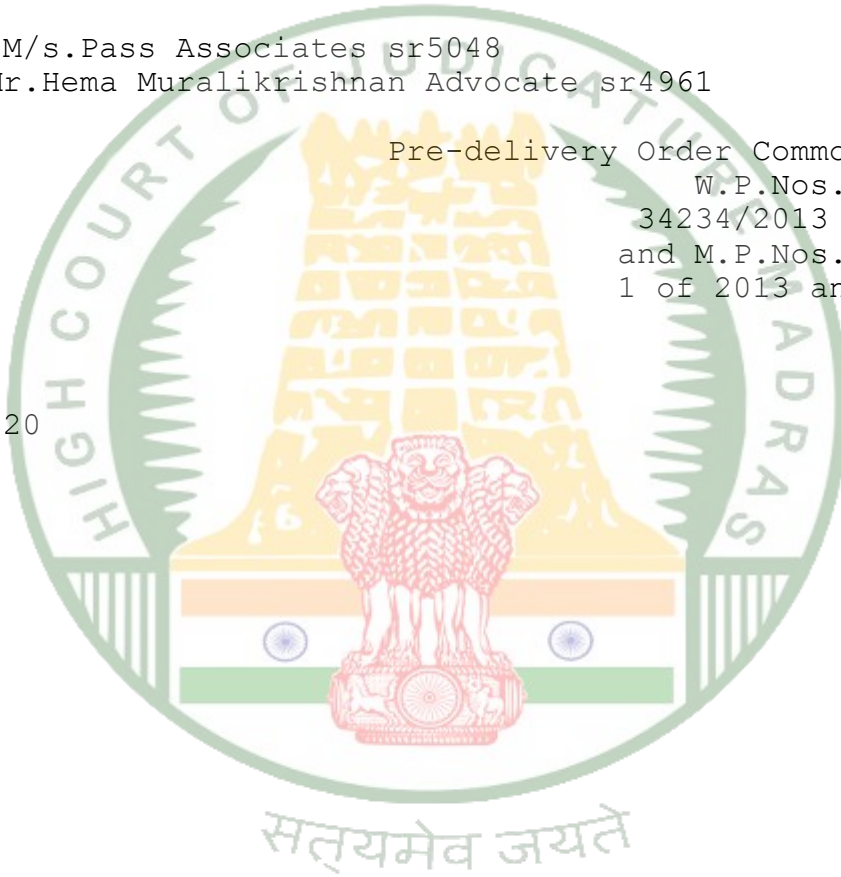
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3.The Deputy Director of Income Tax
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Ayakar Bhawan, Annex III Floor,
121, Mahatma Gandhi Road,
Chennai 600 034.

+3 ccs to M/s.Pass Associates sr5048
+1 cc to Mr.Hema Muralikrishnan Advocate sr4961

Pre-delivery Order Common Order in
W.P.Nos.29475/2012,
34234/2013 & 1739/2015
and M.P.Nos.1 of 2012,
1 of 2013 and 1 of 2015

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