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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

CORAM

The Honourable Mr. Justice T.S. SIVAGNANAM
and

The Honourable Mr. Justice SATHI KUMAR SUKUMARA KURUP

Judgment Reserved On 06.08.2021	Judgment Pronounced On 17.08.2021
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T.C.A.No.619 of 2011

Commissioner of Income Tax,
Salem

.. Appellant/Respondent

-vs-

M/s. Angels Educational Trust,
Aniyapuram Main Road,
Aniyapuram Post, Namakkal.

.. Respondent/Appellant

Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 09.06.2011 made in I.T.A.No.1707(Mds)/2009 on the file of the Income Tax Appellate Tribunal 'D' Bench, Chennai.

Against the order of the Commissioner of Income-Tax, Salem, dated 25.08.2009, made in C.No.9755 (159) SLM/2008-2009.

For Appellant : Mr. J. Narayanaswamy,
Senior Standing Counsel

For Respondent : Mr. R. Sivaraman

JUDGMENT

T.S. Sivagnanam, J.

This appeal, by the appellant/Revenue, filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as



"the Act"), is directed against the order dated 09.06.2011, made in I.T.A.No.1707(Mds)/2009 on the file of the Income Tax Appellate Tribunal 'D' Bench, Chennai (for brevity "the Tribunal").

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2.The appeal was admitted on 20.02.2012, on the following substantial question of law:-

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in setting aside the order of the Commissioner of Income Tax under Section 12 AA of the Income Tax Act and directing him to grant registration to the assessee Trust without appreciating the various issues raised in the order of the Commissioner of Income Tax pointing out the defects in the trust deed and also the systematic earning of substantial surplus of income out of the gross receipts?"

3.The respondent is a Trust (hereinafter referred to as "the assessee"), which came into being pursuant to a Deed of Trust dated 28.08.1995, registered as Document No.30 of 1995 on the file of the Sub Registrar, Mohanur. The Trust was founded by four Trustees with a corpus of Rs.501/- established for educational purposes and known as 'Angles Educational Trust'. The principle object of the Trust was to run an educational or other institutions to provide, establish, maintain, run, develop and improve or assist in the establishment, maintenance, running, developing and improving education; to institute and award scholarships to poor and deserving students and to assist them in any manner of their study, research or apprenticeship. There were other objects of the Trust, which were incidental and ancillary to the main object, viz., education. The first and second Trustees or their successors in office of the Board of Trustees, were given full power and authority to administer the Trust, its properties and affairs and to do all acts, deeds and things which were calculated to fulfil the objects of the Trust for which it was established.

4.The 'powers of the Trustees' were enumerated in Clause 6 of the Deed of Trust.

4.1.In terms of Clause 11 of the Deed of Trust, which deals with 'application of income and trust fund', the Trustees shall after providing for the payments mentioned in the Deed and its disbursements, apply and utilize the net income or the corpus of the Trust funds for the benefit of the citizens of India without any discrimination on the grounds of religion, sect, cast and creed after complying with the provisions of the Act.

4.2.Clause 12 of the Deed of Trust provided that the



founder of the Trustees and their relatives are not to be benefited.

4.3. Clause 13 states that none of the Trustees shall be entitled to draw any remuneration from the Trust.

4.4. In terms of Clause 18, special power was given to the first Trustee to amend the covenants of the Trust except the objects of the Trust and all or any other provisions of the Trust Deed, which casts obligation on them to conform with the provisions of the Act as amended from time to time.

5. By Deed of Codicil dated 16.09.1999, registered as Document No.107/1999, on the file of the Sub Registrar, Mohanur, decided to amend the Deed of Trust by altering certain clauses by enumerating the first trustee as the President and the second trustee as the Secretary of the Trust. By Deed of Codicil dated 20.08.2009, on account of the death of the founder trustee and admission of additional trustees, amended Clause 16 of the Deed of Trust by making the Trust as irrevocable. However, giving liberty to the Trustees to dissolve the Trust and decided to follow the instructions issued by the Commissioner of Income Tax, Salem (for brevity "the CIT"), to the effect that the Trust will not carry on any activity with an intention of earning profit; it will not carry any activity outside India and the income of the Trust will be solely utilized towards the objects; and no portion of it will be utilized for payment to the members by way of profit, interest, dividends etc.

6. The assessee-Trust filed an application in Form 10A dated 27.03.2009, before the appellant for registration under Section 12AA of the Act. The said application was rejected by the appellant by order dated 25.08.2009. In the said order, the appellant stated that the Trust runs a Matriculation School with instructions both in English and Tamil Medium and also established a Teachers Training College from the financial year 2007-08. The appellant noted the income in excess of expenditure for the two educational institutions for four financial years, that is, from 2005-06 to 2008-09. The Trustees were called upon to explain and they stated that the excess of income over expenditure from the School fell down considerably during the financial years 2007-08 and 2008-09, on account of competition by other educational institutions, which were established in the neighbourhood and this prompted the assessee-Trust to provide free bus service to students, who opt for education in Tamil medium. Since the income over expenditure from the school considerably got reduced, the Trust established a Teacher Training College, which provided good returns and the profits of the Trust increased during the financial years 2007-08 and 2008-09. According to the appellant, this was done with a clear motive for earning profits, which subsumes the charitable activity of the assessee-Trust. The appellant stated



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that since the Trust is making profit year after year, the functioning of the Trust cannot be termed as 'charitable' and in this regard, placed reliance on the decision of the High Court of Uttaranchal in CIT vs. Queen's Educational Society reported in (2009) 223 CTR 395. After extensively referring to the said decision, the appellant held that the net surplus made by the assessee-Trust, ever since its inception, clearly suggests that the educational institutions are being run on commercial lines with a view of earning profits. For such reason, the application filed for Registration under Section 12AA of the Act was rejected. Aggrieved by such order dated 25.08.2009, the assessee-Trust preferred appeal before the Tribunal. The appeal was allowed by order dated 09.06.2011, which is impugned before us.

7.Mr.J.Narayanaswamy, learned Senior Standing Counsel for the appellant submitted that the Tribunal directed registration to be granted to the assessee-Trust under Section 12AA without appreciating the detailed reasons set out by the appellant in his order dated 25.08.2009, while rejecting the application. Further, it is submitted that the Tribunal failed to notice that the Trust was claiming exemption under Section 10(23C)(iiiad) whereas, there were non-educational objects, which were clearly brought out by the appellant in his order dated 25.08.2009.

8.Further, it is submitted that the appellant had clearly mentioned that the covenants and conditions in the Deed of Trust as amended by two Codicils were self-contradictory and noting this, the application was rejected, which aspect was not appreciated by the Tribunal. Further, it is submitted that the excess of income shown for four years will clearly establish that the Trust has been founded with a profit motive and without considering this aspect, the appeal was allowed. Further, it is submitted that the Tribunal failed to take note of the fact that all powers have been vested with two of the Trustees without noticing that a corum was required and the majority of the Trustees alone could take a decision. Therefore, it is submitted that the Tribunal erred in interfering with the reasoned order passed by the appellant dated 25.08.2009, while rejecting the application. Therefore, it is submitted that the appeal may be allowed and the substantial question of law be answered against the Revenue.

9.Mr.R.Sivaraman, learned counsel for the assessee-Trust sought to sustain the order passed by the Tribunal and submitted that the Tribunal had elaborately considered the factual position, the various conditions contained in the Deed of Trust and the two Codicils and clearly held that the Trust was not established with an intention of making profits, but with a genuine intention of serving for the cause of education more



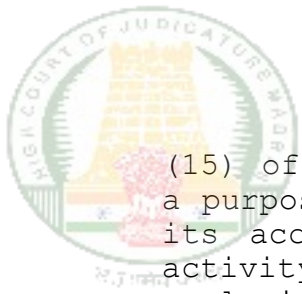
particularly, the students from rural background, who opted to take the medium of instruction in Tamil.

10. Further, it is submitted that the decision in Queen's Educational Society (supra) rendered by the High Court of Uttarakhand was tested for its correctness before the Hon'ble Supreme Court by the Trust in Queen's Educational Society vs. CIT reported in (2015) 55 taxmann.com 255 (SC) and the said decision was reversed. Further, the said decision could not have been applied to the case of the assessee-Trust, as the case was whether the said Queen's Educational Society had fulfilled the three requirements as stipulated under Section 10(23C) of the Act whereas, in the instant case, the issue is whether the application filed by the assessee-Trust for registration under Section 12AA could have been rejected. Therefore, the appellant erroneously rejected the application without noticing the fact that the claim made by the Queen's Educational Society was a claim for exemption under Section 10(23C) of the Act and such claim made by them was rejected by the Assessing Officer, the said order was reversed by the CIT(A), which order was confirmed by the Tribunal in an appeal filed by the Revenue and challenging the order, appeal was filed before the High Court, which was allowed by setting aside the order of the Tribunal and affirming the order of the Assessing Officer and aggrieved by the same, the said assessee filed appeal before the Hon'ble Supreme Court. It is submitted that in the said decision, various other decisions of the Hon'ble Supreme Court were referred to and the law laid down in those decisions will come to the aid and assistance of the assessee-Trust and therefore, the Tribunal rightly allowed the appeal filed by the assessee-Trust and directed registration to be granted under Section 12AA of the Act.

11. We have elaborately heard the learned counsels for the parties and perused the materials placed on record.

12. The undisputed facts are that the assessee-Trust was established and is administering Matriculation School offering education both in Tamil and English medium. It has also established a Teachers Training College during the financial year 2007-08. The income for four financial years was taken into consideration by the appellant and noting the figures, the appellant opined that the income is in excess of expenditure for both the educational institutions and came to the conclusion that the Trust has been established with a clear motive of earning profits.

13. In Addl. CIT v. Surat Art Silk Cloth Mfr. Association reported in (1980) 121 ITR 1, the Hon'ble Supreme Court while construing the definition of "charitable purpose" in Section 2



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(15) of the Act, held that every Trust or institution must have a purpose for which it is established and every purpose must for its accomplishment involve the carrying of an activity. The activity must, however, be for profit in order to attract the exclusionary clause and the question therefore, is when can an activity be said to be one for profit? It was held that it is not enough that as a matter of fact, an activity results in profit, but it must be carried on with the object of earning profit. It was further observed that profit-making must be the end to which the activity must be directed or in other words, the predominant object of the activity must be making a profit. Further, where an activity is not pervaded by profit motive, but is carried on primarily for serving the charitable purpose, it would not be correct to describe it as an activity for profit, though it may be carried on in advancement of the charitable purpose of the Trust or institution. It was further pointed out that the predominant object of such activity must be to subserve the charitable purpose and not to earn profit.

14. By referring to the decision in the case of Dharmadeepti vs. CIT reported in (1978) 3 SCC 499, it was pointed out that the activity must be "essentially charitable in nature" and it must not be a cover for carrying on an activity, which has profit making as its predominant object. Further, it was pointed out that this interpretation of the exclusionary clause in Section 2(15) derives considerable support from the speech made by the Finance Minister while introducing that provision. It was further pointed out that the test to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or not to earn profit. Where profit making is the predominant object of the activity, the purpose, though an object of general public utility, would cease to be a charitable purpose. But where the predominant object of the activity is to carry out charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. Further, it was pointed out that the exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. Further, it would be difficult for persons in-charge of a Trust or institution to carry on the activity that the expenditure balances the income and there is no resulting profit and that would not only be difficult of practical realisation, but would also reflect unsound principle of management. The Hon'ble Supreme Court agreed with the decision in Sole Trustee, Loka Shikshana Trust vs. CIT reported in (1975) 101 ITR (SC), that if the profits must necessarily feed a charitable purpose under the terms of the Trust, the mere fact that the activities of the Trust yield profit will not alter the charitable character of the Trust.



15. The decision in Aditanar Educational Institution vs. Addl. CIT reported in (1997) 224 ITR 301 was noted wherein, it was observed that the decisive or acid test is whether an overall view of the matter, the object is to make profit. Thus, the law, which was common to Section 10(23C)(iiiad) and Section 10(23C)(vi) was summed up as follows:-

"11. Thus, the law common to Section 10(23C)(iiiad) and (vi) may be summed up as follows:

1) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.

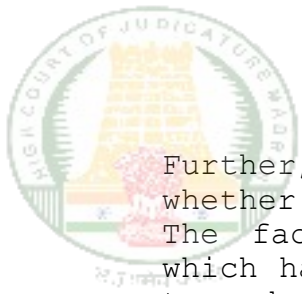
2) The predominant object test must be applied - the purpose of education should not be submerged by a profit making motive.

3) A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.

4) If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes.

5) The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons."

16. The Court took into consideration the decision of the High Court of Punjab and Haryana, which has been followed by the Delhi High Court in St. Lawrence Educational Society (Regd.) vs. CIT reported in (2013) 353 ITR 320 and also in Tolani Education Society vs. Dy. DIT (Exemptions) reported in (2013) 35 ITR 184, where the High Court of Bombay held that the petitioner (therein) has a surplus of income over expenditure for the three years cannot by any stretch of logical reasoning, lead to the conclusion that the petitioner therein does not exist solely for educational purposes or that it exists only for profit.



Further, it was held that the test to be applied is as to whether the predominant nature of the activity is educational. The fact that an incidental surplus, which is generated and which has resulted in additions to the fixed assets, is utilized towards upgrading the facilities of the educational institution, was held to be permissible. Further, it was observed that without the advancement of technology, no college or institution can offer to remain stagnant. Further, it was held that an educational institution cannot be prohibited from upgrading its infrastructure or facilities save on the pain of losing the benefit of the exemption under Section 10(23C) and imposing such a condition, which is not contained in the statute, would lead to a perversion of the basic purpose for which such exemptions have been granted to educational institutions. It was further pointed out that knowledge in contemporary times is technology driven. Educational institutions have to modernize, upgrade and respond to the changing ethos of education. The said decision of the High Court of Bombay and the other decisions of the High Courts were approved by the Hon'ble Supreme Court.

17. Bearing the above legal principles in mind, we proceeded to examine the facts of the case. Though the order passed by the appellant dated 25.08.2009, which was impugned before the Tribunal, appears to be an elaborate order, it is so because the appellant had quoted extensively from the decision of the High Court of Uttaranchal, which has been set aside by the Hon'ble Supreme Court. The only reason we can decipher from the impugned order, which was the basis for rejection of the application, is on the ground that for four financial years, the income of the Trust was in excess of its expenditure from the two educational institutions.

18. The learned Senior Standing Counsel for the appellant would point out that for the financial years 2005-06 and 2006-07, the excess income from the Matriculation School is close to 20% and for the financial years 2007-08 and 2008-09, the excess income from the Teachers Training College is 50% and this will clearly show that the motive for establishing the Trust was only for the purpose of earning profit and not for a charitable activity. The manner in which the appellant had approached the issue is wholly erroneous. There is no finding rendered by the appellant that the Trust was established solely for making profit. The appellant has not rendered any finding that the activities of the Trust were carried on only with the object of earning profit and whether such was the predominant object of the assessee-Trust, no such finding has been rendered by the appellant while rejecting the application. The explanation offered by the assessee-Trust was that on account of various other educational institutions come up in the neighbourhood, the income generated from the school had grossly fallen down and at



that juncture, the Trust took a decision to establish a Teacher Training College, which proved to be successful. The specific case of the assessee-Trust was that they have provided free bus services to the students, who opted to study in Tamil medium. This was with a view to encourage students to attend the school and obviously would fulfil the object for which the Trust was established. Therefore, the Tribunal was right in holding that the appellant has not brought down any material on record to show that the assessee-Trust was motivated by earning profit. The Tribunal appreciated the assessee-Trust for establishing the school with medium of instruction in Tamil and that itself was held to be a charitable activity carried on by the assessee-Trust and by providing free bus service, it would motivate the students to attend the school and get themselves educated in Tamil medium and merely because, bus services were provided free of cost cannot be treated to be an activity for making profit. The assessee's institution was rightly regarded as an institution carrying on educational activity and in the absence of any material available with the appellant, the Tribunal was right in itself observing that there was nothing on record to show that the Teachers Training College has been established solely for making profit. Furthermore, the Tribunal was right in its observation that excess of income over expenditure by itself is not a reason to hold that the assessee-Trust is not engaged in charitable activities. Furthermore, there was no finding that the Trustees had applied the monies of the Trust for their personal benefit or for any other purpose other than education. The infrastructure facilities, which were provided by the assessee-Trust were also rightly taken note of by the Tribunal.

19. With regard to the observation of the appellant that only two of the Trustees were authorized to administer the Trust, the same was held to be not a reason to reject the case of the assessee-Trust and it is common that the day-to-day activities of a Trust cannot be entrusted to all 14 Trustees and therefore, the President and Secretary of the Trust have to administer the Trust and there is nothing wrong in such an arrangement made by the assessee. Furthermore, the Tribunal was right in observing that if in any particular assessment year, if there was any error in the manner in which the funds of the Trust were administered, it would be open to the Assessing Officer to examine the case and decide as to whether the assessee-Trust was entitled to the benefit of Section 11 of the Act for a particular assessment year or not. Thus, the Tribunal rightly held that the assessee-Trust was entitled to registration under Section 12AA of the Act.

20. Thus, for the above reasons, we find that there is no error in the order passed by the Tribunal by directing



registration to be granted to the assessee-Trust under Section 12AA of the Act.

21. In the result, the appeal, filed by the appellant-Revenue, is dismissed and the substantial question of law is answered against the Revenue. No costs.

Sd/-
Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal 'D' Bench,
Chennai.

2. The Commissioner of Income-Tax,
Salem.

Pre-delivery Judgment made in
T.C.A.No.619 of 2011

RLD (CO)
SU (07/09/2021)