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IN THE HIGH COURT OF JUDICATURE AT MADRAS

|               |            |
|---------------|------------|
| RESERVED ON   | 03.02.2022 |
| PRONOUNCED ON | 14.03.2022 |

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.1639 OF 2020

AND

W.M.P.NOS.1913 & 1914 OF 2020

(Through Video Conferencing)

The Institute of Franciscan Missionaries of Mary,  
Represented by its Secretary,  
The Immaculate Conception Convent,  
Door No.1252, Big Bazaar Street,  
Coimbatore - 641 001.

...Petitioner

Vs.

1.The Commissioner,  
Coimbatore City Municipal Corporation,  
City Municipal Corporation Buildings,  
Coimbatore - 641 001.

2.The Assistant Commissioner,  
Central Zone,  
Municipal Corporation of Coimbatore,  
Coimbatore - 641 001.

...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 pertaining to the impugned order of rejection of exemption to property tax in Roc.No.14529/2009/A6/Cz, dated 13.12.2019, on the file of the first respondent, and quash the same, directing the respondents to exempt the ICC Hospital, No.19, Ismail Street, Coimbatore -1, under the control of the petitioner, from levy of property tax u/s. 123(e) of the Coimbatore City Municipal Corporation Act, 1981, in continuation of exemption it already enjoyed u/s. 83(1) (e) of the Tamil Nadu District Municipalities Act, 1920.

For Petitioner : Fr.Xavier Arul Raj, Senior Counsel  
for Fr. Xavier Associates.

For Respondents : Mr.S.Saravanan



## O R D E R

The petitioner has challenged the impugned order dated 13.12.2019 passed by the first respondent/Commissioner of City Municipal Corporation, Coimbatore rejecting the request of the petitioner for granting of exemption from payment of property tax under Section 123(e) of the Coimbatore City Municipal Corporation Act, 1981.

2. Earlier, the petitioner had filed a Writ Petition before this court in W.P.No.14529 of 2009 for a Writ of Certiorarified Mandamus, to call for the records from the second respondent pertaining to his Notice under Assessment No.240020 dated 08.07.2009, in respect of the Immaculate Conception Convent Hospital and to quash the same and to direct the respondents to pass an order by granting exemption from levy of property tax under Section 123(e) of the Tamil Nadu Act 25 of 1981.

3. The said Writ Petition was disposed by a learned Single Judge of this Court vide order dated 07.12.2017 after considering the order passed in the case of Sundaram Medical Foundation Vs. The Commissioner Corporation of Chennai, CDJ 2017 MHC 5265 and in the light of the decision of this Court in Masonic Charity Trust Vs. The Corporation of Coimbatore, (2010) 8 MLJ 643, with the following observations:-

11. Thus, for the above reasons, this writ petition is allowed, the impugned demand is quashed and the respondents are directed to consider the petitioner's claim for exemption vide petition dated 08.05.1995, along with the annexures and the petitioner is at liberty to submit a fresh petition enclosing the copies of earlier petition on the claim for exemption within a period of thirty days from the date on which the petition submitted by the petitioner. It is needless to state that while quashing the impugned demand of property tax for the past period, there should be no coercive action against the petitioner till the matter is decided in terms of the above directions. No costs. Consequently, connected miscellaneous petition is closed.

4. Thereafter, a demand noticed dated 09.01.2019 was issued by the first respondent. The petitioner appears to have filed W.P.No.30904 of 2019 and obtained a stay vide order dated 01.11.2019. Pursuant to the order dated 14.07.2010 in W.P.No.14529 of 2009, the first respondent passed the impugned order dated 13.12.2019 with the following observations:-



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Your hospital premises were inspected by the corporation officials in this connection. It is well evidenced from the inspection that your hospital is not actually run in strict accordance with the principles of charity. On the contrary, your hospital is run purely on the basis of profit motive under the guise of charitable hospital.

It has also come to light during inspection that the hospital collects huge amount from the patients for treating them, it is not free of cost as contented by you and it is not charitable in nature.

The Hon'ble Division Bench of the Madras High Court in W.A.No.612 of 2003 has held that the benefit conferred under Section 80G of the Income Tax Act would not confer on the hospital to seek an exemption from payment of property under Section 123(e) of the Act and the benefit conferred under Section 123(e) is not automatic.

The Hon'ble Division Bench of the Madras High Court in L.P.A.No.210 of 1999 has held that the burden of proof that the profit was utilized for charitable purpose rest upon the individual who claims it and the provisions of Income Tax Act and Customs Act are not in paramateria with the provisions of Coimbatore City Municipal Corporation Act.

You also failed to produce any documents to show that the treatment is rendered free of cost, that the service provided is charitable in nature or profit earned was utilized for charitable purpose, as held by the Hon'ble Division Benh of Madras High Court in L.P.A.No.210 of 1999 in the case of K.G.Hospital.

Moreover, in the case of K.G.Hospital, though an exemption was granted in the year with effect from 01.04.1980 which was withdrawn later on, the Hon'ble Division Bench held that when the hospital has not proved that the profit earned by it are spent for charitable purpose, it is not entitled for exemption.



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In the present case too, you have not produced any proof to show that you are rendering free treatment or the profits earned by you is spent for charitable purpose. Therefore, you are not entitled to claim exemption from payment of property tax to your hospital premises under Section 123(e) of the Coimbatore City Municipal Corporation Act, 1981.

5. The learned Senior Counsel for the petitioner submitted that since the petitioner is running a Charitable Hospital as its object is only to do charity, the petitioner is entitled for exemption from payment of property tax under Section 123(e) of the Coimbatore City Municipal Corporation Act, 1981 which has been wrongly denied to the petitioner vide impugned order.

6. The learned Senior Counsel for the petitioner has also drawn attention to the following cases:

- i. PSG & Sons Charities Vs. City Municipal (1997) 1 CTC 331,
- ii. Queen's Educational Society Vs. Commissioner of Income Tax (2015) 8 SCC 47.
- iii. Chief Commissioner of Income Tax Vs. St. Peter's Educational Society, (2016) 14 SCC 306.
- iv. Govel Trust Running Aravind Eye Hospital, Madurai Vs. The Commissioner Coimbatore City Municipal Corporation, Coimbatore and Others, LNINLORD 2019 MAD 15745.
- v. Sundaram Medical Foundation, Rep by its Trustee and Director-Administration, T.N.P. Durai Vs. Commissioner, Corporation of Chennai and Others, (2017) 7 MLJ 802.
- vi. Velammal Educational Trust Vs. State of Tamil Nadu and Others, 2017 SCC OnLine Mad 37345.
- vii. Sundaram Medical Foundation Vs. Chennai Metro Water Supply and Sewerage Board and others, W.A.No.1426 & 1427 of 2021, dated 19.05.2021.
- viii. M/s. The New Delhi Holy Family Hospital Society Vs. Municipal Corporation of Delhi, 1983 SCC OnLine Del 151.
- ix. S.N.R. Sons Charitable Trust, Coimbatore Vs. The Commissioner, Coimbatore City Municipal Corporation, Coimbatore, 1992 SCC OnLine Mad 247.



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- x. Society of Jesus and Another Vs. Bangalore Mahanagar Palike and Others, ILR 2002 KAR 94.
- xi. Christian Medical College, Vellore Association Vs. The Government of Tamil Nadu and others, Manu/TN/7884/2021

7. The learned Senior Counsel for the petitioner has drawn the attention to the recent decision of the learned Single Judge of this Court in the case of Parivar Seva Sanstha v. The Commissioner, The Corporation of Chennai in W.P.No.32041 of 2019, dated 29.10.2020.

8. The learned Senior Counsel also drew attention to several paragraphs from the said decision and submitted that the learned Single Judge of this Court has concluded that though profit earning should not be the dominant object of the institution, there is no bar to it being a mere incident for its operations. To hold that there should be a bar on the earning of profits would only serve to make the institution unviable.

9. The learned Senior Counsel also brought out the distinction between the provisions of the Delhi Municipal Corporation Act, 1957 and Coimbatore City Municipal Corporation Act, 1981. A reference was made to paragraph 34 of the decision which reads as follows:

"34. Though profit earning should not be the dominant object of the institution, there is no bar to it being a mere incident of its operations. To hold that there should be a bar on the earning of profits would only serve to make the institution unviable. The provision for exemption in the Delhi Act specifically provides for this situation in the imposition of the condition that 'such society is supported wholly or in part by voluntary contributions, (and) applies its profits, if any, or other income in promoting its objectives and does not pay any dividend or bonus to its members'. The Madras enactment does not employ the same phrase and extends the exemption to all 'charitable hospitals and dispensaries but not including residential quarters attached thereto'. However, the use of the word 'charitable' would necessitate an examination of established parametres such as the following, among other tests: (i) the activity engaged in by the entity in question (ii) whether such activity is generally understood to fall



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within the ambit of public service and social good (iii) whether other statutory authorities, including income-tax have recognised the petitioner as being engaged in, and rendering charitable activities (iv) whether the dominant object of the institution is to render service or to earn profit (v) if the activity does generate profit or the institution earns income from other sources, is such profit/net income ploughed back into the institution or diverted to other avenues/individuals."

10. The learned Senior Counsel for the petitioner further submits that the petitioner Hospital was exempted from payment of property tax till 1980 under Section 83(1)(e) of the Tamil Nadu District Municipalities Act, 1920. However, in the year 1981, after the Coimbatore was re-organised as a Corporation, under the Coimbatore City Municipal Corporation Act, 1981, the exemption was sought to be denied. It is submitted that the petitioner was made to pay property tax at the rate of Rs.8924/- per half year and the petitioner expressed its inability to pay such tax and gave its representation before the respondents stating that they were entitled for the benefit of tax exemption under the new dispensation of the Corporation or under the new act as given in the previous years under Section 83(1)(e) of the Tamil Nadu District Municipalities Act, 1920. The first respondent had raised the tax rate from Rs.8924/- to Rs.22460/- per half year.

11. Aggrieved by the said order, the petitioner filed an appeal in T.A.No.431 of 1993 before the Taxation Appellate Tribunal. The Taxation Appellate Tribunal passed an order dated 25.04.1995 and gave liberty to the petitioner to file appropriate application by filing relevant documents and statements. The Taxation Appellate Tribunal has also given a direction to the respondent to examine as to whether the petitioner is entitled for exemption from payment of property tax and pass appropriate orders.

12. The learned Senior Counsel further submitted that the activity undertaken by the petitioner cannot be compared with the activity undertaken by the Corporate hospitals. It is submitted that the petitioner collects contributions from the in-patients who can afford to pay for the treatment. It is submitted that the petitioner also receives contributions made by the Missionaries of Charities viz., Nazareth Convent, St.Mary's Convent, Convent of our lady of Velanganni and St.John de Britto Convent.



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13. The learned Senior Counsel for the petitioner further submits that the surplus income which is generated by the petitioner is ploughed back for the services rendered by the petitioner and therefore, the petitioner cannot be made liable to tax.

14. The learned counsel for the petitioner has drawn attention to the Certificate issued to the petitioner under Income Tax Act which according to him confirms that the petitioner is a charitable hospital and since the said expression is not defined under the Coimbatore City Municipal Corporation Act, the certificate of registration granted under Section 12A of the Income Tax Act has to be recognised for the purpose of grant of exemption. It is further submitted that the hospital is 174 years old hospital and is engaged only in providing charitable premises.

15. Opposing the prayer, the learned counsel for the respondents submits that the hospital premises of the petitioner was inspected and it was found that the petitioner was collecting fees for treating patients as inpatient and outpatient and therefore, it cannot be stated that the petitioner was a charitable hospital for the purpose of Section 123(e) of the Coimbatore City Municipal Corporation Act, 1981.

16. The learned counsel for the respondent has drawn the attention to a recent decision of a learned Single Judge of this Court rendered in the case of Sundaram Medical Foundation vs. Chennai Metro Water Supply & Sewerage Board, in W.P.Nos.20992 & 20993 of 2018, vide dated 26.04.2021, wherein, it was held as follows:-

"40.The above facts are not controverted and this Court has considered the online web portal of the writ petitioner / Sundaram Medical Foundation and the facts were extracted in aforementioned paragraphs. Perusal of the above details regarding the charges collected from the patients, any prudent man will form an opinion that there is no reason to believe that the petitioner is running a Charitable Medical Institution by dominantly providing free medical services to the poor, needy and deserving citizen of this great Nation. It is to be remembered that any institution predominantly providing medical services at free of cost to the poor, needy and deserving people, alone, may be granted with the benefit of exemption. The character of predominant services to be interpreted as



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if the services provided to poor, needy and deserving are not only provided to such poor, needy and deserving people, and they must have free access to such charitable medical institutions for the purpose of taking treatment. Thus, it is to be construed as poor, needy and deserving patients / citizen of this great Nation, must have free access to such Charitable institution and such institution should not refuse admission in the hospital at any circumstances to the poor.

41. In the absence of any such free access to poor, needy and deserving patients in charitable medical institution, one cannot come to the conclusion that such institutions are doing charity to poor, needy and deserving for the purpose of seeking exemption of property tax under the Statute. Tax being Revenue of the State, strict interpretation of law is not only imminent, but a constitutional mandate. Therefore, the benefit of doubt must always be extended to the Revenue and not to the individual as claimed by the petitioner.

44. In fact, petitioners are predominantly providing services to rich and affluent. Thus, this Court is inclined to draw factual inference that the petitioner / Medical Foundation is providing free medical services to the poor, needy and deserving people restrictedly and to the limited extent for the purpose of retaining the free land allotted by the Government in G.O.Ms.No.460, Revenue dated 10.04.1992. The value of the land in Anna Nagar Location is running in several crores. Such a valuable land is allotted at free of cost in favour of the petitioner to run the medical institution and under the guise of maintenance of building and other infrastructures, the petitioners are collecting huge charges from the patients and providing least services to the poor and needy. Thus, such factors are to be inspected by the Government for the purpose of ascertaining, whether the Charitable institutions are functioning for the welfare of the poor, needy and deserving people and in the event of any contra facts, all suitable actions are to be initiated.



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45.As far as the provisions of the Chennai City Municipal Corporation Act is concerned, it is unambiguous that Charitable Hospitals are eligible for exemption. However, the character of the Charitable Hospitals are to be scrutinized as the loss of Revenue is detrimental to the interest of public at large. Thus, the authorities are bound to be cautious, while scrutinizing all material facts and circumstances, for taking a decision. In the present case, the respondents have conducted inspection regarding the functioning of the petitioner / Medical Foundation and formed an opinion that they are providing free Medical services to 15% of the patients and they are collecting charges from 85% and further, the charges collected from the patients are comparable on par with the established reputed Hospitals in Chennai City."

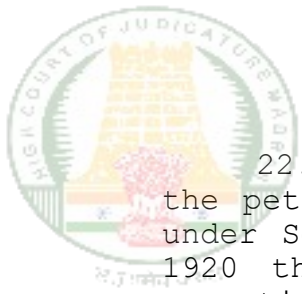
17. I have considered the arguments advanced by the learned Senior Counsel for the petitioner and the learned counsel for the respondents. I have perused the case laws relied on by the learned Senior Counsel for the petitioner and the learned counsel for the respondent.

18. The Immaculate Conception Convent Hospital was established in the year 1879. After the Tamil Nadu District Municipalities Act, 1920 was enacted, the said hospital would have been governed by the provisions of the said Act.

19. Later, the petitioner was organised and registered as a society under the provisions of the Tamil Nadu Societies Registration Act, 1860 in the year 1973. It was not registered as a trust under the provisions of the Indian Trusts Act, 1882. The petitioner took over the hospital and the said hospital thus came under the purview of the petitioner society.

20. After 1920, levy of property tax on the subject building would have been governed by the provisions of the Tamil Nadu District Municipalities Act, 1920.

21. In 1981, when the Coimbatore City Municipal Corporation Act, 1981 was enacted under which aslo lands and buildings of Charitable Hospitals and Dispensaries were exempted from payment of property tax.



22. It appears that till about 1981, the subject building of the petitioner was given exemption from payment of property tax under Section 83 of the Tamil Nadu District Municipalities Act, 1920 though there are no records to indicate the same. The exemption was sought to be denied by the first respondent Commissioner of Municipal Corporation vide communication/ letter dated 12.11.1981.

23. The first respondent Commissioner of Municipal Corporation stated that there was no provision in the Coimbatore City Municipal Corporation Act, 1981 for granting exemption to the buildings of the petitioner.

24. The first respondent thus sought to impose property tax under the provisions of the Coimbatore City Municipal Corporation Act, 1981, by fixing the annual value of the land in year 1981. The petitioner challenged the same before the Taxation Appellate Tribunal (T.A.T.) in T.A.No.431 of 1993.

25. By an order dated 25.04.1995, the Taxation Appellate Tribunal had partially granted relief to the petitioner by stating that the petitioner will have to file appropriate application before the first respondent to justify its claims for exemption under the provisions of the Coimbatore City Municipal Corporation Act, 1981.

26. The petitioner appears to have filed an application pursuant to the aforesaid order dated 25.04.1995 of the T.A.T. According to the petitioner, the said application is still pending before the first respondent. On the other hand, the first respondent in the counter has stated that the said application was rejected. However, details of orders have not been furnished before this Court.

27. The petitioner later received a demand notice dated 08.07.2009 from the second respondent. The petitioner was called upon to pay a sum of Rs.6,59,876/- as property tax for the period between 1998-99 to 2009-10.

28. The petitioner thereafter received another demand notice dated 09.01.2019 from the second respondent. The petitioner was called upon to pay a sum of Rs.13,60,636/- as property tax up to the date of demand. There are however no details of period for which the aforesaid amount was demanded.

29. Section 123(e) of the Coimbatore City Municipal Corporation Act, 1981 is pari materia with Section 101(e) of the Chennai City Municipal Corporation Act, 1919 and Section 83 of the Tamil Nadu District Municipalities Act, 1920. These



provisions exempts "Charitable Hospital and Dispensaries" from payment of property tax. These provisions are reproduced below:-

| Chennai City<br>Municipal<br>Corporation Act,<br>1919                                                                                                                                                                                                                    | Tamil Nadu District<br>Municipalities Act,<br>1920                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | Coimbatore City<br>Municipal<br>Corporation Act,<br>1981                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>101. General exemptions. --- The following buildings and lands shall be exempt from the property tax :--</p> <p>(a). ....</p> <p>(b). ....</p> <p>.....</p> <p>(e) charitable hospitals and dispensaries but not including residential quarters attached thereto;</p> | <p>83. General exemptions.- (1) The following buildings and lands shall be exempt from the property tax :-</p> <p>(a). ....</p> <p>(b). ....</p> <p>.....</p> <p>(e) charitable hospitals and dispensaries;</p> <p>Provided that nothing contained in clauses (a), (c) and (e) shall be deemed to exempt from property tax any building or land for which rent is payable by the person or persons using the same for the purposes referred to in the said clauses.]</p> <p>Explanation .- The exemption granted under this section shall not extend to residential quarters attached to schools and colleges not being hostels or to residential quarters attached to hospitals, dispensaries and libraries.</p> | <p>123. General exemption from property tax.- The following buildings and lands shall be exempt from the property tax -</p> <p>(a). ....</p> <p>(b). ....</p> <p>.....</p> <p>(e). charitable hospitals and dispensaries but not including residential quarters attached thereto;</p> |



30. The expression "Charitable Hospitals and Dispensaries" has not been defined in any of these enactments. The word "Charity" means relief to poor. The general meaning for the word "Charity" is generosity and helpfulness, especially towards the need or suffering. An institution engaged in relief of the poor, charitable organization and dedicated to the General Public purpose, more specifically, for the benefit of needy people, who cannot pay for services can be said to be charitable institutions.

31. The first attempt to define the "Charity" under English law for legal purpose was contained in the Statute (43 Eliz., c.4) of 1601. [see "Tax Laws & Charity authored by Dr.R.Gupta & Anita Goel, Jain Brothers, 873, East Park Road, New Delhi - 5 in 1973"].

32. Section 2 of the Charitable Endowments Act, 1890 defines the expression "Charitable Purpose" as follows:-

"Charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility, but does not include a purpose which relates exclusively to religious teaching or worship."

33. The expression "Charitable Purpose" has also been defined in Section 2(15) of the Income Tax Act, 1961. Section 2 (15) of the Income Tax Act, 1961 reads as under:-

2(15) "Charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility.

34. Section 92 of the Civil Procedure Code uses the expression "Public Purposes of a Charitable or Religious Nature". It reads as under:-

92. Public charities.-(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the



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Advocate-General, or two or more persons having an interest in the trust and having obtained the leave of the Court, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree:-

- (a) removing any trustee;
- (b) appointing a new trustee;
- (c) vesting any property in a trustee;
- (cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;
- (d) directing accounts and inquiries;
- (e) declaring what proportion of the trust property or of the interest therein shall be allocated to any particular object of the trust;
- (f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;
- (g) settling a scheme; or
- (h) granting such further or other relief as the nature of the case may require.

(2) Save as provided by the Religious Endowments Act, 1863 (XX of 1863), or by any corresponding law in force in the territories which, immediately before the 1st November, 1956, were comprised in Part B States, no suit claiming any of the reliefs specified in sub-section (1) shall be instituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.

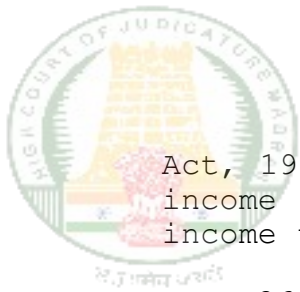
(3) The Court may alter the original purposes of an express or constructive trust created for public purposes of a charitable or religious nature and allow the property or income of such trust or any portion thereof to be applied cy pres in one or more of the following circumstances, namely :-



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- (a) where the original purposes of the trust, in whole or in part,—
  - i. have been, as far as may be, fulfilled; or
  - ii. cannot be carried out at all, or cannot be carried out according to the directions given in the instrument creating the trust or, where there is no such instrument, according to the spirit of the trust; or
- (b) where the original purposes of the trust provide a use for a part only of the property available by virtue of the trust; or
- (c) where the property available by virtue of the trust and other property applicable for similar purposes can be more effectively used in conjunction with, and to that end can suitably be made applicable to any other purpose, regard being had to the spirit of the trust and its applicability to common purposes; or
- (d) where the original purposes, in whole or in part, were laid down by reference to an area which then was, but has since ceased to be, a unit for such purposes; or
- (e) where the original purposes, in whole or in part, have, since they were laid down,—
  - i. been adequately provided for by other means, or
  - ii. ceased, as being useless or harmful to the community, or
  - iii. ceased to be, in law, charitable, or
  - iv. ceased in any other way to provide a suitable and effective method of using the property available by virtue of the trust, regard being had to the spirit of the trust.

35. Section 10(22A) of the Income Tax Act, 1961 was inserted with effect from 02.09.1970. The said provision was however later deleted with effect from 01.04.1999 vide Finance (No. 2)



Act, 1998. Under Section 10(22A) of the Income Tax Act, 1961, an income of a "Medical Institution" was exempt from payment of income tax.

36. Section 10(22A) of the Income Tax Act, 1961 prior to its deletion read as under:-

#### CHAPTER III

##### INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

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-

- (1) .....
- (2) .....
- .....

(22A) any income of a hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit.

37. This exemption was available to hospital or other institution existing solely for philanthropic purposes and not for purposes of profit. While deleting Section 10(22A) from the Income Tax Act, 1961, Finance (No.2) Act, 1998 also inserted Section 10(23C)(iiia) with effect from 01.04.1999. The aforesaid provision is still there in the Income Tax Act, 1961. It reads as under:-

#### CHAPTER III

##### INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME

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-

- (1) .....
- (2) .....
- .....

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

- (i) .....
- (ii) .....
- .....



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(iiiic):- any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, and which is wholly or substantially financed by the Government.

38. Thus, the exemption under the Income Tax Act, 1961 is confined to hospitals existing solely for philanthropic purposes and not for the purpose of profit and which is wholly or substantially financed by the Government.

39. Rule 2BBB of the Income Tax Rules, 1962 prescribes the percentage of Government grant for considering a University or a Hospital etc. as substantially financed by the Government for the purposes of Clause (23C) to Section 10 of the Income Tax Act, 1961.

40. Till about 1998, a hospital satisfying the above requirement would have been exempted from income tax under Section 10(22A) and later under Section 10(23C)(iiiic) of the Income Tax Act, 1961. There would have no necessity for claiming exemption from payment of income tax as a "Charitable Institution" if the petitioner satisfied the above requirements of these provisions.

41. A parallel exemption from the payment of Income Tax is available under Section 11 and 12, and 12A of the Income Tax Act, 1961 to such Charitable Institutions. Donations to such Charitable Institutions qualify for tax relief to the donors under Section 80G of the Income Tax Act, 1961 in the form of Section 80G Certificate issued by Charitable Institution.

42. The Allahabad High Court in Secretary of State for India Vs. Radhaswami Satsang Sabha, (1945) 13 I.T.R. 520 held that the registration of a charity under the Societies Registration Act, 1860 is a prima facie evidence of valid dedication.

43. In Inland Revenue Commissioners Vs. Glasgow Police Athletic Association, [1953] AC 380 (HL); [1953] 1 All ER 747 (HL), Lord Normand held as under: -

If any association has two purposes, one charitable and the other non-charitable, and if the two purposes are such and so related that the non-charitable purpose cannot be regarded as



incidental to the other, the Association is not a body established for charitable purposes only.

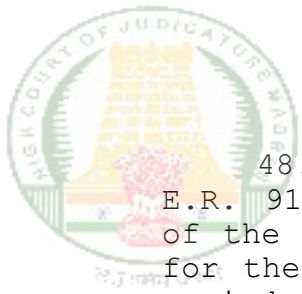
44. In the above case, Lord Cohen laid down certain principles deducible from the cases as follows:-

- i. If the main purpose of the body of persons is charitable and the only elements in its constitution and operations which are non-charitable are merely incidental to that main purpose, that body of persons is a charity notwithstanding the presence of those elements: Royal College of Surgeons v. National Provincial Bank [1952] A.C. 631 (H.L.).
- ii. If, however, a non-charitable abject is itself one of the purposes of the body of persons and is not merely incidental to the charitable purpose, the body of persons is not a body of persons formed for charitable purposes only, within the meaning of the Income Tax Acts: Oxford Group v. Inland Revenue Commissioners [1949] 2 All.E.R 537 (C.A.).
- iii. If a substantial part of the objects of the body of persons is to benefit its own members, the body of persons is not established for charitable purposes only: Inland Revenue Commissioners v. Yorkshire Agricultural Society [1928] 1 K.B. 611.

45. In I.R.C. Vs. Peeblesshire Nursing Association, (1927) 11 T.C.335, it was held that it is not necessarily inconsistent with the object of a purely charitable association to include in its organisation some department intended to be run at a profit so as to contribute to the accomplishment of the association's charitable purpose.

46. In St.Andrew's Hospital Vs. Sheersmith, (1887) 2 T.C.219, it was held that it may not be correct to say that where the surplus of fees received from the patients are utilised for the purpose of extension and improvement of a hospital, it would not be for charitable purposes.

47. In Needham Vs. Bowers, (1888) 2 T.C. 360, it was held that where an institution for the insane in which some patients paid sufficiently well for all the inmates to be supported without payment and which was, therefore, self-supporting is not charitable although it was founded by charitable donations and made no profit.



48. In *Le Cras Vs. Perpetual Trustee Co. Ltd.*, (1967) 3 All. E.R. 915 (P.C.), a testator bequeathed by his will two-thirds of the income of his residuary estate to the Sisters of Charity for the general purposes of St. Vincent's Private Hospital for a period of two hundred years or for so long as they should conduct the Hospital. The private hospital was having 82 beds and close to a public hospital which had 500 beds. This was also conducted by the Sisters of Charity who were a voluntary association of women devoting themselves without reward. The reason for establishing the private hospital was to relieve the pressing demand of the public for admission to the general hospital. Charges were made at the private hospital for beds, it provided accommodation and medical treatment in greater privacy than would be possible in a general hospital. There were surpluses of income over expenditure but the private hospital was not conducted for profit. The surpluses were used to contribute to the maintenance of the general hospital and for the general purposes of the Sisters of Charity.

49. In that context, it was held that the gift of income to the Sisters of Charity for the general purposes of the private hospital was a valid charitable gift. Therefore, what prevailed in the mind of Court is the dominant purpose for which the hospital was being run. However, in the present case, the Article of Association does not reveal the same.

50. In *Re Smith's Will Trusts : Barclay's Bank Ltd. Vs. Mercantile bank Limited*, (1962) 2 All E.R. 563 (C.A.), it was held that although a "hospital" in its wider meaning was capable of covering institutions such as private nursing homes, which were run for profit and thus were not charitable, yet, having regard to the time when the bequest was made, the testator used the term referring only to voluntary hospitals which were charitable institutions, as their funds were applied to the relief of the sick.

51. In *Maulana Mohammad Ibrahim Riza Malak Vs. C.I.T.*, AIR 1930 P.C. 226, it was held as under:-

Some property was vested in the assessed as the head of Dawood Borah tribe. The profits from the property were to be treated as part of the income of the community. On reference to the trust-deeds it was found that some of the purposes were not of a religious or charitable nature. It was held that the income derived from the property was not entitled to exemption under Section 4(3)(i) of the Act.

52. In *the East India Industries (Madras) Private Ltd. Vs. C.I.T.*, (1967) 65 I.T.R. 611 (S.C.) : A.I.R. 1967 S.C. 1554, the



East India Industries (Madras) Private Limited paid a donation of Rs.7,500/- to Agastyar Trust and claimed exemption from payment of tax under Section 15B of the Indian Income Tax Act, 1922.

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53. The said Trust was established for various objects, one of which was to manufacture, buy, sell and distribute pharmaceutical, medicinal, chemical and other preparations and other articles. The objects included several charitable and religious purposes. The last Cause of paragraph 2 of the Trust Deed provided that the objects shall be independent of each other and that the trustees shall have discretion to apply the property of the trust in carrying out all or any of such objects of the trust as the trustees may deem fit. Clause 5(i) provided that 'the trustees shall have power to apply the whole or any part of the trust property or fund whether capital or income towards all or any of the purposes of the trust provided any property or money held in special trust shall be applied only for that purpose and not otherwise.'

54. On the construction of the trust deed, the Supreme Court held that the deed gave absolute power of selection to the trustees to choose between charitable and non-charitable objects of the trust for spending the entire income of the trust properties. The property of the trust was not held wholly for charitable and religious purposes. Hence, the donation did not qualify for exemption.

55. In East India Industries (Madras) Private Ltd. Vs. C.I.T., (1967) 65 I.T.R. 611 (S.C.) : A.I.R. 1967 S.C. 1554, the Hon'ble Supreme Court followed the Privy Council judgment in the Maulana Mohammad Ibrahim Riza Malak case referred to supra and the observations of Lawrence L. J., in Keren Kaymeth Le Jisroel Ltd. Vs. I.R.C., (1932) 17 Tax Cases 27, 40, 41 : (1932) AC 650 and held that if there are several objects of the trust, some of which are charitable and some non-charitable, and the trustees have unfettered discretion to apply the income to any of the object, the whole trust would fail and no part of the income would be exempt from tax.

56. In Municipal Corporation of Hyderabad Vs Hyderabad Race Club, (1986) 4 SCC 696 : AIR 1987 SC 92, the Hon'ble Supreme Court held that the test to apply is to seek an answer to the question; "To what use is, the property put or for what purpose is the property put and to ascertain whether such occupation or user is for a "charitable purpose". This decision was rendered in the context of Section 202(1) (b) of the Hyderabad Municipal Corporation Act, 1955. The Court in para 4 held as follows:-



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"In the present case the occupation and user is to conduct horse races and to train horses for racing. Unless it can be posited that conducting of horse races is a charitable purpose, it cannot be concluded that the exemption envisioned by Section 202(1)(b) is attracted. And even if one were to take the most "charitable" view as regards the meaning and content of the expression "charitable", conducting of horse races or training of horses for the races cannot be said to be a charitable activity. The expression charitable in the context of Section 202(1)(b) means a benevolent activity calculated to benefit the poor or the deprived. Surely horse racing is not such a benevolent activity, however charitable a view one takes. It has also to be emphasized that it must be the very activity which is carried on the property which must be charitable and not the application of the income of such activity.

57. Hon'ble Supreme Court in Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, AIR 1980 SC 387 discussed the troubling issue as follows:-

15. We must then proceed to consider what is the meaning of the requirement that where the purpose of a trust or institution is advancement of an object of general public utility, such purpose must not involve the carrying on of any activity for profit. The question that is necessary to be asked for this purpose is as to when can the purpose of a trust or institution be said to involve the carrying on of any activity for profit. The word "involve" according to the Shorter Oxford Dictionary means "to enwrap in anything, to enfold or envelop; to contain or imply". The activity for profit must, therefore, be intertwined or wrapped up with or implied in the purpose of the trust or institution or in other words it must be an integral part of such purpose. But the question again is what do we understand by these verbal labels or formulae; what is it precisely that they mean? Now there are two possible ways of looking at this problem of construction. One interpretation is that according to the definition what is necessary is that the purpose must be of such a nature that it involves the carrying on of any activity for profit in the



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sense that it cannot be achieved without carrying on an activity for profit. On this view, if the purpose can be achieved without the trust or institution engaging itself in an activity for profit, it cannot be said that the purpose involves the carrying on of an activity for profit. Take for example a case where a trust or institution is established for promotion of sports without setting out any specific mode by which this purpose is intended to be achieved. Now obviously promotion of sports can be achieved by organising cricket matches on free admission or no profit no loss basis and equally it can be achieved by organising cricket matches with the predominant object of earning profit. Can it be said in such a case that the purpose of the trust or institution does not involve the carrying on of an activity for profit, because promotion of sports can be done without engaging in an activity for profit. If this interpretation were correct, it would be the easiest thing for a trust or institution not to mention in its constitution as to how the purpose for which it is established shall be carried out and then engage itself in an activity for profit in the course of actually carrying out of such purpose and thereby avoid liability to tax. That would be too narrow an interpretation which would defeat the object of introducing the words "not involving the carrying on of any activity for profit". We cannot accept such a construction which emasculates these last concluding words and renders them meaningless and ineffectual.

58. The Hon'ble Supreme Court in the above case answered the issue as follows:-

16. The other interpretation is to see whether the purpose of the trust or institution in fact involves the carrying on of an activity for profit or in other words whether an activity for profit is actually carried on as an integral part of the purpose or to use the words of Chandrachud, J, as he then was in Dharmodayam case [(1977) 4 SCC 75 : 1977 SCC (Tax) 517 : (1977) 109 ITR 527] , "as a matter of advancement of the purpose". There must be an activity for profit and it must be involved in carrying out the purpose of the trust or institution or to put it differently, it must be



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carried on in order to advance the purpose or in the course of carrying out the purpose of the trust or institution. It is then that the inhibition of the exclusionary clause would be attracted. This appears to us to be a more plausible construction which gives meaning and effect to the last concluding words added by the legislature and we prefer to accept it. Of course, there is one qualification which must be mentioned here and it is that if the constitution of a trust or institution expressly provides that the purpose shall be carried out by engaging in an activity which has a predominant profit motive, as, for example, where the purpose is specifically stated to be promotion of sports by holding cricket matches on commercial lines with a view to making profit, there would be no scope for controversy, because the purpose would, on the face of it, involve carrying on of an activity for profit and it would be non-charitable even though no activity for profit is actually carried on or, in the example given, no cricket matches are in fact organised.

59. The Hon'ble Supreme Court in *Municipal Corporation of Delhi Vs. Children Book Trust*, (1992) 3 SCC 390 considered the grant of exemption to lands and buildings occupied and used by a society for charitable purposes under Section 115(4)(a) of the Delhi Municipal Corporation Act, 1957. The said decision was rendered in the context of Section 115(4) of the Delhi Municipal Corporation Act, 1957 which reads as under:-

115 - Premises in which property taxes are to be levied.

(1) .....

.....

(4) Save and otherwise provide in this Act, the General Tax shall be levied in respect of all lands and buildings in Delhi except

(a) lands and buildings or portions of lands and buildings exclusively occupied and used for public worship or by society or body for charitable purposes provided: that such society is supported wholly or in part by voluntary contribution, applies its profit, if any, or other income in promoting its objections and does not pay any dividend or bonus to its members. "





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voluntary contribution cannot amount to a compulsive donation. If the donor, in order to gain an advantage or benefit, if he apprehends that but for the contribution some adverse consequence would follow, makes a donation certainly it ceases to be voluntary.

84. Therefore, we conclude that the test to be applied is not merely qualitative but quantitative as well.

85. The last aspects of the matter is utilisation of the income in promoting its objects and not paying any dividend or bonus to its members. The learned counsel for the appellant and the intervener would urge that on the basis of Cane (Valuation Officer) and Another (supra) (1961 (2) Queen's Bench Division 89) the position in the instant case is the same. At Page 121 the following observation is found:

"One, I think, that enriches the corporation itself or relieves it of a burden or furthers its objects or powers."

61. Thus, the following criteria has to be kept in mind:-

- i. The dominant objectives of the society should be charitable and not to earn profit.
- ii. The institution should be engaged in the dissemination of education and such activity must be in the nature of public health or philanthropy.
- iii. The entity seeking exemption must be supported wholly or in part by voluntary contribution.
- iv. The excess/surplus income must be utilised for the promotion of objectives and must not be distributed as dividend, bonus or profit to its members or diverted elsewhere.

62. This decision was taken note of by this Court in Parivar Seva Sanstha case referred to supra and distinguished by placing reliance on the decision of the Delhi High Court in W.P.(c). No.2212 of 2008 vide order dated 18.05.2007. The Allahabad High Court in Sherwani Charitable Trust Vs. C.I.T., (1968) 69 I.T.R. 750 (All) had held that "It is clear from the third part of the preamble to the trust deed that the trustees themselves have definitely stated that the purpose of creating the trust was to



utilise the income of the trust property "partly on charitable objects and partly towards the maintenance of the members of the donors family". Clause 2(B) of the trust deed clearly shows that one-third of the income from the trust property was to be spent on the maintenance and support of the members of the Shervani family and relatives. The trustees have also the discretion of supporting people whom they considered deserving. It is not clear from the trust deed as to in what sense the persons have to be deserving before the trustees could exercise their discretion and give them some amount from the one-third of the income secured for the maintenance and support of the Shervani family. It is clear that the qualification to deserve such support has not been stated to be indigence or poverty. The trustees have absolute discretion unqualified by any considerations of indigence or charity in granting sums in their discretion to such persons as they choose. The word "those" is comprehensive enough to include any person and expression "deserving such support" can admit of the discretion being exercised on considerations not necessarily charitable".

63. In *Society of Jesus and Another Vs. Bangalore Mahanagar Palike and Others*, ILR 2002 KAR 94 :2001 SCC OnLine Kar 538, the Karnataka High Court while dealing with a similar situation held as follows:-

7. .... That does not mean that for the purpose of running a Charitable Hospital/dispensary, if the facilities in the hospital are made available to the affluent and rich patients and if they are charged for the services rendered with a view to organise funds required to such a hospital, such a hospital will not lose the characteristic of a Charitable Hospital/dispensary. .... Therefore, if the object of establishing and running a hospital and its continued existence, is to give medical aid to the poor and the deserving either totally free or to a large extent subsidised, if such a hospital collects substantial charges from the affluent and rich patients out of some portion of the facilities available in the hospital extended to them, in my view, as observed earlier, such hospitals and dispensaries cannot be considered as not charitable hospitals and dispensaries.

64. A Division Bench of this Court in *Municipal Corporation of Coimbatore Vs Govindasamy Naidu Hospital*, 2004 SCC OnLine Mad 220: (2004) 2 CTC 155, dealt with the very same exemption from the payment of property tax under consideration of the present lis within the meaning of Section 83(e) of the Tamil Nadu



District Municipalities Act, 1920 and Section 123(e) of the Coimbatore City Municipal Corporation Act, 1981.

65. The Division Bench referred to decision of the Hon'ble Supreme Court in Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, AIR 1980 SC 387, wherein it was held that the activity involved in carrying out the charitable purpose must not be motivated by a profit objective. It must be undertaken for the purpose of advancement or carrying out the charitable purpose. The Hon'ble Supreme Court held that the predominant activity was for the promotion of Commerce and Trade. The Division Bench held as follows:-

9. We have considered the rival contentions of the parties. Before we proceed to deal with the legal submissions with reference to the relevant provisions of the Act, it would be useful to find out as to whether the plaintiff/respondent has proved its case to the effect that it is a Charitable Institution within the meaning of the Act. A perusal of Exhibit A-12 dated 14.5.1979, which is an application submitted by the plaintiff/respondent discloses several particulars about the hospital. In the said application, Ex.A-12 it is admitted that the details relating to the number of patients, out-patients as well as inpatients who have been treated free of charges or at concessional rates, have not been maintained. The relevant portion is extracted here under:

"At the beginning detailed records about the patients who were treated free or at concessional rates were not maintained. We wanted to avoid unnecessary paper work, expenditure on employment of non-medical personnel, and delay in treatment and discharge of the patients....

There are no standard procedure or guidelines of maintenance of Hospital accounts and patient statistics. We had to learn by trial and error, and we now have detailed statistics. ....

Most patients knowing that the Hospital is run by a Charitable Trust volunteer to pay their fees as donations to the Trust. As long as the amount they pay equal or more than the amount payable as fees to the hospital, we receive their payments as





entity or person should not clothe an institution with a tag of a "Charitable Institution" merely because a portion of the revenue from such economic activity is doled out as a charity for needy and poor. A hybrid form charity is not what is contemplated. The activity has to be charitable to achieve the object of the trust or deed. There cannot be any discrimination between different sections of persons who visit the hospital for treatment. There also cannot be different facilities to those who pay and those who do not pay. If such discrimination exists, it cannot be said a hospital was a charitable hospital.

69. Over a period, the perception of a charitable institution is blurring. New economic entities have mushroomed masquerading as charitable institutions and are getting unintended fiscal incentives from the Government. The tag of charitable institution is being abused to corner unintended fiscal benefit even though such institutions are generating revenue though economic activity and are competing with other entrepreneurs who are driven solely by profit motive.

70. Unless the activities of the petitioner are fully charitable in nature i.e. there is no collection of any fees for the treatment given to the patients, the question of granting and/or extending exemption to the petitioner under Section 123 (e) of the Coimbatore City Municipal Corporation Act, 1981 cannot be countenanced.

71. May be the scale of the operation and revenue of the petitioner may not be comparable with a corporate hospital which have mushroomed and bloomed in the past few decades would not compel the Court to conclude that the petitioner is a "Charitable Hospital".

72. The health and education is primary concern of the State. However, the private entrepreneurs and few institutions having affiliation to religious denomination have come to fill this space as the State is unable to meet the demand for such services. Few institutions have also sprouted purely out of philanthropic and charitable objectives where the donations are received.

73. The facts on record also indicate that the building of the petitioner is of the year 1879 and that the petitioner itself was registered as Society in the year 1973. The objects in the Memorandum of Association of the petitioner's society dated 24.01.1973 indicates that the Society was established to take over the various hospitals including the petitioner hospital, namely Immaculate Conception Convent Hospital and to manage, administer, carry on, conduct hospitals and etc. for the





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specialised, in India or abroad, of the members of the society and other personnel for the purposes of the society, and to meet the extra expenses of the visiting members of the society going abroad, in the course of business or attending specialised and/or refresher courses in India and abroad.

(xviii) .....

(xix) .....

(xx) To start, establish and maintain separate funds:  
For the capital funds consisting of the liquid capital of the society.

For the new programmes, activities and projects of the society.

1. For the repair, maintenance, renovation, alteration or extension of existing buildings and structures, and for the repair and maintenance of machinery, apparatus instruments and tools, medical or otherwise and all other equipment including laboratories and libraries and all other paraphernalia belonging to the institutions of the society and for the replenishment of the old equipment and for the purchase of new ones needed to up date the equipment and requirements o the institutions of the society.
2. A reserve fund for the promotion of the activities of the society including the maintenance and the support of the members of the society, the education and training of personal needed for the purposes of the society.

And to pay into such funds periodically or annually such sums as are possible and to invest the same in approved banks or securities or in any manner authorised by law.

79. Thus, a reading of the objects of the society indicates that the object of the hospital is not purely charitable in nature. The fact that the Memorandum of the Society itself authorises collection of charges from the persons receiving treatment in hospital, nursing school and work rooms indicates that the petitioner's object is not a charitable hospital.

80. In case of a Charitable Institution, there is an absence of quid pro-quo for services. The Charitable Institutions largely depend on the Charity and donations from public to achieve their objects as per the Trust Deed in case of a Charitable Institution or Memorandum of Association in case of a Society. The Charitable Institutions are ordinarily not expected to involve themselves in the generation of income and the



economic activities unless such activity itself is meant for rehabilitating its beneficiaries. Such Institutions sometimes employ physically handicapped persons or mentally challenged persons and destitute and/or other physically challenged persons etc. for the generation of income. Generation of income in such case is incidental to the main activity. Generation of income can be a by-product of the charitable activity. Therefore, there is no merit in the contention of the petitioner that it is a charitable hospital.

81. I am therefore unable to apply to the decision of this Court in Parivar Seva Sanstha Vs. The Commissioner, the Corporation of Chennai, in W.P.No.32041 of 2019, dated 29.10.2020 to the facts of this case.

82. Though few decisions of this Court in PSG & Sons Charities case referred to supra and in Coimbatore Masonic Charity Trust case referred to supra have been cited, they are of no material consequences to the fact of the present case in the light of the above discussion. No documents have been furnished by the petitioner to justify the claim for exemption, so that, the case can be remitted back. In any event, the objects of the society also do not indicate that they are charitable in nature.

83. The decision in Queen's Educational Society case referred to supra rendered in the context of Section 10(23-C) (iii-ad) & (vi) of the Income Tax Act, 1961 is of no relevance to the facts of the present case as it was rendered in the context of the aforesaid provisions. It operates under a different field. The issue there was whether an institution making large profits and ploughs such profits back for purchasing assets for additional institutions was entitled for exemption under Section 10(23-C) (iii-ad) & (vi) of the Income Tax Act, 1961. It was held that such an institution cannot be said to be existing solely for educational purposes. The law was summarized as follows:-

11. Thus, the law common to Sections 10(23-C) (iii-ad) 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.



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- (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 cease to be one existing solely for educational purposes.
- (5) The ultimate test is whether on an overall view of the matter in the assessment year concerned the object is to make profit as opposed to educating persons.

84. The question in the present case is not about making profit. Issue is whether the hospital is a charitable hospital or not. In this case, it cannot be said that the petitioner was a charitable hospital either on admitted facts or based on the registered Memorandum of Association dated 24.01.1973. The subsequent decision of the Hon'ble Supreme Court in St. Peter's Educational Society case referred to supra is also therefore of no relevance to the facts of the present case.

85. When under a similar circumstances the Division Bench of this Court has held this exemption was not available to the said Hospital, it remains inexplicable how a different view can be entertained.

86. Thus, if the objects are distributive, each and every one of the objects must be charitable in order to conclude that the trust might be a valid charity. Same principle is applicable in the case of a building in which medical hospital is being run with a charitable object. Merely because a portion of service is charitable would clothe such hospital with a tag of a charitable hospital to claim exemption. If such hospital is collecting money for the services rendered, it is not entitled to be called as charitable hospital.

87. In the facts of this case, curiously, the then District Collector of Coimbatore has issued a Certificate dated 12.01.1983 certifying that the petitioner was a "Charitable Institution". It is not clear under what circumstances an application came to be filed on 06.12.1982 which prompted the Collector, Coimbatore to issue the aforesaid Certificate to the petitioner.

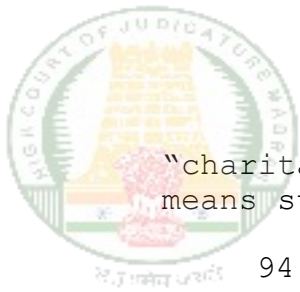
88. A similar Certificate was once again obtained by the petitioner in the year 1986 from the office of the District



89. Copies of these applications are not available for perusal. However, these Certificates were certainly issued to the petitioner after Coimbatore City Municipal Corporation Act, 1981 came into force and after the first respondent Commissioner of Municipal Corporation has issued a communication/ letter dated 12.11.1981 to the petitioner stating that the petitioner was not entitled to exemption from payment of property tax under Section 123(e) of the Coimbatore City Municipal Corporation Act, 1981. It was perhaps obtained for securing the exemption under Section 123(e) of the Coimbatore City Municipal Corporation Act, 1981.

91. Merely because the petitioner is having certain outreach programmes which may be charitable in nature or that a section of patients are given free treatment would not automatically render the petitioner a charitable hospital. It would not mean that an exemption from payment of property tax can be allowed to the petitioner.

93. If the amount are collected for treating the patients and a portion of the amount is used for doing charity, it would not mean that the hospital becomes a charitable hospital. This may be explained with an example. An individual may do a charity out of his earning by contributing the amount for charitable cause, but, such an individual cannot be labelled as a



"charitable person" even though he may be doing charity. It means such a person is doing charity.

94. At best of the act of the petitioner giving free treatment for few poor and needy patients while collecting fees for giving treatment to those patients who can afford is not sufficient to hold the petitioner Charitable Institution / Hospital. Few acts of benevolence and charity should not be construed in such a manner to label such a person as a Charitable Institution.

95. I am therefore in agreement with the word of caution sounded by this Court in Sundaram Medical Foundation The Commissioner Corporation of Chennai, CDJ 2017 MHC 5265 that the authorities are bound to be cautious, while scrutinizing all material facts and circumstances, for taking a decision.

96. I therefore hold the claim for exemption under Section 123(e) of the Coimbatore City Municipal Corporation Act, 1981 by the petitioner is misconceived. Therefore, there are no merits in this Writ Petition.

97. This Writ Petition stands dismissed. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1.The Commissioner,  
Coimbatore City Municipal Corporation,  
City Municipal Corporation Buildings,  
Coimbatore - 641 001.

2.The Assistant Commissioner,  
Central Zone,  
Municipal Corporation of Coimbatore,  
Coimbatore - 641 001.

+2ccs to M/s.Father Xavier Associates, Advocates, Sr.No.17331  
+1cc to Mr.S.Saravanan, Advocate, Sr.No.16969

W.P.No.1639 of 2020 and  
W.M.P.Nos.1913 & 1914 of 2020

SSV(CO)  
RVM(05/04/2022)