

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN
&
THE HONOURABLE MR. JUSTICE ASHOK MENON

THURSDAY, THE 7TH DAY OF DECEMBER 2017/16TH AGRAHAYANA, 1939

ITA.No. 246 of 2015 ()

AGAINST THE ORDER/JUDGMENT IN ITA 179/COCH/2014 of
I.T.A.TRIBUNAL,COCHIN BENCH DATED 06-03-2015

APPELLANT(S) /APPELLANT/APPLICANT :

NORKA ROOTS
NORKA CENTRE, THYCAUD, THIRUVANANTHAPURAM-695 014.

BY ADVS.SRI.P.BALAKRISHNAN (E)
SRI.MOHAN PULIKKAL
SRI.P.P.NARAYANAN
SRI.K.S.MENON (K)

RESPONDENT(S) /RESPONDENT :

THE COMMISSIONER OF INCOME TAX
THIRUVANANTHAPURAM.

R1 BY ADV. SRI.CHRISTOPHER ABRAHAM,
INCOME TAX DEPARTMENT
R1 BY ADV. SRI.K.M.V.PANDALAI, INCOME TAX DEPARTMENT

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON 07-12-
2017, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE-A : COPY OF ORDER DATED 7.3.2005 PASSED BY THE COMMISSIONER OF INCOME TAX.

ANNEXURE-B : COPY OF ORDER DATED 5.5.2006 OF THE INCOME TAX APPELLATE TRIBUNAL IN ITA NO.570/COCH/2005-06.

ANNEXURE-C : COPY OF ORDER DATED 6.2.2007 OF THE COMMISSIONER OF INCOME TAX, TRIVANDRUM.

ANNEXURE-D : COPY OF ORDER OF THE INCOME TAX APPELLATE TRIBUNAL DATED 5.9.2008 IN ITA NO.253/COCH/07.

ANNEXURE-E : COPY OF JUDGMENT DATED 19.3.2009 OF THIS COURT IN ITA NO.31/2009.

ANNEXURE-F : COPY OF ORDER DATED 9.1.2014 OF the COMMISSIONER OF INCOME TAX, THIRUVANANTHAPURAM.

ANNEXURE-G : COPY OF ORDER DATED 6.3.2015 OF the INCOME TAX APPELLATE TRIBUNAL IN ITA NO.179/C/2014.

ANNEXURE-H : COPY OF GOVERNMENT ORDERS IN RESPECT OF NORKA.

ANNEXURE-I : COPY OF NOTE ON THE ACTIVITIES OF THE APPELLANT PRODUCED BEFORE THE COMMISSIONER AND THE TRIBUNAL.

ANNEXURE-J : COPIES OF THE MEMORANDUM AND ARTICLES OF ASSOCIATION OF THE APPELLANT.

//TRUE COPY//

PS TO JUDGE.

K.VINOD CHANDRAN & ASHOK MENON, JJ.

ITA No.246 of 2015

Dated this the 7th day of December, 2017

J U D G M E N T

Vinod Chandran, J.

The appellant herein claims registration as a charitable institution under Section 12A of the Income Tax Act, 1961. This is the third round of litigation, which arises from an order passed, on remand made by a Division Bench of this Court as per Annexure-E judgment. The application, declined the registration so claimed.

2. The learned Judges, at the earlier instance, found that the advancement of any object of general public utility is included in the definition of ‘charitable purpose’ under Section 2(12) of the Act. The object of the appellant organization being promotion of interests of non-resident Keralites; *prima facie*, it was found that they are concerned with the advancement of general public utility. However, the learned Judges did not think it fit to direct registration. The learned Judges directed the Commissioner to verify the source of fund and its utilization to determine whether the efforts of the appellant also were in line with its avowed objective. The appellant was established and had been purportedly carrying on its objects for some years, while the question of registration as a charitable institution was being considered by the

statutory authorities. The Division Bench observed that though verification of accounts is an exercise, carried on every year in the course of assessment after granting registration; it could even be verified in consideration of the registration. The said exercise, carried out by the Commissioner before granting registration, would be necessarily for ascertainment of the source of funds and its application. It was specifically observed that if under cover of promoting interests of Non-resident Keralites, the appellant is engaged in collection of charges from them and making profits, then certainly it is a profitable organization, no matter dividend is not declared by virtue of the registration granted under Section 25 of the Companies Act, 1956. Specific reference was made to unnecessary expenditure, if revealed, being clear evidence of the true purpose of the organization and its object not being complied with. The orders passed on remand by the first appellate authority and confirmed by the Tribunal is challenged before us in appeal.

3. Learned Counsel for the appellant submits that the appellant had been constituted specifically for the purpose of aiding Non-Resident Keralites and had been intervening in their issues, to redress their grievances and provide succour, within the country and even abroad. The appellant has also been carrying on schemes sponsored by the State Government to aid and help those Non-Resident

Keralites who have lost their jobs abroad and come back to the State. The learned Standing Counsel for the Department, however, would contend that whatever schemes that have been implemented as a measure of charity, have been done with the funds provided by the State. The appellant is engaged in certification processes and the like, for which huge amounts were charged from the Non-Residents; a pie of which is not spent for any charity. It is also contended that the objects of the appellant do not disclose that it is an agency constituted to channel the funds of the Government.

4. The Commissioner while verifying the aspects as directed by the Division Bench of this Court had looked at the specific source of funds and expenditure of the appellant over the years from 2006-07 to 2013-14. The Tribunal too has extracted the figures as found in the Commissioner's order, which we do not intend to extract herein again. Suffice it to notice that though the receipts of income from certification, bank interest, project identify card and other income like photostat and cover sales exceeded to Rs.1,00,00,000/- for the financial year 2006-07 and reached Rs.3,33,00,000/- in the year 2012-13, there is no expenditure for charitable purpose made from such income generated. The entire charitable activities carried out by the appellant are out of the funds given by the Government in two Schemes, termed *Saantwanam*

and *Kaarunyam*. The statistics, as revealed from the order of the Tribunal, shows that in the year 2006-07, 100% of the amounts funded by the Government was spent. There was considerable reduction in percentage of expenditure, even out of the Government funds, in the subsequent years. Out of the funds granted by the Government, the expenditure was actually between 28% to 60% in the various subsequent years. It is also pertinent that in the year 2012-13, the total funds spent for charitable purpose out of the funds granted by the Government came to only 28.07% ie: an amount of Rs.1 crore 58 lakhs out of a total government funding of Rs.5 crore 64 lakhs. The administrative expenses for that year came to Rs.1,01,66,559/- which was 30.5% of the total income generated for that year. The programmes funded by the appellant itself came to a paltry amount of Rs.7.5 lakhs which was only 22% of the generated income, the highest percentage in all the years. The own fund programmes from 2009-2010 to 2011-2012 ranged between 2 to 5% of the total income.

5. At the risk of repetition, it is to be reiterated that the monies spent for charitable purposes as noticed by the Commissioner in all the aforesaid years, are mostly out of the funds of the Government. As has been emphasised by the learned Standing Counsel for the Department, very little has been spent, out of the income derived over the years, for

any charitable purpose. The administrative expenses ate up a good percentage and the rest ended up as profits. The learned Counsel for the appellant argued that in implementing the schemes of the Government, there, necessarily, will be administrative charges. But, it cannot be above the amounts actually expended. We find that in all the years, the expenditure has exceeded the amounts spent for charitable purposes.

As per Section 12AA of the Income Tax Act, the Commissioner is empowered to call for documents or information from the assessee, which are necessary to satisfy the authority about the genuineness of the activities of the institution. The Division Bench of this Court had also directed that such verification is to be done to ascertain whether actually the funds generated as income were expended for charitable purposes. It was incumbent upon the appellant to show that it had utilized its income, in advancement of the objectives as stated in the Memorandum of Association. The objectives of the Memorandum of Association have been extracted both in the order of the Commissioner and also of the Tribunal. It does not in fact speak of a constitution, for the purposes of merely canalizing the funds made available by the Government. The charitable activities of the appellant was only in applying the government funds; which too was not spent to the extent made available. As noticed by the Tribunal and the Commissioner, the

charitable activities carried out by the appellant, was only in so far as expending the fund provided by the Government, that too, not to its full extent. The appellant was found to have not applied any part of their net income to the objectives stated in the Memorandum of Association. Thus, the appellant was also found to have not carried out any charitable activity in the relevant years, from the income derived from various activities of facilitation of certification and other matters in respect of the Non-Resident Keralites. The Tribunal found that, though technically, the objects of the appellant comes within the ambit of advancement of an object of general public utility, as described in Section 2(15) as it existed prior to the assessment year 2009-2010, it has not carried out any such charitable activity. This Court does not find any reason to interfere with the orders of the Tribunal or of the Commissioner of Income Tax. Therefore, the Income Tax Appeal stands rejected. The parties are directed to suffer their respective costs.

K.VINOD CHANDRAN
Judge

ASHOK MENON
Judge

jg/dkr xxx