IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 15TH DAY OF OCTOBER 2014

PRESENT

THE HON'BLE DR. JUSTICE K. BHAKTHAVATSALA

AND

THE HON'BLE MR. JUSTICE PRADEEP D.WAINGANKAR

INCOME TAX APPEAL NO.5004/2012

BETWEEN
The Commissioner of Income Tax,
Opp. Civil Hospital,
Dr. Ambedkar Road,
Belgaum. Appellant

(By Sri Y V Raviraj, Adv., for appellant)

AND

Karnataka Lingayat Education Society
(KLE Society),
Lingaraj College Campus,
College Road,
Belgaum. Respondent

(By Sri S Parthasarathy, Sri P Dinesh,
Sri H R Kambiyavar and Sri Gangadhar J M,
Advs., for respondent)

This Income Tax Appeal is filed under Section 260A of the Income Tax Act, 1961, against the order dated 11.8.2011 made in ITA No.149/PNJ/2011 on the file of Income Tax Appellate Tribunal, Panaji Bench, Panaji.

This Appeal coming on for hearing, the same having been heard and reserved for pronouncement of Judgment this day, Dr. Bhakthavatsala, J., delivered the following:

JUDGMENT

This is an Appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961, challenging the order dated 11.8.2011 made in ITA No.149/PNJ/2011 on the file of Income Tax Appellate Tribunal allowing the Appeal filed by the Assessee-KLE Society challenging the order dated 8.7.2011 passed under Section 12AA(3) of the Income Tax Act, 1961 and cancelling the registration of Trust granted under Section 12Aof the Income Tax Act, on the file of Commissioner of Income Tax, at Belgaum.

2. For the purpose of convenience and better understanding, the respondent/KLE Society is hereinafter referred to as 'the Society'.

3. Brief facts of the case leading to the filing of the Appeal by the Revenue may be stated as under:

The Society was registered under the Societies Registration Act, 1860 and also under the Bombay Public Trust Act, 1950. It was also registered as a 'Trust'. under Section 12A of the Income Tax Act (in short, 'the IT Act'). It is a charitable institution established with the primary object of imparting education to all irrespective of the caste, creed or sex with the preference to north Karnataka. The Society was granted an approval under Section 10(23C)(vi) of the IT Act, by order dated 30.12.2008 and the same was in force from the assessment year 2008-09 onwards. Further, as per order dated on 22.6.2009, the Society was approved under Section 80G of the IT Act, for the period from 1.4.2009 to 31.3.2012. During the course of scrutiny of the list of donees as annexed with the returns filed by the Society for the assessment year 2008-09, the Assessing Officer under Section 133(6) of the IT Act called for information from the donors as to their voluntary donations made to the Society. After receipt of the information from the donors, the Assessing Officer was of the opinion that (i) the Society has received donation from the parents/relatives towards admission of students in the educational institutions run by the Society or by the KLE University; (ii) that though the donation was voluntary contribution, it was capitation fee; (iii) that the Society is running students' Hostel and corporate Hospital and the facilities are charged; (iv) that the Hospital is not used for teaching purpose of its own educational institutions; (v) that the activity of the Society is of commercial activity and not charitable, and (vi) therefore the Society is not eligible for exemption under Section 11 of the IT Act.

4. The Revenue issued a show cause notice to the Society under Section 12AA r/w Section 293C of the IT Act,

to show cause as to why the registration granted under Section 12A of the IT Act shall not be cancelled.

5. The Society filed its statement of objections to the show cause notice urging the following grounds:

i. that the Society is carrying on its object of providing education, from Kindergarten to PG degree, by running more than 200 educational institutions, with all facilities, in the State of Karnataka and Maharashtra;

ii. that the Society and the KLE University are two separate and distinct entities having separate registrations with different Government authorities and independent in their functioning and assessed to tax, in their respective capacity;

iii. that the students have been admitted to the Colleges in accordance with the Rules and

Regulations approved by the Government of India through UGC;

iv. that the Society is running large number of educational institutions since 1916, in urban as well as rural areas in various faculties;

v. that the KLE University is an independent body running various colleges for undergraduate, post graduate in medicine, dentistry, pharmacy, Ayurveda and nursing;

vi. that the Society needs huge amount of funds for creating infrastructure and also for providing better facilities for the students in each of the area undertaken by the Society and receive voluntary donations from various persons, societies and similar Trusts and all such receipts are applied for attainment of the main object of charitable purpose of imparting education;

vii. that the voluntary donations received from the various donors are not for the purpose of seeking admission in the Society's Colleges/institutions or any other institutions run by the Society;

viii. that the allegations that the donations received by the Society are towards admission of students to KLE University is baseless and contrary to facts;

ix. that the donations received by the Society have no connection either direct or indirect with the admission of students to KLE University;

x. that under Section 9 of the Karnataka Educational Institutions (Prohibition of Capitation Fees) Act, 1984, to inspect, enquire and investigate as to whether the institution has collected capitation fee in contravention of the provisions of the said Act, is vested with the Government of Karnataka and therefore the enquiry made by the Income Tax Authority under the IT Act is without jurisdiction;

xi. that the voluntary contribution collected by the Society from the donors cannot be said as capitation fee and the benefit of Sections 11 and 12 of the Income Tax Act cannot be denied to the Society;

xii. that the income derived from property held under the Trust refers to the income like interest, rent from property, fees from schools/colleges, but voluntary donations do not arise from the property of the Trust and therefore the income is exempted from taxation;

xiii. that the benefit of Section 11 of the IT Act, in so far as the income derived from property of the Trust on a stipulation that the income shall be applied for the purpose of the object of the

Trust and if 85% of the income is applied for the purpose of object of the Trust, which includes both revenue and capital expenditure, the entire income is exempt from the tax and if the application of the income is short of 75% of the total income, such shortage of application can be accumulated for application over a period of five subsequent years, and thus Section 11 of the IT Act does not refer to the source of income, but prescribes the manner in which the income has to be applied to meet the object of Trust and therefore rejection of the benefit of Section 11 of the IT Act is bad in law;

xiv. that the benefit of Section 11 of the IT Act can be rejected only when the income of the Trust is applied for the purpose other than the objects of the Trust;

xv. that the Hospital called Prabhakar Kore Hospital & Research Centre is being used for teaching purpose viz., Under Graduate and Post Graduate students of JNMC College and the students are attending the said Hospital as a part of training and the Society is using the said Hospital for the benefit of students of Nursing College, for imparting practical education in the Hospital;

xvi. that maintaining of Hostels in the college premises is for the purpose of facilitating students studying in the college and the same is incidental to the object of education and running of the Hostels cannot be said as a commercial activity;

xvii. that since 2006, the Society is having Hostels, in JNMC campus, for the students of the College and when the KLE University came into existence and arrangements had to be made by KLE University for separate Hostels, the Society allowed KLE University to use the Hostels on temporary basis;

xviii. that the income of the Hostels is used for further development of the educational activities only;

xix. that the observation of the Revenue that the income of the Society deriving from the Hospitals and Hostels run by it is a commercial activity and therefore not carrying on its object is incorrect interpretation;

xx. that the Hospitals and Hostels run by the Society are linked with the main object of education;

6. The Revenue considered the above grounds, but by order dated 8.7.2011, the Commissioner of Income Tax, rejected the contentions and held that the activities of the Society are not genuine and not being carried on in accordance with the objects and not remained as charitable

purpose within the meaning of Section 2(15) of the IT Act and the registration hitherto granted to the Society under Section 12AA(3) of the IT Act, was cancelled. This was challenged by the Society before the Appellate Tribunal in ITA No.149/PNJ/2011.

7. The Appellate Tribunal, on considering the grounds urged by the Society and the Revenue has held that the entire impugned order does not reveal that the Society has prejudiced or infringed any of the conditions set out in the registration granted under Section 12A of the IT Act viz., (i) the activities of the institution are not genuine or (ii) the activities of such institution have not been carried on in accordance with objects for which the registration was granted. Therefore, the Tribunal set aside the order of the Revenue and restored the registration of the Society granted under Section 12A of the IT Act. This is impugned in this Appeal by the Revenue.

8. Learned Counsel appearing for the Revenue submits as follows:

i. that some of the donors of the Society verified and examined and found that the donations given to KLE Society were for admissions to various Courses of KLE University and thus there was a direct nexus to the donations collected by the KLE Society and admissions made by KLE University;

ii. that the KLE Society is an umbrella organization and sponsoring Society for KLE University and some of the Institutions originally belong to KLE Society were shifted to KLE University for making KLE University as a deemed University;

iii. that there was a colourable transaction between the Society and the KLE University to make believe that the donations collected by the Society were for admission of students in KLE University;

iv. that there is a direct link between the Management of the Society and that of KLE University;

v. that the Chairman of the Society is also heading the governing body of KLE University and thus 4 out of 15 members of the Board of Management of KLE University belong to that of the Society and apart from that the Chancellor of KLE University is the Chairman of the Society and thus the donations received by the Society is for seeking admission in KLE University and the donation is nothing but capitation fee;

vi. that the Hostels run by the Society is not charitable and therefore it would not qualify the Society as charitable by virtue of proviso to Section 2(15) of the IT Act;

vii. that the Tribunal failed to consider the genuineness of the activity of the Society in the right perspective;

viii. that the Tribunal ought to have held that the assessee indulged in sale of education by collecting donation and carrying on its activity with profit motive and therefore its activities are not charitable in nature and that charitable object cannot depend upon utilisation of profits and the activities carried on by the Society are outside the purview of charitable purpose within the meaning of Section 2(15) of the IT Act;

ix. that the Tribunal erred in not noticing that there is direct nexus to the donation collected by the Society and admissions given to the students of KLE University.

He has cited the following decisions:

i. (2013) 355 ITR 280 (P & H) COMMISSIONER OF INCOME TAX Vs. SURYA EDUCATIONAL & CHARITABLE TRUST;

ii. (2013) 84 CCH 287 PHHC (COMMISSIONER OF INCOME TAX Vs. SAVIOR CHARITABLE TRUST);

iii. (2009) 315 ITR 428 (UTTARAKHAND) (COMMISSIONER OF INCOME TAX Vs. NATIONAL INSTITUTE OF AERONAUTICAL ENGINEERING EDUCATIONAL SOCIETY);

iv. (2014) 98 DTR (ALL) 183 (COMMISSIONER OF INCOME TAX Vs. LUCKNOW DEVELOPMENT AUTHORITY);

v. (1992) 3 SCC 666 (MOHINI JAIN Vs. STATE OF KARNATAKA AND OTHERS);

vi. (2011)7 SCC 179 (INDIAN MEDICAL ASSOCIATION Vs. UNION OF INDIA & OTHERS);

vii. (2005) 6 SCC 537 (P.A. INAMDAR AND OTHERS Vs. STATE OF MAHARASTRA AND OTHERS);

viii. (2003) 6 SCC 697 (ISLAMIC ACADEMY OF EDUCATION & ANR. Vs. STATE OF KARNATAKA AND OTHERS);

ix ITA Nos.5007-12/13 (KAR) (M/S. VISVESVARAYA TECHNOLOGICAL UNIVERSITY

Vs. ASST. COMMISSIONER INCOME TAX) (DATED 20.12.2013);

x. (2008) 20 SOT 353 (HYD) (VODITHALA EDUCATION SOCIETY Vs. ASSISTANT DIRECTOR OF IT);

xi. (2010) 324 ITR 44 (MAD) (P.S. GOVINDASAMY NAIDU AND SONS Vs. ASSISTANT COMMISSIONER OF INCOME TAX);

xii. (1975) 101 ITR 234 (SC) (SOLE TRUSTEE, LOKA SHIKSHANA TRUST Vs. COMMISSIONER OF INCOME TAX);

xiii. (1971) 82 ITR 540 (SC) (COMMISSIONER OF INCOME TAX Vs. DURGA PRASAD MORE);

xiv. (1995) 214 ITR 801 (SC) (SUMATI DAYAL Vs. COMMISSIONER OF INCOME TAX).

9. On the other hand, Sri S Parthasarathy, learned Counsel appearing for the respondent/Society, submits that the Appellate Tribunal has rightly set aside the order of the Commissioner of Income Tax and restored the registration of the Society and there is no illegality or infirmity in the

impugned order. He relies upon the following reported and un-reported decisions:

i. (2006) 285 ITR 327 (KARN) (SANJEEVAMMA HANUMANTHE GOWDA CHARITABLE TRUST Vs. DIRECTOR OF INCOME-TAX (EXEMPTIONS);

ii. (1997) 224 ITR 310 (SC)(ADITANAR EDUCATIONAL INSTITUTION ETC. Vs. ADDITIONAL COMMISSIONER OF INCOME TAX);

iii. (2001) 247 ITR 658 (SC) (OXFORD UNIVERSITY PRESS, ETC. Vs. COMMISSIONER OF INCOME TAX);

iv. (1997) 225 ITR 1010 (SC) (THIAGARAJAR CHARITIES Vs. ADDITIONAL COMMISSIONER OF INCOME TAX AND ANOTHER);

v. (2008) 301 ITR 86 (SC) (AMERICAN HOTEL & LODGING ASSOCIATION EDUCATIONAL INSTITUTE Vs. CENTRAL BOARD OF DIRECT TAXES & ORS.);

vi. (2011) 330 ITR 480 (SC) (DIRECTOR OF INCOME TAX Vs. GARDEN CITY EDUCATIONAL TRUST); and

vii. ITA NO.182/2011 (THE DIRECTOR OF INCOME TAX Vs. M/S. VENKATESHA EDUCATION SOCIETY) (DB).

10. The substantial question of law that arises for our consideration is:

> Whether the Appellate Tribunal is justified in restoring the registration of the Society?

11. Our answer to the above point is in the affirmative for the following reasons:

i. that the donations received by the society cannot be construed as capitation fee for the admission of students by the KLE university;
ii. that providing hostel to the students/ staff working for the society is incidental to achieve the object of providing education namely the object of the Society;
iii. that the revenue appears to have not properly appreciated the legal point that though the Chairman and few members of 'the Society' are the Chairman and members of 'the KLE University', they are separate legal entities;

iv. that there is no violation of any of the conditions stipulated under the IT Act, warranting for cancellation of registration of the society;

v. that the Tribunal on proper appreciation of the grounds urged by the Society and the Revenue, has rightly restored the registration.

In view of the above, there is no merit in the contentions urged by the learned Counsel for the Revenue and the decisions cited by him are of no avail.

12. For reasons stated above, we pass the following :

ORDER

Appeal fails and the same is hereby rejected.

Sd/-
JUDGE

Sd/-
JUDGE

Bjs