

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. VINOD CHANDRAN

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THE HONOURABLE MR. JUSTICE ASHOK MENON

WEDNESDAY, THE 16TH DAY OF JANUARY 2019 / 26TH POUSHA, 1940

ITA.No. 1665 of 2009

AGAINST THE ORDER/JUDGMENT IN ITA 215/2006 of
I.T.A. TRIBUNAL, COCHIN BENCH DATED 13-03-2009

APPELLANT/S:

M/S. SREE CHITHRA EDUCATIONAL,
CULTURAL AND FILM SOCIETY, KUNNATHUKAL.P.O.,
VIA. NEYYATTINKARA, THIRUVANANTHAPURAM.

BY ADVS.
SRI.E.K.NANDAKUMAR (SR.)
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS

RESPONDENT/S:

DEPUTY DIRECTOR OF INCOME TAX (EXEMPTION)
O/O THE COMMISSIONER OF INCOME TAX,
THIRUVANANTHAPURAM-3.

BY ADVS.
SRI.P.K.R.MENON, SR. COUNSEL FOR GOI (TAXES)
SRI.JOSE JOSEPH, SC, FOR INCOME TAX

OTHER PRESENT:

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON
16.01.2019, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

JUDGMENT

Ashok Menon, J.

Aggrieved by the refusal to get exemption claimed under Section 10(22) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), the assessee, a charitable institution registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 and running an educational institution affiliated with CBSE, is before us. The following substantial questions of law, as framed by another Division Bench of this Court, arise for consideration:

"(i) Whether on the facts and circumstances of the case, Appellate Tribunal was justified in sustaining the order of the assessing authority by not granting the benefit of exemption under Section 10(22) of the Income Tax Act ?

(ii) Ought not the Hon'ble Tribunal to have found that an enquiry as to the ownership of land on which the educational institution was situated was wholly alien to the issue of eligibility of the assessee to the benefit of Section 10(22) of the Income Tax Act ?"

2. The facts in brief are thus:

M/s Sree Chithra Educational, Cultural and Film Society was registered as a society on 04.03.1993 as per Annexure A, with one of its objects being, running an educational institution. It is pointed out that the Society is also registered under Section 12A of the Act as per the order of the Commissioner of Income Tax (Appeals) at Annexure B. A school was started by the Society in 1995, initially in a rented premises. Thereafter, in 1997, the Society purchased land measuring 27 cents vide Annexure C sale deed and constructed a permanent building for running the school, where it has been functioning all these years. It is submitted that the income derived from the school is being exclusively used for the purpose of the school. A larger extent of land was purchased in 2002 for the purpose of affiliation to CBSE, obtained as per Annexure D. The income tax returns were being filed regularly and acknowledgment received as per Annexures E and F.

3. The claim of the assessee for exemption under Section 10(22) of the Act was denied by the Assessing Officer (A.O.) for the reason that the school has not got CBSE recognition and that the property purchased in 1997 is in the name of the Secretary and the Manager of the Trust, respectively Satheesh Kumar and his wife, Pushpavally, a teacher in that school.

4. It is pointed out that the CBSE recognition was subsequently obtained and that the document of sale inadvertently mentions the names of Satheesh Kumar and Pushpavally, though the purchase of land was accounted for in the school register and books.

5. The appeal preferred before the C.I.T. (Appeals) was allowed vide Annexure G holding that the onus is on the A.O. to establish the existence of profit motive in the activities of the assessee.

6. The Revenue preferred appeal before the Tribunal, which was allowed vide Annexure I order confirming the finding of the A.O. on the sole ground that the land in question was purchased in the name of

the Secretary and Principal of the school. The said order stands impugned.

7. The learned Counsel for the assessee argues that the Society is not being run for profit and that the other activities of the Society also includes charity, and that the income of the Trust is mainly derived from running of the educational institution, and therefore, the assessee is entitled to get the order of the Tribunal reversed. Reliance is placed on the decisions **Oxford University Press v. C.I.T., [2001] 247 ITR 658, American Hotel and Lodging Association Educational Institute v. Central Board of Direct Taxes, [2008] 101 SCC 509** and **Queen's Educational Society v. C.I.T., (2015) 8 SCC 47.**

8. The assessment order reveals that the Society had disclosed a gross receipt of Rs.25,93,864/-, which includes income from running of educational institutions at different places. The return for the assessment year under consideration, ie., 1997-98, the income from school was excluded and the income arising out of the cultural activities alone was disclosed for

claiming exemption under the Act. The defence set up by the assessee is that blanket exemption under Section 10(22) is available in respect of income earned by educational institutions, and therefore, the same was not included in the return of income.

9. The question that arises for consideration before us is whether the assessee can exclude the income that is derived from the educational institutions claiming the benefit under Section 10(22) of the Act and show the income derived otherwise than from the educational institutions alone for the purpose of taxation. A reading of Section 10(22) would be profitable.

"10. Incomes not included in total income.-

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(22) any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit;"

10. The provision indicates that the exemption granted under Section 10(22) is not to the income derived from any educational institution, but to institutions existing "*solely for educational purposes and not for the purpose of profit*". Facts reveal that

the school is functioning in a property, acquired in the name of the Secretary and his wife, and not in the name of the Society or the school; which has no independent existence from the Society, atleast so far as the Income Tax Act. The balance sheet of the assessee indicated acquisition of assets, the particular land, from the income of the trust. But the land was purchased in the individual name of the Manager and Secretary. The A.O clearly found that the funds of the Society were diverted to purchase assets, immovable property in the name of persons managing the society. The clear finding was that it cannot be held that the institution is existing solely for educational purposes and not for profit.

11. **American Hotel and Lodging Association Educational Institute**(supra), considered the provision brought in, of exemption for income from education in similar cases, under sub-clause (vi) of Section 23C after deleting sub-section (22) from Section 10, with effect from 01.04.1999. The new provision was identical insofar as the conditions of existence solely for

educational purposes and not for profit; but with a requirement of approval by the prescribed authority and some conditions for monitoring as stipulated in the provisos, under Section 23C. We are not concerned with the interpretation given to the amended provision under Section 23C(vi) but the Court also looked at Section 10(22) since the appellant therein was already availing exemption under Section 10(22). It was held that once an applicant-institution came within the phrase "exists solely for educational purposes and not for profit", no other conditions like application of income were required to be complied with. The prescribed authority was only required to examine the nature, activities and genuineness of the institution. The mere existence of profit/ surplus did not disqualify the institution. It was held so:

"36. The moot question in Section 10(22) was whether the activities of the applicant came within the definition of "income of educational institution". Under Section 10(22) one had to closely analyse the activities of the institute, the objects of the institute and its source of income and its utilisation. Even if one of the objects enabled the institute to undertake commercial activity, the institute would not be entitled to approval under Section

10(22). The said section *inter alia* excludes the income of the educational institute from the total income.

37. In *CIT v. Surat Art Silk Cloth Manufacturers' Assn.*, (1980) 2 SCC 31, it has been held by this Court that test of predominant object of the activity is to be seen whether it exists solely for education and not to earn profit. However, the purpose would not lose its character merely because some profit arises from the activity. That, it is not possible to carry on educational activity in such a way that the expenditure exactly balances the income and there is no resultant profit, for, to achieve this, would not only be difficult of practical realisation but would reflect unsound principles of management. In order to ascertain whether the institute is carried on with the object of making profit or not it is the duty of the prescribed authority to ascertain whether the balance of income is applied wholly and exclusively to the objects for which the applicant is established."

Definitely so since no institution can survive without at least a nominal profit. It is the motive which has to be looked at; which can be discerned by the manner in which the application of funds is made. Here the profit motive is very evident since out of the income of the educational institution, landed property was purchased in the names of persons in management.

12. Referring to the decision in **Oxford University Press** (supra), the question that arose was whether the

Oxford University Press, which was functioning in India and making profit, could claim benefit of Section 10(22) of the Act. The Hon'ble Supreme Court held that what is relevant is whether there is imparting of education in India. Therefore, the test formulated by the Court to decide the character of the recipient of income under Section 10(22) is whether there is in fact existence of an activity, which is in the nature of "imparting of education in India". **American Hotel and Lodging Association Educational Institute** found that this is how the words "in India" have come into the judgment in **Oxford University Press** (supra) and not by incorporation from Section 11(1)(a) of the Act. Oxford University Press carried no educational activity in India and the exemption did not apply to the University. All the learned Judges held in **Oxford University Press** (supra) that the words "in India" cannot be read into Section 10(22) resulting in either only Indian Universities or Institutions carrying educational activities solely in India being enabled the exemption under Section 10(22). However, the

majority view was that the "non-profit" motive has to be tested against Indian activities and since the assessee therein was carrying on only commercial activity of selling printed books and materials, within India, it cannot claim the exemption under section 10(22). This aspect has application in the instant case because here too the profit motive was discernible from the purchase of land in favour of the personnel in management.

13. In **Queen's Educational Society** (supra) it was reiterated that if the activities are primarily for educating persons, the fact that institutions make surplus profit incidentally from such activities does not make the institution a profit making institution. What is relevant is that the purpose of education should not get submerged under the profit making motive. The ultimate test is whether on an overall view of the issue in the assessment year concerned, the object is to make profit as opposed to imparting education.

14. Applying the ratio to the case in hand, even though it is true that the assessee is running an educational institution, it cannot be said that the society exists solely for educational purposes and not for profit. The Tribunal rightly concluded that the acquisition of property in the name of individuals is indicative of the fact that the profits of the institution was being used for self aggrandizement; which is the explicit motive. The explanation that the property was inadvertently purchased in the name of individuals by an innocuous mistake, can only be taken with a pinch of salt.

15. In this context, we also find that the assessee is a society, formed with many objectives, one of which is imparting education. Hence, the assessee cannot be found to be an institution established and existing solely for educational purposes. The assessee also has declared income from cultural activities, which again reinforces the finding that the object is not solely education.

We find no reason, whatsoever, to interfere with the finding of the Tribunal. The questions of law are answered against the assessee. The appeal stands dismissed, though without costs.

Sd/-

K.VINOD CHANDRAN

JUDGE

Sd/-

ASHOK MENON

JUDGE

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APPENDIX**APPELLANT'S/S ANNEXURES:**

ANNEXURE-A	TRUE COPY OF THE REGISTRATION CERTIFICATE DATED 04/03/1993.
ANNEXURE-B	TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX TRIVANDRUM DATED 19/01/1994.
ANNEXURE-C	TRUE COPY OF THE SALE DEED NO.1568/1997 DATED 04/04/1997.
ANNEXURE-D	TRUE COPY OF THE CBSE AFFILIATION ISSUED TO THE APPELLANT DATED 19/01/2004.
ANNEXURE-E	TRUE COPY OF THE ACKNOWLEDGEMENT OF FILING RETURN FOR 1997-98 DATED 30/03/2000.
ANNEXURE-F	TRUE COPY OF THE ASSESSMENT ORDER FOR 1997-98 ISSUED BY THE INCOME TAX DEPARTMENT TO THE APPELLANT DATED 30/03/2005.
ANNEXURE-G	TRUE COPY OF THE ORDER ISSUED BY THE COMMISSIONER OF INCOME TAX (APPEALS) TO THE APPELLANT DATED 30/12/2005.
ANNEXURE-H	TRUE COPY OF THE APPEAL FILED BY THE ASSISTANT DIRECTOR OF INCOME TAX (EXEMPTION) DATED 17/03/2006.
ANNEXURE-I	TRUE COPY OF THE TRIBUNAL ORDER IN APPEAL FILED BY THE ASSISTANT DIRECTOR OF INCOME TAX (EXEMPTION) DATED 13/03/2009 ISSUED TO THE APPELLANT.