

(1979) 02 MAD CK 0034

In the Madras High Court

Case No : Tax Case No. 114 of 1975 (Reference No. 97 of 1975)

Additional Commissioner of Income Tax

APPELLANT

Vs

Aditanar Educational Institution

RESPONDENT

Date of Decision : 23-02-1979

Acts Referred:

Income Tax Act, 1961 — Section 10(22), 11, 12(2)

Citation : (1979) ILR (Mad) 285 : (1979) 118 ITR 235

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; A.K. Sen, R. Janakiraman for K. Srinivisan and K.C. Rajappa, for the Respondent

Judgement

Sethuraman, J.—In this reference u/s 256(1) of the I.T. Act, 1961, the following question has been referred:

" Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the income of the assessee is entitled for exemption u/s 10(22) of the Income Tax Act, 1961 ? "

2. The assessee is a society registered under the Societies Registration Act, 1960. Its objects are to establish, run, manage or assist colleges, schools and other educational organisations existing solely for educational purposes. It received as donation from a trust called " Thanthi Trust" a sum of Rs. 15,71,370 during the previous year relevant to the assessment year 1965-66, a sum of Rs. 5,62,432.25 during the previous year relevant to the assessment year 1966-67 and a sum of Rs. 4,78,899.67 during the previous year relevant to the assessment year 1967-68. The assessee filed returns for all these three assessment years stating that " its taxable income was nil as it was an educational institution existing solely for educational purposes ". The actual figure shown was " loss " for all the three years. The ITO closed the assessments stating that since there was no taxable income, the question of granting the exemption u/s 10(22) did not arise.

3. The CIT took proceedings u/s 263 of the Act as, in his view, the assessment made by the ITO was erroneous and prejudicial to the revenue. According to him, the ITO had not considered the question whether the assessee was entitled to exemption in respect of the receipts of voluntary contributions. In his view, the assessee was not entitled to any exemption in view of the provisions of Sections 11 and 12(2) of the Act. After giving the necessary notice to show cause why the assessments for these years should not be cancelled, the Commissioner passed an order on 30th March, 1972, cancelling the assessments for these three years and directing the ITO to make fresh assessments taking into consideration the voluntary contributions received from "Thanthi Trust". It may be mentioned herein that for the assessment year 1965-66 the order of the Addl. CIT is dated 30th March, 1972, and for the other two assessment years the order was passed on March 2, 1973. In the second order, which is little more elaborate than the first, the Additional Commissioner took the view that the principle of ejusdem generis would apply in the construction of Section 10(22) and that the section would apply only to exempt the income for a college, academy or school. In other words, the point sought to be made was that the exemption u/s 10(22) would apply to the educational institutions, as such, and not to anyone else, who might be financing for running such an institution.

4. The assessee appealed to the Tribunal for all the three years and the appeals came to be disposed of by a common order dated April 22, 1974. The Tribunal held that the assessee was an institution existing for educational purposes and not for purposes of earning any profit, and that the assessee itself could be termed as an educational institution so as to come within the ambit of Section 10(22) of the Act. It is this order of the Tribunal that has given rise to the question set out above.

5. Before we proceed to consider the question, we may refer to its objects and as to what was done by it in pursuance of its objects. The objects for which it came into existence are set out in its memorandum of association and they are as follows :

- (a) To establish, run, manage or assist colleges for teaching of arts, sciences or professions.
- (b) To establish, run, manage or assist schools and other educational organisations existing solely for educational purposes.
- (c) For the objects aforesaid (a) and (b), to raise or collect funds by subscriptions, donations, gifts, grants or endowments.
- (d) To do all such acts, deeds and things as may be incidental or conducive to the furtherance of the above objects.

6. There is a governing body for the institution and there are rules and regulations governing its conduct. Any surplus remaining at the time of the dissolution of the society has to be made over to a society having similar objects.

The society was registered in February, 1963. In pursuance of its objects the assessee-society started a college called " Aditanar College of Arts and Science " at Tiruchendur in 1965. The Director of Public Instruction, Madras, by his proceedings dated 18th February, 1965, approved the opening of a college at Tiruchendur, under the management of the assessee subject to certain conditions. On 31st May, 1965, the assessee applied to the Registrar of the Madras University for affiliation for the P.U.C. course and also for opening of the college at Tiruchendur. In the application sent to the University, the assessee stated that the entire fund of more than Rs. 22,00,000 standing in its name was earmarked for the college and that the amount would not be diverted to any other purpose without obtaining the prior sanction of the University. The Syndicate considered the application and after obtaining a report of inspection requested the assessee to comply with certain conditions before affiliation was granted. As the assessee complied with those conditions the college was granted affiliation. After the Madurai University was established, the college was affiliated to that University.

7. Section 10(22), to the extent relevant, runs as follows :

" 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--.....

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

8. In the present case the institution is not a University. The question is whether it comes under the category " or other educational institution ". On this aspect, the learned counsel for the revenue reiterated what is stated in the orders of the Commissioner u/s 263, viz., that the term " other educational institution " should be construed by an application of the rule of ejusdem generis. How this rule is to be applied has been set out by Craies on Statute Law, seventh edition, at page 181, as follows :

" The ejusdem generis rule is one to be applied with caution and not pushed too far, as in the case of many decisions, which treat it as automatically applicable, and not as being, what it is, a mere presumption, in the absence of other indications of the intention of the legislature. The modern tendency of the law, it was said, is " to attenuate the application of the rule of ejusdem generis." To invoke the application of the ejusdem generis rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply, but the mention of a single species does not constitute a genus. " Unless you can find a category ", said Farwell L.J., " there is no room for the application of the ejusdem generis doctrine ", and where the words are clearly wide in their meaning they ought not to be qualified on the ground of their association with other words. For instance, where a local Act required that " theatres and other places of public

entertainment " should be licensed, the question arose whether a " fun-fair " for which no fee was charged for admission was within the Act. It was held to be so, and that the ejusdem generis rule did not apply to confine the words " other places " to places of the same kind as theatres."

9. The word " University " does not represent the genus in the present case, so that the subsequent words will have to be considered as taking their colour from this genus. As pointed out by the Supreme Court in *S. Azeez Basha and Another Vs. Union of India (UOI)*, , there was no law in India which prohibited any private individual or body from establishing a University and it was, therefore, open to a private individual or body to establish a University. There is a good deal in common between educational institutions which are not universities and those which are universities. Both teach students and both have teachers for the purpose. But what distinguishes a University from any other educational institution is that a University grants degrees of its own while other educational institutions cannot. It is this granting of degrees by a University which distinguishes it from the ordinary run of educational institutions. Thus, in law, in India there was no prohibition against establishment of Universities by private individuals or bodies and in fact the famous Viswabharathi University was started by Rabindranath Tagore as a private individual. It was only in 1956 by Sub-section (1) of Section 22 of the University Grants Commission Act (III of 1956) it was laid down that the right of conferring or granting degrees should be exercised only by a University established or incorporated by or under a Central Act or a State legislature. The other " educational institution " cannot come within the category " University ". The term " University " stands for a higher degree of education than scholastic level. " Any educational institution " would fall within the scope of Section 10(22) even though it may have or may not have anything to do with the University. The categories are so different that the University cannot be the genus, and the " other educational institution " the species thereof. Thus, the college here could come under the " other educational institution ".

10. The further contention was that the institution, in order to qualify for the exemption u/s 10(22) should itself be the educational institution and that it was not enough if it ran an educational institution. It was pointed out that the assessee could assist colleges and that in case it merely rendered assistance, it would be in the nature of a financial body, which did not itself impart education. It is difficult to accept the argument that, in the present case, the assessee is not the educational institution. The assessee has come into existence for the purpose of establishing, running, managing or assisting colleges, schools and other educational organisations. In pursuance of its objects, as seen earlier, the assessee has established a college. It is stated that the management of the college had to be vested in a registered body. It is not clear whether two registered bodies were contemplated, one being the assessee and the other the managing body. In para. 8 of its order, the Tribunal has observed as follows !

"Ultimately, affiliation for the P.U.C. course was granted to the college by the Madras University on condition that the management of the college should be by a registered body."

11. It was stated that the college itself was incorporated as a separate registered body. There is no material on record to show that the college" was separately incorporated as a registered body. It is not possible on the facts to pursue this point further. It is enough at this stage to mention that the assessee, in order to effectuate its objects, has necessarily to impart education only through the medium of a college consisting of professors and students. Unless a college itself is brought into existence by the professors, a college would ordinarily come into existence only by third parties, who appoint the principal and the professors. With the help of professors, students would have to be recruited and education imparted. Thus, the medium through which the assessee could effectuate its objects is the college and by employing this medium, the assessee imparts education. It is not possible to accept the contention that the assessee is only a financing body and does not on the facts come within the scope of " other educational institution " occurring in Section 10(22).

12. The provision requires that the institution should exist solely for educational purposes and not for purposes of profit. We have already reproduced the clauses in the memorandum describing the objects of the society. In effect, there are only two clauses, viz., Clauses. (a) and (b), which are material for this purpose. Clause (a) provided for establishment, running or management of colleges or assistance to colleges. Clause (b) contemplates the same being done for schools and other educational organisations. Thus, the sole purpose for which the assessee has come into existence is education at the levels of college and school.

13. This point as to whether a society could by running an institution claim exemption u/s 10(22) has been considered by the Allahabad High Court in *Katra Education Society Vs. Income Tax Officer, "A" Ward, .* It has been held therein that an educational society could be regarded as an educational institution if the society was running an educational institution. It is true there is no further discussion. But the point appears to need no further discussion. We agree with this decision.

14. The further question is whether this institution exists for the purpose of profit. In this connection our attention was drawn to a decision of the Orissa High Court in *SECONDARY BOARD OF EDUCATION, ORISSA Vs. INCOME TAX OFFICER, WARD "E", CUTTACK., .* Under the Orissa Secondary Education Act, 1953, the Secondary Board of Education had a fund. One of the sources of income of the Board was profits from compilation, publication, printing and sale of text books. The profits so earned formed part of the board's fund. The income and expenditure of the board was controlled and the entire expenditure was directed towards development and expansion of educational purposes. Any surplus remaining after the expenditure was also to form part of the sinking fund to be devoted to the cause of education as and when necessary. It was held that the

Board of Secondary Education could not be said to exist for the purpose of profit and that its existence was solely for the purpose of education.

15. Mr. A. K. Sen, the learned counsel for the assessee, gave a categorical answer to a question as to whether an assessee like the present one could merely by running an institution for educational purposes, get exemption for all its income whether it related to the educational purpose or not. Quite fairly, and in our opinion, rightly, he stated that the expression "existing" used in Section 10(22) clearly showed that the matter would have to be investigated in each year, and so long as it was found that the institution existed for educational purposes in the relevant year, and so long as its profit is incidental to the purpose of education, the income would be exempt, and not any income however remotely connected with the educational institutions. A society by merely running a college cannot utilise this provision as an instrument for exemption in respect of all its sources of income which had no connection with its educational authority. There must be some correlation between the income earned and the educational institution. For instance, it is well known in this part of the country, that educational institutions before they are granted affiliation are required to deposit a substantial sum, and that such deposits are to be invested in Government securities or trustee securities which yield income. Though such income would otherwise be taxable, still in view of the fact that it has a direct relation to the running of the institution which imparts education, the exemption would have to be granted. It would not be possible or proper to lay down in any precise terms as to what would be the income of the educational institution which would qualify for exemption u/s 10(22) and what would be outside the exemption. The answer would depend upon the facts in each case. What can possibly be stated is that any income, which has a direct relation or is incidental to the running of the institution, as such, would qualify for exemption.

16. Before parting with the case, we may point out that a paper book was filed on behalf of the assessee and it was stated by Mr. Jayaraman, the standing counsel for the Commissioner, that the said book contains certain other materials, which have not been made annexures to the statement of the case. We did not look into those materials.

The question is accordingly answered in the affirmative and in favour of the assessee.

17. The assessee will be entitled to its costs. Counsel's fee Rs. 500.