

(1983) 10 MAD CK 0013

In the Madras High Court

Case No : Tax Case No"s. 477, 486 and 487 of 1978 (Reference No"s. 297, 306 and 307 of 1978)

Commissioner of Income Tax

APPELLANT

Vs

Devi Educational Institution and Others

RESPONDENT

Date of Decision : 03-10-1983

Acts Referred:

Income Tax Act, 1961 — Section 10(22), 11, 12(2), 80G

Citation : (1984) 43 CTR 48 : (1985) 153 ITR 571

Hon'ble Judges : V. Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : J. Jayaraman and Nalini Chidambaram, for the Appellant; T. Raghavan, for the Respondent

Judgement

Ramanujam, J.—In T.C. No. 477 of 1978, at the instance of the Revenue, the following question has been referred by the Income Tax

Appellate Tribunal to this court for its opinion :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee is an educational institution

and, therefore, the assessee's income is exempt u/s 10(22) of the Income Tax Act, 1961 ?

2. In T.Cs. Nos. 486 and 487 of 1978, again at the instance of the Revenue, the following common question has been referred to this court for its

opinion :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the Appellate Assistant Commissioner

was correct in excluding the donations paid by the assessee to M/s. Devi Educational Institution from the total income of the assessee ?

3. Messrs. Devi Educational Institution, Madras, who is the assessee in T.C. No. 477 of 1978 returned a surplus income of Rs. 4,127 for the

assessment year 1973-74 and claimed exemption on the ground that it is an educational institution coming within the scope of s. 10(22) of the I.T.

Act, 1961. The ITO held that the assessee was not an educational institution but was only an educational trust registered under the Societies

Registration Act, that though some steps have been taken by the educational society to start an educational institution in Karunanidhi Nagar, no

educational institution has yet come into existence and, therefore, s. 10(22) was not applicable in the assessee's case and that the institution can,

however, come within the category of charitable institutions covered by s. 11. In that view, he denied the exemption under s. 10(22) and brought

the surplus income of Rs. 4,127 returned by the assessee to tax. On appeal by the assessee, the AAC went into the question and found that the

assessee had taken the following steps for setting up the educational institutions :

i. Application made to Registrar, University of Madras, for affiliation of a proposed Women's college;

ii. Petition to the Government of Tamil Nadu for allotment of lands;

iii. Equipping financially by receiving donations for making endowment of about Rs. 2 lakhs in case affiliation is granted;

iv. Conducting bridge course with the technical assistance of the British Council;

v. Starting of commercial institute;

vi. Obtaining sanction of Government to a Girl's High School;

vii. Petition to Government for allotment of lands at Indira Nagar;

viii. Starting of library.

4. The AAC also examined the objects of the assessee-society and found that they are similar to those in the case of a similar institution ""Aditanar

Educational Institution"" which has been held by the Tribunal to be an educational institution coming within the scope of s. 10(22). The AAC,

therefore, held that the assessee-society is an educational institution in the light of the facts established in this case and in the light of the order of the

Tribunal in the case of Aditanar Educational Institution in I.T.A. No. 720/1972-73 batch.

5. Aggrieved by the order of the AAC, the Revenue took the matter in appeal before the Tribunal contending that the Aditanar Educational

Institution, which was the subject-matter of the appeal before the Tribunal, is not comparable with the society in this case, that the facts in the

former case establish that the educational institution has already come into existence while in the assessee's case no educational institution has

come into existence and only certain steps have been taken to establish the same, that, therefore, the assessee-society can claim the benefit of s.

10(22) only after the college is established and started functioning and that the income received before the actual establishment of the college

cannot be termed as the income of an educational institution. The Tribunal, after considering the rival contentions of the parties, held that since the

college is intended to be established as a wing of the assessee-society, it will qualify for exemption under s. 10(22) as all the necessary steps for

establishment of the college had been taken by the trust and that as the trust has consciously taken all steps to start the educational institution and

as no retracing is possible, the assessee should be taken to come within the scope of s. 10(22). In that view, the Tribunal upheld the order of the

AAC directing the ITO to treat the assessee as an educational institution and grant them exemption in terms of s. 10(22). Aggrieved by the order

of the Tribunal holding that the assessee-society as an educational institution, the Revenue has sought and obtained the reference on the question

set out in T.C. No. 477 of 1978.

6. The assessee-society has been collecting donations for the establishment of the educational institution in pursuance of the objects of the trust.

Two of the donors who had donated to the assessee-society claimed exemption on the ground that the donation has been made to the assessee-

society which is an educational institution. That claim was not accepted by the ITO. But, however, the said claim was accepted by the AAC and

exemption was granted in respect of the donations made to the assessee-society. The said view of the AAC has been upheld by the Tribunal on

the ground that since the donations have been made to the assessee-society which has been held to be an educational institution, they are entitled

to claim exemption in relation to such donations. Aggrieved by the said view of the Tribunal, the Revenue has sought and obtained a reference

referring the common question set out in T.Cs. Nos. 486 and 487 of 1978.

7. Thus, the main and substantial question for consideration in these cases is whether the assessee-society is an educational institution entitled to

claim exemption under s. 10(22) of the Act. As already stated, the Tribunal had held that the objects of the society are substantially educational,

and the society having taken due and irreversible steps for the establishment of an institution for carrying on the said educational objects set out in

the memorandum of association, the society should be taken to be an educational institution contemplated by s. 10(22). In support of the said

view, the Tribunal has followed its own earlier judgment in I.T.A. Nos. 720 of 1972-73 and 383 of 1973-74 dated April 22, 1974.

8. The said earlier decision of the Tribunal was the subject-matter of reference before this court in Additional Commissioner of Income Tax Vs.

Aditanar Educational Institution, . In that case, this court considered in detail the scope and ambit of s. 10(22). There, a society registered under

the Societies Registration Act came into existence to establish, run, manage or assist colleges, schools and other educational organisations existing

solely for educational purposes. The society received donations from a trust and had started a college and utilised the entire donation for the same.

The society claimed that as it was an educational institution existing solely for educational purposes, its income should be completely exempted

under s. 10(22). That claim was accepted by the ITO, but the Commissioner revised the order of the ITO and held that the society was not

entitled to any exemption under ss. 11 and 12(2) of the Act and directed the ITO to redo the assessment. The Commissioner took the view that

the society will not be eligible for exemption under s. 10(22) as the exemption thereunder would apply only to an educational institution as such and

not to anyone else who might be financing the running of the institution. When the matter reached the Tribunal, it held that the society was an

educational institution existing for educational purposes and not for the purpose of earning any profit and, hence, the society itself could be termed

as an educational institution so as to come within the ambit of s. 10(22). The Revenue took the matter to this court on a reference contending that

the expression ""other educational institution"" occurring in s. 10(22) should be read ejusdem generis with the expression ""University"" occurring

earlier and, if so read, "other educational institution" can only refer to institutions in the nature of a university. This court rejected the said contention and held that any educational institution would fall within the scope of s. 10(22), even though it may have or may not have anything to do with a university and, therefore, the college run by the society in that case would come within the term "other educational institution" in s. 10(22). It also held that since the sole purpose for which the society had come into existence was "education" at the level of college and school, it should be taken to come within the expression "other educational institution" in s. 10(22) and that an educational society could be regarded as an educational institution if the society itself is running an educational institution. This court, however, had expressed the view that all the income of the society running a college or educational institution would not be exempt under s. 10(22) and it is only the income which has a direct relation or is incidental to the running of the institution, as such, that would qualify for exemption. The said decision of this court came to be rendered long after the Tribunal rendered its decision in the case before us. Therefore, the Tribunal did not have the benefit of the observations made in that case. In this case, as already stated, the ITO made a distinction between an educational society and an educational institution and in view of the observations made by this court in Additional Commissioner of Income Tax Vs. Aditanar Educational Institution, , such a distinction cannot be made if the educational society itself is a running or proposes to run an educational institution. The contention of the Revenue that the expression "other educational institution" should be understood ejusdem generis with the preceding expression "University" has not also been accepted by this court and it has been held that the expression "other educational institution" shall cover all educational institutions other than universities. Thus the said decision of this court supports the assessee to the extent that the assessee-society which has been mainly established for the purpose of carrying on educational activity and which is not doing any other activity for profit will come within the scope of "other educational institution" occurring in s. 10(22).

9. However, a further question arises in this case which has not arisen in the case in Additional Commissioner of Income Tax Vs. Aditanar

Educational Institution, . In that case, an educational institution was already existing. Therefore, the court had no occasion to consider the scope of the latter part of s. 10(22), namely, ""existing solely for educational purposes and not for purposes of profit"". But, here, the question arises as to whether the assessee-society satisfies the latter portion of s. 10(22). The Tribunal has proceeded on the basis that though the assessee-society has not yet been established and started running an educational institution, it having taken all the essential and necessary steps for establishment of the same, it should, be taken to satisfy s. 10(22). We cannot agree with this view of the Tribunal. Having regard to the object behind giving an exemption to the income of an educational institution, the existence of such an educational institution should be taken to be a condition precedent for the grant of exemption thereunder. It is no doubt true in this case that the assessee-society has come into existence solely for educational purposes and not for the purpose of profit; but that is not sufficient to satisfy s. 10(22) which contemplates that an educational institution which claims exemption of its income should exist solely for educational purposes and not for the purpose of profit. Therefore, the existence of an educational institution is necessary for its income to be exempted under that section. In this connection, the learned counsel for the Revenue contends that since the college which is the main object of the trust has not yet been established, the educational institution cannot be taken to have come into existence and so long as such an educational institution has not come into existence, s. 10(22) cannot have any application. Even though the main object of the assessee-trust is to establish a college and that has not been established, if it conducts other educational institutions or carries on other educational activities, it may claim the benefit of s. 10(22) and it is not necessary that all the activities or the purposes which are educational and which are referred to in the trust deed should come into existence or performed before claiming the benefit under s. 10(22). We cannot, therefore, agree with the learned counsel for the Revenue that unless all the educational activities referred to in the trust deed are being performed or established, the benefit of s. 10(22) cannot be obtained. Even if all the educational activities referred to in the trust deed have not been brought into existence, if at least some educational activities had been carried on and the same have been laid on a permanent footing, the

assessee-society is entitled to claim the benefit under s. 10(22), since it will come under the definition of "educational institution" as it is actually carrying on certain educational activities referred to in the memorandum of association. In this context, the learned counsel for the assessee-society contends that at least three educational activities were being conducted during the assessment year such as conducting a bridge course with the technical assistance of the British Council, starting a library and starting of a commercial institute and that these activities being educational, the assessee-society which is carrying on those activities should be taken to be an educational institution for the purpose of s. 10(22). However, we find that the Tribunal has not given any finding as to whether the assessee was actually carrying on any educational activity so as to come within the definition of an educational institution. The Tribunal has merely proceeded on the basis that since the assessee-society has already taken steps to set up an educational institution, it should be taken to come within the scope of s. 10(22). As already stated, we feel that the mere taking of the preliminary or necessary steps for the establishment of an educational institution cannot amount to actual bringing into existence of an educational institution. Since s. 10(22) uses the expression "existing solely for educational purposes", the actual existence of the educational institution is a precondition for the application of s. 10(22) and the mere taking of steps for the establishment of the educational institution may not be sufficient to attract the exemption under s. 10(22). However, the Tribunal has not gone into the question as to whether the assessee-society (trust) had started the three activities referred to above and whether those three activities will amount to educational activities, so as to bring the assessee-society (trust) within the definition of educational institution. After analysing the facts and circumstances of this case, if the Tribunal had gone into the question as to whether the three activities carried on by the assessee-society will make it an educational institution and had given a finding one way or the other, we would be in a position to answer the question referred to us. But in the absence of any findings as to the nature of the activities actually carried on by the assessee, it is not possible for us to answer the question referred to us. Therefore, without answering the question referred to us, we direct the Tribunal to rehear the appeal filed by the Revenue in the light of the observations made by this court in Additional

Commissioner of Income Tax Vs. Aditanar Educational Institution, , as also the observations made by us in the course of this judgment. The reference in T.C. No. 477 of 1978 is accordingly returned unanswered.

10. As regards the question referred in the other two cases, namely, T.C. Nos. 486 and 487 of 1978, as already stated, the Tribunal held that the

assesseees are entitled to claim exemption under s. 80G as the donation has been made to an educational institution. Now that this court has

directed the Tribunal to consider the question as to whether the assessee which is a donee, is an educational institution or not for the purpose of s.

10(22), the question whether the donors are entitled to claim exemption will also have to be considered afresh by the Tribunal. The learned counsel

for the assesseees, however, contends that even if s. 10(22) is not applicable to the donee, still the assesseees who are donors can claim exemption

under s. 11 as the gift has been made to a charitable institution as has been held by the ITO and the amount donated has been applied to charitable

purposes. Since the Tribunal has not dealt with the question as to whether the assesseees are entitled to claim the benefit of s. 11, that question may

not arise out of the Tribunal's order. However, since we are directing the Tribunal to consider the matter afresh, all these question of applicability

of s. 11. Therefore, this question also is returned unanswered with a direction to the Tribunal to consider it in the light of what has been stated

above.

11. There will be no order as to costs in these three cases.