

Aditanar Educational Institution

Vs

Additional Commissioner of Income- Tax

Civil Appeals Nos. 2578-2580 of 1979 with civil appeals nos. 356, 356a and 356b of 1980, 3881-3882 of 1984, 379-380 of 1985, 41-42 of 1988, 8789 of 1995, civil appeals nos. 642-646 of 1997 arising out of S.L. PS. nos. 2357-2359 of 1988, 3122 of 1987 and 6281 of 1986, civil appeals nos. 2578-2580 of 1979 and 356, 356a and 356b of 1980 were from the judgment and order dated February 23, 1979, of the madras high court in T.C. no. 114 of 1975. the judgment of the high court is reported as addl. CIT v. ADITANAR educational institution [1979] 118 ITR 235 (Mad)

(B. P. Jeevan Reddy, K. S. Paripoornan JJ)

05.02.1997

JUDGMENT

K.S. PARIPOORNAN J.

1 Leave granted in Special Leave Petitions Nos. 2357-2359 of 1988, 3122 of 1987 and 6281 of 1986.

In this batch of 18 cases, a common question of law - the scope of section 10(22) of the Income-tax Act, 1961 - arises for consideration. The main case is the decision rendered by the Madras High Court in Tax Case No. 114 of 1975 (Addl. CIT v. Aditanar Educational Institution). The said decision is reported in [1979] 118 ITR 235. The assessee as well as the Revenue have filed appeals from the said decision, which covered a period of three years 1965-66, 1966-67 and 1967-68. The appeals filed by the assessee are Civil Appeals Nos. 2578-2580 of 1979 and the appeals filed by the Revenue are Civil Appeals Nos. 356, 356A and 356B of 1980. Civil Appeals Nos. 41 and 42 of 1988 as also the appeals relating to Special Leave Petitions Nos. 2357-2359 of 1988 and 3122 of 1987 relate to the same assessee. The assessees in the other cases are different. In Civil Appeals Nos. 3881-3882 of 1984 and 379- 380 of 1985, the assessee is Sri Paramakalyani Education Society, Madras. In Civil Appeals Nos. 8789 of 1995, the assessee is one Sattur Hindu Nadar's Edward School Committee. In the appeal relating to Special Leave Petition No. 6281 of 1986, the assessee is one Rajagopal Educational Trust. As stated, the common question involved in this batch of 18 cases is the interpretation to be placed on section 10(22) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The decision of the Madras High Court rendered in Tax Case No. 114 of 1975 (Addl. CIT v. Aditanar Educational Institution [1979] 118 ITR 235) was followed in all the other cases. The following table would show the parties and the relevant appeals and the assessment years :

#-----	Cases No.	Parties	Year concerned-----
-----	(1)	(2)	(3)-----
-----	C.A. Nos. 2578-80/	Aditanar Educational	1965-66, 1966-67 and 1979
	Addl. CIT	v. Aditanar	1965-66, 1966-67 and
	356B/1980	Educational Institution,	1967-68
	Madras	C.A. Nos. 3881-82/	CIT, Madras v. 1971-72 and
	1972-73	1984 Sri Paramakalyani Education Society, Madras	C.A. Nos. 379-80/ CIT, Madras v. 1973-

74 and 1975-751985 Sri Paramakalyani Education Society, MadrasC.A. No. 41-42/ CIT, Madras v. Aditanar 1963-64 and 1964-651988 Educational Institution, MadrasC.A. No. 8789/1995 CIT, Madurai v. Sattur 1980-81 Hindu Nadars' Edward School Committee, SatturS.L.P. No. 2357- CIT, Madras v. Aditanar 1977-78, 1978-7959/1988 Educational Institution, and 1979-80 MadrasS.L.P. No. 3122/ CIT, Madras v. Aditanar 1980-811987 Educational Institution, MadrasS.L.P. No. 6281/ CIT, Madras v. Rajagopal 1979-801986 Educational Trust-----
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It should be mentioned that in the appeal relating to Special Leave Petition No. 6281 of 1986 (CIT v. Rajagopal Educational Trust), the Madras High Court dismissed the application filed by the Revenue under section 256(2) of the Act. By this judgment, we withdraw the said application to the file of this court and finally dispose of the same on the merits along with the other appeals.

We heard counsel. It is agreed before us that the decision rendered in the main appeals will govern the entire batch of cases.

The question of law that arises for consideration in this batch of cases is to the following effect (see [1979] 118 ITR 235, 236) :

"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 under section 10(22) of the Income-tax Act, 1961 ?"

It is sufficient to state the minimal facts in the main case, T.C. No. 114 of 1975 (Civil Appeals Nos. 2578-2580 of 1979 and 356, 356A and 356B of 1980; the decision reported in [1979] 118 ITR 235). 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. The assessee received donations 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 "nil" returns for all these years. According to the assessee, its taxable income was "nil" as it was an educational institution existing solely for educational purposes. The Income-tax Officer closed the assessments stating that there is no taxable income. There was no question of granting exemption under section 10(22) of the Act since, according to the assessee, it incurred loss for all the three years. The Commissioner of Income-tax initiated suo motu proceedings under section 263 of the Act as, in his opinion, the assessments made by the Income-tax Officer were erroneous and prejudicial to the Revenue. He opined that the Income-tax Officer failed to consider the question whether the assessee was entitled to exemption in respect of the receipts of voluntary contributions. According to him, the assessee was not entitled to any exemption. An order was passed on March 30, 1972, directing the Income-tax Officer to make fresh assessments taking into consideration the voluntary contributions received from Thanthi Trust. The order so passed for the assessment year 1965-66 is dated March 30, 1972. For the other two years, the orders were passed on March 2, 1973. It was stated in the order dated March 2, 1973, that section 10(22) of the Act will apply only to exempt the income for a college, academy or school. In other words, the exemption under section 10(22) would apply to the educational institutions as such and not to anyone who might be financing the running of such an institution. In the appeal filed by the assessee for all the three years, by a common order dated April 22, 1974, the Appellate Tribunal held that the assessee was an institution existing for educational purposes and not for purposes of earning any profit and the assessee itself could be

termed as an educational institution within the ambit of section 10(22) of the Act. It is thereafter, at the instance of the Revenue, the question of law mentioned hereinabove was referred to the Madras High Court for its decision.

Section 10(22) of the Act runs as follows :

"10. Incomes not included in total income. - 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."

The sole question that arises for consideration is whether the assessee will be taken in by the words "other educational institution". On this aspect, the High Court held thus (page 240) :

"'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'."

Proceeding further, the High Court held that the assessee came into existence for the purpose of establishing, running, managing or assisting colleges, schools and other educational organisations and in pursuance of its objects, the assessee has established a college. It was further held that the medium through which the assessee could effectuate its objects is the college and by employing this medium, the assessee imparts education. The High Court opined that it is not possible to accept the contention of the Revenue 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). It was found that the sole purpose for which the assessee has come into existence is education at the levels of college and school and that an educational society could be regarded as an educational institution, if the society was running an educational institution not for the purpose of profit, but its existence was solely for the purpose of education. On the basis of the above findings, the High Court answered the question referred to it in the affirmative and in favour of the assessee. It is this judgment which is objected to by the assessee as also by the Revenue in the main appeals - Civil Appeals Nos. 2578-2580 of 1979 and 356, 356A and 356B of 1980.

Counsel for the Revenue mainly stressed the plea that the exemption under section 10(22) of the Act would apply only to educational institutions as such. According to him, in this case, the assessee might be financing for running an educational institution, but it is not itself an educational institution. As noted earlier, the Tribunal held that the assessee was an institution existing for educational purposes and not for the purposes of earning any profit and the assessee itself could be termed as an "educational institution" coming within section 10(22) of the Act. The High Court has concurred with this view. The High Court has further held that the medium through which the assessee could effectuate its objects is the college and by employing this medium, the assessee imparts education and it cannot be stated 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) of the Act. Reliance was placed on the decision of the Allahabad High Court in *Katra Education Society v. ITO* [1978] 111 ITR 420, to hold that an educational society could be regarded as an educational

institution if the society was running an educational institution. We are of the view that an educational society or a trust or other similar body running an educational institution solely for educational purposes and not for the purpose of profit could be regarded as "other educational institution" coming within section 10(22) of the Act. (See CIT v. Doon Foundation [1985] 154 ITR 208 (Cal) and Agarwal Shiksha Samiti Trust v. CIT [1987] 168 ITR 751 (Raj)). It will be rather unreal and hypertechnical to hold that the assessee-society is only a financing body and will not come within the scope of "other educational institution" as specified in section 10(22) of the Act. The object of the society is to establish, run, manage or assist colleges or schools or other educational institutions solely for educational purposes and in that regard to raise or collect funds, donations, gifts, etc. Colleges and schools are the media through which the assessee imparts education and effectuates its objects. In substance and reality, the sole purpose for which the assessee has come into existence is to impart education at the levels of colleges and schools and so, such an educational society should be regarded as an "educational institution" coming within section 10(22) of the Act. We hold accordingly. In our view, the judgment of the High Court does not merit interference. The plea of the Revenue to the contrary is untenable and we repel the same. All the appeals filed by the Revenue shall stand dismissed, but there shall be no order as to costs.

We will now take up the appeals filed by the assessee in the main case - Civil Appeals Nos. 2578-2580 of 1979. It passes our comprehension as to why the assessee filed the appeals at all from the judgment of the High Court dated February 23, 1979, which is in its favour. When questioned, senior counsel appearing for the assessee, Mr. G.C. Sharma, stated that there are some observations of the High Court in the concluding portion of the judgment, which may prejudicially affect the assessee in future. We are of the view that this apprehension has no basis. All that the High Court has stated in the penultimate paragraph of the judgment is that counsel for the assessee gave a right answer to a hypothetical question put forward by the court to the effect that the applicability of section 10(22) should be evaluated or investigated every year, and only if it is found that the "institution" exists for educational purposes in the relevant year and even if any profit results, which is only incidental to the purpose of education, the income would be exempt. The High Court has made an observation that any income which has a direct relation or is incidental to the running of the institution as such would qualify for exemption. We may state that the language of section 10(22) of the Act is plain and clear and the availability of the exemption should be evaluated each year to find out whether the institution existed during the relevant year solely for educational purposes and not for purposes of profit. After meeting the expenditure, if any surplus results incidentally from the activity lawfully carried on by the educational institution, it will not cease to be one existing solely for educational purposes since the object is not one to make profit. The decisive or acid test is whether on an overall view of the matter, the object is to make profit. In evaluating or appraising the above, one should also bear in mind the distinction/difference between the corpus, the objects and the powers of the concerned entity. The following decisions are relevant in this context : Governing Body of Rangaraya Medical College v. ITO [1979] 117 ITR 284 (AP) and Secondary Board of Education v. ITO [1972] 86 ITR 408 (Orissa). We make this position clear in order to allay the apprehensions expressed by counsel.

Subject to these observations, the appeals filed by the assessee also fail and they are dismissed, but with no order as to costs.