

Tilok Tirath Vidyawati Chuttan vs Commissioner Of Income Tax on 17 January, 2025

Author: Sanjeev Prakash Sharma

Bench: Sanjeev Prakash Sharma

Neutral Citation No:=2025:PHHC:007264-DB

CWP-350-2000 (O&M) AND
CWP-1311-2000 (O&M)

- 1 -

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

204

Judgment reserved on: December 12, 2024
Judgment pronounced on: 17-01-2025

1. CWP-350-2000 (O&M)

Tilok Tirath Vidyavati Chhuttani Trust

. . . Petitioner

Versus

Commissioner of Income Tax, Chandigarh and another

. . . Respondents

2. CWP-1311-2000 (O&M)

Tilok Tirath Vidyavati Chhuttani Trust

. . . Petitioner

Versus

Union of India and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Shantanu Bansal, Advocate
for the petitioner - Trust.

Mr. Varun Issar, Senior Standing Counsel,
for the respondents - Revenue.

SANJAY VASHISTH, J.

1. By this common order Civil Writ Petitions Nos. 350 and 1311, both of 2000, would get disposed of, as the broad facts and issues involved therein are similar. In fact, in both the cases, petitioner - Trust has been denied the renewal benefit of tax relief under Section 80-G of the Income Tax Act, 1961.

For brevity, facts are being referred from CWP No. 350 of 2000.

1 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) -2-

2. By virtue of Trust Deed/Memorandum of Association dated 31.03.1972, Tilok Tirath Vidyavati Chhuttani Charitable Trust (hereafter referred to as 'petitioner-Trust') came into being. As per Article 4 of the Trust Deed, the objects of the petitioner-Trust are as under:-

"4. The objects of the Trust are affording medical relief, and encouraging medical research and for that purpose:-

i) to assist, contribute and augment the development and maintenance of the Post Graduate Institute of Medical Education and Research, Chandigarh, grant research stipends, scholarship or provide help to deserving faculty members, trainees and/or patients therein;

ii) to maintain, establish, finance, subsidise, exclusively or partly, or give grants-in-aid, recurring or otherwise for the maintenance of hospitals, clinics, dispensaries, nursery schools or other establishments of like nature;

and

iii) to assist, subsidise, contribute foreign travel in furtherance of or advance of medical sciences (research) in all its branches;

Provided that the funds made available to the said Post- graduate Institute or any other society may be subject to such conditions as to accounting or for being spent on specified objects as the Trustees may from time to time think fit to impose.

Provided, however, that any contribution by the Trustees to any other Trust, society, institutions, fund, scheme, or project, having as its sole objects all or any of the aforesaid objects shall mean furtherance of the objects of this Trust.

Provided, always, that no part of the income or corpus of the Trust shall be applied directly or indirectly for the benefit of the Founders or their relatives or other persons specified in section 13 of the Income-tax Act, 1961, as amended from time to time or in any other law governing Trusts.

Provided, always, that should any of the objects above mentioned fall outside the scope of exemption from income-tax under the law for the time being in force in India or of the 2 of 26 Neutral Citation

No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) -3- provisions of any other tax law relating to public trusts, the Founders in their life time and thereafter the Trustees may, by a supplementary deed, delete any of the objects, or any part of them from the object of the Trust, so, however, that the nature of the Trust is not substantially altered."

3. On 17.08.1973, petitioner-Trust applied for registration under Section 12-A(a) of the Income Tax Act, 1961 (hereafter referred to as 'the 1961 Act'), which was allowed by the Commissioner of Income-tax, Patiala, vide Certificate dated 12.02.1976 (Annexure P-1). Thereafter, pursuant to application dated 16.01.1997 made by the petitioner-Trust, another Certificate dated 19/21.05.1997 (Annexure P-2), was issued by the Commissioner of Income-tax, Patiala, to the effect that the petitioner-Trust will be eligible for the tax relief under Section 80-G of the 1961 Act, in the hands of the donors subject to the limits and conditions prescribed in the said section. It was further stipulated that the said exemptions will be valid for the period ending 31.03.1993 to 31.03.1997 (relevant to the Assessment Years 1993-94 to 1997-98). While granting exemption under Section 80-G of the 1961 Act, following notes were also inserted in the certificate dated 19/21.05.1997 (Annexure P-2):

"NOTE:

1. Receipts issued to the donors should bear the number and date of this order should state clearly that this certificate is valid upto 31.3.1997.

2. Statements of accounts, receipts and expenditure and balance sheets should be submitted annually to the Income Tax Officer, Ward-10, Chandigarh.

3. The Amendments, if any, made to the constitution should be intimated to this office immediately.

3 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) -4-

4. If any further renewal is required, an application has to be made to the concerned Assessing Officer together with statements of accounts of receipts and expenditure."

Further, while endorsing copy of the certificate dated 19/21.05.1997 (Annexure P-2), to the Income-tax Officer, Ward-10, Chandigarh, it was mentioned as under:-

"2. The Income-tax Officer, Ward-10, Chandigarh. He should verify and satisfy himself with the annual statements which will be submitted by the applicant that it continues to fulfill the conditions of section 80-G and, instructions issued by the Board from time to time."

4. While considering the application for renewal of exemption under Section 80G of the 1961 Act and the income tax returns for the Assessment Year 1996-97, the Commissioner of Income-tax,

Chandigarh (respondent No. 1 in CWP-350-2000) issued a show cause notice dated 17.02.1999 (Annexure P-21), to the petitioner-Trust, inter alia, mentioning therein that it was noticed that the petitioner-Trust was not working for the objects for which it was created, as a hospital was being run on the 4 th floor of SCO 52-54, Sector 17, Chandigarh and on the first floor of the said building an organisation by the name of 'Chandigarh Medical Center' was being run, wherein a large number of doctors were carrying out their private practices by using the facility, building and manpower of the Trust and in return they used to pay to the Trust either a fix amount per month or fixed percentage of their receipt. This arrangement between the doctors and the petitioner-Trust amounted to take the premises of the Trust on rent and carrying private practice. Thus, no charitable work was being carried out.

4 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) -5- In the said show cause notice, it was further pointed that the petitioner-Trust had donated Rs. 29,00,000/- to a society, namely, Sardarni Uttam Kaur Charitable Society, and its objects (as per Trust Deed of said society) were not in any way connected with the objects of the petitioner- Trust. Apart this, by citing details of other donations made by the petitioner- Trust to other Societies and PGI etc., it was concluded that the petitioner- Trust was utilizing the interest income of its corpus fund in making donations to the Trusts/Societies not connected in any way to its objects, and no charitable work was being done and no medical research was undertaken.

5. Responding to the show cause notice dated 17.02.1999 (Annexure P-21), the petitioner-Trust filed a detailed reply dated 23.02.1999 (Annexure P-3), wherein it has been explained that Chuttani Medical Center was functioning in the basement, 2nd, 3rd and 4th floors of the building, whereas Chandigarh Medical Center, was functioning on the first floor, which was set up by Dr. P.N. Chuttani after his retirement in 1978. Petitioner-Trust has been providing medical facilities by arranging the consultant doctors under one roof and doing charitable work. Admitted that the consultant charge their fees and pay rent for the accommodation provided to them or permit deduction for certain percentage out of their fees. It was disclosed that a sum of Rs. 15,000/- per month was being paid by them to the Trust for maintenance of the first floor.

In the said reply, it was pointed out that the petitioner-Trust runs Operation Theatres and Nursing Home on the 2 nd and 3rd floor of the building complex, and no hospital is being run by it on the 4 th floor, where 5 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) -6- an out patient is being run with investigative facilities like E.C.G. and Endoscopic examination. The fee charged from the patients is very reasonable and nominal for conducting various examinations, as compared to the charges at other Medical Centers/Nursing Homes. In fact, for providing all the facilities, the petitioner-Trust suffer loss, which is met from the income from other sources. Besides this, the petitioner-Trust engage the services of Junior Doctors, two Specialist of Medical and Radiology, nurses and other staff for running its center.

Further, it was submitted that the petitioner-Trust approached the PGI for establishing the Center for Tropical Medicines and Communicable Diseases and for this purpose proposed to provide a sum of Rs. 50,00,000/- per annum to the PGI. This proposal was under

consideration of the PGI and Ministry of Health, Government of India.

So far as giving of donation to Sardarni Uttam Kaur Education Society, Village and Post Office Sarai Naga, Faridkot, it was explained that the said organization is duly registered and recognized by the Income-tax Department under Section 12A and it has also been granted certificate under Section 80G of the 1961 Act. The donation was given to it for the purpose of setting up an Educational Institution, which is covered under Clause 4(ii) of the Objects of the petitioner-Trust.

Thus, it was requested by the petitioner-Trust not to take any action for cancellation of registration under Section 12A of the 1961 Act.

6. Respondent No. 1 (in CWP-350-2000) sought further information and documents from the petitioner-Trust, vide letter dated 6 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) -7- 01.03.1999 (Annexure P-4), to which a detailed reply dated 09.03.1999 (Annexure P-5), was furnished by the petitioner-Trust. However, not satisfied with the reply, again a show cause notice dated 19.03.1999 (Annexure P-6) was issued calling upon the petitioner-Trust as to why registration under Section 12A of the 1961 Act be not cancelled. Reply to the show cause notice was filed on 24.03.1999 (Annexure P-7) by the petitioner-Trust by highlighting that the activities being performed by it are in consonance with the objects. In support of the submissions made in its reply, the petitioner-Trust placed reliance on the judgments in the cases of M.A. Namzie Endowment v. CIT, (1998) 174 ITR 58, 72 & 73; Bihar Institute of Mining and Mine Surveying v. CIT, 208 ITR 608; Nachimuthu Industrial Association v. CIT, 235 ITR 190; CIT v. Bar Council of Maharashtra, (1981) 130 ITR 28; CIT v. Rajan Lal Misra, (1966) 131 Taxation 263, 267; Umaid Charitable Trust v. CIT, (1980) 125 ITR 55 (Raj.); CIT v. Nehru Pasvula Santha and Gramabhivrudhi Sangam, (1975) Tax LR 246, 250 (AP); Aditnar Educational Institution v. Additional Commissioner of Income Tax, (1977) 210 ITR 310, 318B; Sreenarayam Chandrika Trust v. CIT, (1966) 224 ITR 445; CIT v. Chandrika Educational Society, (1966) 224 ITR 449; Chandrika Educational Trust v. CIT, (1966) 224 ITR 453; CIT v. J.K. Charitable Trust, (1992) 196 ITR 31, 44 (All); and CIT v. Andhra Chamber of Commerce, (1965) 55 ITR 722 (SC).

7. After noticing the replies and the documents submitted by the petitioner-Trust, as also the material collected by concerned Assessing Officer, the Commissioner of Income-tax, Chandigarh, passed a detailed 7 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) -8- order dated 24.09.1999 (Annexure P-8), thereby rejected the application of the petitioner-Trust for continuation of approval of exemption under Section 80G of the 1961. Concluding para of the order dated 24.09.1999 (Annexure P-8), which is subject matter of challenge in CWP-350-2000, reads as under:-

" In this background, it has now been seen as to whether the assessee Trust deserves to be granted continuation of approval for exemption u/s 80G. From the evidence brought on record by the Assessing Officer as also from the facts as narrated above, it comes out that the applicant Trust has not done anything towards achieving the objects of the Trust i.e. it has neither afforded medical relief nor it has encouraged

medical research in any manner. The renewal for exemption u/s 80G is given for the future, i.e. for the period yet to come and that is to enable the Institution/Trust to carry on with the activities. From the evidence on the record, it has been established that the applicant in the previous years has not devoted itself either for charitable work or for the furtherance of the objects of the trust. In fact, the income of the Trust was subjected to tax for the year 1996-97. Since the trust has not applied itself for furtherance of objects in earlier years and keeping this in view, the continuation of approval of exemption u/s 80G is denied and the application of the applicant is, therefore, rejected."

8. By filing a written statement, respondents defended the impugned order dated 24.09.1999 (Annexure P-8), asserting that predominate objects of the petitioner-Trust was to earn profit and it has not done anything charitable in nature. The impugned order has been passed in accordance with law only after issuing show cause notices and affording due opportunity of hearing. Throughout, the petitioner-Trust failed to adduce any evidence to establish that it has been providing low cost medical aid to the public of Chandigarh and surrounding States of Himachal, Punjab and 8 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) -9- Haryana. Not a single rupee was spent by the petitioner-Trust on medical research. Only in one year, it has donated a sum of Rs.30,000/- to the PGI, Chandigarh, whereas donation to the tune of Rs.29,00,000/- and Rs.25,00,000/- respectively were made to Sardarni Uttam Kaur Education Society during two financial years i.e. 1994-95 and 1995-96 (Assessment Years 1995-96 and 1996-97), which have been utilised by Sardarni Uttam Kaur Education Society for further financing in the companies owned/belonging to the family members of the President & Vice-President of the said society. It has also been pointed out that the trustees of the Sardarni Uttam Kaur Education Society are indirectly related to the trustees of the petitioner-Trust. For example, Miss Babli Brar, President of Sardarni Uttam Kaur Education Society, is the daughter of Mrs. G.K. Brar, who was Chairperson of another society, i.e. Cancer Society of North India, in which Dr. P.N. Chuttani, Dr. I.C. Pathak and Dr. Y.N. Mehra, were also trustees and they are also trustees in the petitioner-Trust. Specific stand taken in the written statement is that Sardarni Uttam Kaur Education Society, in fact, has been created only to be used as a conduit for passing on of the funds of the petitioner-Trust, for the benefit of Brar Group of Companies.

Claim of the petitioner-Trust that it run into losses by providing medical relief or encouraging medical research, has also been denied. It has been pointed out that petitioner-Trust had paid rent ranging from Rs. 5,66,077/- to Rs. 7,39,200/- per annum during four years to the owners of the building, which includes the founder trustee, namely, Late Shri P.N. 9 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 10 -

Chuttani. The rent alone constituted 12.01% to 25.84% of the total expenditure during four years.

Main reason for rejection of the claim of the petitioner-Trust for continuation of the exemption under Section 80G of the 1961 Act, is that it failed to carry out its object, thus, not entitled to claim the benefit under said provision of law, and there is no illegality or perversity in passing the impugned order dated 24.09.1999 (Annexure P-8). Challenge in CWP-1311-2000

9. By filing separate petition i.e. CWP No. 1311 of 2000, the petitioner-Trust has sought quashing of notice dated 31.08.1999 (Annexure P-10), issued by the Income Tax Officer, Ward 2(1), Chandigarh, mentioning that the income chargeable to tax for the assessment year 1995- 96 of the petitioner-Trust has escaped assessment within the meaning of Section 147 of the 1961 Act, therefore, it was proposed to assess/re- assess/re-complete the income/loss/depreciation allowance for the said assessment year. The petitioner-Trust was asked to file a return in the prescribed form, within 30 days from the date of service of said notice.

Other than this, the petitioner-Trust also challenged another show cause notice dated 11.01.2000 (Annexure P-13), as to why donation made to Sardarni Uttam Kaur Educational Society by the petitioner-Trust be not disallowed.

10. We have examined the record before us, and also heard the counsel from both the sides.

10 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 11 -

11. Vide registration Certificate No.Judl/Reg.CR/73-74/6-T/37157, dated 12.02.1976, petitioner - Trust was issued a registration certificate by the Commissioner of Income Tax, Patiala, under Section 12-A(a) of the IT Act.

Looking at the object of this Trust, it was exempted from the purview of Income Tax Act under Section 80-G for the year 1993 to 1997. Object of the Trust was to provide quality, but with low cost medical aid to the public of Chandigarh and surrounding States i.e. Punjab and Haryana. It is also contended that the object was to provide basic as well as specialized medical care under one roof, so as to provide free/subsidized medical aid and diagnostic facilities to the deserving patients, who were not in a capacity to pay the higher expenses. In the premises of the petitioner - Trust and to achieve its object one Chhuttani Medical Centre was also running there to provide quality and low cost medical aid to the patients at no profit and no loss basis. As per the contention, it had been running in losses also.

12. From the pleadings, we find that on raising questions by the respondents in the year 1999 certain explanations were submitted by the Trust explaining therein its activities and the funds being used to achieve the objects as detailed in clause 4 of the petitioner - Trust, and none of the expenditure is being used for one's personal benefits. After being satisfied, the registration of the certificate under Section 12-A(a) of the IT Act was never cancelled and was continued by the respondents.

13. In regard to the exemption under Section 80-G of the IT Act, one notice dated 17/21.09.1999 was issued by the petitioner - Trust and in 11 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 12 -

response thereto, the request sent by the petitioner - Trust for continuation of the registration under Section 80-G of the IT Act. However, vide impugned order dated 24.09.1999, application of the petitioner - Trust for extension of the exemption under Section 80-G of the IT, was declined.

14. Case before us is not of cancellation of the registration, rather, it is declining the grant of exemption under Section 80-G of the IT Act for the future period also.

To our mind, the impugned action of the respondents is in self contradiction, because on one hand the objects of the petitioner - Trust explained in clause 4, is the part of the registration and based upon the said object, exemption under Section 80-G of the IT Act, was granted for Assessment Year 1998-1999 to 2000-2001. However, in the impugned order, basically two grounds have been taken for declining the exemption, i.e.;

(a) The Trust has not provided facility of space to the Doctors of various specialties under one roof;

(b) The Trust has given donations to various organizations.

15. While examining both the issues, respondents have discussed the donations of Rs.26,12,500/- and Rs.29,51,871/-, which were given to the institution namely; Sardarni Uttam Kaur Educational Society. In this view, Assessing Officer (A.O.) has noticed that object of the Trust do not permit the trustees to apply the income for donations to other trusts and thus, action of the trustees was held to be illegal. Only on this basis, the Assessing 12 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 13 -

Officer drew its' conclusion that neither any charitable work was done by the Trust nor any medical relief or encroachment of medical research has been provided for the last many years. While saying so, it took note of donations made during the Assessment Year 1992-93 to 1997-98 and found that except two donations for the Assessment Year 1995-96 and 1996-97. In all other areas, the donations are very meager. Thus raised its demand about these two donations only. Probably, while raising suspicion, the Assessing Officer failed in noticing the amount of the cross receipt during these years, which are Rs.3,54,46,069/- and Rs.59,83,090/-, respectively.

16. The gross amount received and the donations made by the petitioner - Trust, as discussed in the impugned order is as under:-

Asstt. Year	Cross Receipt (Amt. in Rs.)	Donation (Amt. in Rs.)
1992-93	11,42,062/-	21,626/-
1993-94	17,30,549/-	41,043/-
1994-95	22,56,884/-	64,558/-
1995-96	3,54,46,069/-	26,12,500/-*
1996-97	59,83,090/-	29,51,871/-*
1997-98	99,91,384/-	15,000/-

17. We find that for drawing such a conclusion, the order is based only on assumptions and there is not supportive evidence, collective or discussed in that regard.

For the impugned action, we are also unable to find that until some action is taken by the respondents by saying that it does not deserve any registration because of failure to meet out the

objects mentioned in clause 8 of the registration, targeting the donations alleging the same to be 13 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 14 -

against the object, would not satisfy us. There would not be any dispute to the effect that the petitioner - Trust runs only one "Chhuttani Medical Centre". Therefore, the donations made to it cannot be doubted merely for the reason that the donations in other years are of smaller amount. Respondents have not taken note of the fact that the petitioner - Trust had been making donations to Sardarni Uttam Kaur Charitable Society, which is also registered under Section 12-A of the IT Act and had been granted exemption under Section 80-G of the IT Act. Neither from the record, nor anything pointed out by the respondents that their action is in pursuance to the complaint from any person/organization/society, to which the medical services are being provided by the petitioner - Trust.

Actually, the respondents were required to convince itself, as to whether the petitioner - Trust is meeting out its charitable purpose or not ? Once the foundation of registration under Section 12-A of the IT Act is not questioned, the ancillary expenses to achieve the object of the Trust, as enshrined in the Memorandum of Object and Terms, there is no point of raising mere suspicion on the donations, which many a times are ancillary in nature and though directly or indirectly meet out the object of its registration. The case of Sonapat Hindu Education and Charitable Society v. Commissioner of Income Tax and another, (2005) 278 ITR 262 (P&H) :

Law Finder Doc Id #684789, objection of the CIT, which was based merely on technical ground, was found unsustainable. The relevant finding recorded therein is as under:-

14 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 15 -

"16. We are of the opinion that, in view of the fact that the petitioner had enjoyed approval under section 80G of the Act from the year 1991 to March 31, 1999, i.e., even after the amendment of its objects on September 17, 1999, and after the insertion of clause (vi) with effect from October 1, 1991, the Commissioner was not justified in holding that either fresh registration under section 12A(a) of the Act was required or the memorandum should have been amended as per the procedure laid down in section 92 of the Code of Civil Procedure. In Radhasoami Satsang v. Commissioner of Income Tax, (1992) 193 ITR 321 their Lordships of the Supreme Court, inter alia, observed that though strictly speaking, res judicata does not apply to income-tax proceedings, where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be, at all, appropriate to allow the position to be changed in a subsequent year. We feel that these observations are quite apposite in the present case. The ratio of the decision of the apex court in Nizam's case (2000) 243 ITR 676 is not attracted in this case.

17. As regards the question whether the petitioner's income would be liable to be included in its 5 / 6 LAW FINDER Submitted By: Hon'ble Mr. Justice Sanjay Vashisth PDF downloaded from the online archives of Chawla Publications(P) Ltd. total income under the provisions of sections 11 and 12 of the Act, a bare perusal of the said provisions would show that there are various factors, like the nature of contributions ; the quantum of income set apart and accumulated for application in future for specified purposes which would require consideration to determine whether the income derived by such trust or society would be liable to be

15 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 16 -

included in the total income. It will thus be not possible, to determine on the date when a donation is made for deduction under section 80G, as to what will be the position as on the end of the relevant previous year of the society or the trust, who had sought approval under section 80G of the Act. We have no hesitation in holding that the scope of enquiry by the Commissioner, while dealing with the application under section 80G(5)(vi) of the Act, extends to eligibility to exemption under various provisions of the Act, referred to in that sub-section, but not to actual computation of income under the Act, particularly when a society or a trust is claiming exemptions under sections 11 and 12 and not under section 10 of the Act. It needs little emphasis that the enquiry for the said purpose relates to whether the applicant is registered under section 12A ; whether it is a trust wholly for charitable purposes and whether the income received by it is liable to be considered under section 11 of the Act. The enquiry whether at the end of the previous year, the donor will be able to sustain a claim because of non-fulfilment of some conditions by him would depend at the close of the relevant previous year, as it is not possible to predicate these conditions in praesenti when the donation is made.

18. In so far as exemption under section 10(23C) of the Act is concerned, for the view we have taken above on the application of sections 11 and 12 of the Act, exemption under the said provision would not be necessary to make the petitioner eligible for approval under section 80G. None the less, it is stated that the application for claiming exemption under the said provision is also pending for the past few years.

19. For the foregoing reasons, we are of the view that the impugned order of the Commissioner refusing approval to the petitioner-society under section 80G of the Act is founded on 16 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 17 -

irrelevant considerations and, therefore, cannot be sustained. Consequently, we allow the writ petition ; make the rule absolute, quash the impugned order and direct the Commissioner to take a fresh decision on the petitioner's application in accordance with law. There will, however, be no order as to costs."

18. Similarly, Delhi High Court, in the case of Kirti Chand Tarawati Charitable Trust v. Director of Income Tax (Exemptions) and others, (1998) 232 ITR 11, observed as under:-

"12. It follows that while dealing with a tax law the realities, and not devices and subterfuges, have to be seen. The vision cannot be permitted to be blurred by the blinkers of colourable devices and dubious methods.

13. Shri C.S. Aggarwal, learned counsel for the petitioner, submitted that for the purpose of determining charitable purpose of the Trust, the respondents should have confined their attention and scope of scrutiny only to the purposes as set out in the deed of Trust without digressing to actual activities carried on by the Trust. It was also submitted that the scheme underlying the relevant provisions of the Income-tax Act shows that the legislative intent is to grant the donations made to a charitable trust exemption from payment of income tax and if a donor makes donations to a trust with charitable purpose as spelled out from the objects set out in the deed of trust then the donations must enjoy exemption though in the event of the donation being misused or misutilised for purposes other than charitable, the Trust may be liable to assessment under the appropriate provisions and may also face penal consequences; however, this has nothing to do with the 17 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 18 -

grant of recognition under Section 80G of the Act, submitted the learned counsel. We are not impressed.

14. It is not disputed that the objects of the Trust as set out in the deed of declaration are charitable. However, on-the-spot enquiry conducted by the respondents has revealed the Trust being engaged mainly in the construction of a religious temple wherein no charitable activity was being carried on. It is also not disputed that the donations received by the Trust and enjoying exemption under Section 80G were invested by the petitioner and the income derived therefrom was utilised for a religious purpose.

15. For the purpose of construing the purpose of a Trust, one need not remain necessarily confined to the objects of the Trust as set out in the deed of declaration. The real purpose of establishment of a Trust has to be found out and spelled out. 'Purpose' means that which one sets before him to accomplish or attend, an intention or aim object, plan, project; Term is synonymous with the ends sought and an object to attain, an intention, etc. (see Black's Law Dictionary, 6th Edn, page 1236). Purpose must obviously be construed as real purpose and not a purpose as it outwardly appears to be. Any other interpretation would permit a fraud being played on the law permitting exemption from taxation. If the argument of the learned counsel for the petitioner was to be accepted then a trust may be established with a purpose as set out in the deed of declaration which appears to be highly charitable but the Trust may

in fact be engaged in such activities which cannot even remotely be called charitable, and yet the donations made to the Trust would enjoy exemption. The authority conferred with power to grant exemption is not debarred from finding out the real purpose as distinguished from the ostensible purpose and if it may find that the purpose of the trust was 18 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 19 -

other than charitable then nothing debars the authority from denying the approval.

16. Once a trust has approval from the Commissioner, the trust can persuade the donors into making donations. The donors would be persuaded to make such donations influenced by the approval unmindful of the fact that their donations were going to be utilised for religious purpose as distinguished from charitable purpose- the distinction which the Parliament has chosen to keep in view while framing Section 80G. Purpose of establishment- the real purpose as distinguished from the ostensible purpose- is germane to the enquiry which the Commissioner has to hold while granting approval under Section 80G(5)(vi). We are not prepared to place any such interpretation on the language implied in Section 80G so as to uphold an obligation on the part of the Commissioner to grant an approval to a trust merely by looking at the instrument creating the Trust and shutting its eyes towards the activities actually carried out by it.

17. The second contention of the learned counsel for the petitioner also deserves to be discarded. Having received donations for charitable purposes, instead of being spent on charity, are utilised for investing so as to earn the returns thereon and utilise the same for purposes other than charitable (religious in the case at hand). Obviously the donations are being utilised for purposes other than charity though indirectly.

18. We are, therefore, of the opinion that no fault can be found with the impugned order of the respondent denying renewal of recognition under Section 80G of the Income-tax Act, 1961 to the petitioner Trust for the period 1.4.1996 onwards. The petition is devoid of merit and liable to be dismissed. It is dismissed accordingly though without any order as to the costs."

19 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 20 -

19. We also find that recently, Hon'ble Apex Court while considering the requirement of continuing the registration for an Educational Trust, in the case of M/s New Noble Educational Society v. Chief Commissioner of Income Tax-1 and another, (2023) 6 SCC 649, proceeded to hold that the word 'solely' would also mean that the ancillary work, which may be carried out by the Society for the purpose of enhancing education, would also be treated as work for charitable purposes. The relevant finding recorded therein, is as under:-

"69. This court is of the opinion that the findings in the impugned judgment on this aspect are sound. The requirement of registration of every charitable institution is not optional. Aside from the fact that the consequences of non-registration are penal,

which indicates the mandatory nature of the provisions of the A.P. Charities Act, such local laws provide the regulatory framework by which annual accounts, manner of choosing the governing body (in terms of the founding instrument: trust, society, etc.), acquisition and disposal of properties, etc. are constantly monitored. Entry 32 of List II of the Seventh Schedule to the Constitution reads as follows:

"32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; cooperative societies."

By Entry 28, List III of the Seventh Schedule, the states have undoubted power to enact on the subject of charities:

20 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 21 -

"28. Charities and charitable institutions, charitable and religious endowments and religious institutions."

The A.P. Charities Act provides a statutory regulatory framework in regard to activities of charitable institutions in the state. Sections 72-74 deal with surplus funds and their treatment; Sections 75-77 deal with properties of trusts and charitable institutions and restrictions on transfers. These and other provisions enable the State, which is concerned in the proper administration of such organizations, to ensure that they are managed efficiently without misfeasance. They also contain provisions to protect the interests of trusts, especially funds and properties.

70. In view of the above discussion, it is held that charitable institutions and societies, which may be regulated by other state laws, have to comply with them-just as in the case of laws regulating education (at all levels). Compliance with or registration under those laws, are also a relevant consideration which can legitimately weigh with the Commissioner or other concerned authority, while deciding applications for approval under Section 10 (23C).

71. This reasoning equally applies especially in Section 11(4A) which speaks of profits incidental which specifies that exemption in relation to income or trust of an institution which are profits or means of business cannot be exempted 'unless the business is incidental, trust or as the case may be institution and separate books of accounts are maintained by such trusts or institution in respect of such business '. Thus, the underlying objective of seventh proviso to Section 10(23C) and of Section 11(4A) are identical. These have to be read in the light of the main provision which spells out the conditions for exemption 21 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 22 -

under Section 10(23C) - the same conditions would apply equally to the other sub-clauses of Section 10(23C) that deal with education, medical institution, hospitals etc.

72. What then is 'incidental' business activity in relation to education? Imparting education through schools, colleges and other such institutions would be per se charity. Apart from that there could be activities incidental to providing education. One example is of text books. This court in a previous ruling in Assam State Text Book Production & Publication Corpn. Ltd. v. Commissioner of Income Tax (2009) 17 SCC 391 has held that dealing in text books is part of a larger educational activity. The Court was concerned with State established institutions that published and sold text books. It was held that if an institution facilitated learning of its pupils by sourcing and providing text books, such activity would be 'incidental' to education. Similarly, if a school or other educational institution ran its own buses and provided bus facilities to transport children, that too would be an activity incidental to education. There can be similar instances such as providing summer camps for pupils' special educational courses, such as relating to computers etc., which may benefit its pupils in their pursuit of learning.

73. However, where institutions provide their premises or infrastructure to other entities, trusts, societies etc., for the purposes of conducting workshops, seminars or even educational courses (which the concerned trust is not actually imparting) and outsiders are permitted to enrol in such seminars, workshops, courses etc., then the income derived from such activity cannot be characterised as part of education or 'incidental' to the imparting education. Such income can properly fall under the other heads of income.

22 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 23 -

74. In R.R.M Educational Society's appeal before this court, the charitable status of the appellant within Section 10(23C) was denied inter alia on the ground that the institution was not merely imparting education but also was running hostels. It is clarified that providing hostel facilities to pupils would be an activity incidental to imparting education. It is unclear from the record whether R.R.M Educational Society was providing hostel facility only to its students or to others as well. If the institution provided hostel and allied facilities (such as catering etc.) only to its students, that activity would clearly be 'incidental' to the objective of imparting education.

75. The last ground urged was with respect to the refusal by the Commissioner to register certain institutions who had amended their objectives. This court is of the opinion that the impugned judgment cannot be faulted with in rejecting the challenge by the appellant societies and trusts, because the requirement of trust or societies applying for registration or approval under the provisos to Section 10(23)(C) spell out a specific time (before 30 September). As the High Court has observed, there is no provision to extend such a deadline. In the circumstances for the concerned year, the reasoning of the High Court in refusing to interfere with the concerned authorities decisions to approve or reject the registration of the institution, is hereby affirmed.

76. The conclusions of this court are summarized as follows:

- a. It is held that the requirement of the charitable institution, society or trust etc., to 'solely' engage itself in education or educational activities, and not engage in any

activity of profit, means that such institutions cannot have objects which are unrelated to education. In other words, all objects of the society, trust etc., must relate to imparting education or be in relation to educational activities.

23 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 24 -

b. Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval under Section 10(23C) of the IT Act. At the same time, where surplus accrues in a given year or set of years per se, it is not a bar, provided such surplus is generated in the course of providing education or educational activities. c. The seventh proviso to Section 10(23C), as well as Section 11(4A) refer to profits which may be 'incidentally' generated or earned by the charitable institution. In the present case, the same is applicable only to those institutions which impart education or are engaged in activities connected to education.

d. The reference to 'business' and 'profits' in the seventh proviso to Section 10(23C) and Section 11(4A) merely means that the profits of business which is 'incidental' to educational activity - as explained in the earlier part of the judgment i.e., relating to education such as sale of text books, providing school bus facilities, hostel facilities, etc. e. The reasoning and conclusions in American Hotel (supra) and Queen's Education Society (supra) so far as they pertain to the interpretation of expression 'solely' are hereby disapproved. The judgments are accordingly overruled to that extent. f. While considering applications for approval under Section 10(23C), the Commissioner or the concerned authority as the case may be under the second proviso is not bound to examine only the objects of the institution. To ascertain the genuineness of the institution and the manner of its functioning, the Commissioner or other authority is free to call for the audited accounts or other such documents for recording satisfaction where the society, trust or institution genuinely seeks to achieve the objects which it professes. The observations made in American Hotel (supra) suggest that the Commissioner could not call for the records and that the examination of such accounts would be at the stage of assessment.

Whilst that reasoning undoubtedly applies to newly set up charities, trusts etc. the proviso under Section 10(23C) is not confined to newly set up trusts - it also applies to existing ones. The Commissioner or other authority is not in any 24 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 25 -

manner constrained from examining accounts and other related documents to see the pattern of income and expenditure.

g. It is held that wherever registration of trust or charities is obligatory under state or local laws, the concerned trust, society, other institution etc. seeking approval under Section 10(23C) should also comply with provisions of such state laws. This would enable the Commissioner or concerned authority to ascertain the genuineness of the trust, society etc. This reasoning is reinforced by the recent insertion of another proviso of Section 10(23C) with effect from 01.04.2021.

77. In a knowledge based, information driven society, true wealth is education -and access to it. Every social order accommodates, and even cherishes, charitable endeavour, since it is impelled by the desire to give back, what one has taken or benefitted from society. Our Constitution reflects a value which equates education with charity. That it is to be treated as neither business, trade, nor commerce, has been declared by one of the most authoritative pronouncements of this court in T.M.A Pai Foundation (supra). The interpretation of education being the `sole' object of every trust or organization which seeks to propagate it, through this decision, accords with the constitutional understanding and, what is more, maintains its pristine and unsullied nature.

78. In the light of the foregoing discussion, the assessee's appeals fail. It is however clarified that their claim for approval or registration would have to be considered in the light of subsequent events, if any, disclosed in fresh applications made in that regard. This court is further of the opinion that since the present judgment has departed from the previous rulings regarding the meaning of the term `solely', in order to avoid disruption, and to give time to institutions likely to be affected to make appropriate changes and adjustments, it would be in 25 of 26 Neutral Citation No:=2025:PHHC:007264-DB CWP-350-2000 (O&M) AND CWP-1311-2000 (O&M) - 26 -

the larger interests of society that the present judgment operates hereafter. As a result, it is hereby directed that the law declared in the present judgment shall operate prospectively. The appeals are hereby dismissed, without order on costs."

20. After going through the law laid down by the Hon'ble Apex Court and the facts examined by us, we find that the action of the respondents is not tenable, because same is not based upon any substantial evidence. Therefore, impugned orders are hereby set-aside and consequently, the writ petitions are allowed.

Since, writ petitions have been decided all other pending civil miscellaneous application(s), if any, shall stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

January 17, 2025
J. Ram

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No