

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH, COCHIN</b>
<b>BEFORE S/SHRI CHANDRA POOJARI, AM &amp; GEORGE GEORGE K., JM</b>

I.T.A. No.266/Coch/2018
Assessment Year : 2003-04

Calicut Education Trust, Corporation College of Arts & Science, EMAS Complex, YMCA Road, Kozhidoor-673 001. [PAN:AAATC 4925C]	<b>Vs.</b>	The Income Tax Officer, Ward-1(1), Calicut.
<b>(Assessee-Appellant)</b>		<b>(Revenue-Respondent)</b>

<b>Assessee by</b>	Shri M.V. Venugopal, CA
<b>Revenue by</b>	Shri Sudhanshu Shekhar Jha, CIT(DR)

<b>Date of hearing</b>	24/10/2018
<b>Date of pronouncement</b>	30/10/2018

### **ORDER**

Per CHANDRA POOJARI, AM:

This appeal filed by the assessee is directed against the order of the CIT(A), Calicut dated 28/03/2018 and pertains to the assessment year 2003-04.

2. The assessee has raised the following grounds:

- 1) The CIT(A) went wrong in confirming the denial of exemption u/s. 11 by the Assessing Officer.
- 2) The CIT(A) was not justified in ignoring the finding of the CIT(A) at the time of registration u/s. 12A.

- 3) The CIT(A) ought to have held that the Assessing Officer went wrong in his conclusion that discharging of liability taken over another association would be fatal to the claim for exemption u/s.11.
  - 4) No direction was given by the CIT(A) to change the system of accounting from mercantile to cash.
  - 5) The CIT(A) relied on a decision CIR vs. Sarvodaya Illakkiya Pannai in 343 ITR 300(Mad.) which was in favour of the assessee and not applicable to the issue to be decided.
  - 6) Having quoted and relied on an unreported case of the ITAT in Prathima Educational Society vs. DCIT in ITA No.1767/Hyd/2011, the CIT(A) ought to have given a copy of the said judgment he relied on.
  - 7) At any rate the CIT(A) ought to have directed application of tax at rates applicable to individuals and AOP.
  - 8) The CIT(A) went wrong in ignoring Ground No. 8 which was an alternate claim for allowing exemption u/s. 10(23C)(iiiad).
3. The facts of the case are that the assessee is a Trust formed with the object of imparting education. The assessee filed its return of income for the assessment year 2003-04 on 31/10/2003 declaring Nil income after claiming deduction of Rs.6,60,505/- u/s. 11 of the Act. On going through the activities performed by the Trust, the Assessing Officer observed that the assessee is not a charitable trust but running a parallel college/coaching centre to make profit and the same was distributed to the trustees by way of allowances and interest and therefore, deduction claimed u/s. 11 of the Act was not allowable. Accordingly, he denied exemption claimed under section 11 of the Act and computed the total income at 1,19,990/-.

3.1 The Assessing Officer noted that the assessee-Trust created by trust deed dated 31.08-2002, had 19 members. Its objects are:

1. To work for the educational cultural, social advancement of the people of Malabar.
2. To establish and run educational institutions of all kinds at all levels in all subjects including pre/upper/lower primary/secondary/higher secondary school, industrial training centres, teachers training institute and colleges such as Arts & Science, Commerce and Management Studies, Medical, Engineering, Agriculture, Veterinary, Law etc.
3. To publish and propagate books, periodicals and journals as deemed useful by the Trust for achievement of the objectives of the Trust.
4. To take over the Institution, Corporate college of Arts and Science, YMCA Cross Road, Calicut with its all liabilities and assets.

3.2 The Assessing Officer further noted that in A.Y.2003-04, the assessee had not done any object of trust except taken over of Corporate College of Arts and Science w.e.f. 01.09.2002. The Assessing Officer observed that the Corporate College of Arts and Science was a coaching centre popularly known as Parallel College giving tuition to various subjects from plus one to post graduate. It had no affiliation or recognition with any University or Board of Education and no charity or additional benefits to students have been provided. It was noticed that collection of fees was at the same rate collected by other parallel colleges. The Assessing Officer further observed as follows:

*"When going through the balance sheet, P&L account of the corporate college of Arts and Science for the period ending 31.08.2002 it has a net profit of Rs. 30,674/- with an outstanding liability of Rs. 141,640/-. The outstanding liabilities are as under:-*

Salary to teachers (Aug)	13,140
Allowance to teachers	112,500
Rent	13,000
Transporting	<u>3,000</u>
	<u>141,640</u>

On perusal of the minutes of G.B. held on 29.01.2003 up to 31.08.2002 the Corporate College of Arts and Science, they have received Rs. 308,670/- as fees from EMAS building and Rs. 7,10,120/- from the P.G. Centre and have a cash balance of Rs. 80,000/- in bank and Rs. 130,266/- in hand (out of this the balance is paid in Bank account) after paying the salary for August 2002. It is seen that the profit of Rs. 30,674/- is arrived after considering the liability of Rs. 141,640/-. The salary paid to teachers comes to Rs. 90,455/- it includes special allowance granted to teachers having administration charges. On going through the decision taken at the G.B. meeting held on 26.10.2003, it is seen that the outstanding liability of Rs. 112,500/- payable to the teachers as allowance is distributed to 19 trustees (16 trustees are teachers) @ Rs. 4500/- and the balance of Rs. 27000/- is earmarked for the purchase of library. Rs. 85,500/- was paid on 31.03.2004 through acquittance.

The salary to teachers was calculated on the basis of hours of classes taken by them and the number of students in each class but there is no provision for any other allowance. The assessee has failed to produce any appointment letter or contract made between the teacher and the management to verify the correctness of providing allowance to teachers. They informed though the letter dated 17.01.2006 that there is no appointment letter or written contract entered with the teachers.

In addition to the above, the licence fees paid to Shri Babu Premraj (Jt. Secretary) for conducting P.G. Centre is Rs.16000/- for the F. Y. 2002-03 but agreement dated 02.06.2003 this has been enhanced to Rs. 40,000/- This also a direct benefit to the Trustee.

Before the formation of Trust, 19 members has contributed Rs. 10,000/- each towards the capital, in the account it is termed as loan from members and teachers which will be refunded when the financial position improved. But in the subsequent years it is seen that interest @ 15% was granted to the balance payable to members. It is nothing but providing interest on capital employed for the business."

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Thus, the Assessing Officer denied exemption u/s. 11 of the Act to the assessee.

4. On appeal, the CIT(A) observed that it is well within the powers of the Assessing Officer to grant or reject exemption under Section 11 of I T Act from year to year in case of a trust. For this proposition, the CIT(A) relied on the judgment of the Madras High Court decision in the case of CIT Vs Savodaya Ilakkiya Pannai in 343 ITR 300 (Mad) on 25 January 2012 wherein it was held as follows:

*"Under Section 12AA, the Commissioner is empowered to grant or refuse the registration and after granting registration, would be empowered to cancel and that too, only on two conditions laid down under section 12AA(3) of the Act. Whether the income derived from such transaction would be assessed for tax and also whether the trust would be entitled to exemption under section 11 are entirely the matters left to the assessing officer to decide as to whether it should be assessed or exempted."*

4.1. The CIT(A) relied on the decision of the ITAT, Hyderabad Bench in the case of Prathima Educational Society Vs. D.I.T in ITA No. 1767/Hyd/2011 wherein it was held as under:

*"In case of discrepancy or irregularity with regard to allowability of exemption under section 11 is noticed by the Assessing Officer, he can make independent enquiry or examination at the time of assessment for each assessment year in accordance with the law."*

4.2 Coming to the merits of the case, the CIT(A) observed that the trustees have received benefit by way of allowances and interest and interest at the rate of 15% was granted to balance payable to members. It was noticed that salary to teachers was calculated on hourly basis and number of students in each class. It was noticed that there was no appointment letter or written contract with teachers. However, it was seen that a part of outstanding liability of Rs. 112,500

payable to teachers was distributed to 19 trustees @ Rs.4500/- each i.e., a fixed allowance and not on hourly basis. Further, Joint Secretary was paid licence fee of Rs. 16000/- for conducting P.G Centre during the F.Y. 2002-03 which was later enhanced to Rs. 40,000/- vide agreement dated 02.06.2003 which, according to the CIT(A), is a direct benefit to trustee. The CIT(A) referred to section 13(l)(c)(ii) of IT Act which reads as follows:-

*"13(1) Nothing contained in Section 11 (or Section 12) shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—*

- (a) .....*
- (b).....*
- (bb).....*
- (c) .....*

*(i).....*

*(ii) If any part of such income or any property of the trust or the institution (whenever created or established) is during the previous used or applied, Directly or indirectly for the benefit of any person referred to in subsection*

*Further, sub section (3) of section 13 is as under:*

*(3) The persons referred to clause (c) of sub-section (1) and sub-section (2) are the following, namely:-*

- (a)*
- (b)*
- (c) -----*
- (cc) any trustee of the trust or manager [by whatever name called) of the institution;]"*

4.3. Thus, the CIT(A) confirmed the view taken by the Assessing Officer that the trustees and Joint Secretary managing the P.G Centre had received benefits

from the income / property of the trust during the year and such income is not eligible for deduction under section 11 of I.T. Act.

4.4 According to the CIT(A), the assessee's reliance on the case laws cited is misplaced as the facts of the instant case are entirely different. Further, the CIT(A) observed that its reliance on decision of High Court in its favour on the matter of service tax is also of no help as the benefit to trustees was never a matter before the Court. Moreover, the facts brought out by the Assessing Officer during the course of assessment proceedings clearly brought the case within the provisions of section 13(i)(c)(ii) of I.T. Act.

4.5 The CIT(A) also confirmed the view taken by the Assessing officer that the trust was running a parallel college / coaching centre to make profit and no charitable activities were performed. It was also seen that the fees were collected from students at the rate of the other parallel colleges which was increased subsequently. According to the CIT(A), this brings out the profit motive of the assessee-Trust and there is no affiliation to a University or Board. According to the CIT(A), assessee's argument that a status of counselling centre was granted to it by University of Calicut in year 2013 is not relevant for the period under consideration. In view of the above, the CIT(A) dismissed these grounds of appeal of the assessee. Similarly, the CIT(A) also dismissed other grounds of appeal of the assessee.

5. Against this, the assessee is in appeal before us. The Ld. AR submitted that the CIT(A) was not justified in confirming the action of the learned Assessing Officer in rejecting the claim of the assessee on the facts of the case. The Ld. AR relied on the decisions of the Jurisdictional High Court in the case of The Supdt. of Central Excise Vs. Calicut Education Trust in WA No.250/2006(E) dated 25<sup>th</sup> July, 2013, CIT Vs Birla Janahit Trust (208 ITR 372), Oxford Academy for Career Development Vs Chief Commissioner of Income tax & Ors (315 ITR 382). It was submitted that the CIT(A) was not justified in ignoring the finding of the CIT at the lime of granting registration under section 12AA. The Ld. AR relied on the decision of the Academy for Career Development Vs. Chief Commissioner of Income tax & Ors (2009) 315 ITR 382, Hiralal Bhagvati Vs CIT (246 ITR 188) confirmed by SC in ACIT Vs Sitrat City Gymkhana (300 ITR 214). The Ld. AR submitted that the discharging of liability taken over from the Corporate College of Arts and Science could not stand in the way of concluding that the activities of the Trust was charitable. It was submitted that in the return of income, the system of accounting was given as cash, while in the assessment order, it was mentioned as mercantile and the appellate order is silent about this. According to the Ld. AR, the decisions cited by the CIT(A) were not relevant to the issue on hand and the decision of Sarvodaya Ilakkiya Pannai, cited supra is actually in favour of the assessee. Moreover, it was submitted that in this case Registration under section 12AA was not revoked. Section 12AA(3) is effective only from 01-

10-2004, while the assessee was granted registration on 28/05/2003. Therefore, power to revoke has no retrospective operation. It was submitted that even assuming for the sake of argument that the Trust was not entitled to exemption, the rate of tax applicable was one applicable to AOP and there was no ground for applying maximum marginal rate of tax. It was submitted that the CIT(A) had not properly examined the claim of the assessee for exemption u/s. 10(23C)(iiiad). The Ld. AR relied on the decisions in Delhi Music Society vs. Director General of Income-tax (357 ITR 265) and CIT vs. Doon Foundation (154 ITR 208).

6. The Ld. DR relied on the order of the lower authorities.

7. We have heard the rival submissions and perused the record. The assessee is a Trust registered u/s. 12A of the I.T. Act. The main objects of the assessee-Trust are as under:

1. To work for the educational cultural, social advancement of the people of Malabar.
2. To establish and run educational institutions of all kinds at all levels in all subjects including pre/upper/lower primary/secondary/higher secondary school, industrial training centres, teachers training institute and colleges such as Arts & Science, Commerce and Management Studies, Medical, Engineering, Agriculture, Veterinary, Law etc.
3. To publish and propagate books, periodicals and journals as deemed useful by the Trust for achievement of the objectives of the Trust.
4. To take over the Institution, Corporate college of Arts and Science, YMCA Cross Road, Calicut with its all liabilities and assets.

7.1 In the assessment year under consideration, the assessee took over control of Co-operative College of Arts and Science w.e.f. 01/09/2002 with all its assets and liabilities. The Co-operative College of Arts and Science was started in June, 2002 by the teachers who came out from Co-operative College of Arts and Commerce and the teacher of Mathematical guidance centre due to its stoppage. The Co-operative College of Arts and Science is a coaching centre popularly known as Parallel College giving tuition to various subjects form Plus One to Postgraduates. It has no affiliation or recognition with any University, Board of Education. The Trust has not carried on any charitable activities beneficial to the students or any benefits to the people of Malabar through the Trust. The assessee had collected fees at the same rate which was collected by other Parallel Colleges. The assessee also conducted coaching classes to the students to appear for various examinations conducted by the Board of Examination, University etc. The assessee is not a regular college, providing systematic education to the students. Now the question which arises for our consideration is when the assessee is conducting coaching classes for various examinations conducted by the Board of Examination, University etc., whether such activities of the assessee could be treated as 'education' within the meaning of sec. 2(15) of the I.T. Act. In the case of Sole Trustee, Loka Shikshana Trust vs. CIT (101 ITR 234), the Supreme Court had an occasion to consider this issue and Apex

Court found that all kinds of acquiring knowledge may not come within the term "education". The Apex Court held as follows:

*"The sense in which the word "education" has been used in section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, is education, because as a travelling you acquire fresh knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling."*

*5. From the above judgment of the apex Court, it would be abundantly clear that there should be systematic instruction to the students by way of normal schooling. Mere coaching classed may provide some kind of knowledge to the students. But that kind of knowledge cannot fall within the meaning of "education" as provided in section 2(15) of the Act. As the Apex Court observed, one may acquire knowledge in the course of travelling; during the course of reading newspaper; etc. But that kind of knowledge cannot fall within the term "education" as provided in section 2(15) of the Act. As the Apex Court observed, one may acquire knowledge in the course of travelling; during the course of reading newspaper; etc. But that kind of knowledge cannot fall within the term "education" as provided in section 2(15) of the Act. There should be a normal schooling by way of regular and systematic instruction.*

*7. The Patna High Court in the case of Bihar Institute of Mining And Mine Surveying vs C.I.T. (1994) 208 ITR 608 (Pat) held that mere conducting of*

*classes for open university / distance education cannot be construed as charitable activity within the meaning of section 2(15) of the Act. The Patna High Court, after considering the judgment of the Apex Court in Commissioner of Income-tax vs Andhra Chamber of Commerce (1965) 55 ITR 722 (SC) and in the case of Commissioner of Income-tax vs Sole Trustee, Loka Shikshana Trust (1970) (77 ITR 61) (Mys) has observed as follows at page 615 of the ITR:*

*" It is true that by reason of the Finance Act, 1983, the question as to whether any charitable institution is being run with a profit motive or not has lost its relevance. However, the word "charitable" prefixing the word "institution" has to be given its full effect. It appears that one of the principal projects of the petitioner's institution has the object of coaching and preparing the students for appearing in various examinations conducted by the Board of Mining Examination and / or MI(1) section (a)(b) and the said coaching of students in an institute is not, in our opinion, an imparting of education which can be said to be a process of training and developing knowledge and character of students by normal schooling. A coaching institute cannot be said to be an institution where normal schooling is done. The definition of "charitable purpose" is inclusive and not exhaustive."*

*8. It is further seen that the Gujarat High Court also had an occasion to consider identical issue in the case of Saurashtra Education Foundation vs C.I.T. (2005) 273 ITR 139 (Guj). The Gujarat High Court found that all kinds of education would not fall within the meaning of section 2(15) of the Act. The training, instruction, etc. would result in grant of a diploma or degree by a university or a governmental agency. In the case before us, admittedly, the taxpayer is conducting **coaching** classes. Therefore, it cannot be treated as a charitable institution as provided in section 2(15) of the Act, This Tribunal is of the opinion that the taxpayer is not eligible for registration u/s 12AA of the Act. Accordingly, the order of the lower authority is confirmed."*

7.2 In view of the above, we are of the opinion that the assessee cannot be considered to be an educational trust within the meaning of section 2(15) of the Act. Therefore, it is not entitled for exemption u/s. 11 of the Act. Accordingly, the order of the CIT(A) is confirmed on the reasons as above.

7.3 Another argument of the Ld. AR is that since the approval u/s. 12A was granted, exemption u/s. 11 of the Act is to be granted automatically. In our opinion, as held by various Courts, the Assessing Officer has the liberty to grant or refuse exemption u/s. 11 at the time of making assessment for each assessment year in accordance with law. In the assessment year under consideration, the Assessing Officer came to the conclusion that the activities carried on by the assessee are not charitable in nature, hence, he denied exemption u/s. 11 of the Act. Hence, we do not find any merit in the argument of the Ld. AR. This ground of appeal of the assessee is dismissed.

7.4. Without prejudice to the earlier findings, we find that the assessee has paid interest to the Trustees on the amount of contribution made by 19 members at Rs.10000/- each at 15% per month. Hence, the assessee is hit by the provisions of section 13(1)(c)(ii) of the I.T. Act. From this point of view also, the appeal of the assessee is dismissed.

7.5. The Ld. AR submitted that no opportunity was given by the CIT(A) to change the system of accounting from mercantile to cash. In our opinion, this issue does not require adjudication. The method of accounting is to be followed at the option of the assessee only. This ground of appeal of the assessee is dismissed.

7.6. The Ld. AR has also grievance with regard to non consideration of certain decisions relied upon by the assessee by the Assessing Officer and relying on some decisions against the assessee. Since we have held that the activities carried on by the assessee is not charitable in nature and the assessee is not entitled to exemption u/s. 11 of the Act, the assessee cannot have any grievance at this stage. This ground of appeal of the assessee is dismissed.

7.7. The Ld. AR made a plea before us that the rate of tax is to be applied as applicable to individuals instead of AOP. In our opinion, when the assessee was treated as not entitled to exemption u/s. 11 of the Act, the income of assessee is to assessed at maximum marginal rate as applicable to AOP u/s. 164/165 of the Act. This ground of appeal of the assessee is rejected.

8. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on this 30<sup>th</sup> October, 2018.

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

sd/-  
(CHANDRA POOJARI)  
ACCOUNTANT MEMBER

Place: Kochi

Dated: 30<sup>th</sup> October, 2018

GJ

Copy to:

1. Calicut Education Trust,  
Corporation College of Arts & Science, EMAS Complex, YMCA Road,  
Kozhikode-673 001.

2. The Income Tax Officer, Ward-1(1), Calicut.
3. The Commissioner of Income-tax(Appeals), Calicut.
4. The Pr. Commissioner of Income-tax, Calicut
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin