REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3795 OF 2014

M/S NEW NOBLE EDUCATIONAL SOCIETY **APPELLANT(S)**

VERSUS

THE CHIEF COMMISSIONER OF INCOME TAX 1 AND ANR. **RESPONDENT(S)**

WITH

CIVIL APPEAL NO. 3793 OF 2014

CIVIL APPEAL NO. 3794 OF 2014

CIVIL APPEAL NO. 9108 OF 2012

CIVIL APPEAL NO. 6418 OF 2012

J U D G M E NT

S. RAVINDRA BHAT, J.

1. It has been said that education is the key that unlocks the golden door to freedom.[1] In *Avinash Mehrotra v Union of India*[2], this court underlined the object and value of education in the following words:

[1]An aphorism common to all faiths. Proverb 4:13 states, *"Take hold of instruction, do not let go. Guard her, for she is your life."* The *Pavamana Mantras* (purifying mantras) appealing to be taken from darkness to light in *Brihadaranyaka Upanishad*, as part of verse 1.3.28 too emphasizes the value of knowledge and education, *"Lead me from the darkness of ignorance to the light (of knowledge)."* Surah Al-Baqarah, gives an important interpretation about learning, *"He gives knowledge and wisdom to whomever He wills and to whomsoever knowledge is given, much good has been given."*
[2]*Avinash Mehrotra v Union of India*, (2009) 6 SCC 398.

> *"29. Education today remains liberation - a tool for the betterment of our civil institutions, the protection of our civil liberties, and the path to an informed and questioning citizenry. Then as now, we recognize education's "transcendental importance" in the lives of individuals and in the very survival of our Constitution and Republic."*

2. The subject matter of these appeals[3] is the rejection of the appellants' claim for registration as a fund or trust or institution or any university or other educational institution (hereinafter collectively referred to as "institution / trust") set up for the charitable purpose of education, under the Income Tax Act, 1961 (hereinafter, "IT Act"). The Andhra Pradesh High Court, by its detailed impugned judgment[4], held that the appellant trusts which claimed benefit of exemption under Section 10 (23C) of the IT Act were not created 'solely' for the purpose of education, and that to determine that issue, the court had to consider the memorandum of association or the rules or the constitution of the concerned trust. Additionally, the appellants were denied registration on the ground that they were not registered under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 (hereinafter, "A.P. Charities Act") as condition precedent for grant of approval.

3. The parties had urged that such a precondition was absent in the provisos to Section 10(23C) (vi) of the IT Act, and that since the tax statute was a complete code in itself, other acts such as A.P. Charities Act could not form the basis for denying approval. Rejecting the same, the High Court interpreted Section 10 (23C) (vi) of the IT Act in light of the previous decisions of this court, and held as follows:

> *"7. An educational society, running an educational institution solely for educational purposes and not for the purpose of profit, must be regarded as "other educational institution" under section 10(23C)(vi) of the Act. It would be unreal and hyper-technical to hold that the assessee-society is only a financing*

[3] *M/s St. Augustine Educational Society v The Chief Commissioner of Income Tax*, C.A. No.3793/2014; *M/s St. Patrick Educational Society v The Chief Commissioner of Income Tax*, C.A. No. 3794/2014; *M/s New Noble Educational Society v The Chief Commissioner of Income Tax*, C.A. No. 3795/ 2014; *M/s R.R.M Educational Society Hyderabad v The Chief Commissioner of Income Tax*, C.A. No. 6418/2012 and *M/s Sri Koundinya Educational Society v The Chief Commissioner of Income Tax*, C.A. No. 9108/2012.

[4] *M/s New Noble Educational Society v The Chief Commissioner of Income Tax*, (2011) 334 ITR 303. This batch of writ petitions was decided on 11.11.2010.

body and will not come within the scope of "other educational institution". If, in substance and reality, the sole purpose for which the assessee has come into existence is to impart education at the level of colleges and schools, such an educational society should be regarded as an "educational institution". (Aditanar Educational Institution v. Addl. CIT, [1997] 224 ITR 310 (SC)). *Educational institutions, which are registered as a society, would continue to retain their character as such and would be eligible to apply for exemption under section 10(23C)(vi) of the Act.* (Pine-grove International Charitable Trust v. Union of India, [2010] 327 ITR 73 (P&H)). *The distinction sought to be made between the society, and the educational institution run by it, does not, therefore, merit acceptance.*

8. In order to be eligible for exemption, under section 10(23C)(vi) of the Act, it is necessary that there must exist an educational institution. Secondly, such institution must exist solely for educational purposes and, thirdly, the institution should not exist for the purpose of profit. (CIT v. Sorabji Nusserwanji Parekh, [1993] 201 ITR 939 (Guj)). *In deciding the character of the recipient of the income, it is necessary to consider the nature of the activities undertaken. If the activity has no co-relation to education, exemption has to be denied. The recipient of the income must have the character of an educational institution to be ascertained from its objects.* (Aditanar Educational Institution, [1997] 224 ITR 310 (SC)). *The emphasis in section 10(23C)(vi) is on the word "solely". "Solely" means exclusively and not primarily.* (CIT v. Gurukul Ghatkeswar Trust, (2011) 332 ITR 611 (AP); CIT v. Maharaja Sawai Mansinghji Museum Trust, [1988] 169 ITR 379 (Raj)). *In using the said expression, the Legislature has made it clear that it intends to exempt the income of the institutions established solely for educational purposes and not for commercial activities.* (Oxford University Press v. CIT, [2001] 247 ITR 658 (SC)). *This requirement would militate against an institution pursuing the objects other than education*. (Vanita Vishram Trust v. Chief CIT, [2010] 327 ITR 121 (Bom)). *Even if one of the objects enables the institution to undertake commercial activities, it would not be entitled for approval under section 10(23C)(vi) of the Act.* (American Hotel and Lodging Association Educational Institute, [2008] 301 ITR 86 (SC)). *It is only if the objects reveal that the very being of the assessee-society, as an educational institution, is exclusively for educational purposes and not for profit, the assessee would be entitled for exemption under section 10(23C)(vi) of the Act*. (Gurukul Ghatkeswar Trust, [2011] 332 HR 611 (AP))*".*

4. On the second question, i.e., whether registration under the A.P. Charities Act was an essential prerequisite for registration or approval under the IT Act, the impugned judgment held that such registration was mandatory:

"21. Application of the provisions of A.P. Act 30 of 1987 to all public charitable institutions, whether registered or not in accordance with the provisions of the Act, continues to be the same as in the repealed A.P. Act 17 of 1966. Chapter IV

of A.P. Act 30 of 1987 relates to registration of charitable institutions. Section 43 relates to registration of charitable institutions and, under sub-section (1) thereof, the trustee or other person in charge of the management of every charitable institution is required to make an application for its registration to the concerned Assistant Commissioner. Under section 43(5), on receipt of the application, the Assistant Commissioner shall, after making such enquiry as he thinks fit and after hearing any person having interest in the institution, pass an order directing its registration, and to grant a certificate of registration containing the particulars furnished in the application with the alterations, if any, made by him as a result of his enquiry. Section 43(6) requires the particulars relating to every institution, contained in the certificate of registration, to be entered in the Register of Institutions and Endowments maintained by the Assistant Commissioner. One copy thereof is required to be furnished to the Deputy Commissioner, and another to the Commissioner. Under section 43(11) where any trustee or other person fails to apply for registration of a charitable institution, within the time specified, he shall be punishable with fine which may extend to one thousand rupees. Section 44 relates to the power of the Commissioner to have the institution registered and, thereunder, where any trustee or other person in charge of the management of a charitable institution fails to apply for registration of the institution, the Commissioner shall give notice to the trustee, or the other person, to make an application in that regard within a specified period and, if he fails to make such an application within the period specified, the Commissioner is empowered to have the charitable institution registered after following the prescribed procedure.

22. On a conjoint reading of the Explanation to section 1(3)(a), section 2(4) and 2(5) of A.P. Act 30 of 1987 it is evident that a society running an educational institution in the State of Andhra Pradesh is a public charitable institution. The submission that, in the absence of registration, the provisions of A.P. Act 30 of 1987 are not applicable is not tenable. The provisions of A.P. Act 30 of 1987 apply to all public charitable institutions whether registered or not in accordance with the provisions of the Act. A public charitable institution is required, in law, to conduct the management of its affairs strictly in accordance with the provisions of A.P. Act 30 of 1987. Registration under A.P. Act 30 of 1987 would also ensure that the activities of the educational agency are monitored by the State agencies, section 58 of A.P. Act 30 of 1987 relates to accounts and audit and, under sub-section (2)(a) thereof, the accounts of every charitable institution the annual income of which, as calculated for the purpose of section 65 for the financial year immediately preceding, exceeds rupees one lakh, shall be subject to concurrent audit by an agency specified by the Government, and the audit shall take place as and when expenditure is incurred. The mere fact that the authorities failed to act in the matter to get the institution registered under the provisions of the Act is of no legal consequence. (Secretary to Government, Revenue (Endowments) Department of AP v. Sri Swamy Ayyappa Co-operative Housing Societies Ltd., [2003] 6 ALT 62 (AP)).

23. Imparting of education is regarded as an activity that is charitable in nature. Education has so far not been regarded as a trade or business where profit is the motive. (State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699; T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481 : AIR 2003 SC 355; Islamic Academy of Education, (2003) 6 SCC 697). *Section 2(15) of the Income-tax Act defines "charitable purpose" to include "education". 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", in section 2(15), has not been used in that wide and extended sense according to which every acquisition of further knowledge constitutes education. What education connotes, in that clause, is the process of training and developing the knowledge, skill, mind and character of students by formal schooling.* (Sole Trustee, Loka Shikshana Trust v. CIT, [1975] 101 ITR 234 (SC)). *This definition of "education" is wide enough to cover the case of an "educational institution" as, under section 10(23C)(vi), the "educational institution" must exist "solely" for educational purposes.* (Maharaja Sawai Mansinghji Museum Trust, [1988] 169 ITR 379 (Raj)). *The element of imparting education to students or the element of normal schooling where there are teachers and taught must be present so as to fall within the sweep of section 10(23C)(vi) of the Act. Such an institution may, incidentally, take up other activities for the benefit of students or in furtherance of their education. It may invest its funds or it may provide scholarships or other financial assistance which may be helpful to the students in pursuing their studies. Such incidental activities alone, in the absence of the actual activity of imparting education by normal schooling or normal conduct of classes, would not suffice for the purpose of qualifying the institution for the benefit of section 10(23C)(vi).* (Sorabji Nusserwanji Parekh, [1993] 201 ITR 939 (Guj)). *Section 2(15) is wider in terms than section 10(23C)(vi) of the Act. If the assessee's case does not fall within section 2(15), it is difficult to put it in section 10(23C)(vi) of the Act*. (Maharaja Sawai Mansinghji Museum Trust, [1988] 169 ITR 379 (Raj)). *As "education" falls within the scope of "charitable purpose" both under section 2(5) of A.P. Act 30 of 1987 and section 2(15) of the Income-tax Act and, inasmuch as A.P. Act 30 of 1987 requires all charitable institutions in the State of A.P. to be registered, the Chief Commissioner was justified in holding that the petitioner-societies should have registered themselves under the provisions of A.P. Act 30 of 1987, as failure to so hold would have resulted in one arm of the law being utilized to defeat another arm of the law which would not only be opposed to public policy, but would also bring the law into ridicule.* (Bihari Lal Jaiswal v. CIT, [1996] 217 ITR 746 (SC))."

The Appellants' Arguments

5. Ms. Prabha Swami, learned counsel appearing for one of the appellants (R.R.M Educational Society), contended that the impugned judgment was in error

of the law. She submitted that the High Court's approach in considering the memorandum of association, rules or the constitution of the trust was no doubt correct, however the literal interpretation of the expression 'solely' under Section 10(23C)(vi) was not correct.

6. It was urged that there was no bar or restriction imposed by law on trusts involved or engaged in activities other than education, from claiming exemption under Section 10(23C)(vi), provided their motive was not-for-profit. It was submitted that in the present case, the assesses had other objects apart from education which were charitable. Consequently, the denial of registration by the Commissioner was contrary to law.

7. Learned counsel relied on the decision of this court in *American Hotel and Lodging Association v Central Board of Direct Taxes*[5] and *Queen's Education Society v Commissioner of Income Tax*[6] to submit that the test for determination was whether the 'principal' or 'main' activity was education or not, rather than whether some profits were incidentally earned. The observations relied upon from *American Hotel* (supra) were:

> *"38. In deciding the character of the recipient, it is not necessary to look at the profits of each year, but to consider the nature of the activities undertaken in India. If the Indian activity has no correlation with education, exemption has to be denied (see judgment of this Court in Oxford University Press* [(2001) 3 SCC 359 : (2001) 247 ITR 658]). *Therefore, the character of the recipient of income must have character of educational institution in India to be ascertained from the nature of the activities. If after meeting expenditure, surplus remains incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes. In other words, existence of surplus from the activity will not mean absence of educational purpose (see judgment of this Court in Aditanar Educational Institution v. CIT* [(1997) 3 SCC 346 : (1997) 224 ITR 310]). *The test is—the nature of activity. If the activity like running a printing press takes place it is not*

[5] *American Hotel and Lodging Association v Central Board of Direct Taxes*, (2008) 10 SCC 509.
[6] *Queen's Education Society v Commissioner of Income Tax*, (2015) 8 SCC 47.

educational. But whether the income/profit has been applied for non-educational purpose has to be decided only at the end of the financial year."

8. It was further held that the third proviso was in effect operative *after* the registration or approval of the trust *at the stage of assessment* to determine the actual application of income of any given trust. The *provisos*, according to the court, were divided into the processing (or vetting) provisions (applicable at the stage of grant or refusal of an application) and the monitoring provisions, involving consideration of application of income of the trust:

"40. We shall now consider the effect of insertion of provisos to Section 10(23-C)(vi) vide the Finance (No. 2) Act, 1998. Section 10(23-C)(vi) is analogous to Section 10(22). To that extent, the judgments of this Court as applicable to Section 10(22) would equally apply to Section 10(23-C)(vi). The problem arises with the insertion of the provisos to Section 10(23-C)(vi). With the insertion of the provisos to Section 10(23-C)(vi) the applicant who seeks approval has not only to show that it is an institution existing solely for educational purposes [which was also the requirement under Section 10(22)] but it has now to obtain initial approval from the PA, in terms of Section 10(23-C)(vi) by making an application in the standardised form as mentioned in the first proviso to that section. That condition of obtaining approval from the PA came to be inserted because Section 10(22) was abused by some educational institutions/universities. This proviso was inserted along with other provisos because there was no monitoring mechanism to check abuse of exemption provision. With the insertion of the first proviso, the PA is required to vet the application. This vetting process is stipulated by the second proviso.

***

42. Under the twelfth proviso, the PA is required to examine cases where an applicant does not apply its income during the year of receipt and accumulates it but makes payment therefrom to any trust or institution registered under Section 12-AA or to any fund or trust or institution or university or other educational institution and to that extent the proviso states that such payment shall not be treated as application of income to the objects for which such trust or fund or educational institution is established. The idea underlying the twelfth proviso is to provide guidance to the PA as to the meaning of the words "application of income to the objects for which the institution is established". Therefore, the twelfth proviso is the matter of detail.

43. The most relevant proviso for deciding this appeal is the thirteenth proviso. Under that proviso, the circumstances are given under which the PA is

> *empowered to withdraw the approval earlier granted. Under that proviso, if the PA is satisfied that the trust, fund, university or other educational institution, etc. has not applied its income in accordance with the third proviso or if it finds that such institution, trust or fund, etc. has not invested/deposited its funds in accordance with the third proviso or that the activities of such fund or institution or trust, etc. are not genuine or that its activities are not being carried out in accordance with the conditions subject to which approval is granted then the PA is empowered to withdraw the approval earlier granted after complying with the procedure mentioned therein.*
>
> *44. Having analysed the provisos to Section 10(23-C)(vi) one finds that there is a difference between stipulation of conditions and compliance therewith. The threshold conditions are actual existence of an educational institution and approval of the prescribed authority for which every applicant has to move an application in the standardised form in terms of the first proviso. It is only if the prerequisite condition of actual existence of the educational institution is fulfilled that the question of compliance with requirements in the provisos would arise. We find merit in the contention advanced on behalf of the appellant that the third proviso contains monitoring conditions/requirements like application, accumulation, deployment of income in specified assets whose compliance depends on events that have not taken place on the date of the application for initial approval.*
>
> *45. To make the section with the proviso workable we are of the view that the monitoring conditions in the third proviso like application/utilisation of income, pattern of investments to be made, etc. could be stipulated as conditions by the PA subject to which approval could be granted".*

9. Likewise, the decision in *Queen's Education Society* (supra) was also cited, in which this court held that income earned incidentally, or profits incidental to the main activity, *per se* would not debar a trust's application for approval, or registration, as a tax-exempt organization.

10. Counsel further submitted that in a similar manner, the previous decision of this court in *Aditanar Educational Institution v. Additional Commissioner of Income Tax*[7] was relevant. The same observed that:

> *"8. 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 the purposes of profit. After meeting the expenditure, if any*

[7] *Aditanar Educational Institution v. Additional Commissioner of Income Tax*, (1997) 3 SCC 346.

> *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".*

11. It was submitted that in *American Hotel* (supra), with the insertion of the provisos to Section 10(23C)(vi), a trust seeking approval had to show that it existed 'solely' for educational purposes, and should've also obtained initial approval of the Prescribed Authority (hereinafter, "PA"), through an application in the standardized form as mandated by the first proviso. The condition of obtaining approval from the PA was inserted because Section 10(22) was misused. The proviso was inserted along with other provisos because there was no monitoring mechanism to check abuse of exemption provision. The process of examination of the application was stipulated by the second proviso, which stated that the PA could call for such documents including annual accounts or information from the applicant to check its genuineness. Under the third proviso, the PA had the power to judge the genuineness of the activities of the applicant and consider if it applied its income wholly and exclusively to the objects for which it was constituted/established. Under the twelfth proviso, the PA had to examine cases where an applicant did not apply its income during the year of receipt and accumulated it but made payment therefrom to any trust or institution registered under Section 12AA or to any trust and to that extent the proviso stated that such payment shall not be treated as application of income to the objects for which such trust was established. This was to guide the PA to determine the meaning of the words *"application of income to the objects for which the institution is established"*. The thirteenth proviso listed the circumstances under which the PA was empowered to withdraw the approval granted earlier, if the authority was satisfied that the trust had not applied its income in accordance with

the third proviso or if it found that the trust had not invested/deposited its funds in accordance with the third proviso or that the activities of such trust etc. were not genuine or that its activities were not being carried out in accordance with the conditions subject to which approval was granted. In such cases, the authority could withdraw the approval granted earlier after complying with the procedure stipulated.

12. It was urged that there could be no dispute that the appellant R.R.M. Educational Society was running an educational institution. The fact that the appellant had other objects did not mean that it ceased to be an institution existing 'solely' for educational purposes. The emphasis of the word 'solely' was in relation to the *institution's motive* to not operate for the purposes of making profit; it ought not to be interpreted in relation to the *objects* of the institution. It was argued that the threshold conditions were actual existence of an educational institution and approval of the PA for which every applicant had to move an application in the standardized form in terms of the first proviso. If the prescribed conditions of actual existence of the educational institution were fulfilled, then the question of compliance with the requirements as spelt out in the other provisos would arise. At the present stage, such considerations were not relevant.

13. It was also contended by the counsel that Section 10 (23) (iiiab), (iiiad) and (vi) required the institutions to exist solely for educational purposes and not for profit. The term 'exist' connoted the purpose, goal, object and mission of the institution. Where the purpose of the institution and the defining character of its mission were education, and education alone, the test was fulfilled. That incidentally, a surplus had resulted in a year, was irrelevant and would not change the essential nature of the institution into a profit-oriented one. 'Existence' meant the central causal purpose of its being, though the manner in which it carried on its activities may assume relevance. Institutions existed for what they were formed to

pursue, and if that was solely and exclusively for the purpose of education, the statutory condition was satisfied.

14. Learned counsel lastly urged that the appellants had established and were managing educational institutions which did not make profit. It was submitted that the IT Act did not stipulate registration under the A.P. Charities Act, or any other state law as a condition precedent for grant of approval. As long as the trust was registered under some law (such as the Andhra Pradesh Societies Registration Act, 2001) or even a not-for-profit was duly incorporated, no other requirement under provisos to Section 10(23C)(vi) of the IT Act compelled further registration or approval under any state law. It was reiterated that the IT Act was a complete code in itself, and other acts, including the A.P. Charities Act, could not be the basis for denying institutions the benefit of approval. It was submitted that the provisions of the IT Act ought not be linked to, or taken together with, provisions of other enactments. The objects and reasons and the various provisions of the A.P. Charities Act regulated and protected the property of charitable institutions. The activities of the appellant trusts and societies were not prohibited under any law including the A.P. Charities Act and non-registration under that Act could not result in discontinuance of their activities.

15. Ms. Daisy Hannah, learned advocate appearing on behalf of some of the appellants, supported the arguments of Ms. Prabha Swami. She submitted that the existence of more than one object could not hinder or bar a trust's claim to exemption, so long as it 'mainly' carried on education, or education-related activities. The emphasis was not on the absence or existence of objects other than education, rather, the negative mandate against profit, in that profit could not motivate a trust's functioning. She stressed that the manner of utilization of surplus or profits and conditions imposed by the tax authorities while granting approval or exemption, were irrelevant at the stage of considering application seeking exemption

under Section 10 (23C). Those considerations were valid only when tax authorities examined the functioning of the trust during the course of assessments to examine its compliance with the law.

16. Counsel relied on the decision of *Oxford University Press v. Commissioner of Income Tax*[8], where interpretation of the expression 'solely' for the purpose of education meant that the sole purpose of an institution must be to impart education and not make profit. The word 'existing' was held to mean 'being'.

17. It was submitted that the High Court's reasoning upholding the threshold rejection of the appellant's cases on the ground that the appellant had several objects, only some of which were 'educational' while others were not, leaving the trustees with discretion to apply the income or property to *any* object, was erroneous. The PA no doubt had to be satisfied through the material on record that the applicant did exist and was involved in a charitable activity, for which the objects of the institution had to be examined. However, if more than one object did exist, and all the objects were essentially charitable in nature, what needed to be seen was the actual functioning. The mere possibility that the trustees possessed the discretion to apply the surplus or earnings in respect of any object, and not only education, was not sufficient.

18. Mr. N. Venkataraman, learned Additional Solicitor General (hereinafter, "ASG") appeared on behalf of the revenue. He pointed out that from the inception of the IT Act, till 31 March 2009, the definition of charitable purposes under Section 2(15) included only four activities. By the amendment of 2009 – and later in 2015 – other objects, such as preservation of watersheds, forests and wildlife, monuments and places or objects of artistic or historic interest, and yoga were included as activities deemed charitable in nature. The result was that once an activity was identified as charity, the income of that unit or entity was excluded from the ambit

[8] *Oxford University Press v. Commissioner of Income Tax*, (2001) 3 SCC 359.

of taxation by virtue of Section 10. Likewise, deduction for income from property held for charitable purposes was provided under Section 11.

19. It was alleged that since the inception of the IT Act in 1961 till 31 March 1975, income from education was excluded as a head under Section 10. By Section 10 (22), income of university or other educational institutions existing 'solely' for educational purposes, and not for the purpose of profit, was excluded from tax liability. An identical provision was enacted by Section 10 (22A) for hospitals. It was pointed out that there were two key elements to the definition of what could be excluded from the ambit of taxation – (i) that the institution should exist 'solely' for the purpose of education; and (ii) it should not exist for the purpose of profit.

20. By the Taxation Laws (Amendment) Act, 1975, Section 10 (23C) was brought into force for the first time, and by virtue of sub-clauses (iv) and (v), other funds and institutions established for charitable purposes and trusts including any other legal obligation or institution being solely for public religious purposes and charitable purposes, could be notified by the Central Government. Likewise, similar provisions were made for the purposes of universities and educational institutions. The Direct Tax Laws (Amendment) Act, 1987 deleted Section 10 (23C) (iv) and (v). These clauses were, however, restored by the Direct Tax Laws (Amendment) Act, 1989 with effect from 1 April 1990. Parliament also introduced six provisos to Section 10 (23C), broadly dealing with the considerations that were to weigh with the Central Government before issuing notifications exempting income of such entities. The conditions embodied in the six provisos dealt with genuineness of activities of the institution - application of income or its accumulation for its application in future to be wholly and exclusively for the objects for which the institution had been established, and allowing profits and gains for the purpose of exclusion, subject to the business being incidental to the attainment of its objectives and maintenance of separate books of accounts.

21. It was submitted that by the Finance Act 1998, which came into force on 1 April 1999, significant changes were affected in that section. These were that sub-clauses (iiiab) (iiiac) (iiiad) and (iiiae) were added to Section 10(23C). Furthermore, two sub-clauses namely (vi) and (via) were added. Sub-clause (vi) dealt with education. At the same time, Parliament deleted Section 10 (22) and Section 10 (22A). These amendments, it was highlighted, were crucial inasmuch they changed the complexion and contours of Section 10 (23C). Firstly, institutions solely or substantially financed by the government were classified under one category. Secondly, institutions whose aggregate annual receipts did not exceed the prescribed limits were classified under another category. Thirdly, institutions approved by the PA, having regard to their importance throughout the country or throughout any state, were classified under one category. Fourthly, institutions solely for educational purposes and not for the purpose of making a profit, were classified under one category (i.e., Section 10 (23C) (vi) and (via)). It was submitted that of the several provisos added, the most important of them having a bearing on the subject matter of these appeals were the first, second, third, seventh, thirteenth, fourteenth, fifteenth and sixteenth provisos.

22. The ASG urged that the expression 'education' found place in several provisions of the Constitution. As to what was the precise scope of the expression was examined by this court on several occasions. The ASG relied on the decision of the eleven-judge bench in *T.M.A Pai Foundation v State of Karnataka*[9] where it was held that 'education' under the Constitution meant and included education at all levels, from primary school up to postgraduation, and also included professional education. The expression 'educational institution' meant institutions which imparted education as understood in the formal sense of schooling. It was further elaborated that having regard to the demographics and the geographical spread of

[9] *T.M.A Pai Foundation v State of Karnataka*, 2002 (8) SCC 481.

the nation, as well as the challenges faced by the country, it was beyond the economic capacity of the State to provide free or subsidised universal education at all levels. Therefore, *per force* private educational institutions had to function to fill the needs of students. Within that framework, the role of charitable institutions in imparting education was vital and prominent. Imparting education had always been regarded as head of charity. Tracing the history of the law relating to charities, the learned ASG submitted that even in England, charitable objects included imparting education.[10] It was submitted that various articles in the Constitution, namely Article 21-A, Articles 28 to 30, Article 41, Articles 45- 46 and Article 51 (k) as well as several entries in the Seventh Schedule made it apparent that education meant mainstream curriculum-based education and not education as was broadly or commonly understood. He emphasised the importance of this aspect because while deciding whether tax exemption under the IT Act could be granted for educational institutions, the term 'education' as a charitable purpose could not be comprehended as the enlarged meaning. It was in the constitutional sense, and under the IT Act, of curriculum-based schooling, that education had to be understood under Section 2 (15) of the IT Act as a head of charitable purpose.

23. The learned ASG submitted that the *ratio* in *T.M.A Pai Foundation* (supra) had established that education *per se* was regarded as a charitable activity. It could not be regarded as trade or business with profit motive driving it. There could be some doubt about whether education was to be regarded as a profession; nevertheless, it was covered by the term 'occupation'. It was submitted that the court in this context ruled an 'occupation' would be an activity of a person undertaken as a means of livelihood or as a mission in life. Counsel also pointed to certain portions

[10] *Special Commissioners of Income Tax v. Pemsel* [1891] A.C. 531. Per Lord MacNaughten, "*"Charity" in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads."*

of the judgement in *T.M.A Pai Foundation* (supra) to highlight that the rights conferred under Articles 29 and 30 were to be regarded as guarantees to ensure equality to minority communities either based on religion or language.

24. It was submitted that given this enunciation of the principle that education was an occupation and was *per se*, charitable, it was antithetical to commerce or business. In other words, education could not, either under the Constitution or under the IT Act, be regarded as a business activity. Thus, any commercialisation of education would result in loss of the benefit of tax exemption which an institution would otherwise be entitled to claim legitimately as a charitable trust. The ASG also relied upon the subsequent seven-judge decision in *PA Inamdar v State of Maharashtra*[11] which had followed the reasoning in *T.M.A Pai Foundation* (supra).

25. It was submitted next, that this court held in *Aditanar* (supra) - in the context of Section 10 (22) of the IT Act - that the language of the provision was plain and that every year the tax authorities had to discern whether the institution existed solely for educational purposes and not for the purpose of profit after meeting the expenditure, and that if any surplus resulted incidentally from the lawful activities carried on by the educational institution, it would not cease to be one existing 'solely' for educational purposes. It was held that the decisive test or litmus test was whether on an overall view of the matter, the object of the institution was to make profit or to impart education.

26. Turning next to the decision in *Oxford University Press* (supra) the learned ASG pointed out that the majority judgement had recognised that the term '*existing solely for educational purposes and not for the purposes of profit*' qualified '*university or other educational institution'*. It was submitted that the majority judgement stated clearly that being part of an educational institution was insufficient and the concerned entity had to engage in imparting education itself, and in the

[11] *P.A. Inamdar v State of Maharashtra*, (2005) 6 SCC 537.

course of such activity could generate surplus. However, the claim that a unit which was part of a university abroad and was thus entitled to be treated as a charity in India was held to be untenable, because the assessee's sole activity was to print and publish books for profit.

27. The ASG also pointed out that the decision of this court in *American Hotel* (supra) was in the context of peculiar facts. The organization was a non-profit set up in U.S.A. and was granted tax exemption as an educational institution there. It had a branch office in India mainly to comply with its obligations under various agreements with the Ministry of Tourism of the Government of India. That branch provided a focal point in India for Indian missions to avail of its educational courses. The branch collected data from educational institutions/persons wishing to take courses offered in the field of hospitality and who paid fees for the required course material which was thereafter remitted to U.S.A. It was highlighted that like in *Oxford University* (supra), the assessee did not carry on any educational activity in India *per se*. It was in the nature of a support establishment for an entity which was granted charitable status in the U.S.A. The ASG contended that *American Hotel* (supra) propounded an erroneous test, i.e., of 'predominant object' (also known variously as 'dominant/primary/main' object), though the statute expressly stipulated that the institution must exist 'solely' for the purpose of education. It was pointed out that the test of predominant object was used in *Additional Commissioner of Income Tax v Surat Art Silk Cloth Manufacturers' Association*[12] which was not a case dealing with educational institutions, but rather with charities that were engaged in advancing objects of general public utility. It was held that to *"ascertain whether the institute is carried on with the object of making profit or not it is the duty of the*

[12] *Additional Commissioner of Income Tax v Surat Art Silk Cloth Manufacturers' Association*, (1980) 2 SCC 31.

prescribed authority to ascertain whether the balance of income is applied wholly and exclusively to the objects for which the applicant is established".[13]

28. The revenue also urged that the decision in *American Hotel* (supra) was wrong in holding that the stipulations in monitoring conditions set out in various provisos to Section 10 (23C) were different from compliance with those conditions, and that compliance or non-compliance was to be considered only at the assessment stage.

29. It was submitted that the decision in *Queen's Education Society* (supra), too could not be sustained, as it relied on the 'predominant object' test enunciated and applied in *Oxford University* and *American Hotel* (supra). Learned ASG submitted that the court's reasoning in *Queen's Education Society* (supra), in which the 'predominant object' test was applied, and a distinction was drawn between making a 'surplus' and carrying on an activity for profit, with the former not debarring an institution from claiming tax exemption – was incorrect.

Relevant Provisions

30. An analysis of the relevant provisions is called for. Section 2 (15) of the IT Act defines 'charitable purpose' as follows:

> *"(15) "charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:*
>
> ***Provided** that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—*
>
> *(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and*

[13] *American Hotel* relying on *Surat Art*, para 37.

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year".

31. Section 10 of the IT Act exempts from the field of taxation certain classes of income. Section 10 (23C), which is relevant for the purposes of this case, reads as follows:

"10. 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—

(23C) any income received by any person on behalf of—

*(i)********************

(iiiab) any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or

****

Explanation.—For the purposes of sub-clauses (iiiab) and (iiiac), any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds such percentage of the total receipts including any voluntary contributions, as may be prescribed, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year; or

(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipt as may be prescribed or

(iv) any other fund or institution established for charitable purposes which may be approved by the prescribed authority, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States; or

(v) any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes, which may be approved by the prescribed authority, having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that

the income accruing thereto is properly applied for the objects thereof;

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority; or…"

The first, second, third, seventh, thirteenth, fourteenth, fifteenth and sixteenth provisos (as of 2012) are relevant to Section 10 (23C). They are reproduced below:

Proviso 1:

Provided *that the fund or trust or institution [or any university or other educational institution or any hospital or other medical institution] referred to in sub-clause (iv) or sub-clause (v) [or sub-clause (vi) or sub-clause (via)] shall make an application in the prescribed form and manner to the prescribed authority for the purpose of grant of the exemption, or continuance thereof, under sub-clause (iv) or sub-clause (v) [or sub-clause (vi) or sub-clause (via)]*

Proviso 2:

*[**Provided further** that the prescribed authority, before approving any fund or trust or institution or any university or other educational institution or any hospital or other medical institution, under sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via), may call for such documents (including audited annual accounts) or information from the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, as it thinks necessary in order to satisfy itself about the genuineness of the activities of such fund or trust or institution or any university or other educational institution or any hospital or other medical institution, as the case may be, and the prescribed authority may also make such inquiries as it deems necessary in this behalf:]*

Proviso 3:

Provided also *that the fund or trust or institution [or any university or other educational institution or any hospital or other medical institution] referred to in sub-clause (iv) or sub-clause (v) [or sub-clause (vi) or sub-clause (via)]—*

[(a) applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established and in a case where more than fifteen per cent of its income is accumulated on or after the 1st day of April, 2002, the period of the accumulation of the amount exceeding fifteen per cent of its income shall in no case exceed five years; and]

[(b) does not invest or deposit its funds, other than—

(i) any assets held by the fund, trust or institution [or any university or other educational institution or any hospital or other medical institution] where such assets form part of the corpus of the fund, trust or institution [or any university or other educational institution or any hospital or other medical institution] as on the 1st day of June, 1973;

[(ia) any asset, being equity shares of a public company, held by any university or other educational institution or any hospital or other medical institution where such assets form part of the corpus of any university or other educational institution or any hospital or other medical institution as on the 1st day of June, 1998;]

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation), acquired by the fund, trust or institution [or any university or other educational institutionor any hospital or other medical institution] before the 1st day of March, 1983;

(iii) any accretion to the shares, forming part of the corpus mentioned in sub-clause (i) [and sub-clause (ia)], by way of bonus shares allotted to the fund, trust or institution [or any university or other educational institution or any hospital or other medical institution] ;

(iv) voluntary contributions received and maintained in the form of jewellery, furniture or any other article as the Board may, by notification in the Official Gazette, specify,

for any period during the previous year otherwise than in any one or more of the forms or modes specified in sub-section (5) of Section 11".

Proviso 7:

"***Provided also*** *that nothing contained in sub-clause (iv) or sub-clause (v) [or sub-clause (vi) or sub-clause (via)] shall apply in relation to any income of the fund or trust or institution [or any university or other educational institution or any hospital or other medical institution], being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business:"*

Proviso 13:

"Provided also *that where the fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) is notified by the Central Government [or is approved by the prescribed authority, as the case may be,] or any university or other educational institution referred to in sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (via), is approved by the prescribed authority and subsequently that Government or the prescribed authority is satisfied that—*

(i) such fund or institution or trust or any university or other educational institution or any hospital or other medical institution has not—

(A) applied its income in accordance with the provisions contained in clause (a) of the third proviso; or

(B) invested or deposited its funds in accordance with the provisions contained in clause (b) of the third proviso; or

(ii) the activities of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution—

(A) are not genuine; or

(B) are not being carried out in accordance with all or any of the conditions subject to which it was notified or approved,

it may, at any time after giving a reasonable opportunity of showing cause against the proposed action to the concerned fund or institution or trust or any university or other educational institution or any hospital or other medical institution, rescind the notification or, by order, withdraw the approval, as the case may be, and forward a copy of the order rescinding the notification or withdrawing the approval to such fund or institution or trust or any university or other educational institution or any hospital or other medical institution and to the Assessing Officer".

Proviso 14:

***"Provided also** that in case the fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in the first proviso makes an application on or after the 1st day of June, 2006 for the purposes of grant of exemption or continuance thereof, such application shall be [1][made on or before the 30th day of September of the relevant assessment year] from which the exemption is sought".*

Proviso 15:

***"Provided also** that any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of the said section shall be included in the total income".*

Proviso 16:

***Provided also** that all pending applications, on which no notification has been issued under sub-clause (iv) or sub-clause (v) before the 1st day of June, 2007, shall stand transferred on that day to the prescribed authority and the prescribed authority may proceed with such applications under those sub-clauses from the stage at which they were on that day".*

Analysis and Conclusion

32. Education ennobles the mind and refines the sensibilities of every human being. It aims to train individuals to make the right choices. Its primary purpose is to liberate human beings from the thrall of habits and preconceived attitudes[14]. It should be used to promote humanity and universal brotherhood. By removing the darkness of ignorance, education helps us discern between right and wrong. There is scarcely any generation that has not extolled the virtues of education, and sought to increase knowledge.

33. The subject of education is vast, even sublime. Yet, it is not the broad meaning of the expression which is involved in this case. As was held in *T.M.A Pai Foundation* (supra), education in the narrower meaning of the term as scholastic *structured* learning is what is meant in Article 21-A, Articles 29-30 and Articles 45-46 of the Constitution. As to what is 'education' in the context of the IT Act, was explained in *Loka Shikshana Trust v. Commissioner of Income Tax*[15] in the following terms:

> *"5. The sense in which the word "education" has been used in section 2(15) is the 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 result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge.…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 formal schooling."*

[14]Rabindranath Tagore's Gitanjali, famous for its unforgettable verses, yearns for a place where, *"Knowledge is free"*, and where, *"The world has not been broken up into fragments by narrow domestic walls, where words come from the depths of truth"*, and *"Where the clear stream of reason has not lost its way into the dreary desert sand of dead habit"*.
[15] *Loka Shikshana Trust v. Commissioner of Income Tax*, (1976) 1 SCC 254.

Thus, education i.e., imparting formal scholastic learning, is what the IT Act provides for under the head of "charitable" purposes, under Section 2 (15).

34. The issues which require resolution in these cases are firstly, the correct meaning of the term 'solely' in Section 10 (23C) (vi) which exempts income of *"university or other educational institution existing solely for educational purposes and not for purposes of profit".* Secondly, the proper manner in considering any gains, surpluses or profits, when such receipts accrue to an educational institution, i.e., their treatment for the purposes of assessment, and thirdly, in addition to the claim of a given institution to exemption on the ground that it actually exists to impart education, in law, whether the concerned tax authorities require satisfaction of any other conditions, such as registration of charitable institutions, under local or state laws.

I. Institutions existing 'solely' for profit

35. The revenue contends that the expression 'solely' has to be given its plain and grammatical meaning. It is emphasized that though there are several heads of charity and several kinds of organizations which are recognised by the IT Act, the statute underlines that those which claim to be educational institutions should have only the sole object of education, and no other. On the other hand, the assessee-appellants contend that the expression 'solely' has never been understood in its literal sense, but that this court has consistently held that the expression means that the predominant object, among other objects of the institution claiming exemption, should be education.

36. The decision in *Loka Shikshana Trust* (supra) was rendered in the background of whether a newspaper published by a trust, set up with the object of publishing it, and educating the Kannada speaking public, could be said to have the object of education. It is in that context that this court clearly enunciated what is meant by

education - i.e., in its scholastic sense of structured learning rather than the wider meaning of the expression.

37. Before the advent of the IT Act, under the old Income Tax Act, 1922, charitable purposes – much like the present one - included four broad heads. The last head was advancement of objects of general public utility. The court had to deal with the changed definition, brought about by the IT Act of 1961, which contained restrictive terms, in that the making of profit in the course of carrying on of objects of general public utility was prohibited. In a couple of decisions of this court[16], it was held that the prohibition against making profit applied only to trusts that had as their objective the advancement of general public utility. The prohibition from making profits therefore, did not apply to trusts meant to advance education, medical relief or relief for the poor.

38. This court in subsequent decisions, notably in *Indian Chamber of Commerce v Commissioner of Income Tax*[17] followed in principle, the *ratio in Loka Shikshana Trust* (supra) and held that profit-making cannot be an object at all in the case of trusts set up with the object of advancing general public utility. Matters came to a head when this court had occasion to review the previous law in *Surat Art* (supra). The assessee in *Surat Art* (supra) was a trade promotion association set up to advance the interests of silk weavers and promote exports. Some of its objects included permitting the association to obtain export licenses and export cloth manufactured by members, *"To buy and sell and deal in all kinds of cloth and other goods and fabrics belonging to and on behalf of the Members*." This court was of the opinion that the principal object, or in the exact words of the decision, 'the predominant' object or purpose of the assessee was to advance the interests of silk manufacturers. The other objects were only incidental. It was in that context that the court held that

[16] *See Dharmadeepti* v. *Commissioner of Income Tax* (1978) 3 SCC 449.
[17] *Indian Chamber of Commerce v Commissioner of Income Tax*, (1976) 1 SCC 324.

profit-making in the course of carrying on the predominant objective of a trust or other institution is not *per se* prohibited. Notably it was held that:

> *"6. ...But if the primary or dominant purpose of a trust or institution is charitable, another object which by itself may not be charitable but which is merely ancillary or incidental to the primary or dominant purpose would not prevent the trust or institution from being a valid charity: Vide Commissioner of Income Tax Madras v Andhra Chamber of Commerce ((1965) 1 SCR 565).The test which has, therefore, to be applied is whether the object which is said to be non-charitable is a main or primary object of the trust or institution or it is ancillary or incidental to the dominant or primary object which is charitable."*

The court then interpreted the definition in the following terms:

> *"10a. It is clear on a plain natural construction of the language used by the Legislature that the ten crucial words "not involving the carrying on of any activity for profit" go with "object of general public utility" and not with "advancement". It is the object of general public utility which must not involve the carrying on of any activity for profit and not its advancement or attainment. What is inhibited by these last ten words is the linking of activity for profit with the object of general utility and not its linking with the accomplishment or carrying out of the object. It is not necessary that the accomplishment of the object or the means to carry out the object should not involve an activity for profit. That is not the mandate of the newly added words. What these words require that the object should not involve the carrying on of any activity for profit. The emphasis is on the object of general public utility and not on its accomplishment or attainment. The decisions of the Kerala and Andhra Pradesh High Courts in Commissioner of Income Tax v Cochin Chamber of Commerce and Industry and Andhra Pradesh State Road Transport Corporation v Commissioner of Income Tax in our opinion lay down the correct interpretation of the last ten words, in section 2 clause (15). The true meaning of these last ten words is that when the purpose of a trust or institution is the advancement of an object of general public utility, it is that object of general public utility and not its accomplishment or carrying out which must not involve the carrying on of any activity for profit."*

39. It is thus evident that the seeds of the 'predominant object' test was evolved for the first time in *Surat Art* (supra). Noticeably, however, *Surat Art* (supra) was rendered in the context of a body claiming to be a charity, as it had advancement of general public utility for its objects. It was not rendered in the context of an

educational institution, which at that stage was covered by Section 10 (22)[18]. In that sense, the court had no occasion to deal with the term '*educational institution, existing solely for educational purposes and not for purposes of profit'*. Therefore, the application of the 'predominant object' test was clearly inapt in the context of charities set up for advancing education. It is important to highlight this aspect at this stage itself, because the enunciation of 'predominant object' test in *Surat Art* (supra) crept into the interpretation of *'existing solely for educational purposes'*, which occurred then in Section 10 (22) and now in Section 10 (23C).

40. The issue in *Aditanar* (supra) was whether the assessee society, whose objects were education, could be denied exemption, on the ground that it was not engaged in educational activities, but its schools were. The Income Tax Appellate Tribunal and the High Court granted relief on that score, holding that the assessee's objects were 'solely' educational. This court endorsed that view:

> *"7. It will be rather unreal and hyper-technical 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). 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). We hold accordingly. In our view, the judgment of the High Court does not merit interference."*

From *Aditanar* (supra), what can be gleaned is that a society may not by itself carry on educational activities, however if it sets up and governs such institutions, and its object is solely educational, it would be regarded as a charity set up solely for the purpose of education.

[18] Section 10 (22) exempted *"any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit"*

41. The next relevant decision is *Oxford University* (supra). The High Court was of the view that to avail the benefit of exemption under Section 10(22), it was necessary that the income should be the income of a university or an educational institution '*existing solely for educational purposes and not for the purposes of profit'*. There was a divergence of judicial opinion in this court. S.P. Bharucha, J. who wrote the dissenting opinion, observed as follows:

> *"5. By reason of Section 10(22), any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit, is not includible in its total income. A university is the creation of a charter or a statute. It is created exclusively for educational purposes, and not for profit. An educational institution, while it may impart education, may yet have a profit motive. Strictly speaking, therefore, the phrase "existing solely for educational purposes and not for the purposes of profit" in clause (22) qualifies only the words "other educational institution" and not the words "a university". But this strict interpretation is of no great account for the purposes of this case, and the expression may be read to qualify both "a university" and "other educational institution". For the purposes of obtaining the exemption under clause (22) the university must be "existing solely for educational purposes and not for purposes of profit". What this means is that the sole purpose of a university must be to impart education and not at all to make profit. The word "existing" in the context means "being". It has no locational sense. The clause does not say "existing in India" and the words "in India" cannot be read into it. The clause does not require that the university must impart education in India before it can qualify for exemption thereunder. The High Court was in error in interpreting the clause differently."*

42. D. P. Mohapatra, J. expressed a different view, in which he was joined by Y.K. Sabharwal, J.:

> *"32. I am of the view that the expression 'existing solely for the educational purpose and not for the purpose of profit' qualifies a 'university' or other educational institution'. In a case where a dispute is raised whether the claim of exemption from the tax by the assessee is admissible or not, it is necessary for the assessee to establish that it is a part of a university which is engaged solely or at least primarily for educational purposes and not for purposes of profit and the income in respect of which the exemption is claimed is a part of the income of the university. This question assumes importance in a case like the one in hand where the assessee is nothing more than a commercial establishment/business enterprise engaged in the business of printing, publishing and selling of books in this country. The label ' university press' is not sufficient to establish that it is engaged in any educational activity. The purpose of the existence of the assessee in this country as appears from the material on record, is possibly to earn profit.*

If the interpretation of the provision in section 10(22) as urged on behalf of the assessee is accepted, the provision will be exposed to challenge on the ground of being irrational and, therefore, arbitrary. Then the question will arise for what purpose is this exemption from tax extended to the assessee? How is it different from the large number of such establishments engaged in the business of printing, publishing and selling of books."

Y.K. Sabharwal, J.'s opinion was:

"41. The plain language of clause (22) does not suggest that the words mentioned above qualify only other educational institution and not universities. Mr. Dastur though faintly suggested that it can be argued that these words do not qualify universities and qualify other educational institutions but the learned counsel did not argue on that basis. The learned counsel assumed that the requirement of sole existence for educational purposes and not for purposes of profit applies to universities as well as to other educational institutions. Unfortunately, the existence of the so-called universities ostensibly for sole educational purposes and in reality for purposes of profit is not unknown in this country. The words to the similar effect have also been used in clause (22A) of section 10 in relation to a 'hospital' or 'other institution for the reception and treatment of persons. . . .' The words used in the similar setting in clause (22A) are 'existing solely for philanthropic purposes and not for purposes of profit'. There is no reason to restrict the application of these words only to 'other institution' and not to 'a hospital' by holding that these words do not qualify the words 'a hospital'.

42. The requirement of existing university solely for educational purposes and not for purposes of profit will also be applicable to the universities and to this extent I am in respectful agreement with the reasoning of brother Mohapatra. For the present purposes, however, as already said, I will assume that sole purpose of University of Oxford is educational and not profit.

********** **********

A university or other educational institution which exists solely for educational purposes and not for purposes of profit though not established in India but having some educational activity in this country alone would be entitled to claim exemption. Such a university or educational institution having educational activity in India but being established or constituted in some other country would not be denied the benefit of exemption only on the ground that it has not been established or constituted in India. The imparting of education or existence of educational activity in India is the basic assumption of section 10(22) and the place of the establishment or constitution of a university or other educational institution is of no consequence. Similar phraseology has also been used in clause (22A) in relation to the income of a hospital or other institution for the reception and treatment of the ailments referred to in the said provision. The

requirement there is about existence solely for philanthropic purposes and not for the purposes of profit. Clause (22A) of section 10 reads as under:

(22A) any income of a hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit."

***

"60. If the contention urged on behalf of the assessee is accepted, it would result in an university or other educational institution [clause (22)] or hospital or other institution as contemplated by [clause (22A)], without providing in India any educational or philanthropic activity, as the case may be, claiming the benefit of exemption on the ground that such a service is being provided in some part of the world though in India such body is engaged itself or through its branch in an activity akin to a business or profit-making activity. The existence of activity, which is in the nature of service to society in India is implicit in clauses (22) and (22A) of section 10. Further, under clause (29) though the words 'Indian law' are not used, but to claim exemption the authority therein has to be constituted under any law for the time being in force in India."

43. The next decision which dealt with education and its charitable nature was *American Hotel* (supra). The appellant was a U.S.A registered non-profit organization which was granted tax exemption in that country. It had a branch office in India to comply with its obligations under various agreements with the Ministry of Tourism of the Government of India. In accordance with the terms of the Memorandum of Understanding, it was responsible *inter alia*, for providing a full and complete curriculum recognized throughout the world for all hospitality educational programmes in India, making available text books, course materials and software programmes utilized in the appellant's 'Hospitality Management Diploma', offering a comprehensive certification and registration programme for the Indians desirous of availing an education in the hospitality field in India. The appellant received tax exemption under Section 10(*22*) up to the year ending 31 March 1998. The branch office accounts showed surplus, which was repatriated outside India. Its claim for approval under Section 10 (23C) after the repeal of Section 10 (22) was

rejected as the authority held that the assessee had not applied its income for the purpose of education in India.

44. This court held that:

> "*27. Actual existence of the educational institution was the pre-condition of the application for initial approval under section 10(22). On grant of approval, under section 10(22), sections 11 and 13 did not apply. Therefore, earlier prior to 1-4-1999 when exemption was given to the appellant, there was no assessment nor demand section 10(22) had an automatic effect. Once an applicant-institution came within the phrase 'exists solely for educational purposes and not for profit' no other conditions like application of income were required to be complied with. The Prescribed Authority was only required to examine the nature, activities and genuineness of the Institution. The above phrase was the only requirement for initial approval. The mere existence of profit/surplus did not disqualify the institution if the sole purpose of its existence was not profit-making but educational activities as section 10(22) by its very nature contemplated income of such institution to be exempted. Under section 10(22) the test was restricted to the character of the recipient of income, viz, whether it had the character of educational institution in India, its character outside India was irrelevant for deciding whether its income would be exempt under section 10(22).*
>
> *28. The moot question in section 10(22) was - whether the activities of the applicant came within the definition of 'income of educational institution'. Under section 10(22) one had to closely analyse the activities of the Institute, the objects of the Institute and its source of income and its utilization. Even if one of the objects enabled the Institute to undertake, commercial activity, the institute would not be entitled to approval under section 10(22). The said section inter alia excludes the income of the educational institute from the Total Income…*
>
> *29. In Surat Art Silk Cloth Mfg. Association's case (supra) it has been held by this Court that test of predominant object of the activity is to be seen whether it exists solely for education and not to earn profit. However, the purpose would not lose its character merely because some profit arises from the activity. That, it is not possible to carry on educational activity in such a way that the expenditure exactly balances the income and there is no resultant profit, for, to achieve this, would not only be difficult of practical realization but would reflect unsound principles of management. In order to ascertain whether the Institute is carried on with the object of making profit or not it is duty of the prescribed authority to ascertain whether the balance of income is applied wholly and exclusively to the objects for which the applicant is established.*
>
> *30. In deciding the character of the recipient, it is not necessary to look at the profits of each year, but to consider the nature of the activities undertaken in India. If the Indian activity has no co-relation to education, exemption has to be denied, (see judgment of this Court in Oxford University Press case (supra). Therefore, the character of the recipient of income must have character of*

educational institution in India to be ascertained from the nature of the activities, if after meeting expenditure, surplus remains incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes. In other words, existence of surplus from the activity will not mean absence of educational purpose (see judgment of this Court in Aditanar Educational Institution v. Addl. CIT 1997 (224) ITR 310 . The test is the nature of activity. If the activity like running a printing press takes place it is not educational. But whether the income/profit has been applied for non-educational purpose has to be decided only at the end of the financial year".

********** **********

"32. We shall now consider the effect of insertion of provisos to section 10(23C)(vi) vide Finance Act, 1998. section 10(23C)(vi) is analogous to section 10(22). To that extent, the judgments of this Court as applicable to section 10(22) would equally apply to section 10(23C)(vi). The problem arises with the insertion of the provisos to section 10(23C)(vi). With the insertion of the provisos to section 10(23C)(vi) the applicant who seeks approval has not only to show that it is an institution existing solely for educational purposes [which was also the requirement under section 10(22)] but it has now to obtain initial approval from the prescribed authority, in terms of section 10(23C)(vi) by making an application in the standardized form as mentioned in the first proviso to that section. That condition of obtaining approval from the prescribed authority came to be inserted because section 10(22) was abused by some educational institutions/universities. This proviso was inserted along with other provisos because there was no monitoring mechanism to check abuse of exemption provision. With the insertion of the first proviso, the prescribed authority is required to vet the application. This vetting process is stipulated by the second proviso. It is important to note that the second proviso also indicates the powers and duties of the prescribed authority. While considering the approval application in the second proviso, the prescribed authority is empowered before giving approval to call for such documents including annual accounts or information from the applicant to check the genuineness of the activities of the applicant institution. Earlier that power was not there with the prescribed authority. Under the third proviso, the prescribed authority has to ascertain while judging the genuineness of the activities of the applicant institution as to whether the applicant applies its income wholly and exclusively to the objects for which it is constituted/established. Under the twelfth proviso, the prescribed authority is required to examine cases where an applicant does not apply its income during the year of receipt and accumulates it but makes payment therefrom to any trust or institution registered under section 12AA or to any fund or trust or institution or university or other educational institution and to that extent the proviso states that such payment shall not be treated as application of income to the objects for which such trust or fund or educational institution is established. The idea underlying the twelfth proviso is to provide guidance to the prescribed authority as to the meaning of the words 'application of income to the objects for which, the institution is established'. Therefore, the twelfth proviso is the matter of detail. The most relevant proviso for deciding this appeal is the

thirteenth proviso. Under that proviso, the circumstances are given under which the prescribed authority is empowered to withdraw the approval earlier granted. Under that proviso, if the prescribed authority is satisfied that the trust, fund, university or other educational institution etc. has not applied its income in accordance with the third proviso or if it finds that such institution, trust or fund etc. has not invested/deposited its funds in accordance with the third proviso or that the activities of such fund or institution or trust etc., are not genuine or that its activities are not being carried out in accordance with the conditions subject to which approval is granted then the prescribed authority is empowered to withdraw the approval earlier granted after complying with the procedure mentioned therein.

33. Having analysed the provisos to section 10(23C)(vi) one finds that there is a difference between stipulation of conditions and compliance thereof. The threshold conditions are actual existence of an educational institution and approval of the prescribed authority for which every applicant has to move an application in the standardized form in terms of the first proviso. It is only if the pre-requisite condition of actual existence of the educational institution is fulfilled that the question of compliance of requirements in the provisos would arise. We find merit in the contention advanced on behalf of the appellant that the third proviso contains monitoring conditions/requirements like application, accumulation, deployment of income in specified assets whose compliance depends on events that have not taken place on the date of the application for initial approval.

34. To make the section with the proviso workable we are of the view that the Monitoring Conditions in the third proviso like application/utilization of income, pattern of investments to be made etc., could be stipulated as conditions by the prescribed authority subject to which approval could be granted. For example, in marginal cases like the present case, where appellant-Institute was given exemption up to financial year ending 31-3-1998 (assessment year 1998-99) and where an application is made on 7-4-1999, within seven days of the new dispensation coming into force, the prescribed authority can grant approval subject to such terms and conditions as it deems fit provided they are not in conflict with the provisions of the 1961 Act (including the above-mentioned monitoring conditions). While imposing stipulations subject to which approval is granted, the prescribed authority may insist on certain percentage of accounting Income to be utilized/applied for imparting education in India. While making such stipulations, the prescribed authority has to examine the activities in India which the applicant has undertaken in its Constitution, MoUs, and Agreement with Government of India/National Council. In this case, broadly the activities undertaken by the appellant are - conducting classical education by providing course materials, designing courses, conducting exams, granting diplomas, supervising exams, all under the terms of an Agreement entered into with Institutions of the Government of India. Similarly, the prescribed authority may grant approvals on such terms and conditions as it deems fit in case where the Institute applies for initial approval for the first time. The prescribed authority must give an opportunity to the applicant-institute to comply with the

monitoring conditions which have been stipulated for the first time by the third proviso. Therefore, cases where earlier the applicant has obtained exemption(s), as in this case, need not be re-opened on the ground that the third proviso has not been complied with. However, after grant of approval, if it is brought to the notice of the prescribed authority that conditions on which approval was given are breached or that circumstances mentioned in the thirteenth proviso exists then the prescribed authority can withdraw the approval earlier given by following the procedure mentioned in that proviso. The view we have taken, namely, that the prescribed authority can stipulate conditions subject to which approval may be granted finds support from sub-clause (ii)(B) in the thirteenth proviso."

45. The next judgement is that of *Queen's Education Society* (supra). In that case, the society was engaged in imparting education through its schools. For two successive assessment years the society recorded some profits. It was denied exemption, on the ground that the society's objects included not only education, but others as well, and that its aim was to make profit. The Uttarakhand High Court affirmed the view of the revenue. On appeal, this court after considering the previous judgements (discussed above), held that the High Court was in error. After quoting extensively from the judgement in *Surat Art Silk* (supra), this court recorded its conclusions, entirely affirming the 'predominant object' test:

"11. Thus, the law common to Section 10 (23C) (iiiad) and (vi) may be summed up as follows:

(1) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.

(2) The predominant object test must be applied - the purpose of education should not be submerged by a profit making motive.

(3) A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.

(4) If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not be cease to be one existing solely for educational purposes.

(5) The ultimate test is whether on an overall view of the matter in the concerned assessment year the object is to make profit as opposed to educating persons."

46. The court disapproved the Uttarakhand High Court's view that generating surplus was prohibited and adversely commented on the inferences drawn by the High Court. It was held that the High Court had misconstrued the judgement in *Aditanar* (supra). It then discussed the appeal directed against the judgement of the Punjab and Haryana High Court in *Pinegrove International Charitable Trust Vs. Union of India*[19], where the exemption application was denied by the revenue on the ground that the level of fees collected and the surplus generated consistently for several years indicated that the trust was essentially engaging itself in profitable activity under the garb of imparting education. The High Court had held that the generation of profits could not be the only reason to deny exemption, and what was relevant was the 'predominant' or main object of the society, which in that case was to impart education. The High Court also held that after granting approval, if the PA notices that the conditions in which approval had been granted were violated under the circumstances detailed in the thirteenth proviso (as it existed then), approval could be withdrawn after following the procedure prescribed.

47. This court in *Queens Educational Society* (supra) approved the judgement of the Punjab and Haryana High Court in *Pinegrove International* (supra). By the same judgement, it also approved other judgements of High Courts which had followed *Pinegrove* and disagreed with the Uttarakhand High Court's judgement.

48. From the above discussion, it is evident that this court has spelt out the following to be considered by the revenue, when trusts or societies apply for registration or approval on the ground that they are engaged in or involved in education:

[19] *Pinegrove International Charitable Trust Vs. Union of India*, (2010) 327 ITR 73 (P&H).

(i) The society or trust may not directly run the school imparting education. Instead, it may be instrumental in setting up schools or colleges imparting education. As long as the sole object of the society or trust is to impart education, the fact that it does not do so *itself,* but its colleges or schools do so, does not result in rejection of its claim. (*Aditanar* (supra)).

(ii) To determine whether an institution is engaging in education or not, the court has to consider its objects (*Aditanar* (supra)).

(iii) The applicant institution should be engaged in imparting education, if it claims to be part of an entity or university engaged in education. This condition was propounded in *Oxford University* (supra) where the applicant was a publisher, part of the Oxford University established in the U.K. The assessee did not engage in imparting education, but only in publishing books, periodicals, etc. for profit. Therefore, the court by its majority opinion held that the mere fact that it was part of a university (incorporated or set up abroad) did not entitle it to claim exemption on the ground that it was imparting education in India.

(iv) The judgement in *American Hotel* (supra) states that to discern whether the applicant's claim for exemption can be allowed, the 'predominant object' has to be considered. It was also held that the stage of examining whether and to what extent profits were generated and how they were utilised was not essential at the time of grant of approval, but rather formed part of the monitoring mechanism.

(v) *Queen's Educational Society* (supra) approved and applied the 'predominant object' test (which extensively quoted *Surat Art* (supra) and applied it with approval). The court also held that the mere fact that substantial surpluses or profits were generated could not be a bar for rejecting the application for approval under Section 10(23C)(vi) of the IT Act.

Examination of the term 'solely'

49. It is evident, that in construing the term *'any university or other educational institution existing solely for educational purposes and not for purposes of profit'* the other negative reference to profit, in respect of educational institutions, is in the seventh proviso which states that incomes which are profits of business, cannot be exempt, *"unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business"*.

50. The basic provision *granting exemption,* thus enjoins that the institution should exist *'solely for educational purposes and not for purposes of profit'.* This requirement is categorical. While construing this essential requirement, the proviso, which carves out the exception, so to say, to a limited extent, cannot be looked into. The expression 'solely' has been interpreted, as noticed previously, by other judgments as the 'dominant / predominant /primary/ main' object. The plain and grammatical meaning of the term 'sole' or 'solely' however, is 'only' or 'exclusively'. P. Ramanath Aiyar's *Advanced Law Lexicon*[20] explains the term as, *"'Solely' means exclusively and not primarily"*. The Cambridge Dictionary defines 'solely' to be, *"Only and not involving anyone or anything else"*.[21] The synonyms for 'solely' are *"alone, independently, single-handed, single-handedly, singly, unaided, unassisted"* and its antonyms are "*inclusively, collectively, cooperatively, conjointly etc*."

51. It is, therefore, clear that term 'solely' is not the same as 'predominant / mainly'. The term 'solely' means to the exclusion of all others. None of the previous decisions – especially *American Hotel* (supra) or *Queens Education Society* (supra) – explored the true meaning of the expression 'solely'. Instead, what is clear from the previous discussion is that the applicable test enunciated in *Surat Art* (supra) i.e.,

[20] P. RAMANATHA AIYAR, ADVANCED LAW LEXICON, (6th Edn.), Pg. 5249-5250 (2019).
[21] *Solely,* Cambridge Dictionary (4th Edn.) (2013).

the 'predominant object' test was applied unquestioningly in cases relating to charitable institutions claiming to impart education. The obvious error in the opinion of this court which led the previous decisions in *American Hotel* (supra) and in *Queens Education Society* (supra) was that *Surat Art* (supra) was decided in the context of a society that did not claim to impart education. It claimed charitable status as an institution set up to advance objects of general public utility. The *Surat Art* (supra) decision picked the first among the several objects (some of them being clearly trading or commercial objects) as the 'predominant' object which had to be considered while judging the association's claim for exemption. The approach and reasoning applicable to charitable organizations set up for advancement of objects of general public utility are entirely different from charities set up or established for the object of imparting education. In the case of the latter, the basis of exemption is Section 10(23C) (iiiab), (iiiad) and (vi). In all these provisions, the positive condition *'solely for educational purposes'* and the negative injunction *'and not for purposes of profit'* loom large as compulsive mandates, necessary for exemption. The expression 'solely' is therefore important. Thus, in the opinion of this court, a trust, university or other institution imparting education, as the case may be, should necessarily have all its objects aimed at imparting or facilitating education. Having regard to the plain and unambiguous terms of the statute and the substantive provisions which deal with exemption, there cannot be any other interpretation.

52. The view of this court is fortified by the previous judgements in *Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company & Ors.* [22] where a constitution bench held that taxing statutes are to be construed in terms of their plain language:

> *"21. The well-settled principle is that when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of consequences. If the words in*

[22] *Commissioner of Customs (Import), Mumbai v. Dilip Kumar and Company & Ors*., (2018) 9 SCC 1.

> *the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the legislature".*

The Court, while noting the nuances between 'strict' and 'literal' interpretation, held as follows:

> *"29. ...We may reiterate at the cost of repetition that strict interpretation of a statute certainly involves literal or plain meaning test. The other tools of interpretation, namely, contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material, especially in taxation statutes. Indeed, it is well settled that in a taxation statute, there is no room for any intendment; that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification. Equity has no place in interpretation of a tax statute. Strictly one has to look to the language used; there is no room for searching intendment nor drawing any presumption. Furthermore, nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute*".

If the language is unambiguous and capable of one meaning, that alone should be applied and not any other, based under surmise that the Parliament or the legislature intended it to be so. In other words, it is only in cases of ambiguity that the court can use other aids to discern the true meaning. Where the statute is clear and the words plain, the legislation has to be given effect in its own terms.

53. In *A.V. Fernandez v State of Kerala*[23], a constitution bench discussed how tax laws should ordinarily be construed:

> "29. *It is no doubt, true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter*".

54. It is only when the application of literal interpretation gives rise to an absurdity, should the interpretation be expansive. This was reiterated in *Mangalore*

[23] *A.V. Fernandez v State of Kerala*, 1957 SCR 837.

Chemicals and Fertilisers Ltd. v. Deputy Commissioner of Commercial Taxes & Ors.[24]:

> *"24. ...The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation".*

55. This court has, in many judgments, stressed that the object of a proviso is to except from the main provision something enacted in the substantive clause. It cannot however, by itself be read as a substantive provision. *Ishverlal Thakorelal Almaula* v. *Motibhai Nagjibhai*[25] considered the function and effect of a proviso:

> *"8. The proper function of a proviso is to except or qualify something enacted in the substantive clause, which but for the proviso would be within that clause. It may ordinarily be presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject-matter of the proviso."*

56. In *Indore Development Authority v. Manoharlal*[26] it was held that:

> *"192. A proviso has to be construed as a part of the clause to which it is appended. A proviso is added to a principal provision to which it is attached. It does not enlarge the enactment. In case the provision is repugnant to the enacting part, the proviso cannot prevail. Though in absolute terms of a later Act. Its placement has been considered, and purpose has been considered in the following decisions. It was observed in State of Rajasthan v. Leela Jain [State of Rajasthan v. Leela Jain, (1965) 1 SCR 276 : AIR 1965 SC 1296] : (AIR p. 1300, para 14)*
>
> > *"14. ... So far as a general principle of construction of a proviso is concerned, it has been broadly stated that the function of a proviso is to limit the main part of the section and carve out something which but for the proviso would have been within the operative part."*

[24] *Mangalore Chemicals and Fertilisers Ltd. v. Deputy Commissioner of Commercial Taxes & Ors*, (1992) Supp (1) SCC 21.
[25] *Ishverlal Thakorelal Almaula* v. *Motibhai Nagjibhai*, 1966 (1) SCR 367.
[26] *Indore Development Authority v. Manoharlal,* (2020) 8 SCC 129.

57. The scope of a proviso was dealt with in great detail in *S. Sundaram Pillai v. V.R. Pattabiraman*.[27] This court observed that normally a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. A proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment. After quoting previous decisions and authoritative texts, this court summarized the correct legal position, as follows:

> *"43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:*
>
> *(1) qualifying or excepting certain provisions from the main enactment:*
>
> *(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:*
>
> *(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and*
>
> *(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."*

58. The seventh proviso to Section 10 (23C) (vi) alludes to business and profits (*'being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business'*). The interpretation of Section 10 (23C) therefore, is that the trust or educational institution must *solely* exist for the object it professes (in this case, education, or educational activity only), *and not for profit*. The seventh proviso however carves an exception to this rule, and permits the trust or institution to record (or earn) profits, *provided* the *'business'* which has to be read as *the education or*

[27] *S. Sundaram Pillai v. V.R. Pattabiraman*, 1985 (1) SCC 591.

educational activity - and nothing other than that - is *incidental to the attainment of its objectives* (i.e., the objectives of, or relating to, education).

59. In this court's judgment in *Delhi Cloth & General Mills Co. Ltd. v Workmen & Ors.*[28] the question involved was the jurisdiction of an industrial tribunal. Under the Industrial Disputes Act, 1947, as to whether it can decide disputes referred to it, and *matters incidental thereto*, this court explained the meaning of 'incidental' in the following manner:

> *"21. [T]he word 'incidental' means according to Webster's New World Dictionary:*
> *"happening or likely to happen as a result of or in connection with something more important; being an incident; casual; hence, secondary or minor, but usually associated:"*
> *"Something incidental to a dispute" must therefore mean something happening as a result of or; in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct."*

The above decision has been followed in other cases. 'Incidental' therefore, means, in the context of the present case, something connected with the activity of education.

60. In the light of the above discussion, this court is of the opinion that the interpretation adopted by the judgments in *American Hotel* (supra) as well as *Queens Education Society* (supra) as to the meaning of the expression 'solely' are erroneous. The trust or educational institution, which seeks approval or exemption, should solely be concerned with education, or education related activities. If, incidentally, while carrying on those objectives, the trust earns profits, it has to maintain separate books of account. It is only in those circumstances that 'business' income can be permitted- provided, as stated earlier, that the activity is education, or relating to education. The judgment in *American Hotel* (supra) as well as *Queens Education Society* (supra) do not state the correct law, and are accordingly overruled.

[28] *Delhi Cloth & General Mills Co. Ltd. v Workmen & Ors.*, 1967 (1) SCR 882.

61. The second question which this court has to address is whether the PA (Commissioner or any other designated authority) is in any manner enjoined to confine the nature of inquiry to discern the object of a society, trust or other institution at the stage when it approaches the authority for approval under Section 10 (23C).

62. Section 10(23C) has many provisos. The first proviso enjoins the concerned fund, trust or institution to apply to the concerned authority i.e., the Commissioner, for grant of approval and sets out the timeline for doing so. These include situations where a trust or institution was granted approval up to a particular point in time and sought extension. The second proviso by sub-clause (ii) requires the Commissioner to make such enquiries to specify about the *genuineness* of the activities of the fund, trust or institution and compliance of such requirements of other laws in force by such fund, trust or institution. Upon considering the materials the Commissioner or the concerned authority can pass an appropriate order granting approval for a specific period of time, or reject the application. The second proviso importantly indicates that before granting approval to any fund, trust or institution, the Commissioner or the concerned authority '*may call for such documents*' including audited annual accounts or information from the fund, or trust or institution etc., as is deemed necessary for recording satisfaction about the *genuineness* of the activities. The judgment in *American Hotel* (supra) dealt extensively with the effect of the provisos to Section 10(23C). While doing so, the court made certain remarks with respect to the effect of these provisos characterizing a few of them as those dealing with the stage of considering applications for approval or registration and other as those dealing with application of income or receipts of the trust. In respect of the latter, this court was of the opinion that the question of application of income or profits could arise only at the stage of assessment. The court was also of the

opinion that the audited books of accounts would be of little or no relevance at the stage of registration or approval.

63. Having regard to the plain terms of the second proviso to Section 10(23C), which refers to the procedure for approval of applications including those made by trusts and institutions imparting education, one can discern no such restrictions. From the pointed reference to 'audited annual accounts' as one of the heads of information which can be legitimately called or requisitioned for consideration at the stage of approval of an application, the inference is clear: the Commissioner or the concerned authority's hands are not tied in any manner whatsoever. The observations to the contrary in *American Hotel* (supra) appear to have overlooked the discretion vested in the Commissioner or the relevant authority to look into past history of accounts, and to discern whether the applicant was engaged in fact, 'solely' in education. *American Hotel* (supra) excluded altogether inquiry into the accounts by stating that such accounts may not be available. Those observations in the opinion of the court assume that only newly set up societies, trusts, or institutions may apply for exemption. Whilst the statute potentially applies to newly created organizations, institutions or trusts, it equally applies to existing institutions, societies or trust, which may seek exemption at a later point. At the same time, this court is also of the opinion that the Commissioner or the concerned authority, while considering an application for approval and the further material called for (including audited statements), should confine the inquiry ordinarily to the nature of the income earned and whether it is for education or education related objects of the society (or trust). If the surplus or profits are generated in the hands of the assessee applicant in the imparting of education or related activities, disproportionate weight ought not be given to surpluses or profits, provided they are incidental. At the stage of registration or approval therefore focus is on the activity and not the proportion of

income. If the income generating activity is intrinsically part of education, the Commissioner or other authority may not on that basis alone reject the application.

Applicability of Other Laws

64. In some appeals a grievance was articulated that the revenue did not grant approval to the society or educational institution because it was not registered under the A.P. Charities Act. Section 1(3)(a) the A.P. Charities Act is applicable to all public charitable institutions whether registered or not. The term *'public charitable institutions'* is defined, and includes every charitable institution the administration of which is for the time being, amongst others, carried on by a society. *'Charitable institution'*, under Section 2(4), and '*charitable purpose*' under Section 2 (5) of A.P Charities Act are defined as follows:

> *"**2 Definitions***
>
> *******
>
> *(4) 'charitable institution ' means any establishment, undertaking, organisation or association formed for a charitable purpose and includes a specific endowment and dharmadayam;*
> *(5) 'charitable purpose' includes-*
>
> *(a) relief of poverty or distress;*
>
> *(b) education;*
>
> *(c) medical relief;*
>
> *(d) advancement of any other object of utility or welfare to the general public or a section thereof not being an object of an exclusively religious nature."*

65. Clearly, charitable objects – defined by the A.P. Charities Act, are *pari materia* with the IT Act. Thus, establishments or associations or organizations (widely phrased terms) formed for '*charitable purpose*' fall within the meaning of charitable institutions. These include societies and trusts, set up for educational purposes.

66. By Section 43(1), every charitable institution, existing as on the date of commencement of the A.P. Charities Act was obliged to apply for registration. *'New*

trusts or institutions are obliged, within ninety days of their formation, to apply for registration' through persons in charge - the Registrar, by Section 43(2) to Section 43 (4) is obliged to inquire into the material provided with the application, and take into account other relevant material. Section 43 (5) reads as follows:

> *"43(5) On receipt of the application, the Assistant Commissioner shall, after making such enquiry as he thinks fit and hearing any person having interest in the institution or endowment, pass an order directing its registration and grant to the trustee or other person a certificate of registration containing the particulars furnished in the application with the alterations, if any, made by him as a result of his enquiry."*

67. In the event of failure to comply with Section 43(1), or failure to intimate changes in the trust, or for supplying false information, the trustee or other person in charge, can be penalized by Section 43 (11). Section 44 empowers the Commissioner to direct charitable organizations and trusts to comply and register under the Act.

68. The assessees had argued that since they were registered under the Andhra Pradesh Societies Registration Act, 2001 or were trusts duly registered, they could not be compelled to comply with state laws as a condition for consideration of their application as charitable institutions, under Section 10 (23C).

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:

> *"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 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*[29] 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.

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

[29] *Assam State Text Book Production & Publication Corpn. Ltd. v. Commissioner of Income Tax*, (2009) 17 SCC 391.

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.

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 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 assessees' 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 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.

.....CJI.
[UDAY UMESH LALIT]

….....J.
[S. RAVINDRA BHAT]

..... J.
[PAMIDIGHANTAM SRI NARASIMHA]

New Delhi,
October 19, 2022.