

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.2565/CHNY/2017

निर्धारण वर्ष /Assessment year : ---

M/s. Investors Financial
Education Academy,
5A, 5th floor, Kences Tower,
No.1, Ramakrishna Street,
T.Nagar, Chennai 600 017.

Vs. The Income Tax Officer,
(Exemption)
Ward 4,
Chennai 600 034.

[PAN AACCI 5911R]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. R. Vijayaraghavan, Adv
प्रत्यर्थी की ओर से /Respondent by : Shri. Vijay Kumar Punna, J.
Standing Counsel.

सुनवाई की तारीख/Date of Hearing : 07-06-2018
घोषणा की तारीख /Date of Pronouncement : 11-06-2018

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

In this appeal filed by the assessee, it assails an order dated 29.09.2017 of Id. Commissioner of Income Tax (Exemptions), Chennai, denying it the registration sought u/s.12AA of the Income Tax Act, 1961 (in short 'the Act').

2. Grounds taken by the assessee are reproduced hereunder:-

1.The Order of the Commissioner of Income Tax (Exemption) is contrary to law, facts and in the circumstances of the case.

2.The Commissioner of Income Tax (Exemption) erred in rejecting the application filed in Form No.10A for grant of registration u/s.12AA of the Act

3.The Commissioner of Income Tax (Exemption) erred in holding that the Appellant is not entitled to registration u/s. 12AA.

4.The Commissioner of Income Tax (Exemption) ought to have appreciated that the main objects of the Appellant is educating and dissemination of knowledge.

5.The Commissioner of Income Tax (Exemption) ought to have appreciated that when the object of Trust is for educational purposes the registration cannot be rejected on the basis of first proviso to Section 2(15).

6.Without prejudice, assuming but not conceding that proviso to Section 2(15) is applicable the same would have to be considered in the light of Section 13(8) in the course of assessment of the Trust and not for determining the charitable nature of the Trust.

7.The Commissioner of Income Tax ought to have appreciated that for granting registration under section 12AA only the charitable nature of the trust and genuineness of the activities, have to be examined.

8.The Appellant craves leave to adduce additional grounds at the time of hearing.

3. Ld. Counsel for the assessee submitted that main object of the assessee was to impart financial education and awareness amongst the investor community. As per the Id. Authorised

Representative, Id. CIT erroneously concluded that assessee's activity would fall only under "education". Further, as per the Id. Authorised Representative, though the Id. CIT examined various limbs of u/s.2(15) of the Act, he did not accept the contention of the assessee that it was an organization pursuing activities which advanced objects of general public utility. Submission of the Id. Authorised Representative, was that Id. CIT came to a wrong conclusion on the nature of assessee's activities. According to him Id Commissioner of Income Tax erroneously took a view that assessee was imparting financial education/awareness for a price, when in reality it was not collecting any fees from any of the participants of various programmes conducted by it. As per the Id. Authorised Representative, assessee was conducting investor meets across Tier II cities in India and was imparting education for developing fundamental skills in investing. Further as per the Id. Authorised Representative, assessee had conducted 25 to 30 investor awareness programmes in association with M/s. Nanayam Vikatan, a leading financial magazine of South.

4. Continuing his submissions, Id. Authorised Representative, pointed out that many mutual funds and life insurance companies like Goldman Sachs, Tata Life Insurance, Reliance Life Insurance, Bharti AXA Life Insurance, etc. were sponsoring programmes, which

assessee was conducting for the benefit of public. Ld. Authorised Representative sought to bring to our attention the investor education material published on a periodic basis, and similar articles published in a fortnightly magazine. According to the Id Authorised Representative, assessee was conducting E-courses for imparting basic skills for making investment, to common people and had also developed a mobile app for this purpose. As per the Id. Authorised Representative, assessee was accredited by National Institute of Securities Market (NISM) as a provider of continuing professional education. Further, as per the Id. Authorised Representative, assessee had future plans to pursue educational courses to school children and college students and training of school teachers for this purpose.

5. Adverting to the definition of "charitable purpose" given in Section 2(15) of the Act, Id. Authorised Representative submitted that assessee was eligible for registration u/s.12AA of the Act. According to him assessee was recognized as a charitable association by Ministry of Company Affairs, since it was registered u/s.25 of the Companies Act, 1956. As per the Id. Authorised Representative, there was a clause in its Memorandum of Association, which mandated utilization of its income and property solely for the promotion of its objects. Ld. Authorised Representative also pointed out that similar institutions

which were imparting financial education to general public like Vijaya Financial Literacy Trust, Jnana Jyothi Financial Literacy and Credit Counseling Trust, Indian Institute of Financial Services, Insurance Research and Education Foundation, National Insurance Academy, and ITM University were given registration u/s.12A of the Act and assessee could not be singled out for a different treatment. Reliance was placed on Government's policy, strategy and road map for financial literacy. Submission of the Id. Authorised Representative was that assessee was pursuing objects of general public utility, and was eligible for registration u/s.12AA of the Act. According to the Id. Authorised Representative, question of applying proviso to Section 2(15) of the Act was something which was to be considered by the Id. Assessing Officer at the time of assessment and not relevant while considering an application for registration u/s.12AA of the Act. As per the Id. Authorised Representative, assessee did not promote any financial product or any specific institution through its activities. Thus, as per the Id. Authorised Representative, assessee was unjustly denied registration sought u/s.12AA of the Act.

6. Per contra, Id. Departmental Representative strongly supporting the order of the Id. CIT submitted that objects of the assessee did not fall within the category of general public utility. As

per the Id. Departmental Representative, assessee could not be granted registration sought by it u/s.12AA of the Act. Reliance was placed on the judgment of Hon'ble Uttarakhand High Court in the case of *CIT vs. National Institute of Aeronautical Engineering Educational Society*, 315 ITR 428 and that of Hon'ble Apex Court in the case of *Sole Trustee, Loka Shikshana Trust vs. CIT*, 101 ITR 234.

7. We have considered the rival contentions and perused the orders of the authorities below. Before adverting to the facts, it will be apposite to extract Section 2(15) of the Act which defined charitable purpose.

"charitable purpose" includes relief of the poor, education, 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*
- (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”.*

Claim of the assessee is that it would fall under the limb “education” and alternatively, if this is negated it would fall within the last limb which is “advancement of any other object of general public utility”. Main objects of the assessee as it appear in its MOA is reproduced hereunder;-

“1.To integrate Financial Learning, Education & Protection and propagate the need for financial planning, investment products and services, the policies and procedures, its strength and pitfalls in India or abroad either on its own or in alliance with any other person/ body in India or abroad under any arrangement

2. To collect, research, process, disseminate, distribute supply, furnish, give, send, part with, dispose of, publish, promulgate, proclaim, declare and do all such acts and deeds to make public any kind of technical, industrial, financial, economic or commercial information data, knowledge, details and the like of or relating to matters of interest to investors, organizations, associations, chambers, companies, banks or other entities including information about persons and entities who have been declared defaulters by any government, regulatory or any other body, or who are non compliant with any laws/ policies/ guidelines of the government, regulatory or any other body, or about business/companies in distress and allied matters, whether for consideration or otherwise, and by way of printing and publishing or through website, newspaper, magazine, brochure, radio broadcast, CD ROMS, floppies, directories, charts, movies, audio-visual,

pamphlet or other works and to create, maintain and manage fund/s for the above.

3. To establish state-of-the-art facilities for education, software development and training and to carry out teaching and research and to offer continuing education programs, vocational skills training in various fields through any medium including reports, television, Internet, newspapers, seminars, career guidance festivals and other forms of media and communication and to confer degrees, diplomas, certificates and other academic distinctions on the basis of examination, or any other method of evaluation subject to approval from the appropriate authorities in the field of investments and to conduct market surveys, investor surveys, opinion polls and other studies relating to investments and financial markets for the benefit of all irrespective of caste, creed and religion.

4. To create higher levels of intellectual abilities and standards in the field of investments and financial markets and to promote and inculcate honorable business practices”.

8. First taking up the question whether assessee can be considered as engaged in 'education', what was held by the Hon'ble Apex Court in the case of *Sole Trustee, Loka Shikshana Trust at para 41* of its judgment is reproduced hereunder:-

'41. *The sense in which the word "education" has been used in s. 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a 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. Again,*

when you grow up and have dealings with other people, some of whom are not straight, you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes your wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in cl. (15) of s. 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling".

In relation to the main object of *Loka Shikshana Trust*, what was held by their lordships at page 39 of the judgment is reproduced hereunder:-

'39. *The ITO sent a communication to the Trust on 27th April, 1963, to the effect that since the only activity of the trust was printing, publication and sale of newspaper, weekly and monthly journal, the trust carried on an activity for profit and was not entitled to exemption. In reply to that notice the sole trustee stated that the above-mentioned activities of the trust were covered by cl. (c) of the objects clause of the trust deed. It was added that the above object did not involve the carrying on of any activity for profit. In a further communication dt. 26th June, 1964, the sole trustee wrote :*

"The Trust has four objects in its objects clause one of which is to supply the Kannada speaking people with an organ or organs of educated public opinion, etc. [cl. 2(c) of trust deed]. Under this clause we conduct the publication of newspapers. This has not been agreed upon by your honour as

a charitable purpose and we have accordingly preferred appeals for relief.

The main object of the Trust is education and this may be achieved by conducting and helping educational institutions and by running reading rooms and libraries and helping the institutions having similar objects as of our Trust. These are all charitable objects. In case the Trust has a surplus income it cannot be spent on any object other than the objects of the Trust. For the present we have been educating the Kannada speaking people through newspapers and journals and we shall be taking up the other ways and means of education as noted in our trust deed as and when it is possible for the Trust. We have no option at all except to spend our income on the objects of our Trust which are all charitable without any doubt or ambiguity."

Analysis of the object clause of the M/s. *Loka Shikshana Trust*, made by the Apex Court, appear at para 38 of the judgment and this is reproduced hereunder:-

38. *In order to see as to whether the appellant-trust is for a charitable purpose, we may first go into the question as to what is the object of the appellant-trust. According to Mr. Palkhivala, learned counsel for the appellant, the object of the appellant-trust is education, while the stand of Mr. Sharma on behalf of the Revenue is that not education, but the last mentioned category in s. 2(15), viz., the advancement of any other object of general public utility, is the object of the appellant-trust. The reason for the above divergence in the stands of Mr. Palkhivala and Mr. Sharma is that, according to Mr. Palkhivala, the concluding words of the definition in s. 2(15) of the Act "not involving the carrying on of any activity for profit" do not qualify the first three categories of relief of the poor, education, or medical relief but qualify only the fourth category of "advancement of any other object of general public utility". Once the object of the appellant- trust is held to be education, the trust*

would, according to Mr. Palkhivala, be held to be for a public purpose as defined in s. 2(15) of the Act. In such an event, it would be immaterial whether the object of the trust involves or does not involve the carrying on of any activity for profit. As against that, Mr. Sharma has controverted the submission that the concluding words of the definition, viz., "not involving the carrying on of any activity for profit" qualify only the fourth category of "advancement of any other object of general public utility". According to Mr. Sharma, the concluding words qualify the first three categories of relief of the poor, education and medical relief also. In any case, submits Mr. Sharma, the object of the appellant-trust falls in the fourth category of the definition, namely, "any other object of general public utility". It is, in our opinion, not necessary to express an opinion in this case on the question as to whether the words "not involving the carrying on of any activity for profit" qualify the fourth object, viz., the advancement of any other object of general public utility, or whether they also qualify the other three objects of relief of the poor, education, and medical relief, because we are of the view that the object of the appellant-trust was not education but any other object of general public utility. Clauses 2, 6, 10, 14, 16 and 18 of the trust deed of the appellant read as under :

"2. The object of the trust shall be to educate the people of India in general and of Karnataka in particular by—

(a) establishing, conducting and helping directly or indirectly institutions calculated to educate the people by spread of knowledge on all matters of general interest and welfare:

(b) founding and running reading rooms and libraries and keeping and conducting printing houses and publishing or aiding the publication of books, booklets, leaflets, pamphlets, magazines, etc., in Kannada and other languages, all these activities being started, conducted and carried on with the object of educating the people;

(c) supplying the Kannada speaking people with an organ or organs of educated public opinion and conducting journals in Kannada and other language for the dissemination of useful news and information

and for the ventilation of public opinion on matters of general public utility; and

(d) The original trustee shall have power and authority to spend and utilise the money and the property of the Trust for any of the purposes of this Trust in such manner, as to him may appear proper. The original trustee shall be entitled to operate all the banking accounts of the Trust.

10. The Original Trustee shall have full power to take over on such terms as he may deem fit such concern or concerns, or undertakings as, in his opinion, are congenial or conducive to any of the purposes of the Trust.

14. The original trustee shall be entitled to appoint a manager or managers of institutions of the trust, editor or editors and other subordinates for the purposes of carrying out the printing and publication of any newspaper or newspapers weeklies, monthlies, magazines, books or other publications, and shall have power from time to time to delegate to any one or more persons by power of attorney or otherwise any one or more of the following powers :

(a) to open one or more banking accounts, to operate the same and to deposit and withdraw moneys from the same;

(b) to give receipts or discharges for money or property received by them or any one of them in the course of business carried on by the Trust;

(c) to buy or sell paper, ink, machines, books and materials required for the purposes of the business of the Trust;

(d) to enter into contracts with agents, dealers and others in the course of the business of the Trust;

(e) to employ or remove subordinates and workers necessary for the work;

(f) and generally to do all things necessary and expedient in carrying out the business entrusted to him or them.

16. The original trustee or trustees shall not take any remuneration for discharging his or their duties as a

trustee or trustees provided that this provision shall not preclude a trustee or trustees from being paid out of the Trust fund, such remuneration as may be deemed proper for carrying out any work and duty in connection with the conduct or management of institutions of the Trust, or with the business of printing, publishing or other activities carried on by the Trust. A trustee shall be entitled to be paid all expenses that may be incurred by him in connection with his duties as a trustee including travelling and other expenses.

18. The original trustee or other trustees shall not be responsible for any loss occasioned to the Trust in respect of any business or dealings carried on behalf of the Trust unless the same is due to his own fraud or misappropriation or breach of trust and every trust shall be indemnified by and out of the funds and moneys of the Trust against any loss or damage which the trustee might suffer in regard to any act, deed, or any fines or penalties imposed under the Factories Act or any Labour Legislation or Press Act or any other similar enactment

In the very same judgment their lordships also elucidated the ambit of the term "object of public general utility" at paras 27 and 28, which are reproduced hereunder:-

27. *The difficult question, however, still remains : What is the meaning of "charitable purpose" which is only indicated but not defined by s. 2(15) of the Act ? It seems to me that a common concept or element of "charity" is shared by each of the four different categories of charity. It is true that charity does not necessarily exclude carrying on an activity which yields profit, provided that profit has to be used up for what is recognised as charity. The very concept of charity denotes altruistic thought and action. Its object must necessarily be to benefit others rather than one's self. Its essence is selflessness. In a truly charitable activity any possible benefit to the person who does charitable act is merely incidental or even accidental and*

immaterial. The action which flows from charitable thinking is not directed towards benefiting one's self. It is always directed at benefiting others. It is this direction of thought and effort and not the result of what is done, in terms of financially measurable gain, which determines that it is charitable. This direction must be evident and obligatory upon the trustee from the terms of a deed of trust before it can be held to be really charitable.

28. *We think that this governing idea of charity must qualify purpose of every category enumerated in s. 2(15) of the Act of 1961. We think that the words introduced by the Act of 1961 to qualify the last and widest category of objects of public utility were really intended to bring out what has to be the dominant characteristic of each and every category of charity. They were intended to bring the last and most general category in line with the nature of activities truly charitable and mentioned in the earlier categories.*

The ratio- decidendi of the above judgment when applied to the object of the assessee before us which admittedly is imparting financial education to the general public through programmes sponsored by Goldman Sachs, ICICI, Tata, Reliance Life etc, will clearly show that pursuing such object would not come within the meaning of "education". In fact none of the objects as contained in the main object clauses of the MOA, will fall within the meaning of "education".

9. This brings us to the question whether assessee's activity will fall within the last limb of "charitable purpose" which is advancement of general public utility. The type of programmes conducted by the

assessee as it appear in the documents filed before the Director of Income Tax (Exemptions) to give a bird's eye view of the nature of its activities. This is reproduced hereunder:-

IFEA has been conducting Investor Awareness Programs across cities for targeted audience with the support of Various Market players. IFEA has conducted programs in association with Goldman Sachs Asset Management Company, Reliance Mutual Fund, ICICI Mutual Fund, Reliance Life Insurance, Bharti AXA Life Insurance, TATA Life Insurance. Also, IFEA has partnered with NSE, NSDL , CUB and Nanayam Vikatan to conduct a series of awareness programs

List of programs conducted by IFEA:-

<i>Year</i>	<i>Name of the Sponsor</i>	<i>No of programs</i>
2014	Goldman Sachs	9
2015	Nanayam Vikatan, NSE, NSDC	7
2015	Reliance Life Insurance	254
2016	Nanayam Vikatan, NSE, NSDL	8
2016	Reliance Life Insurance	60
2016	Bharti AXA Life Insurance	131
2016	Tata Life Insurance	160
2017	Nanayam Vikatan, NSE, NSDL, CUB	6
2017	Tata Life Insurance	160

Claim of the assessee is that through the above awareness programmes, it was doing an activity of general public utility. It may be true that assessee was not collecting any fees from any of the participants but admittedly, it was collecting substantial amount as sponsorship fees from various sponsors. Further, almost all of these sponsors were from private sector and not from any Department of Government. A look at the Profit and Loss account of the assessee for

years ending 31.03.2015 and 31.03.2016 give the nature of the revenue earned by it. Pertinent part is reproduced hereunder:-

	<i>31.03.2016</i>	<i>31.03.2017</i>
	<i>₹ in "000"</i>	<i>₹ in "000"</i>
11. Revenue from Operations		
<i>Investors Education on Financial and Insurance Products</i>	<i>9,62,65</i>	<i>2,03,35</i>
<i>Advertisement Income</i>	<i>7,00</i>	<i>33,50</i>
<i>Interest Income</i>	<i>6,93</i>	<i>---</i>
Total	<i>9,76.58</i>	<i>2,36,85</i>

It had profit before tax of ₹27,49,000/- for year ended 31.03.2014, ₹22,09,000 for year ended 31.03.2015, and ₹93,38,000/- for year ending 31.03.2016. The nature of receipts as well as the surplus generated, in our opinion, go contrary to assessee's claim that it was pursuing any charitable activity.

10. One of the arguments taken by the Id. Authorised Representative before us is that applicability of first proviso to Section 2(15) of the Act, was something which was to be looked into by the Id. Assessing Officer during the course of assessment and not an issue which was to be considered while adjudicating an application for registration u/s.12AA of the Act. We are afraid, we cannot accept this line of argument. First proviso is clear in that advancement of any

other object of general public utility will not be a charitable purpose, if it involved carrying on 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. Assessee's activity was imparting financial skills, through programme sponsored by various companies and this in our opinion was nothing but rendering services in relation to trade, commerce or business carried on by such companies. Assessee was in receipt of huge sponsorship fees from them. Just because assessee was registered u/s.25 of the Companies Act, 1956 would not ipso facto make it eligible for registration u/s.12AA of the Act. Predominant activity of the assessee was to conduct programmes which were sponsored by other companies and for which substantial fees were paid by the sponsors. In our opinion, whether or not assessee collected fees from participants was immaterial since it was collecting sponsorship fees from such companies. If the interpretation sought by Id. Authorised Representative is accepted then every company or concern engaged in an activity of infrastructure development will become eligible for exemption u/s.11 and 12 of the Act for the sole reason that development of infrastructure is an activity which is of great general public utility. Unless the dominant activity show altruistic thought and action which reflects selflessness, we cannot say it involves any

'charity'. In the circumstances, we are not inclined to accept the argument of the assessee that it was carrying on any charitable activity within the meaning of Section 2(15) of the Act. We do not find any reason to interfere with the order of the Id. CIT.

11. In the result, the appeal of the assessee is dismissed.

Order pronounced on Monday, the 11th day of June, 2018, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)
(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:11th June, 2018

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- | | | |
|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |