®

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 20TH DAY OF DECEMBER 2013

PRESENT

THE HON'BLE MR.JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE MR.JUSTICE B.MANOHAR

INCOME TAX APPEAL Nos.5007-12/2013

BETWEEN:

M/S. VISVESVARAYA TECHNOLOGICAL UNIVERSITY
JNANA SANGAM CAMPUS
BELGAUM-590014
R/BY ITS VICE CHANCELLOR.

... APPELLANT

(BY SRI GOPAKUMARAN NAIR, SR. ADV., FOR SRI S PARTHASARATHI, ADV., AND SRI H R KAMBIYAVAR, ADV.,)

AND :

THE ASSISTANT COMMISSIONER OF
INCOME TAX,
CIRCLE -I,
FK BHAI COMMERCIAL COMPLEX,
OPP: CIVIL HOSPITAL
DR. AMBEDKAR ROAD,
BELGAUM-590001. ... RESPONDENT

(BY SRI P WILSON, ASG FOR SRI Y V RAVIRAJ, ADV., FOR C/R)

THESE INCOME TAX APPEALS ARE FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961 AGAINST ORDER PASSED IN ITA.NOS.65 TO 70/PNJ/2012 DTD:21-06-2013 ON THE FILE OF THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, GOA, DISMISSING THE APPEAL FILED BY THE ASSESSEE.

THESE INCOME TAX APPEALS COMING ON FOR FINAL DISPOSAL, THIS DAY, DELIVERED THE FOLLOWING:

ORAL JUDGMENT: (DILIP B. BHOSALE J.)

These Income Tax appeals are directed against the order dated 21.06.2013 passed by the Income Tax Appellate Tribunal, Panaji Bench, Goa (for short, "**the Tribunal"**) in I.T.A. Nos.65-70(PNJ)/2012, pertaining to the assessment years 2004-05 to 2009-10. By this order the Tribunal confirmed the orders passed by Commissioner of Income Tax (Appeals), Belgaum (for short **"the Appellate Authority"**) dated 04.09.2012 and the order dated 29.12.2011 passed by the Assessing Officer.

2. These proceedings arise from the notices, all dated 15.03.2011, issued by the Assessing Officer to the appellant – *Visveswaraiah Technological University, Belgaum* (for short,

'the University') under Section 148 of the Income Tax Act, 1961 (for short, **'the Act'**). The notices were issued requiring the University to file its return of income for the assessment years 2004-05 to 2009-10, since, according to the Revenue, income during these years had escaped assessment. Compliance, of these notices was not done, and hence notices under Section 142(1) dated 11.04.2011 and 06.09.2011 were issued. Despite these notices, no returns were filed and hence summons under Section 131 of the Act dated 09.11.2011 were issued fixing the date of hearing on 17.11.2011. Then, the University sought further time to file returns. On 15.12.2011 they filed return of income declaring 'nil income', claiming exemption under Section 10 (23C)(iiiab) of the Act. Assessment for the years 2004-05 to 2009-10 was accordingly completed by separate assessment orders, all dated 29.12.2011, under Section 143(3) read with Section 147 of the I.T. Act, rejecting the claim of the University seeking exemption under Section 10(23C)(iiiab). The Assessing Officer held that the University is not an University "not existing for purposes of profit" as contemplated

by clause (iiiab) of Section 10(23C) of I.T. Act and that it is not "wholly or substantially financed" by the Government.

3. Feeling aggrieved and dissatisfied with the order of the Assessing Officer, the University filed appeal before the Appellate Authority. The Appellate Authority dealt with the questions whether issuance of notice under Section 148 of the I.T. Act was valid, whether the University can be treated as a 'State' under Article 289(1) of the Constitution of India so as to grant exemption from taxation; whether the University is entitled for exemption under Section 10(23C) (iiiab) of the I.T. Act etc. The Appellate Authority after examining the contentions urged on behalf of the University, in the light of the authorities relied upon by them and taking into consideration over all facts and circumstances of the case, came to the conclusion that the University did not fulfill the conditions prescribed under Section 10(23C) (iiiab) of the I.T. Act to be eligible to claim deduction/exemption thereunder. The Appellate Authority negatived the contentions urged on behalf of the University that they are eligible for exemption/deduction

either under Section 10(23C) (iiiab) or Section 10(23C) (vi) of the I.T. Act or Article 289 of the constitution, and confirmed the order passed by the Assessing Officer vide its judgment and order dated 04.09.2012.

4. Against the order passed by the Appellate Authority the University preferred further appeal before the Tribunal. The Tribunal in the course of hearing formulated certain questions of law and facts and ultimately held that the University did not fulfill the conditions prescribed under Section 10(23C) (iiiab) or Section 10(23C) (vi) of the I.T. Act to claim exemption/deduction and, accordingly dismissed the appeals vide orders dated 21.06.2013.

5. Feeling aggrieved and dissatisfied by the order of the Appellate Tribunal, which confirmed the orders passed by the Authorities below, the University has preferred these appeals under Section 260A of the I.T. Act. When the appeals were admitted, no substantial questions of law as contemplated under Section 260A of the I.T. Act were framed. In view thereof, with the assistance of learned counsel for the parties,

we formulated the following substantial questions of law and heard them at considerable length:

i) *Whether on the facts and in the circumstances of case and in law, the authorities below were justified in rejecting the claim of the University seeking exemption/deduction under section 10(23C) (iiiab) of the IT Act, based on their case that they are wholly (or at least substantially) financed by the State Government, as contemplated by Section 23 of the Vishveswaraiah Technological University Act, 1994?*

ii) *Whether the University is existing solely for educational purposes and not for purposes of profit and that the surplus in its accounts in any given year would not constitute profit to deny exemption/benefit under section 10 (23C) (iiiab) of the IT Act?*

iii) *Whether the appellant –University, is a State or part of the State, within the meaning of Article 289(1) of the Constitution of India so*

as to seek exemption from taxation under this Article?

6. Before we consider the questions of law and advert to the arguments advanced by learned counsel for the parties in support of their claims we deem it appropriate to state about status of the University. The University was established and incorporated in the State of Karnataka for development of Engineering, Technology and allied sciences under the provisions of the Visveswaraiah Technological University Act, 1994 (for short, **'the act of 1994'**). The University was established for the purpose of ensuring proper and systematic instruction, teaching, training, research in the development of Engineering, technology and the allied sciences in the State and matters connected therewith. It was brought into force after receiving the assent of Governor on 07.10.1994. All Engineering Colleges, which, as of today are 194, are affiliated to the University.

6.1. Section 3 of the Act of 1994, states that the University has jurisdiction over the whole of State of Karnataka

and it is a body corporate by the name Visveswaraiah Technological University specified in sub-section (1) thereof and have perpetual succession and a common seal and has power to acquire, hold and dispose of property, both movable and immovable, and to sue and be sued by the said name.

6.2. Section 9 of the Act of 1994 provides for accountability of the University. On the basis of this provision and few other provisions in the Act of 1994 it was contended that the University is "controlled and regulated" by the State Government.

6.3. The Chancellor of the University is the Governor of the State of Karnataka. The 'Pro-Chancellor' as contemplated by Section 12 of the Act of 1994 is the Minister who is in charge of Higher Education in Karnataka. The Vice-Chancellor, who is a whole time officer of the University and chief of academic and administrative head, is appointed by the Chancellor and his term is three years extendable by another term of similar period at the discretion of the Chancellor. The

other authorities of the University are Executive Council and Academic Council. The Executive Council has several powers and duties to perform under Section 20 of the Act of 1994 including to administer public and private funds placed at the disposal of or accepted by the University for specified purpose and to invest monies belonging to the Universities.

6.4. Section 23 of the Act of 1994 is relevant for our purpose and it would be advantageous, if it is reproduced, for better appreciation of the submissions, that were advanced by learned counsel for the parties. Section 23 of the Act of 1994 reads thus-

> *23.* ***Funds of the University*** *: (1) The University shall have General Fund to which shall be credited,-*
>
> *(i) its "income" from fees, grants, donations, gifts, if any;*
>
> *(ii) contributions or grants that may be made by the Central Government, State Government, University Grants Commission, All India Council for Technical Education or like authority or any local authority or any corporation owned or controlled by the Government;*
>
> *(iii) other contributions, receipts, grants and donations and benefactions;*
>
> *(iv) contributions from industry, business and technical departments of the*

Government and other user organisations:

Provided that the funds received by the University under item (iv) above shall be called the Development Fund of the University which shall be utilised for the promotion of Technological Education and Research both within the University and in the constituent units without diverting the same for normal capital or recurring expenditure of the University.

(2) The University may have such other funds as may be prescribed by the Statutes.

(3) The General Fund, the Development Fund and the other funds of the University shall be managed according to the provisions laid down in the Statutes.

(4) The Government shall, every year, make nonlapsable lumpsum grants to the University as follows:-

(a) a grant not less than the net expenditure incurred in the financial year immediately proceeding the appointed day in respect of the activities of the Colleges of Engineering, Technology and allied sciences which are transferred to the University and the Divisions of the University;

(b) a grant not less than the estimated expenditure on pay and allowances of the staff, contingencies, supplies and services of the University;

(c) a grant to meet such additional items of expenditure, recurring and non-recurring as the Government may deem necessary for the proper functioning and development of the University."

6.5. From bare perusal of Sub-section(1), (2) and (3) of Section 23 it is clear that the University can have general fund, development fund and other funds. It receives 'income' from different sources including fees, donations and gifts, apart from grants made by Central and State Governments, UGC, AICT, local authority or corporation and contributions from industry, business and technical departments of the Government. Apart from the aforementioned funds, the State Government is obliged to make nonlapsable lumpsum grants to the University for the purposes, as contemplated in Clauses (a) to (c) of Sub-Section (4) of Section 23 of the Act of 1994. Thus, under sub-section (4) the University is entitled for nonlapsable grants for all practical purposes for proper functioning of the University, apart from general, development and other funds, as provided for under Sub-sections (1), (2) and (3) of Section 23.

6.6. The Executive Council, under Section 24 of the Act of 1994, is empowered to constitute a Finance Committee. Section 25 provides that the Vice Chancellor shall prepare the

annual report and shall forward it to the Government and it requires to be laid before the houses of the State Legislature. Section 26 of the Act of 1994 empowers the State Government, at any time, to order and audit of the account of University by such auditor as it may direct. The Executive Council, as contemplated by Section 28 of the Act of 1994 is required to submit a copy of the accounts and audit report to the State Government along with a statement of the action taken by the University on the reports and the State Government shall cause the same to be laid before both Houses of the State Legislature. The Act of 1994 also provides for removal of difficulties under Section 55 thereof.

7. It is not in dispute that the receipts and expenditure of the University are audited under the provisions of the Comptroller & Auditor General (Duties, Powers & Conditions of Service) Act, 1971 (for short, 'the Act of 1971'). Section 14 of the Act of 1971 provides for audit of receipts and expenditure of bodies or authorities substantially financed from the Union or State Revenues. A close look at this provision as well as the

provisions contained in Section 23 of the Act of 1994 would show that audit of receipts and expenditure of the University is carried out under the provisions of the Act of 1971, in view of the provisions contained in the Act of 1994, in particular, Section 23 thereof, which contemplate nonlapsable grants by the State Government for all practical purposes.

8. We would also like to make reference to the grant of exemption under Section 80G of the Act, to which our attention was drawn by learned Senior counsel for the University. There is no dispute that the University had submitted application to the Commissioner of Income Tax (Appeals), Belgaum in Form 10G for grant of exemption under Section 80G of the I.T. Act. In the said Form the University had claimed that its income was exempted under Section 10(23C) (iiiab) of the I.T. Act. The Commissioner of Income Tax (Appeals), Belgaum, after consideration of the University's application and their accounts granted exemption under Section 80G for the periods from 01.04.1998 to 31.03.2003, 22.06.2004 to 31.03.2007 and 01.04.2007 to 31.03.2010. It appears that by Finance (No.2)

Act, 2009, the proviso to Section 80G(5)(vi) of the I.T. Act was omitted with effect from 01.10.2009. As a result thereof, according to the University, the exemption granted under Section 80G was not required to be extended periodically and that the exemption would continue until withdrawn by the Commissioner of Income Tax. The University claims that unmindful of this amendment, they made an application dated 28.04.2010 for extension of exemption under Section 80G. The Commissioner of Income Tax (Appeals), Belgaum also entertained their application and rejected the same on the ground that the University did not satisfy the requirements of Section 10(23C)(iiiab) of the I.T. Act. The said order of the Commissioner of Income Tax was then set aside by the Tribunal, Panaji vide order dated 26.08.2011. The revenue appealed against the order of the Tribunal before this court, which came to be dismissed vide order dated 11.01.2013, with liberty to the Department to initiate proceedings for withdrawing the exemption under Section 80G of the I.T. Act in accordance with law. Even before the order was passed by this Court dated 11.01.2013, case of the University was selected for

scrutiny by issuing a notice under Section 148 of the I.T. Act dated 15.03.2011, as stated in the beginning.

9. It is in this backdrop, we have heard learned counsel for the parties extensively and with their assistance gone through the entire record and so also the impugned orders and judgments of the Supreme Court and High Courts relied upon by them in support. At the outset, even before we consider the questions framed by us, we would like to have a glance at the relevant clauses/sub-clauses of section 10 of the IT Act, so as to appreciate the diverse contentions urged on behalf of the parties.

10. It would be advantageous to reproduce the relevant clause (23C) and sub-clauses (iiiab) (iiiad) and (vi) of Section 10 of the I.T. Act.-

> *"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 –*
> .....

> .....
> *(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*
>
> *(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 receipts as may be prescribed; or*
>
> *(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..."*

10.1. From bare perusal of sub-clauses (iiiab) (iiiad) and (iv), it is clear that they apply to Universities and other Educational Institutions. All the three clauses require that such institutions must exist solely for "educational purposes" and "not for purposes of profit". Sub-clause (iiiab) applies to those institutions which are 'wholly or substantially' financed by the Government. Sub-clause (iiiad) applies to those institutions whose annual aggregate receipts do not exceed

such amount as may be prescribed. Sub-clause (vi) covers Universities or Educational Institutions. other than those mentioned in sub-clauses (iiiab) or (iiiad) and which may be approved by the prescribed authority. For an institution which is 'wholly or substantially' financed by the Government and which falls within the purview of sub-clause (iiiab), no requirement of an approval of the prescribed authority is mandated. Similarly, under sub-clause (iiiab) no requirement of approval is stipulated in the case of those institutions whose aggregate annual receipts are below such amount as may be prescribed. On the other hand, sub-clause (vi) of Section 10(23C) which covers institutions other than those following under sub-clauses (iiiab) or (iiiad) requires the approval of the prescribed authority before a claim for exemption can be allowed. An application under sub-clause (vi) for approval is required by the 14th proviso to Section 10(23 C) of the I.T. Act to be filled on or before 20th September of the relevant assessment year.

11. We now proceed to refer the submissions advanced by learned counsel for the parties on the first two questions formulated by us.

11.1. Mr. Nair, learned Senior Counsel appearing on behalf of the appellant at the outset, after inviting our attention to Section 10 (23C) (iiiab) submitted that all the requirements/conditions stipulated under this provision stand fulfilled, insofar as the University is concerned, and therefore, they are entitled to deduction/exemption contemplated by the said provision. He submitted that under the Act of 1994, in particular Section 23 thereof, the entire expenditure of the University, both recurring and non-recurring, such as pay and allowances of the staff, contingencies, supplies and services of the appellant should be made by the State Government each year through non-lapsable grants. He submitted that grants paid every year are not only in terms of monies or but also by way of making lands available at very concessional rates. He submitted that the Government allotted huge track of land for establishment of the University and has been continuously

allotting lands either free of cost or at concessional rates for further extension/expansion of the University. About 194 Engineering Colleges are affiliated to this University, and therefore, this University requires a huge establishment/infrastructure to carry out its duties/functions contemplated by the Act of 1994.

11.2. Mr.Nair submitted that the Government gave initial land and funds for creation of assets of the University. The University, thus, acquired the income generation capacity with the help of finances from the Government, and therefore, whatever is the income they are getting from different sources and under different heads will have to be treated as financial aid by the State Government. In other words, the whole finance of the University is the Government finance. It was submitted, merely because fees collected exceed the grants received from the Government would not render it outside the purview being an educational institution existing solely for educational purpose. In support of this contention, Mr. Nair, learned Senior Counsel placed heavy reliance upon the order

dated 28.04.2009 passed by ITAT, Bangalore 'A' Bench in I.T.A. No. 1424 (Bang)/2008, in ***The Addl. Director of Income Tax (Exemptions) vs. M/s. National Law School of India University.*** He also placed reliance upon the judgment of ITAT, Kolkata 'A' Bench in ***Sikkim Manipal University vs. Asst. Commissioner of Income Tax, Circle-Gangtok, Sikkim, (2012) 148 TTJ (KOL) 645.***

11.3. Mr. Nair submitted that the University charges fees as approved by the Government and deficit, if any, can be met through grants. This is sufficient to say that the University is atleast substantially financed by the Government. He submitted, the requirement under Section 10(23) (iiiab) of the I.T. Act is that the University be wholly or substantially financed by the Government, which means that the University was set up with the finances made available by the Government. He also relied upon the fact that audit of the University is done by CAG which, it was submitted, further supports the case of the University that it is substantially financed by the Government. In support of this contention he

placed reliance upon the judgment of the ITAT, Bangalore 'A' Bench in ***The Deputy Director of Income Tax (Exemptions) vs. Indian Institute of Management, (2009) 120 ITD 351 (Bang).***

11.4. Mr. Nair then submitted that the expression 'financed by the Government' involves the legislative participation in financing the University or institution. Such participation may be by way of directly providing grants or providing alternative method of financing by virtue of State or Central Legislation. The narrow interpretation of the expression financed by the Government to cover the cases of direct financing, therefore deserves to be rejected. In support of this contention he placed reliance upon the judgement of the ***ITAT, Pune 'A' Bench*** in ***Dy. CIT vs. Maharashtra Rajya Sahakari Sangh Maryadit, (2011) 130 ITD 96 (Pune).***

11.5. Mr. Nair submitted, the University indisputably was established and is existing solely for educational purpose and not for the purpose of profit. By no stretch of imagination,

he submitted that the University can be stated to have been established for purpose of profit. The surplus in its account in any given year, therefore, would not constitute profit so as to deny exemption under Section 10(23C) (iiiab) of the I.T. Act. He submitted that initially only 68 Engineering Colleges were affiliated to the University and now number of colleges has reached 194. Every year 90,000 students clear the degrees of B.Tech. and M.Tech. Over and above this, every year new colleges are coming up which result in fairly large amount of surplus funds. The surplus funds in this background cannot be treated as profit or income, but it is only a receipt over expenditure as authorised by the Government and cannot be disbursed or distributed among anybody, but could be only used for schemes and projects exclusively for educational purposes as directed and approved by the State Government. He submitted, the stand of the revenue that the University has accumulated surplus over a period of time as its profit from collection of fees is wholly misconceived and cannot hold good so long as the surplus is spent exclusively for education purpose.

11.6. Mr. Nair invited our attention to the provisions of the Act of 1971 to contend that the University is being audited by the Principal Accountant General, Karnataka in terms of section 14(1) thereof. This fact, which has not been denied by the revenue, he submitted, would establish that the appellant is substantially financed by the State Government.

12. On the other hand, Mr. Wilson, learned Additional Solicitor General, submitted that a harmonious reading of Section 10(23C) (iiiab) makes it clear that only upon compliance of all the four ingredients, contemplated therein, the University or any other educational institution for that matter can seek exemption/deduction under the said provision. He submitted that the word 'and' used in the said provision should be read as conjuncture and on applying a plain meaning of the provision, it is clear that all conditions should be fulfilled together.

12.1. He then submitted that the concurrent and consistent findings of the authorities right from Assessing Officer till the Tribunal, holding that the University is not

wholly or substantially financed by the State Government, cannot be interfered or disturbed by this Court in the appeal under Section 260A of the I.T. Act. He submitted, the facts on record as verified by the Assessing Officer and which are confirmed by the Appellate Authorities including the Tribunal would prove that the University is not wholly or substantially financed by the Government within the meaning of Section 10(23C) (iiiab) and the grants received by the University are less than 1%. He also invited our attention to various facts and figures placed on record in a tabular form to contend that by no stretch of imagination it can be stated that the University is either wholly or substantially financed by the State Government.

12.2. Insofar as Section 23 of the Act of 1994 is concerned, Mr. Wilson submitted that the said provision is not mandatory, but directory in nature. Hence, without actual compliance of the taxing provision Section 23(4) existing in the statute would not entitle the appellant to satisfy one limb of Section 10(23C) (iiiab). He submitted that the Legislature has

consciously used the word 'financed' in past tense, which indicates that the Government should have liberally given money to the University and it should be existing on the basis of such finance given to them by the Government.

12.3. Mr. Wilson invited our attention to one of the letters issued by the Government, whereby Government made it clear that it was not going to extend any maintenance grants to the appellant-University. Then he invited our attention to Section 55 of the Act of 1994, which, according to him, make it clear that if any difficulty arises in giving effect to the provisions of the Act, the State Government may do anything which appears to it to be necessary for the purpose of removing the difficulty. In the light of this provision he submitted that it is well within the power of the Government not to extend any maintenance grant, if the circumstances do not require or demand for the same. Hence, he submitted, reliance on Section 23 is of no avail to the University.

12.4. Mr. Wilson, submitted that the development grant extended for purchase of lands and other infrastructure is for

the purpose of investment in capital assets which cannot be treated as annual maintenance grants contemplated under Sub-section (4) of Section 23. He submitted that each assessment year under the Income Tax Act is a separate unit and assessment proceedings in each assessment year is also a separate proceeding. An assessee seeking benefit, deduction or exemption, therefore, has to prove that during the relevant assessment year under consideration, the conditions of the provisions under which the assessee is seeking the benefit have been fulfilled. Failure to do so in any particular assessment year would indicate refusal of benefit of exemption for that assessment year. He submitted that the grant extended to the University by the Government during the initial financial years for capital investment by defendants cannot hold the appellant – University to be treated as wholly or substantially financed by the Government during all the future years without receiving any grants during such years.

12.5. He submitted that the substantial amount, which University is getting from Karnataka Examination Authority,

(for short "the Examination Authority") cannot be treated as a financial aid extended by the Government. The Karnataka Examination Authority is registered under the Karnataka Societies Registration Act, 1960 and it is a self financing Body and receives no Government grants and generate its own income and hence, the fees received from them, by no stretch of imagination can be treated as grants received from the Government.

12.6. After inviting our attention to the judgments of the Supreme Court in ***TMA Pai, Islamic Academy of Education vs. State of Karnataka, (2003) 6 SCC 697 and P.A. Inamdar,*** he submitted that one has to see, from the activities and conduct of the University whether an element of profiteering exist. What is permitted by the Supreme Court is reasonable surplus and not unreasonable surplus which amounts to profiteering. In the present case, he submitted that the University fixes the fees to be paid by the affiliated colleges and the students and having regard to the facts and figures, it is clear that it is making profit. He submitted that surplus

monies earned by the University year after year is not spent on any developmental activities and all those amounts are kept in different types of fixed deposits under the heads corpus deposits and fixed deposits and they are earning huge interest on said deposits.

13. We would like to consider the first two questions of law together, in the light of diverse contentions urged on behalf of the parties mainly based on the provisions of Section 10(23C) (iiiab) of the Act and of the Act of 1994 and judgments relied upon in support by learned counsel for the parties.

14. The principle that a taxing statute should be strictly construed is well settled. It is equally trite that the intention of legislature is primarily to be gathered from the words used in the statute. Once it is shown that an assessee falls within the letter of law, he must be taxed, however, great the hardship may appear to the judicial mind to be. On the principle of interpretation of statute the following passage in ***Commissioner of Sales-tax, U.P. v. Modi Sugar Mills Ltd., AIR 1961 SC 1047*** is relevant -

> *"11…In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."*

14.1.The Supreme Court in ***Mathuram Agrawal v. State of M.P.*** in ***(1999) 8 SCC 667*** in paragraph 12 observed thus-

> *"12…The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain, unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e. the subject of the tax, the person who is liable to pay the tax and the*

> *rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter."*

15. Keeping the broad principles laid down by the Supreme Court on interpretation of taxing statute in view, we would like to consider the provisions contained in Section 10(23C) (iiiab) of the Act.

16. The provisions contained in Section 10 (23C) (iiiab) of the I.T. Act clearly stipulate that apart from the applicant seeking exemption being any university or other educational institution, it should "solely" exist for "educational purposes" and "not for purposes of profit" and further "wholly or substantially" financed by the Government. It is not in dispute that the University exists "solely" for educational purpose and was not set up for purposes of profit. In other words, the revenue has not raised any dispute as to the fact that the University is existing "solely" for "educational purpose" and "was set up" "not for purposes of profit". The questions, therefore, raised are whether the University exists solely for educational

purpose and "not for purposes of profit"; whether it systematically started generating income by collecting monies under different heads from students in the colleges affiliated to it and thereby make profit; and whether it is wholly or substantially financed by the Government?

17. The University is denied benefit of an exemption under Section 10 (23C) (iiiab) by the Assessing Officer. In sum and substance, the grievance of the University is that it is entitled to the benefit of an exemption under Section 10 (23C) (iiiab), since it is "wholly" or atleast "substantially" financed by the State Government, as contemplated by Section 23 of the Act of 1994. Undoubtedly, the University earns income from different sources every year. Whether the income of the University could be termed as profit so as to deny them benefit of Section 10 (23C) (iiiab) is the question. It is true that the University has not been established for "making" profit under the provisions of the Act of 1994 by the State Government. But, whether it systematically started making profit, as alleged by the revenue, is the question. In short it is the case of the

revenue that the University is existing for the purposes of profit though it was set up for educational purpose and not suppose to make profit.

18. As observed earlier, sub-clauses (iiiab), (iiiad) and (vi) of Sections 10 (23C) use the similar language with the distinguishing factors noticed earlier. The expressions, "existing solely for educational purposes and not for purposes of profit", is common in all the three sub-clauses. Thus the common element in sub-clauses (iiiab), (iiiad) and (vi) is that the University or education institution must exist "solely for educational purpose and not for the purposes of profit". The ambit of this expression can find elucidation on the basis of a judgment of the Supreme Court in ***Additional Commissioner of Income-tax, Gujarat v/s. Surat Art Silk Cloth Manufacturers Association, 121 ITR 1***. In that case, while considering the expression "Activity for Profit" for the purposes of Section 2(15) of the Income-tax, 1961, the Supreme Court held that the test that must be applied is not "whether as a

matter of fact an activity results in profit" but "whether the activity is carried on with the object of earning profit".

19. The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object with which the University has been set up is to earn profit and where generating of profit is the result of the activities, whether such an institution would cease to be the institution "not for purposes of profit". In other words where the predominant object of the activity is educational purposes and not to earn profit, whether it would loose its character because it makes profit from the activity, will have to be considered in the light of facts of each case.

20. The Bombay High Court in ***Tolani Education Society (supra)*** after considering sub-clauses (iiiab), (iiiad) and (v) in paragraph 9 observed thus-

> *" Sub-clauses (iiab), (iiiad) and (iv) require that the institution must exist solely for educational purposes and not for profit. Existence comprehends the purpose, goal, object and mission of the institution. Where the purpose of the institution and the defining*

character of its mission is education, and education alone, the test is fulfilled. The fact that incidentally, a surplus has resulted in a year will not render such an institution as existing for profit. Existence is defined by the fundamental underlying purpose of its being, though the manner in which it has consistently carried on its activities may assume relevance. Institutions exist for what they are formed to pursue and if that pursuit is solely and exclusively education, the statutory norm is fulfilled."

20.1. Whether fulfillment of the norm, as aforementioned, is sufficient to extend benefit of Section 10(23C) (iiiab), even if the University is making huge profit is the question. As long as "surplus" is "reasonable surplus", there should not be any difficulty in giving exemption under Section 10(23C) (iiiab) of the Act if it fulfills other conditions stipulated therein. If an University or an educational institution under the guise of "surplus" start making huge profit, in our opinion, it would cease to exist for net making profit and in that event would not be entitled for exemption under this provision.

21. At this stage we would also like to refer to Section 10(22) of the I.T. Act, which was omitted by Finance (No.2) Act, 1998 with effect from 01.04.1999. By the very same Finance (No.2) Act, 1998 sub-clauses (iiiab), (iiiad) and (v) were introduced. Clause (22) which was omitted from the I.T. Act with effect from 01.04.1999 reads thus-

> *"Any income of an University or other educational institution, existing solely for educational purpose and not for the purpose of profit."*

22. It appears that several educational institutions had taken advantage of this provision (10(22)) to seek exemption which now fall within the category under clause (vi) of Section 10(23C) of the I.T. Act. Effect of this amendment was considered by the Supreme Court in paragraph 40 of the judgment in ***American Hotel and Lodging Association Educational Institute vs. Central Board of Direct Taxes and Others, (2008)10 Supreme Court Cases 509,*** which reads thus-

> *"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."*

23. Similarly, the Supreme Court in ***Aditanar Educational Institution vs. Additional CIT, (1997) 224 ITR 310,*** while considering the provisions of Section 10(22) of the I.T. Act held that the decisive or acid test is "whether on an overall view of the matter, the object is to make a profit." The observations of the Supreme Court in ***Aditanar (supra)*** were

followed in the judgment of a Division Bench of the Bombay High Court in ***Vanita Vishram Trust vs. Chief Commissioner of Income-tax and Anr., (2010) 327 ITR 121 (Bomb.)***. The case before the Bombay High Court was of the Trust which was existing for over eighteen years and which had only carried on the activity of conducting educational institutions. The application submitted by the petitioner therein for approval under Section 10 (23C) (vi) was rejected *inter alia* on the ground that the objects for which the Trust existed were of a varied nature and did not fulfill the condition that it must exist solely for the purposes of education. Moreover, the trust, had a surplus which had been utilized for the purchase of assets as reflected in the balance-sheet. While setting aside the order refusing approval, it was noted that since the establishment of the trust, save and except for carrying on an educational institution, no other activity had been carried on for long years. Moreover, the fact that a surplus may arise in the activity of the trust after meeting the expenditure incurred for conducting educational activities was held not to disentitle the trust for the benefit of the provisions of Section 10(23C).

24. It is in this backdrop we would now like to consider whether the appellant is "wholly or substantially" financed by the Government of Karnataka and that the University existed during the relevant assessment years 'not for purposes of profit'. While considering these questions we would also like to consider whether the "surplus" in its account during the relevant assessment years would constitute profit so to deny exemption and/or benefit under Section 10(23C) (iiiab) of the I.T. Act.

25. Learned counsel for the appellant submitted that after the University was set up, funds started flowing from different sources, decided by the Government, such as fixed share of common entrance test, registration fee collected by Examination Authority and fixed amounts of fees collected from the students by the affiliated colleges for the purpose of conducting examination and for other purposes. The University, he submitted could meet its expenditure from such funds as organised/authorised by the Government and that is how they could even create surplus over a period of time to be

utilised exclusively for educational purposes and projects as directed and approved by the Government. It cannot, under any circumstances, be treated as profit.

25.1. On the other hand, it was submitted on behalf of the revenue that the expression 'wholly or substantially financed by the Government' as occurred in Section 10(23C) (iiiab) would mean that the funds coming from the treasury of the State or from the consolidated funds of the State and not the funds coming from the pockets of students in affiliated colleges, irrespective of the fact they are organized by the State. Our attention was also invited to the expression 'by the Government' used in section 10(23-C) (iiiab) to contend that the Legislature used this expression and the word 'existing' in the said provision so as to make its intention clear that the financed means the financial aid extended or funds made available by the Government and not organised by the Government through other sources.

26. Before we deal with the submissions it would be necessary to reproduce the facts and figures in tabular form

which may be relevant to appreciate the arguments advanced on behalf of the parties. The first table shows income, expenditure and surplus/income of the University for the relevant financial years, which reads thus-

Table-I

Assessment Year	Receipts as per income and Expenditure Account	Expenditure	Income/ Surplus
2004-05	535831778	176075075	359756703
2005-06	519733746	104955941	414777805
2006-07	686743812	168633168	518110644
2007-08	776014761	173771970	602242791
2008-09	1179300782	570671654	608639128
2009-10	1206176395	352258103	853918292

26.1. The second table shows the financial results of the University for past three years which reads thus-

Table-II

Financial Year	Receipts	Expenditure	Surplus/profit
2009-10	Rs.138.21 Crores	Rs.54.02 Crores	Rs.84.19 Crores **-60.91%**
2010-11	Rs.133.81 Crores	Rs.47.31 Crores	Rs.86.50 Crores **-64.64%**
2011-12	Rs.172.34 Crores	Rs.78.41 Crores	Rs.93.93 Crores **-54.50%**

26.2. The third table shows fees collected and expenditure incurred by the University for two financial years i.e., 2009-10, 2010-11.

Table-III

Nature of fees	Financial year	Amount of Fees Collected	Amount expenditure income	Balance/profit
Convocation	2009-10	Rs.2,72,40,187	Rs.27,07,672	Rs.2,45,32,515
Examination Fee		Rs.32,79,37,115	Rs.17,66,43,156 (Remuneration to examiners and others, squad expenses, TA, DA in connection with exam.	Rs.15,12,93,959
Convocation	2010-11	Rs.3,41,31,767	Rs.4,22,595	Rs.3,37,09,173
Examination Fee		Rs.34,09,71,278	Rs.12,18,68,114 Rs.4,81,88,886 (Remuneration to examiners and others, squad expenses, TA, DA in connection with exam.	Rs.17,09,14,278
E-learning		Rs.12,88,58,695	Rs. Nil	Rs.12,88,58,695

26.3. The last table indicates percentage of grant received from the Government as against the receipts as per income and expenditure statement placed on record:

Table-IV

Assess-ment Year	Income	Percentage of grant w/r to income	Expenses	Percentage of grant w/r to expenses
2004-05	535831778	0.18%	176075075	0.56%
2005-06	519733746	0.19%	104955941	0.95%
2006-07	686743812	0.10%	168633168	0.44%
2007-08	776014761	0.12%	173771970	0.57%
2008-09	1179300782	0.08%	570661654	0.17%
2009-10	1206176395	0.08%	352258103	0.28%
2010-11	1382134265	0.07%	540217020	0.18%

26.4. The aforesaid tables are placed on record by the revenue and which have not been disputed by the University. Bare perusal of the figures reflected in the above tables, it is clear as crystal that the University gets huge income every year by way of convocation fee and examination fee from the Examination Authority and that the percentage of grants extended by the State Government are hardly 1% of the total receipts.

26.5. Similarly, the University collect fees from the students admitted in the affiliated colleges under different heads. It would be relevant to reproduce one of the tables, placed on record, to demonstrate how much fees under different heads are paid to the University. Every student pursuing B.E. and B.Tech course from the affiliated college pay the following fees till he completes the course.

Table-V

Sl.No	Particulars	I year	II year	III year	IV year
1	Registration Fees	2,000/-	--	--	--
2	e-learning fees	2,000/-	--	--	--
3	Sports fees	50/-	50/-	50/-	50/-
4	Sports Development fees	75/-	75/-	75/-	75/-
5	Carriers Guidance & Service Fund	10/-	10/-	10/-	10/-
6	University Development Fund	100/-	100/-	100/-	100/-
7	Cultural Activities	25/-	25/-	25/-	25/-
8	Teachers Development Fee	10/-	10/-	10/-	10/-
9	Student Development Fee	10/-	10/-	10/-	10/-
10	NSS fee	10/-	10/-	10/-	10/-
	Total :	4,290/-	290/-	290/-	290/-
Total = 4,290+290+290+290+=5,160					

27. There does not appear to be any dispute that every year about 90,000 students from different streams pass out from the colleges and the University issue them degrees.

28. As against the receipts under different heads, reflected in the aforementioned tables, the University, as reflected in the assessment order, received the following grants between 1998-99 and 2009-10: in 1998-99 and 1999-2000 the University received about four crores of rupees for purchase of land and others. In 2000-01 they received Rs.48,93,000/- for development work; in 2001-02 they received Rs.7,50,000/- for development work. In 2002-03 they received Rs.45,00,000/- for development work. In 2003-04 and in 2004-05 they received Rs.10,00,000/- each for development work. In 2005-06 they received Rs.7,50,000/- and Rs.10,00,000/- each for development works from 2006-07 to 2009-10. Thus, since 1998-99 till 2009-10 the total grants/ funds paid/ made available by the State Government to the University were Rs.5,68,93,000/-.

29. From the above figures, which were taken into consideration by the authorities below, we find substance in what has been submitted on behalf of the revenue. According to the revenue the University gets about 1% financial aid/ grants from the Government of the total receipts. It is further clear that even without grants, as reflected in Table-I, the surplus amount is more than double the expenditure incurred during 2004-05 till 2009-10. In 2005-06 the surplus amount is almost four times more than the actual expenditure. Similar is the case in 2006-07 and 2007-08. In 2009-10 the surplus amount is almost 2½ times more than the total expenditure. The figures of expenditure also consists of the expenditure incurred by the University, as contemplated under Section 23 of the Act of 1994, i.e., towards pay and allowances of staff, contingencies, supplies and service of the University apart from additional items of expenditure, recurring and non-recurring and so also the expenditure incurred for the activities of colleges.

30. Under Section 23 of the Act of 1994 the State Government is obliged to make non-lapsable lumpsum grants to the University, not less than the net expenditure incurred, in the financial year immediately preceding the pointed day in respect of the activities of colleges of Engineering, Technology and Allied Sciences which are transferred to the University and the division of University. Similarly the University is entitled for grants, not less than the estimated expenditure of pay and allowances of the staff, contingencies, supplies and services and so also to meet additional items of expenditure, recurring and non-recurring for its proper functioning and development.

31. It is not in dispute that though Section 23 of the Act of 1994 provides for grants as aforementioned to be extended by the Government to the University, what the Government has paid since 1998-99 till 2009-10 is about 1% of the total receipts. In other words, the total grants/financial aid extended to the University during all these years is hardly Rs.5,68,93,000/- as against the total receipts, of about five hundred crores. Thus, the submission of Mr.Nair, learned

Senior counsel for the University based on the orders passed by different Tribunals, that the entire Government contribution upto the date has to be taken into account to hold that the University is substantially financed by the State Government, in our opinion, must be rejected.

32. If the grants, which according to the University, it is entitled for under the provisions of Section 23 of the Act of 1994, are added to the receipts as per the income and expenditure account perhaps surplus figures would further enhance by about 20%. Thus, the receipts as per the income and expenditure account, reflected in the Tables would show that they are exorbitantly higher than the actual expenditure and in any case cannot be treated as "incidental surplus". It is also evident from the fact that even after incurring expenditure during all these years the University has at its disposal about 500 crores rupees as surplus.

33. We make it clear that we are not expressing any opinion on the question whether the University should collect

such huge sums from students under different heads. But the fact remains that the University collect huge sums, 3-4 time more than the requirement. Such "surplus", in our opinion, cannot be stated to be incidental. It is not in dispute that huge amounts are invested by the University in fixed deposits, which fetch huge interest thereon. In this backdrop, it will have to be considered that collection of the amounts under different heads or the receipts as per the income and expenditure account is sufficient to hold that activities of the University would result in profit. In other words, though the University was not established for purposes of profit, whether income generated by it could be termed as profit so as to deny exemption under Section 10(23C) (iiiad) of the Act.

34. Except the grants, as mentioned above, of Rs.5,68,93,000/- received from the Government all other receipts, credited to the account of the University, are collected from the students admitted in 194 affiliated colleges. These amounts/monies, in any case, cannot be stated to have been

received by the University from the Government corpus or from the Government Treasury.

35. Having regard to the Scheme of Section 23 of the Act of 1994, which provides for funds of the University, consisting of general fund, development fund and other fund, apart from grants contemplated under Sub-section(4) thereof, it is clear that it has different sources of 'income' so as to meet its all financial needs/requirements. Thus, even without there being any grants under sub-section(4), the University, can run its show with the funds, contemplated under sub-sections (1) to (3) of Section 23. From the Scheme of Section 23, in our opinion, it is directory in nature and not mandatory.

35.1. It is well settled that without actual compliance of a taxing provision, such as Section 10 (23C) (iiiad) of the Act, the provision, such as Section 23 of the 1994 Act, would not entitle any person, such as the University to seek any benefit of the taxing provision. Section 10(23C) (iiiad) of the Act, uses the word/expression 'financed', which, in our opinion, is a clear indication of the intendment of the legislature. It is only if any

University is “financed” “wholly or substantially” it would be entitled for the benefits contemplated under this provision, provided other conditions also stand complied/satisfied. Thus, unless the University is actually financed, it cannot be stated that it is financed**,** wholly or substantially, merely because the funds are organized by the Government or generated in view of income generation capacity acquired by the University on the basis of the infrastructure created with the funds made available by the Government. In other words, merely because the Government gave lands and development funds and created assets of the University whereby it acquired income generation capacity would not mean the “income” that the University is generating from other sources will have to be treated as financial aid by the Government. If we say so, perhaps every such institution, which admittedly, make profit, also will have to be exempted under sub-clauses (iiiab) (iiiad) and (vi) of Section 10(23C) of the Act. The provisions contained in Section 10(23C) (iiiab) in our opinion cannot be stretched that far, when admittedly no grants, as contemplated under Section 23 of the Act of 1994, are ever extended by the

State Government to the University. Extending actual grants or financial aid is one thing and organizing funds is other. Merely because funds are organized by the Government or generated, as contemplated under sub-sections(1) to (3) of Section 23 of the Act of 1994, would not, in our opinion, mean or could be treated as financial aid by the Government, so as to say that the University is wholly or substantially financed by the Government.

36. The University has placed on record the information received by them under the Right to Information Act from the office of the Principal Secretary, Education Department (Higher Education), Government of Karnataka to contend that the Government by orders extend financial aid to the University not only by way of lands and development funds but also authorize the University to collect registration fees through Examination Authority and part of annual fees from the colleges affiliated to the University and, therefore, all the receipts deserve to be treated as financial aid extended by the Government to the University as contemplated under Section

23 of the Act of 1994. This submission, in our opinion, for the reasons recorded in the last paragraph, deserves to be rejected outright. As observed earlier, all the receipts except the amount of Rs.5,68,93,000/- have come from the students. None of the provisions of the Act of 1994 provide for extending of aid/grants by the Government to the University in this manner. Even the statues governing the rules of business of Executive Council, Academy Senate and Constitution, powers and functions of Finance Committee do not provide such financial aid by the Government through the colleges or Examination Authority. The word 'grants' cannot be read to cover the 'income' generated by the University from other sources or under different heads, as contemplated under sub-sections (1) to (3) of Section 23 of the Act of 1994. Thus, the receipts as reflected in the aforementioned tables cannot be stated to be an extension of financial aid by the State Government to the University.

37. As observed earlier, an exemption under Section 10(23C) (iiiab) cannot be either claimed or granted unless all

the ingredients as reflected therein are satisfied/fulfilled. The expression 'not for purposes of profit' will have to be read in the light of the word 'existing' used in sub-clause (iiiab). It is true that the University was set up and is existing for the educational purposes. That by itself is not sufficient. What is necessary is that it should not exist for profit. There could be surplus every year, but the word "surplus" will have to be read and understood in proper perspective. In our opinion, "Surplus" cannot be more than 10% - 15% so as to meet contingencies or unforeseen expenditure.

38. The constant increase in surplus year after year by way of collection of fees under various heads, more than what is required, in our opinion, would not amount to "reasonable surplus" and it would indicates that the University is systematically making profit. As observed earlier and seen from different tables, it cannot be stated that fees collected by the University under different heads, is reasonable surplus and it is incidental. There cannot be any justification to collect the monies under different heads 3-4 times more than what they

require to spend for the purpose for which they collect it. For instance, as seen in Table – III, the University in the financial year 2009-10 collected Rs.2,72,40,187 fees for convocation as against which the total expenditure incurred under this head was hardly Rs.27,07,672/-. In 2010-11 under the same head the total collection was Rs.3,41,31,667/-, whereas the total expenditure was hardly Rs.4,22,595/-. i.e. hardly 1/8 of the total collection. Thus, the collection of fees under each head and corresponding expenditure for the services rendered does not justify the claim of the University that the receipts are only in the nature of surplus and not profit. As observed earlier, surplus funds could be collected, or these could be incidental surplus, to meet contingencies or for spending during the subsequent year for specific purpose for which it was collected and not for investing the same in fixed deposits for earning income by way of interest.

39. It is true that after meeting expenditure, a surplus results incidentally from activity lawfully carried on by the educational institution. As long as the surplus is reasonable,

any University or an institution would not cease to be one existing solely for educational purposes with the object not to make profit. The Supreme Court, in **Aditanar** (supra), has observed that the decisive or acid test is whether on an overall view of the matter, the object is to make profit. If we apply the doctrine of "reasonable surplus" in one case it cannot be stated that the "surplus" with the University is reasonable. Indubitably an educational institution need to plan their investments and expenditure in such a manner and they may generate reasonable surplus taking into consideration, apart from salary/remuneration to be paid to teaching and non-teaching staff and other day to day expenditure, for future development of the institution as also expansion. But, in our case, it cannot be overlooked that the University is entitled for financial aid in the form of monies/lands from the State Government for its development/expansion. Further, it cannot be overlooked that despite huge expansion to cater the need of 194 colleges, the University has generated surplus of about 500 crores within a span of about 10 years. Whether such

surplus could be treated as "reasonable surplus". Our answer is no.

40. What is reasonable surplus, which, an educational institution such as the University can collect and still seek exemption under Section 10(23C) (iiiab) claiming that they are existing solely for educational purpose and not for purposes of profit. It is true that each institution, such as the University, has a freedom to fix its own fee structure taking into consideration the need to generate funds to run the institution. They must also be able to generate reasonable surplus which must be used for the betterment and growth of the educational institution. Thus, while fixing the fee structure it must be fixed keeping in view the infrastructure and facilities available, the investments made, salaries paid to the teachers and staff, future plan for expansion and/or betterment of institution etc. In any case such institutions cannot make profit or charge exorbitantly more than what they need. The "surplus" can be generated for the benefit/use of the institution and not to the

extent so as to keep it in fixed deposits to earn huge income by way of interest.

41. In deciding the character of the recipient, it is not necessary to look at the profit each year, but to consider the nature of activities undertaken. The character of the recipient of income must have the character of educational institution in India to be ascertained from the nature of activities. Mr. Nair, therefore, submitted that 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 purpose. In other words, he submitted, the existence of surplus from the activity will not mean absence of educational purpose. In support of this contention he placed reliance upon the judgment of the Supreme Court in *American Hotel and Lodging Association Educational Institute (supra).*

42. The meaning of the word 'surplus' given in Black's Law Dictionary, Eighth Edition, reads thus-

> **1.** The remainder of a thing; the residue or excess. **2.** The excess of receipts over

> disbursements. **3.** Funds that remain after a partnership has been dissolved and all its debts paid. **4.** A corporation's net worth, beyond the part value of capital stock. – Also termed overplus.

42.1 The meaning of 'surplus' in Oxford Dictionary, reads thus-

> *"An amount left over, **a** an excess of revenue over expenditure. **b** the excess value of a company's assets over the face value of its stock. Adj. Exceeding what is needed or used."*

42.2 The meaning of 'surplus' in Merriam-Webster's Collegiate Dictionary, reads thus-

> **"1a:** the amount that remains when use or need is satisfied **b:** an excess of receipts over disbursements **2:** the excess of a corporation's net worth over the par or stated value of its stock."

43. Indubitably, like any normal person, who has a tendency to save surplus earning, even an educational institution, such as the University, is entitled to generate reasonable surplus for development of education and expansion of the institution. The Supreme Court in ***Islamic Academy of Education (supra)*** observed that reasonable

surplus doctrine can be given effect to only if the institutions make profit out of their investments. They have to plan their investments and expenditure in such a manner and they may generate some amount of profit. Supreme Court further observed that while determining the fee structure safeguard has to be provided for so that professional institutions do not become 'auction houses' for the purpose of selling seats. While fixing the fee structure it should be taken into consideration, *inter alia*, the salary or remuneration paid to the members of the faculty and other staff, the investment made by them, the infrastructure provided and plan for future development of the institution as also its expansion. Future planning or improvement of facilities, Supreme Court states, may be provided for. An institution may want to invest in an extensive device such as medical colleges, technical colleges. These factors undoubtedly are required to be taken care of by the institution such as the University while fixing and demanding fees from the students through their colleges or Examination Authority.

44. Though we do not find either in the judgments of the Supreme Court or High Courts what reasonable surplus would mean, the observation made by Supreme Court in paragraph 156 of the ***Islamic Academy (supra)*** would be useful. Paragraph 156 reads thus-

> *"While this Court has not laid down any fixed guidelines as regards fee structure, in my opinion, reasonable surplus should ordinarily vary from 6% to 15%, as such surplus would be utilized for expansion of the system and development of education."*

45. The Supreme Court in ***P.A. Inamdar and others v. State of Maharashtra and Others, (2005) 6 SCC 537*** observed that, education, accepted as an useful activity, whether for charity or for profit, is an occupation. Nevertheless, it does not cease to be a service to society and even though an occupation, it cannot be equated to a trade or business. In ***Mohini Jain (Miss) vs. State of Karnataka and Others, (1992) 3 SCC 666,*** the Supreme Court in paragraph 17 observed that, "the students are given admission to the educational institutions – whether state-owned or state-

recognised – in recognition of their "right to education" under the Constitution. Charging capitation fee in consideration of admission to educational institutions, is a patent denial of a citizen's right to education under the Constitution. The Supreme Court further observed that Indian civilisation recognises education as one of the pious obligations of the human society. To establish and administer educational institutions is considered a religious and charitable object. Education in India has never been a commodity for sale."

46. From the observations of the Supreme Court, in particular its judgment in ***Islamic Academy of Education and P.A.Inamdar (supra),*** it is clear that an institution cannot charge anything unreasonable under the guise of surplus and make/earn profit, indirectly or systematically and then claim that they are established for educational purpose and not for purposes of profit. What is happening in practice is relevant and in any case that cannot be overlooked. The manner in which the fees are taken by the University under different heads from colleges affiliated to it or from Examination

Authority, it appears to us that it is charging 3 – 4 times more than what is required to meet the expenditure towards salary or remuneration paid to the members of the staff and to meet other expenditure including future developments and its expansion for educational purpose. Further, it cannot be overlooked that Government has extended financial aid from time to time for its development including making lands available for its expansion. Under the provisions of the Act of 1994 the University is entitled for financial aid for its development from the State Government.

47. The Supreme Court in ***American Hotel and Lodging Association Educational Institute vs. Central Board of Direct Taxes and Others, (2008)10 SCC 509,*** in paragraph 38 observed as to what is necessary to look at is profits of each year in deciding the character of recipient. The Supreme Court observed that, '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 *Aditanar Educational Institution v. CIT).*

48. The Bombay High Court in ***Vanita Vishram Trust vs. Chief Commissioner of Income-tax and Anr., (2010) 327 ITR 121 (Bomb.),*** observed that "if after meeting the expenditure, a surplus results incidentally from an activity lawfully carried on by the educational institution, the institution would not cease to be one which is existing solely for educational purposes since the object is not to make profit. Thus, after meeting expenditure, a surplus results incidentally from an activity lawfully carried on by the educational institution, the institution will not cease to be one existing solely for educational purposes and since the object is not to make profit. The decisive or acid test, the Supreme Court observed in ***Aditanar (supra),*** is whether on a overall view of the matter, the object is to make profit. In evaluating or

appraising the issue, the Supreme Court noted that one should bear in mind the distinction between the corpus, the objects and the powers of concerned authority. In short, merely because 'certain surplus' arises from its operations, it cannot be held that the institution is being run for the purpose of profit so long as no person or individual is entitled to any portion of the said profit and the said profit is used to meet the object of institution.

49. It is not in dispute that the University was established for educational purpose and not for purposes of profit. But that by itself, in our opinion would not be sufficient to hold that the huge income generated from its day to-day affairs cannot be treated as profit. In other words, whether huge income earned by the University, over a period of time, in our opinion, cannot be treated as reasonable surplus, having regard to the facts and figures noticed by us in the foregoing paragraphs.

50. The Supreme Court in the ***Additional Commissioner of Income-tax, Gujarat v/s. Surat Art Silk***

Cloth Manufacturers Association, 121 ITR 1, while considering expression "activity for profit" for the purposes of Section 2(15) of the I.T. Act, observed that the test that must be applied is not whether as a matter of fact an activity result in profit, but whether the activities carried on with the object of earning profit, merely because the predominant object of the activity involved in carrying out the object of education and if the institution is generating huge income, which could be avoided by giving substantial relief to the students studying in the affiliated colleges and registered with the University, such income cannot be termed as reasonable surplus. The observations of the Supreme Court in ***Aditanar (supra)*** were followed by several High Courts. Keeping an overall view of the matter, we are of the view that the University though not set up for the purposes of profit, is systematically making profit by receiving huge amounts under different heads though they are legitimately entitled for non-lapsable grants from the Government for all practical purposes.

51. The University claims that the main source of its income consists of grants received from the Government as contemplated by Section 23 of the Act of 1994 and in addition thereto they are receiving funds under different heads from the students for pursuing their education and training at the colleges affiliated to it. The material which has been placed on record by the University and the revenue consisting tabulated statements, all the details of the total receipts and the amount spent by them towards its object for the relevant financial years, it shows that they have earned huge income which could be and would have to be termed as profit, since it is far in excess of its expenditure. Over and above this if the Government also pay them the grants which they are entitled for under the provisions of the Act of 1994. That apart, we did not find the University giving any relief or benefit to the students in terms of monies. This being the position, it cannot be stated that though the University was set up for educational purpose, it is no more a profiteering institution. In other words, it is undoubtedly making profits which cannot be exempted under the provisions of Section 10(23C) (iiiab) of the

I.T. Act. The fact that the University has unreasonable surplus of income over the expenditure during the years in question, it cannot, by any stretch of imagination, would lead to the conclusion that it exists not for the purposes of profit, though the predominant nature of the activity is educational.

52. It was argued on behalf of the University that considering the actual grants received by the University from the State Government in the form of monies and the lands coupled with the statutory obligation under the provisions of the Act of 1994 it is clear that the University, though not wholly, is substantially financed by the State Government. It was submitted by Mr. Nair, learned Senior counsel for the University that the very approach of the revenue comparing the grants actually received with the receipts under different heads for determining whether the University was substantially financed by the State Government was wrong. He submitted that it cannot be overlooked that the Government is under an obligation to finance the entire expenditure as contemplated by Section 23 of the Act of 1994. In support of this submission,

he also invited our attention to several documents to which we have already made reference in the foregoing paragraphs while dealing with the other submissions.

53. From the facts and figures, considered and discussed earlier and as reflected in different tables, it cannot be disputed that the University, as a matter of fact, gets hardly 1% financial aid from the Government of its total receipts from other sources. Even if the costs of the lands at which they were transferred to the University are taken into consideration, still the total funding by the Government to the University would not exceed 4 % – 5 %. It is also clear from the materials on record that the University used the financial aid extended by the Government only for development purpose and not for meeting the other expenditure for which they are entitled to seek grants as provided for under Section 23 of the Act of 1994. The fees they are receiving from the students routed through colleges affiliated to it and the Examination Authority, as observed earlier, cannot be treated as financial aid from the Government to the University. In any case that amount is not coming from Government corpus/treasury. Even if it is

assumed that the fees coming from Examination Authority is also a financial aid extended by Government to the University still, having regard to the facts and figures, reflected in the Tables, the University cannot be stated to have been financed either wholly or substantially. Thus, in our opinion, the University cannot be treated as an institution wholly or substantially financed by the Government.

54. That takes us to consider the last contention urged on behalf of the University by Mr. Nair, learned Senior counsel that the University was established solely with the finances of the State Government and that it is only an extended arm of Government and therefore, is exempted from taxation as envisaged under Article 289 of the Constitution of India.

55. On the other hand, Mr. Wilson, learned Additional Solicitor General appearing for the University submitted that the University being a 'body corporate' having a perpetual succession and a common seal with a power to acquire and hold property and to enter into contracts in the name by which it is known, sue and be sued and having its own general fund

cannot be treated as a 'State' under Article 289(1) of the Constitution of India nor 'a person' as defined under Section 2(31) of the I.T. Act.

56. The definition, as reflected in Article 12 of the Constitution of India, in our opinion cannot be applied to bring the University within the ambit of Article 289 of the Constitution of India. In other words, the extended definition of State as contemplated by Article 12 of the Constitution cannot be extended to bring the University within the ambit of Article 289(1) of the Constitution of India. In this connection, we would like to refer to judgments of the Supreme Court. The Supreme Court in ***The Andhra Pradesh State Road Transport Corporation by its Chief Executive Officer, Hyderabad, v. The Income-tax Officer, B 1 B – Ward, Hyderabad and another, AIR 1964 SC 1486***, observed that the scheme of Article 289 appears to be that ordinarily the income derived by a State both from Governmental and Non-Governmental or commercial activities shall be immune from Income tax levied by the Union, provided, of course, the income in question can be said to be the income of the State. This

general proposition flows from clause (1) of Article 289. The Supreme Court while dealing with clause (2) observed that if clause (1) had stood by itself, it may not have been easy to include within its purview income derived by a State from commercial activities but since clause (2) in terms, empowers the Parliament to make a law levying a tax on commercial activities carried on by or on behalf of a State, the conclusion is inescapable that these activities were deemed to have been included in clause (1) and that alone can be the justification for the words in which clause (2) has been adopted by the Constitution.

57. The Supreme Court in ***State of Rajasthan and others v. Union of India and others, (1977)3 SCC 592***, had an occasion to deal with a word 'State' as occurred in Article 131. The Supreme Court in that case observed that the word 'State' as occurred in this Article has not been defined anywhere in the Constitution. Under Article 367 of the Constitution, if any term is not defined in the Constitution a recourse can be had to the General Clauses Act, 1897, for the

purpose of understanding the meaning of such a term. Then after referring to a definition as occurred in Section 3(23) of the said Act and so also after considering Articles 1 and 3 of the Constitution of India, the Supreme Court observed that, a perusal of Articles 1 and 3 would reveal in unequivocal terms that wherever the Constitution has used the word 'State' without any qualification it means 'State' in the ordinary sense of its term, namely, the State along with its territory or institutions. Article 3 expressly empowers the Parliament to increase or diminish the area or territory of any State. Thus, the Supreme Court, opined that the word 'State' in Article 131 has also been used so as to include only the territory of the State and the permanent institutions contained therein.

58. Similarly, the Supreme Court in ***Tashi Delek Gaming Solutions Ltd., and Another vs. State of Karnataka and Others, (2006)1 SCC 442,*** while dealing with the very same Article, in paragraph 21 thereof, observed that the enlarged definition of 'State' under Article 12 would not extend to Article 131 of the Constitution. It is also not in

dispute that even a statutory corporation is not a 'State' within the meaning of said provision.

59. The Supreme Court in ***Adityapur Industrial Area Development Authority vs. Union of India and Others, (2006)5 SCC 100***, while dealing with Article 289(1), in paragraphs 10 and 11 observed thus-

> *"10. A mere perusal of Article 289(1) discloses that a claim of exemption under it must proceed on the foundation that the exemption is claimed in respect of property and income of a State. Once it is held that the property and income is that of the State, a question may well arise whether it is still taxable in view of the provision of clause (2) of Article 289 which dominantly is in the nature of a proviso. Clause (2) empowers the Union to impose any tax to such extent as Parliament may by law provide, in respect of a trade or business of any kind carried on by, or on behalf of, the Government of a State, or any operation connected therewith. Thus, even the income of the State within the meaning of clause (1) of Article 289 may be taxed by law made by Parliament, if such income is derived from a trade or business of any kind carried on by or on behalf of the Government of a State or any operations connected therewith. Clause (1) of Article 289, therefore empowers Parliament to frame law imposing a tax on income of a State which is earned by means of trade or*

business of any kind carried by or on behalf of the State Government.

11. It is true, as submitted by Shri Venugopal, that clause (2) of Article 289 empowers Parliament to make a law imposing a tax on income earned only from trade or business of any kind carried by or on behalf of the State. It does not authorise Parliament to impose a tax on the income of a State if such income is not earned in the manner contemplated by clause (2) of Article 289. This, to our mind, does not answer the question which arises for our consideration in this appeal. Clause (2) of Article 289 presupposes that the income sought to be taxed by the Union is the income of the State, but the question to be answered at the threshold is whether in terms of clause (1) of Article 289, the income of the appellant Authority is the income of the State. Having regard to the provisions of the Bihar Industrial Area Development Authority Act, 1974, particularly Section 17 thereof, we have no manner of doubt that the income of the appellant Authority constituted under the said Act is its own income and that the appellant Authority manages its own funds. It has its own assets and liabilities. It can sue or be sued in its own name. Even though, it does not carry on any trade or business within the contemplation of clause (2) of Article 289, it still is an authority constituted under an Act of the legislature of the State having a distinct legal personality, being a body corporate, as distinct from the State. Section 17 of the Act further clarifies that only upon its dissolution its assets, funds and liabilities devolve upon the State

> *Government. Necessarily therefore, before its dissolution, its assets, funds and liabilities are its own. It is, therefore, futile to contend that the income of the appellant Authority is the income of the State Government, even though the Authority is constituted under an Act enacted by the State Legislature by issuance of a notification by the Government thereunder."*

60. Having regard to the fact that the University is a 'body corporate' having perpetual succession and a common seal with a power to acquire and hold property and to enter into contract in its name as contemplated under Section 3 of the Act of 1994, and in the light of the meaning of the word state in Article 289 of the Constitution, we are of the opinion, that the University is not a 'State' within the meaning of Article 289(1) of the Constitution and it cannot be exempted from taxation as envisaged thereunder. The word "State" employed in this Article cannot be extended so as to include the University.

61. In the result, the income tax appeals filed by the University are dismissed. All the questions formulated by us

are answered in favour of the revenue and against the assessee. However, there shall be no order as to costs.

SD/-
JUDGE

SD/-
JUDGE

hnm/Ia