IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2565 OF 2010

M/s Yash Society }
Industry House, 5th Floor,
159, Churchgate Reclamation, }
Mumbai-400 020 } .. Petitioner

vs

1. Chief Commissioner of Income Tax}
Aayakar Bhavan, Maharshi Karve Rd,
Mumbai-400 020 }

2. Asst.Director of Income Tax }
Exemption (2) Piramal Chambers,
Mumbai-400 012. }

3.Union of India }
Aayakar Bhavan,
Maharshi Karve Road, }
Mumbai-400 020 } .. Respondents

Mr.Pankaj Toprani for Petitioner
Mr.Suresh Kumar for Respondents

CORAM: M.S.SANKLECHA AND
G.S.KULKARNI, JJ

RESERVED ON : 29th JANUARY 2015
PRONOUNCED ON: 12th MARCH, 2015

JUDGMENT (Per G.S.Kulkarni, J)

1. This petition under Article 226 of the Constitution of India impugns the order dated 27.9.2010, whereby respondent no.1 has rejected the petitioner's application for grant of approval under

section 10 (23-C) (via) of the Income Tax Act, 1961 (for short 'the Act') for A.Y.2009-10 on the ground that the primary requirement of section 10 (23C) that the petitioner is established for philanthropic purposes is not fulfilled by the petitioner as found evident from the creation of capital assets from the surplus funds.

2. Briefly the facts are: On 6.4.1971 the petitioner was registered as a Public Trust under the Bombay Public Trust Act, 1950. Initially the petitioner was registered in the name of 'Birla Vidhya Vihar Hospital'. In September, 1985 the petitioner was registered under the Societies' Registration Act, 1860. On 11.9.1985 name of the petitioner was changed to 'Birla Vidhya Vihar Society' and thereafter on 13.12.1988 it was changed to the present name 'Yash Society'.

3. It is the petitioner's case that the main object of the petitioner in its Memorandum and Articles of Association is to relieve persons suffering from disease or ill-health or requiring medical aid by establishing, constructing and maintaining or assisting Charitable Dispensaries, Hospitals, Convalescent Homes, Sanitoria and

Maternity Homes etc.

4. By Finance Act, 1970 Clause 10 (22A) was inserted in Section 10 of the Act with effect from 1.4.1970 so as to exclude income inter alia of a hospital offering service for treatment as provided therein. The provision reads thus :

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

5. For the period 1970-71 to 1998-99 the petitioner was allowed exemption under section 10 (22-A) of the Act. For the Assessment year 1989-90 the Income Tax Appellate Tribunal examined the issue as to whether the provisions of section 10 (22) were applicable to the petitioner-trust which was running a hospital. The Tribunal by an order dated 31.10.2000 answered in favour of the petitioner and made observations that the petitioner existed for philanthropic purposes. In an appeal to this Court by the revenue the order dated 31.10.2000 of the Tribunal was upheld.

6. By Finance (No.2) Act, 1998 with effect from 1.4.1999 section 10 (22A) was deleted and section 10 (23C) (iiiae) was inserted and was made applicable inter alia to a hospital not covered by Section 10 (23C) having annual receipts of less than Rs.1 crore. Beginning with A.Ys. 1999-00, up to the A.Y. 2008-09 the petitioner had availed and was granted exemption under section 10 (23C) (iiiae) of the Act.

7. The provisions of section 10 (23C) (via) of the Act became applicable to the petitioner with effect from A.Y.2009-10 as its annual receipts exceeded rupees one crore. The petitioner, therefore, made an application dated 17.9.2009 to respondent no.1 in Form No.56D as prescribed under Rule 2CA of the Income Tax Rules seeking approval under the said provisions for the A.Y.2009-10.

8. Respondent no.1 by his letter dated 7.10.2009 addressed to the Director of Income Tax (Exemption) sought examination of the petitioner's case and a report thereon. The respondent no.1 thereafter by its letter dated 12.10.2009 demanded from the petitioner, particulars in proforma report enclosed to the said letter.

This was supplied by the petitioner by its letter dated 21.10.2009. By a further letter dated 22.7.2010 the respondent no.1 again sought details of bifurcation of the capital, work in progress for various years along with details of payments made as also a copy of the resolution of the petitioner passed for purchase of land and the purpose of acquisition. These details were furnished by the petitioner by its letters dated 27.7.2010, 3.8.2010 and 5.8.2010.

9. On examining the material submitted by the petitioner, respondent no.1 by his letter dated 9.8.2010 called upon the petitioner to show cause as to how activities of the petitioner can be said to be carried out for philanthropic purposes and not for earning profits. This show cause was issued on the basis of annual accounts furnished by the petitioner which showed increase of development fund, cash/bank balances and fixed assets which in the opinion of respondent no.1 was indicative of the fact that petitioner's hospital earns substantial profits from its basic operations.

10. Petitioner's Chartered Accountant by his letter dated

23.8.2010 informed respondent no. 1 of the reasons for increase in the development fund, cash and bank balances and fixed assets and the purpose of their utilization and proposed utilization. It was stated that the surplus earned by the hospital has been utilized for incurring capital expenditure for the hospital and also for the acquisition of land at Thane for the purpose of establishing a new hospital and medical research centre. The details of receipts and payments showing surplus and deficit for Assessment years 2006-07, 2007-08, 2008-09 and 2009-10 were furnished to respondent no.1 Respondent no.1 by his letter dated 26.8.2010 called upon the petitioner to furnish further details which were duly furnished by the petitioner by its letter dated 16.9.2010.

11. Respondent no.1 by the impugned order dated 27.9.2010 rejected the petitioner's application refusing to grant approval under section 10 (23C) (via) for A.Y.2009-10 inter alia on the ground that the petitioner does not fulfill primary requirement for granting exemption under section 10 (23C) (via) of the Act.

12. The impugned order rejects approval of the petitioner's application under section 10 (23C) (via) on the following grounds :

(a) The details filed by the petitioner for Assessment years 2006-07, 2007-08, 2008-09 and 2009-10 show the total percentage and the gross surplus and percentage of the amount transferred to the development fund together stood at 19.12 %, 28.37 %, 73.17 % and 12.12 % respectively. This according to the respondent no.1 was indicative of the profits generated by the petitioner as also amounts transferred to the development fund which helped the petitioner to increase its asset base and thereby increasing its capacity to generate more income;

(b) There was a huge increase in fixed assets from Rs.63.75 lacs in A.Y. 2006-07 to Rs.8.02 crores in A.Y. 2009-10 which was an increase of approximately Rupees 7.5 crores within four years;

(c) Cash and bank balances had also increased from Rs.1,42,420/- to Rs.1.74 crores during the same period which was an increase of about Rs.1.30 crores;

(d) The land at Thane admeasuring 8350 sq.meters was purchased by the institution for an amount of Rs.363 lacs. Resolution of the Petitioner dated 28.8.2008 did not in anyway specify the purpose of acquisition of the land at Thane which was claimed to be used for establishing a hospital by the petitioner.

(e) Generation of surplus along with transfer of the amount to the

development fund clearly indicated a systematic method of earning profit which are put to use for increasing its capacity to generate more income;

(f) The quantum of increase in fixed assets, cash and bank balances show that profit generated out of activities of the petitioner is reploughed to enhance income generation capacity thereby leading to gain in more profits;

(g) Amounts spent for poor and needy patients as observed from the details submitted by the petitioner was found to be meagre and which clearly indicated that the petitioner did not exist solely for philanthropic purposes.

It was observed that the aforesaid factors indicated increase in asset base along with generation of surplus to show that there is systematic generation of profits from the activities of the trust and the increase in assets has helped the petitioner to generate more income and thereby earn more profits.

13. Learned counsel for the petitioner in assailing the impugned order has made the following submissions :

(i) It was erroneous for the respondent no.1 to hold that generation of surplus funds would indicate that the petitioner was not existing for philanthropic purposes;

(ii) For the first time in A.Y.1989-90 in granting exemption under section 10 (23A) the authorities had held that benefit of section 10 (23A) was applicable to the hospital conducted by the petitioner and that the petitioner existed solely for philanthropic purposes. For Assessment years 1999-2000 to 2008-09 returns of the petitioners were accepted as correct and exemption was allowed under section 10 (C) (iiiae) of the Act.

(iii) The respondent no. 1 had not considered the fact that surplus earned by the petitioner was ploughed back for acquisition of capital assets for hospital and for acquisition of land at Thane which was for establishing a new hospital and a medical research centre. The figures for A.Y.2006-07 to 2009-10 showed that the petitioner had no deficits in running its hospital for these Assessment years and that there was nominal surplus at the said Assessment years from medical store activity.

(iv) The reasoning that the resolution of the trustees dated 28.8.2008 not specifying that the amount was to be used for establishing a hospital and a medical research centre. The respondent no.1 had failed to consider the preamble of the said Resolution which showed that the purpose of acquisition of the land was set out.

(v) The respondent no.1 has not correctly considered the

percentage of concessional treatment given to poor patients. Instead of considering the net hospital receipts, the respondent no.1 considered the total gross receipts of the petitioner which included the investment while working out the percentage of net concessional treatment.

(vi) The report of the Director of Income Tax (Exemption) has not been furnished to the petitioner while rejecting the petitioner's application under section (23C) (via).

In support of the submissions, learned counsel for the petitioner relied on the following decisions : (1) **Breach Candy Hospital Trust vs Chief Commissioner of Income Tax (2010) 322 ITR 246 (Bom)** (2) **Tolani Education Society vs Deputy Director of Income Tax (Exemption) 351 ITR 184 (Bom) (**3) **Rukmarani Education Foundation vs Chief Commissioner of Income Tax (2013) 260 ITR (Bom) 167.**

14. On the other hand, learned counsel for the revenue has supported the impugned order. He relies on the submissions as made in the affidavit-in-reply filed on behalf of the respondents to contend that the respondent no.1 had appropriately examined the application

of the petitioner seeking an approval under section 10 (23C) (via) of the Act and that for adequate reasons as set out in detail in the impugned order, respondent no.1 has reached to a conclusion that the petitioner is not existing for philanthropic purposes. He submits that the details for past Assessment years relevant to the Assessment year 2009-10 clearly indicated that the petitioner was generating profits and it was not solely existing for philanthropic purpose but, for profits. In supporting the impugned order, learned counsel for the revenue has relied on the following decisions: (1) **S.H. Medical Centre Hospital vs State of Kerala & ors (2014) 11 SCC 381** (2) **Aditanar Educational Institution vs Addl.Commissioner of Income Tax (1997) 3 SCC 346** (3) **Secondary Board of Education vs Income Tax Officer. (1972) 86 ITR 403 (ORI).**

15. With the assistance of the learned counsel for the parties, we have perused the impugned order and the relevant documents as placed in the paper book. The issue which arises for our consideration in these proceedings is whether on the above facts the decision of the respondent no.1 in the impugned order holding that the petitioner is not entitled for an approval under section 10 (23C)

(via) of the Act is legal and valid.

16. In order to effectively adjudicate the above issue, it would be useful to refer to the provisions of section 10 (23) (via) which read thus :

> " **Incomes not included in total income**.
>
> 10: In computing total income of a previous year of any person, any income falling in any of the following clauses shall not be included.....
>
> (23C) : any income received by any person on behalf of __
>
> (via): Any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for the purpose of profit, other than mentioned in sub-clause (iiiac) or clause (iiiae) and which may be approved by the prescribed authority:}" (Emphasis supplied)

17. A plain reading of the aforesaid provision makes it clear that the legislature has categorised for deduction income of those institutions which "exist solely" for philanthropic purpose with a further stipulation that they would exist "not for the purpose of profit". In other words, the institution should not exist for a commercial purpose. The first proviso to this sub-section requires an

assessee to make an application in a prescribed form to the prescribed authority for the purpose of grant of exemption or continuance thereof. The second proviso provides that the prescribed authority before granting an approval may call for such documents, including audited annual accounts or information and as it may think necessary in order to satisfy itself about the genuineness of activities of such a trust or fund and may make such inquiries as may deem necessary in that behalf. It is the further requirement of the provision that an assessee should apply its income solely and exclusively for the objects for which it is established. Rule 2CA of the Income Tax Rules lay down the guidelines for grant of approval.

18. A plain reading of the above provision shows that the legislative emphasis is on a twin requirement . Firstly the purpose for which the trust is existing, which should be solely an existence for a philanthropic purpose and secondly it should not be for profit. This interpretation subserves the object of the provision. The clear language of the provision show that the intention of the legislature is to benefit those institutions which cater to variety of illness and

suffering as a service to the society and solely for philanthropic purpose and not for the purpose of profit. An existence of the institution ostensibly for a philanthropic purpose and in reality for profit, would not qualify an institution for a deduction under this provision. This would not mean that such an institution cannot incidentally have a reasonable surplus which it utilizes for philanthropic purposes.

19. In the light of the above legal requirement, we now proceed to examine the facts of the present case so as to determine as to whether respondent no.1 was right in rejecting the petitioner's application seeking an approval under section 10 (23C) (via). In doing so, we examine whether the impugned decision suffers from any arbitrariness and/or an illegality. From the material on record as placed before respondent no.1 it was reflected that the petitioner was earning surplus revenue from its activities and that the assets were increasing. The fact that surplus was generated is not disputed by the petitioner. This surplus revenue was utilized for acquisition of assets which in the opinion of respondent no.1 was capable of generating

more income. In the Assessment years 2006-07, 2007-08, 2008-09 and 2009-10, the percentage of transfer of gross surplus to the development fund was at 19.12 % 28.37 % 73.17 % and 12.12 % respectively. Accompanied with this, there was a huge increase in fixed assets from Rs.63,75,577/- in A.Y.2006-07 to Rs.8,02,75,706/- in Assessment year 2009-10 which was approximately an increase of Rs.7.50 crores within four years. Petitioner's cash and bank balances also increased from Rs.1,42,420/- to Rs.1,74,15,757/- during the same period which was an increase of about Rs.1.30 crores. The petitioner had purchased land admeasuring 8,350 sq.meters for an amount of Rs.363.63 lacs. All these figures are borne out by the details as submitted by the petitioner before respondent no.1. The reasoning as given by respondent no.1 that all these figures go to show that there was a systematic generation of profits from the activities of the petitioner coupled with the increase in assets which would generate more income / profits cannot be said to be without any basis, arbitrary or perverse. Hence, it was not improper for the respondent no.1 to draw a reasonable inference that the petitioner is not existing solely for philanthropic purpose and for profits, in our

opinion cannot be faulted.

20. We have also perused the statement of expenditure incurred by the petitioner showing the concessional treatment claimed to be offered by it. The figures of concessional treatment clearly indicate that the petitioner has spent meagre amount on the weaker section of the society which negatives the contention of the petitioner that the petitioner is existing solely for philanthropic purpose and not for profit.

21. A perusal of the statement of the hospital charges and fees furnished by the petitioner for Financial year 2006-07, 2007-08 and 2008-09 shows the very negligible percentage of poor/needy patients receiving treatment in the hospital of the petitioner. What is more glaring are the details in the two columns namely 'Gross Concessional Amount Receivable' and 'The amount Received from Poor patients.' These figures in no manner would inspire any confidence or make a prudent person believe that the petitioner is in fact existing for philanthropic purposes. We say so, for the reason, that it is

inconceivable that poor patients would be in a position to pay large amounts as indicated by the petitioner in details given in these financial statements. It would be appropriate if we set down herein below these relevant details :

2006-07

No.of poor/ needy patients	Gross Concessional Amt receivable	Amt received from the poor patients	Amount of relief provided to concessional
14	122800	115385	7415
21	173855	150245	23610
16	80295	73590	6705
20	84685	74370	10315
21	224755	211155	13600
24	274925	254645	20280
20	183865	165500	18365
13	141265	125960	15305
22	192350	172185	20165
32	315070	288030	27040
41	485860	422575	63285
44	448205	411270	36935
Total:288	**2727930**	**2464910**	**263020**

2007-08

No.of poor/ needy patients	Gross Concessional Amt receivable	Amt received from the poor patients	Amount of relief provided to concessional
35	272865	251030	21835

32	372355	319260	53095
53	434450	407705	26745
51	486490	444410	42080
74	829035	762610	66425
67	487325	445105	42220
65	699018	619935	79083
33	339000	318737	20263
57	593425	540975	52450
53	568165	521660	46505
52	502645	449090	53555
52	560575	491600	68975
Total:624	**6145348**	**5572117**	**573231**

2008-09

No.of poor/ needy patients	Gross Concessional Amt receivable	Amt received from the poor patients	Amount of relief provided to concessional
42	400380	360725	39655
57	576715	516480	60235
51	564255	516145	48110
50	675275	627885	47390
66	783960	719445	64515
50	711065	669885	41180
55	544170	497596	46574
57	749905	668310	81595
56	682625	642895	39730
58	561315	5217775	39540
60	641265	596760	44505
68	539638	486308	53330
Total:670	**7430568**	**6824209**	**606359**

For the A.Y. 2007-08, 2008-09 and 2009-10 the percentage of net concessional treatment to the total receipts is as under :

A.Y.	Total Receipts	Net concessional treatment	% of Net concessional treatment to the total receipts
2007-08	73,76,592	2,63,020	3.56%
2008-09	88,76,534	5,73,231	6.45%
2009-10	1,36,18,406	6,06,359	4.45%

Thus, on the basis of the details as submitted by the petitioner the respondent no,.1 has rightly come to a conclusion that the concessional treatment as given by the petitioner for the above assessment years being meagre 3.56 %, 6.45% and 4.45% respectively, definitely does not speak of the existence of the petitioner for philanthropic purposes.

22. One more factor which needs to be noted is in regard to the resolution dated 28.8.2008 passed by the petitioner which does not specify the purpose of acquisition of the land but only authorises the acquisition of the land at a particular price from one Birla India Ltd.

The contention on behalf of the petitioner that the preamble of the resolution is required to be taken into consideration is misconceived and cannot be accepted seen from the totality of the circumstances. The alarming figures of large surplus as generated by the petitioner and the utilization of those surplus for acquisition of assets would speak against the petitioner existing solely for philanthropic purpose and not for profit. This would dis-entitle the petitioner to the benefit of section 10 (23) (via). If the petitioner was to solely exist for philanthropic purposes and was to conduct the hospital to achieve that object by providing treatment to the weaker sections of the society, it could not have been possible for the petitioner to achieve such a huge surplus and the consequent enabling of the petitioner to utilize such surplus funds to generate assets. In our opinion, the material as placed on record do not show that the application of the petitioner under section 10 (23C) (via) of the Act is inappropriately and arbitrarily rejected by the respondent no.1 so as to warrant our interference in exercise of jurisdiction under Article 226 of the Constitution of India.

23. The contention on behalf of the petitioner that looking to the

manner in which the exemption was allowed in the past, respondent no.1 ought to have granted its application under section 10 (23C) (via) of the Act, in our opinion, is completely misconceived and contrary to the requirement of the statutory provision. It was the legal duty of respondent no.1 to consider independently the application of the petitioner for the assessment year in question on the basis of the material as submitted by the petitioner and applying the requirements of the provisions of sub-clause 23C (via) of section 10 decide the same independently. Any deduction and/or exemption as granted to the petitioner for earlier assessment years cannot be claimed to be of any consequence by the petitioner so as claim this deduction as a matter of right for A.Y.2009-10 and thereafter. We therefore, reject this submission as urged on behalf of the petitioner.

24. The decision of the Division Bench of this Court in the case of **Breach Candy Hospital vs CCIT & ors** (supra) as relied on behalf of the petitioner is of no assistance to the petitioner. The Division Bench in the facts of the case had held that there was absence of any material to show that generally there was a profit in the hospital

activities of the petitioner therein. In this context, it was held that it cannot be said that the petitioner did not exist solely for philanthropic purpose but, for the purpose of profit and the rejection of the application of the petitioner therein was held not valid. However, situation in the present case is quite different. In petitioner's case there is accumulation of surplus and there is utilization of this surplus for generation of assets.

25. The reliance of the petitioner on the decision of the Division bench of this Court in **Tolani Educational Institution vs Director of Income Tax** (Exemption) (supra) also is of no avail**.** In this case, activities of the petitioner were educational and the surplus was utilized towards upgrading college facilities. It was held that with the advancement of technology no college or institution can afford to remain stagnant and hence applying the provisions of section 10 (23C) (vi) it was held that it does not require that the college must maintain status quo, as it were, in regard to its knowledge based infrastructure. It was observed that educational institutions have to modernise, upgrade and respond to the changing ethos of education. In this context, it was held that section 10 (23C) cannot be

interpreted regressively to deny exemption as educational institution exist for educational purpose and not for profit. There is no finding of the Court that the utilization of surplus was for acquisition of fixed assets. It was also not the case that the petitioner had not spent on educational activities but, for some other purpose outside the parameters of educational activity which was the sole object of the petitioner. However, in the present case, the petitioner has successively incurred a meagre expenditure on philanthropic activity namely expenditure towards treatment of weaker sections of the society and major amount was utilized for generation of assets. These facts therefore, completely differentiate the case of the petitioner from the facts of the case in **Tolani Education Society** (supra.) The intention of the legislature in making provisions of section 10 (23C) (via) is that an institution shall exist solely for philanthropic purpose and not for the purpose of profits. The expression "solely for philanthropic purpose" and "not for the purpose of profits" spells out a clear intention of the legislature that the institution should not merely exist for philanthropic purpose but existence shall not be for profits. Satisfaction of this twin test by an institution claiming a

deduction would entitle it for the benefit of the provisions of section 10 (23C) (via) of the Act. In the petitioner's case, from the details of the accounts as submitted by the petitioner, this position remains hardly satisfied so as to enable the respondent no.1 to grant an approval for the purpose of the petitioner claiming exemption under the said provisions.

26. The decision of the Division Bench in the case of **Rukmarani Education Foundation** (supra) as relied by the petitioner in support of the proposition that the petitioner has not been informed by the respondent no.1 on the grounds and reasons before the application by the petitioner was rejected. The petitioner in the said case had sought to furnish information/evidence to meet the grounds on which the impugned order was passed which is not the position in the present case. In the present case respondent no.1 had issued a show cause to the petitioner. Apart from that ample opportunity was given to the petitioner to place all the material to show that the petitioner becomes eligible to the deduction as claimed for the assessment year in question. A personal hearing was also granted to

the petitioner 's representative to present the facts of the case on 23.9.2010. After taking into consideration the entire material respondent no.1 has passed a detailed order giving reasons as to why application of the petitioner has not been accepted. The petitioner has not made out any case of a prejudice it has suffered for want of hearing. We are therefore of the clear opinion that respondent no.1 in passing the impugned order has in no manner acted in breach of the principles of natural justice.

27. Learned counsel for the Respondents has appropriately relied on the decision of the Supreme Court in **S.H.Medical Centre Hospital vs State of Kerala & ors** (supra). The Supreme Court was considering an issue as to whether income derived from a building can be said to be used for charitable purpose by running of a free medical aid to the needy and poor in the context of tax exemption under Municipal laws. It was held that income derived from the building was being applied for charitable purpose was to be clearly proved and that the fact that the institution is set up for charitable purpose as stated in the Memorandum of Association cannot be enough to hold that income is necessarily applied for charitable

purposes. In this context, the Supreme Court in paragraph 16 and 17 observed thus:

> 16. "In our considered view, the High court was correct in holding that the application of income derived from a building for charitable purposes does not amount to the building being "principally used" for charitable purpose. In the present case, if we have to rule against the High Court's judgment, it will be necessary to have more evidence with respect to details such as what the nominal charges are for patients who can afford it and the number of patients offered free medical care vis-a-vis the number of patients who pay for the services. The argument that the income is applied for charitable purposes can be accepted only if it is known what portion of the income goes into charity i.e. Free medical services. Does the percentage of patients receiving free medical services increase every year. If we hold that the income derived from a building is applied for charitable purposes then that has to be clearly proved and the fact that the institution is set up for charitable purposes as stated in its memorandum of association cannot be enough to hold that income is necessarily applied for charitable purposes especially in the light of the fact that the patients who can afford to pay for it are being charged for medical services.
>
> 17. Now, we will examine the question of what "charitable purpose" means. The Oxford English Dictionary defines "charitable "as of or relating to the assistance of those in need". In the present case, it can be argued that all medical services relate to the assistance of those in need. This is a valid interpretation but cannot be accepted for the purposes of tax. If these medical services in the present case were being offered free to a majority of the patients rather than a minority of patients, then the conclusion could have been reached that the buildings are principally used for charitable purposes. Further, an amount of approximately Rs.26,00,000 of the expenses are towards "social work and charities" as per the income and expenditure accounts provided, whereas "free medical aid" is around Rs.60,00,000 for the year 2004-2005. It is not clearly mentioned that "social work and charities" is. Furthermore, an exemption is provided for that area in which free medical aid is provided by the appellant Hospital. The appellant has not produced cogent material evidence before the competent authority or the State Government or before the High Court to show that the entire building has been used for charitable purpose by rendering free medical aid to the needy poor people of society. The fact is that the details furnished in the documents produced would go to show that the appellant Hospital is earning money by charging from patients and therefore the claim of the appellant that the entire area taxed is used for

> charitable purpose is not reflected in the documents produced. Hence, we are not inclined to interfere with the impugned orders. The High Court has correctly interpreted the "Explanation" clause to section 3 (1) of the Act to hold that "charitable purpose" means "relief of the poor and free medical relief". (Emphasis supplied)

In the petitioner's case it may be that the memorandum of association shows that it is established for philanthropic purpose but as to whether such philanthropic activities are reflected from the actual conduct of the institution is a fact which is required to be seen by the appropriate authority by appreciating the evidence in that regard in considering the application under section 10 (23C) (via). Such examination is an independent examination and it is only on the basis of the material as submitted by the petitioner, the respondent no.1 has taken a decision to reject the application of the petitioner.

28. The observations of the Supreme Court in its decision in the case of **Aditanar Educational Institution** (supra) are squarely applicable to the issue in hand. In dealing with an issue arising under section 10 (22) of the Act which concerned income of a University or other educational institution existing solely for

educational purpose and not for profit the Supreme Court observed thus :

> " We may state that the language of section 10 (22) of the Act is plain and clear and the availability of the exemption should be evaluated each year to find out whether the institution existed during the relevant year solely for educational purposes and not for the purposes of profit. After meeting the expenditure, if any surplus results incidentally from the activity lawfully carried on by the educational institution, it will not cease to be one existing solely for educational purposes since the object is not one to make profit. The decisive or acid test is whether on an overall view of the matter the object is to make profit. In evaluating or appraising the above, one should also bear in mind the distinction/difference between the corpus, the objects and the powers of the concerned entity." (Emphasis supplied)

29. In the light of our above observations, we are certain that the writ petition does not call for any interference of this Court. Writ Petition is accordingly dismissed. In the facts and circumstances of the case,there shall be no order as to costs.

(G.S.KULKARNI, J.) **(M.S.SANKLECHA, J.)**