

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE**

RESERVED ON: 04.02.2022
DELIVERED ON: 10.02.2022

CORAM:

**THE HON'BLE MR. JUSTICE T.S. SIVAGNAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**ITAT/19/2021
(IA NO: GA/1/2021)**

**CREATIVE MUSEUM DESIGNERS
VERSUS
INCOME TAX OFFICER, EXEMPTIONS, WARD-1(1), KOLKATA**

**Appearance:-
Mr. Pratyush Jhunhunwala
Mr. Uttam Sharma**

.....For the Appellant.

**Mr. Tilak Mitra
Mr. Radhamohan Roy**

.....For the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S.SIVAGNANAM, J.)

1. This appeal by the assessee filed under Section 260 A of the Income Tax Act, 1961 is directed against the consolidated order dated 14.08.2020 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (Tribunal) in ITA Nos. 1147-48/Kol/2018 and 1608/Kol/2019 for the assessment years 2013-14 to 2015-16. The assessee has raised the following substantial questions of law for consideration:-

- (i) Whether the exemption under Section 11 of the Income Tax Act, 1961 can be denied on the basis of the objectives of the petitioner entity when it the same have been accepted as charitable at the time of registration under Section 12A / 12AA of the Act?*
- (ii) Whether the activity of the petitioner of setting up of museums, science parks, planetariums, interactive galleries, exhibits and other forms of dissemination of knowledge through informal means, at the behest of other public bodies or entities, be regarded as commercial in nature and within the periphery of the proviso to Section 2(15) of the Income Tax Act, 1961?*
- (iii) Whether the Tribunal was justified in denying the exemption under Section 11 of the Act and its findings that the objects and the activities of the petitioner are commercial in nature*

and/or are done with the intent of earning profits are arbitrary, erroneous, contrary to law and perverse?

2. We have heard Mr. Pratyush Jhunjhunwala, Learned Senior Standing Counsel and Mr. Uttar Sharma, Learned Junior Standing Counsel for the appellant.
3. The assessee is a company registered under Section 25 of the Companies Act, 1956 and has been established by the National Council of Science Museum, Ministry of Culture, Government of India. The National Council of Science Museums herein after referred to as the Council is an institution formed by the Government of India for the purpose of dissemination of knowledge of science and development of scientific temperament to the general public of the country and to ensure development of the society and the country as well. In order to effectively carry on its objects, the council established the assessee company under Section 25 of the Companies Act 1956 whose very nature was charitable and its purpose is dissemination of knowledge to the Indian society. The assessee is engaged in design and development of knowledge centers like science museums, planetariums, and other knowledge dissemination centers. It is stated that thorough research works in the field of physics, chemistry, sociology, history, finance and other related areas of study are being continuously done by the assessee and based on the research, knowledge centers are created and developed in the country. The assessee would state that there is no other agency which can execute such projects with the level of expertise and dedication as done by them. In the later part of this judgment, we shall refer to the main objects of the assessee as could be culled out from the memorandum of association of

the assessee. The assessee has listed out the various turnkey projects done by them throughout the country and as to how they have state of art infrastructure which educates the general public on various subjects. It is further stated that the assessee is a non-profit company and has been established by the Government of India for developing, promoting education and general public welfare, and any surplus generated by the assessee while establishing these projects, would be ploughed back into the assessee for the purpose of developing its expertise. The assessee applied for registration under Section 12AA of the Act which was granted after the Commissioner was satisfied that the assessee fulfils the conditions required to be complied with for being entitled to registration under Section 12AA of the Act. The assessee also has been granted registration under Section 80 G (5) (vi) of the Act.

4. The Reserve Bank of India (RBI) with a view to establish a museum and financial literacy center in Kolkata for explaining the development of monetary system and exhibit its collection of arte facts issued a tender notification calling upon various agencies throughout the world to participate in the tender. It is stated that there were several participants from the European and American countries but the assessee was the only Government agency working in India which had participated in the tender. The Appropriate authority of the RBI upon being satisfied that the assessee was the best organisation which could be entrusted with the task, awarded the tender to the assessee vide letter dated 08.06.2012. The assessee would state that the RBI museums and financial literacy center, was completed by the assessee with the state of art facilities interactive galleries, trained

professional and was handed over to the Reserve Bank of India on 17.09.2018. On similar lines, Surat Municipal Corporation had awarded the task of establishing five galleries on textiles, astronomy, space, polar science and children learning activities, to educate the general public about the history of development of textiles, study of astronomy through the ages, understanding space travel, understanding Earth's poles and children's interactive gallery. The assessee is stated to have completed the project and the same has been handed over to the Surat Municipal Corporation and thrown open to the public.

5. The assessee filed its return of income for the assessment years under consideration, A.Y. 2013-2014, 2014-2015, and 2015-2016 declaring its income to be nil as the assessee had claimed exemption from income tax, on the surplus which had been generated from the aforementioned activities. The assessments were selected for scrutiny and by orders dated 03.03.2016, 23.12.2016, and 29.11.2017 were completed holding that the surplus generated by the assessee was on account of an activity which was commercial in nature and that the petitioner was performing charitable activity only in the form of general public utility and the surplus was accordingly disallowed under Section 13 (8) read with Proviso to Section 2(15) of the Act. Aggrieved by such order, the assessee preferred appeal before the Commissioner of Income Tax Appeal, (15) Kolkata CIT(A). By two separate orders dated 28.03.2018 and 14.05.2019 the appeals were dismissed. Aggrieved by the same, the assessee preferred appeal before the tribunal which was dismissed by the impugned order.

6. Mr. Pratyush Jhunjhunwala, Learned Counsel appearing for the appellant assessee submitted that the order passed by the assessing officer as affirmed by CIT(A) and the tribunal are perverse, erroneous and arbitrary. It is submitted that the tribunal failed to consider that the activities of the assessee would be charitable within the meaning of Section 2(15) of the Act and would be regarded as an educational activity as well as activities in the nature of general public utility. Further, the tribunal ought to have noted that the assessee having been registered under Section 12AA of the Act, its objectives are to be necessarily accepted as charitable in nature and the same cannot be regarded as a commercial activity or activities done with an intention to earn profit. Further it is submitted that the assessee is not carrying on any activity with a view to earn profit but it is involved in the development of museums, science centers, planetariums, science parks etc. which are undoubtedly centers of dissemination of knowledge and the assessee has to develop the necessary expertise for establishing these knowledge centers and substantial, technical and highly skilled work is involved, deployment of modern machinery and equipment etc. It is submitted that the object behind the projects implemented by the assessee is to take forward the vision of the Central Government in promoting education and learning among the public in an informal and easy manner. It is submitted that the tribunal had taken note of a letter sent by RBI dated 08.06.2012 in which it was stated that they have some concerns about the terms and conditions mentioned in the financial bill. It is submitted that the tribunal thoroughly misread the contents of the letter and the circumstances under which the RBI had addressed the assessee and the letter pertains to

the terms of engagement of the assessee in the said project and it has nothing to do regarding dissemination of knowledge. It is further submitted that the tribunal and the authorities committed serious error in stating that the assessee is a contractor functioning in lieu of money and they are an agent engaged in commercial activity of construction of a museum for RBI. It is submitted that the tribunal failed to note that the dissemination of knowledge was being done by the assessee and RBI jointly as well as with the other organisations with whom the assessee has worked and completed projects and the tribunal thoroughly misunderstood the scope of the projects developed by the assessee. It is further submitted that the assessee is registered under Section 25 of the Companies Act and therefore all its activities are deemed to be non-profit and unless and until the activities are so, the company cannot be registered under Section 25 of the Companies Act. In support of his contentions the Learned Counsel placed reliance on the decisions in *Thanthi Trust Versus Director of Income Tax (Exemptions)*¹ and *Investor Financial Education Academy Versus Income Tax Officer (Exemptions) – 4, Chennai*².

7. Mr. Tilak Mitra, Learned Senior Standing Counsel assisted by Mr. Radhamohan Roy, Learned Junior Standing Counsel sought to sustain the order passed by the tribunal by contending that the tribunal has examined the objects of the assessee company and it is clear that the activities done by them are commercial in nature and so far as the work done for RBI and assessee was selected to execute a project on a turnkey basis and after the

¹[2020] 121 taxmann.com 119 (Madras)

²[2020] 121 taxmann.com 281 (Madras) / [2021] 276 Taxman 57 (Madras)

project is completed, the assessee has to move out which will clearly show that they are in the nature of a contractor who has completed the work on payment of the requisite sums of money. Further it is submitted that the tribunal noted that the price bid proposed by the assessee shows some profit element which would indicate that the project was intended for making profit, it is commercial activity and not for any public utility directly. It is further submitted that the tribunal rightly held that though the assessee is registered under Section 12A of the Act as a charitable institution, the work done by the assessee in the assessment years under consideration are not charitable in nature particularly when no formal and systematic educational function has been discharged by the assessee and what was done by the assessee is a commercial project. Therefore, it is submitted that the tribunal rightly refused to interfere with the order passed by the CIT(A) who had affirmed the view taken by the assessing officer.

8. We have elaborately heard the learned counsels for the parties and carefully perused the materials placed on record.
9. Before we venture into the factual matrix, we need to take note of certain undisputed facts. The assessee is a company registered under Section 25 of the Companies Act. By virtue of the license granted under Section 25 by the Registrar of Companies, West Bengal dated 27.10.2011, it has been proved to the satisfaction of the Registrar of Companies that the assessee has been established for promoting objects of the nature specified in Section 25(1) (a) of the Companies Act and that it intends to apply its profit, if any, or other income in promoting its objects and to prohibit the payment of any dividend to its members. The licence granted under Section 25 has eight conditions

attached to it of which one would state that the incumbent property of the assessee, whensoever derived shall be applied solely for promotion of the objects as set forth in its memorandum of association and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit, to persons who at any time are, or have been members of the said company or to any of them or to any person claiming through anyone or more of them. There are other conditions which will also indicate that no remuneration or other benefits in money shall be given by the company to its members. The memorandum of association of the assessee company if perused shows the main objects to be pursued by the company. By way of illustration we quote a few of the main objects:-

1. *To take up in India or in any part of the world all kind of museums/science centre projects on turn-key basis, including conceptualization, design & development of exhibits, exhibition galleries, construction of buildings, prototyping, manufacture, assembly, repair and maintenance etc. and all other museum/science centre related activities or descriptions associated therewith and incidental thereto.*
2. *To set-up exhibition galleries, science centre/museum facility for other museums/centers in India or in any part of the world.*
3. *To accept orders for fabrication, supply and installation of museum/science centre exhibits/exhibitions educational material from any museum/centre or institution having similar objectives, whether in India or any part of the world and execute the said orders.*

4. *To supply exhibit related technologies/components to any institution in India or in any part of the world.*
5. *To promote activities related to providing consultancy on development of science museums or centers, Parks/Mobile Science Exhibitions/ Museum, science Education resource centres/planetaria/exhibition galleries/science cities etc.*
6. *To develop modules and conduct training of science museums/science centres/museums professional on museum practice.*
7. *To undertake management of science museums/centres.*
8. *To conduct feasibility studies and prepare detailed project reports for science centres/science cities science parks museums.*
9. *To provide consultancy and conduct of non-formal science & technology propagation related activities and talent hunting activities.*
10. *All activities for attainment of the above objectivities.*
11. *To promote activities in relation to research development and dealing in apparatus, equipment, instruments, materials, spares, components and accessories required and directly related to the purpose.*
12. *To set up facility for research and development, inspection quality control, prototype development, tool room, qualification, evaluation and other specialized service required and to exploit/use or turn to profit any patents or copyrights generated*

within the Company or acquired or purchased from any person either in India or abroad.

13. *To set up infrastructure and develop softwares and communication packages for science communication and education projects.*

14. *Implementation of non-formal science education/program/activities and schemes.*

15. *To enter into collaboration with national and international agencies for development of museums/science centers/science activities.*

16. *To undertake establishment of network of dealers/agencies/franchises etc. for advancement of business.*

10. Apart from the above main objects, there are objects, incidental or ancillary to the attainment of main objects. In the impugned order, the tribunal has referred to the incidental objects and missed out the main objects for which the assessee company had been established. This mistake committed by the tribunal has had an impact on the proceedings before it. Apart from the main objects, the incidental or ancillary objects, clause 5 of the memorandum imposes an absolute prohibition on the company to apply its income and property for any other purpose other than for promoting the objects set forth in the memorandum. No portion of the income or property can be paid or transferred directly or indirectly by way of dividend, bonus, etc. The assessee had submitted an application before the Director of Income Tax (Exemption) on the basis of the memorandum of association incorporating the company under Section 25 of the Act and having being

satisfied with, the objects was granted registration under Section 12AA of the Act by order dated 04.03.2013. The assessee has also obtained approval under Section 80 G (5) (vi) of the Act vide order dated 04.03.2013. The aforementioned registration and approval continue to remain valid as on date.

11. The RBI proposed to establish a museum and financial literary centers in Kolkata for which purpose, tenders were called for. The assessee was one among the participants in the tender and was successful and the work was awarded to them in June, 2012. The assessee is very proud to say that they are the only Government of India organisation, working in India, who would be able to execute the project and were selected by RBI though there were several other participants from Europe and America. It has not been disputed that the assessee has completed the project in September, 2018. The assessee was also entrusted with developing another project by the Surat Municipal Corporation for developing various facilities with a view to educate the public on various subjects like development of textiles industries, astronomy, spaces travel etc. This project has also been completed by the assessee. In the return of income filed for the assessment years under consideration, the assessee claimed exemption from income tax on the surplus which had been generated pursuant to the projects executed by them during the years under consideration. The assessing officer, CIT(A) and the tribunal branded the assessee as a contractor. In other words, they held that the assessee had under taken the turn-key projects and completed the same in lieu of money paid. Unfortunately, at the very inception, the assessing officer had approached the matter in a wrong direction. This approach percolated to the CIT(A) and also to the tribunal. We are of the considered

view that the orders passed by the authorities as well as the tribunal are not tenable, an outcome thorough misreading of the nature of the activities done by the assessee qua the objects behind its incorporation as a company under Section 25 of the Companies Act, thus, calling for interference. We support our conclusion with the following reasons:-

12. As mentioned above the tribunal failed to take note of the main objects to be pursued by the company as mentioned in the memorandum of association. In fact, it has not even referred to the main objects but straightway proceeded to take note of the objects incidental or ancillary to the main objects. It is elementary principle that anything incidental or ancillary to the main object has to be read along with and in conjunction with the main object and the incidental objects cannot be read in isolation. This fundamental error committed by the tribunal has lead to a wrong decision by it. That apart the tribunal did not take note of the objects of the company which are not included in the main objects and the incidental or ancillary objects. Had an effort been taken by the tribunal to examine the same it would have been amply clear that the assessee company is a non-profit organisation established for the purpose of undertaking works for all kinds of museums/science centers etc. on turn-key basis which includes all activities incidental and ancillary to it. We had faulted the approach of the assessing officer. We say so because the assessing officer appears to have lost right of an important fact as to how a museum or a science center is established. It is a pity that the assessee has been reduced to the category of a contractor working for money. A museum is not constructed but conceived and developed. The object behind establishing a science center is undoubtedly in

public interest to educate the general public in an easy and attractive manner. To develop in the young minds a love towards science, history, astronomy and various subjects also to educate the general public who might not have had formal education owing to circumstances beyond their control. To conceptualise a museum is a serious matter. The first aspect would be as to the objects sought to be achieved by establishing such a museum or a science park. In the case on hand, the RBI proposed to establish a museum and financial literary center in Kolkata to explain the development of the monetary system and to exhibit its collection of "arte facts". Therefore, a building contractor can hardly be said to be equipped to establish a museum for a specified purpose. Therefore, technical expertise is required, research has to be done and the project has to be conceived in such a manner, it brings about the purpose for which the concept was evolved by RBI. The same would be also for the project which was conceived by the Surat Municipal Corporation. Therefore, to state that the assessee was only a contractor is to belittle their status and the purpose for which they were established by the Ministry of Culture, Government of India. The authorities as well as the tribunal were of the view that it is the RBI which is engaged in the educational activities and not the assessee. This finding is also erroneous as the museum is conceptualised by the assessee and all necessary inputs including training of personnel who are to man the museum or to function as a curator are all the task assigned to the assessee. All these would clearly fall within the objects of the assessee company. Thus, the message and information which will be disseminated through the museum which will be in the nature of a non-formal education is based upon the material which has

been evolved by the assessee and implemented for and on behalf of the Reserve Bank of India.

13. The moot question would be as to who is the “keeper” of the museums established by the assessee company. The tribunal opines it as the RBI/Municipality. In our considered view this approach is thoroughly flawed. The responsibility for museums is on the collection curator, a museum curator or a “keeper” of the heritage of the institution. The curator is a specialized person/organisation who has been entrusted with the onerous duty of taking charge of the content and interpretation of the heritage value. The role of the curator is a specialist work, they have the expertise to develop as to how the archives could be interpreted through various events. Neither RBI nor Surat Municipal Corporation had the expertise within them to establish the museum. They took a policy decision to do the same, realizing that it required the assistance of experts, awarded the work to the assessee. Thus the role of the assessee in conceptuating, developing and establishing the museum is that of a “museum curator” who develops interprets and explains the significance of the collections for the study and education of the public. Thus the assessing officer, CIT(A) and the tribunal erred in not addressing the larger perspective of the matter. It needs to be emphasized that museums play a very important and significant role in preserving culture and heritage to be recorded and remembered regardless of its future. Museums function as places for conservation research, education and entertainment for the general public. Thus, indisputably a museum is a place of informal and free choice education and learning. Museums offer educational experience in diverse fields, to be cherished and enjoyed. To

reduce the appellant assessee, a “Master” curator to that of a contractor, is to belittle their role in preserving heritage.

14. Therefore, the role of the assessee cannot be divested from the project rather it is the project of the assessee which is being manned by the recipient namely RBI and Surat Municipal Corporation. In our considered view this will be the proper manner in which the work assigned to the assessee and completed by them has to be interpreted. Hence, we have no hesitation to hold that the assessee has disseminated knowledge in the process of establishing the facilities for the RBI and the Surat Municipal Corporation. The assessing officer, the CIT(A) and the tribunal did not examine as to the effect of incorporation of the assessee as a company under Section 25 of the Companies Act. This issue was considered in *Investor Financial Education Academy* where also the assessee was registered under Section 25 of the Companies Act. The question arose as to whether every company registered under Section 25 would be automatically entitled for registration under Section 12A of the Act. The Court noted that the Income Tax department has been consistently granting registration to all companies registered under Section 25 of the Act. The Court took note of the decision in *ICAI Accounting Research Foundation Versus Director General of Income Tax (Exemptions)*³ wherein it is pointed out that the fact that the assessee therein was a company registered under Section 25 of the Act was ignored by the tribunal as the status which has been granted by the Government of India itself is the recognition of the fact that foundation is essentially established for the purpose of education and/or for the advancement of any other project of

³[2009] 183 Taxman 462 [2010] 321 ITR 73 (Delhi)

general public utility. The Court also considered as to whether when one limb of the Government has granted a benefit whether another limb of the Government can ignore the same. In this regard, it referred to the decision in the case of *M.V.S. Kathirvelu Nadar Versus Commissioner of Agriculture Income Tax*⁴ wherein it was held that the different limbs of the Government should act in coordination. A word caution was also added that the Court is not laying down a broad proposition that every company registered under Section 25 of the Act would be automatically entitled for registration under Section 12AA of the Act. But registration under Section 25 of the Companies Act is undoubtedly a relevant factor to be noted while considering an application for registration under Section 12AA of the Act as registration under Section 25 of the Companies Act recognises the main objectives of the company as a non-profit organisation. As noted above, this aspect of the matter has not been dealt with by the tribunal which in our opinion ought to have been and if taken into consideration the decision should lean in favour of the assessee.

15. The next aspect is as to whether the assessee company was engaged in educational activities. The tribunal would hold that it is only RBI which is educating the public by establishing the museum and the assessee is only a contractor. This aspect was dealt with in *Thanthi Trust* and after referring to various decisions of the Hon'ble Supreme Court it was held that the word "education" occurring in Section 2(15) of the Act has to be given a wider meaning and not to restrict it to mean formal school education. In *Alembic*

⁴[1968] 68 ITR 786

*Chemical Works Company Limited Versus CIT*⁵ it was observed that it would be unrealistic to ignore the rapid advances in research in antibiotic medical microbiology and to attribute a degree of durability and permanence to the technical knowhow at any particular stage of in the fast-changing area of medical science could be unrealistic. Thus, if the term “education” as occurring of Section 215 (15) cannot be restricted to formal school or college education then dissemination of knowledge through a museum or a science park would undoubtedly fall within the meaning of “education” as occurring in Section 2 (15) of the Act. One other aspect which appears to have weighed in the minds of the tribunal is regards the surplus which has been generated by the assessee upon fulfilling the projects. Merely, because a certain amount has been generated as surplus cannot take away the activities of the assessee as not being charitable for the purpose of imparting education or for general public utility. As could be seen from the memorandum of association, the incumbent profit of the assessee has to be utilised for the promotion of the objects which have been set forth in the memorandum. No portion of the income or property shall be paid or transferred directly or indirectly by way of dividend, bonus etc. Therefore, the finding of the tribunal on this aspect is also not tenable. Thus, when the assessee has not been established for the purpose of earning profit and the income it generates has to be applied for promoting the objects as spelt out in the memorandum and no portion of the income can be directly or indirectly paid by way of dividend or bonus etc, it has to be necessarily held that the assessee is a not for profit organisation but public utility company and the activities of the company for which it has

⁵[1989] 43 Taxman 312/177 ITR 377

been established would undoubtedly show that the company by establishing knowledge parks, engaged in imparting education and also undertakes advancement of other aspects of general public utility to fall within the definition of charitable purpose as defined under Section 2 (15) of the Act. Thus, for all the above reasons we hold that the order passed by the tribunal calls for interference.

16. In the result the appeal filed by the assessee is allowed and the substantial questions of law are answered in favour of the assessee. No costs.

(T.S. SIVAGNANAM, J)

I agree.

(HIRANMAY BHATTACHARYYA, J)

(P.A- SACHIN)