

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.12.2020

PRONOUNCED ON: 18.02.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.29312 & 29315 of 2019 &
WMP.Nos.29115 & 29111 of 2019 & 2325 of 2020

WP.No.29312 of 2019

M/s. Sri Amirthakadeswaraswamy Devasthanam
Dharumapuram Adheenam
Represented by Manager,
R.Sethumanikkam

.. Petitioner

Vs.

- 1.The Assistant Commissioner of Income Tax Officer,
Circle-I, Kumbakonam Income Tax Officer, First Floor,
No.31, Krishnaswamy Road, Gandhi Nagar,
Kumbakonam-612001
- 2.The Income Tax Officer Exemptions Ward,
Room No.210, 2nd Floor,
No.44, Williams Road, Cantonment,
Trichy-620001
- 3.The Joint Commissioner of Income Tax (Exemptions),
Coimbatore Range at
No.121, M.G.Road, Nungambakkam,
Chennai-60034/Coimbatore

.. Respondents

WP.No.29315 of 2019

M/s.Sri Vaithiyanathaswamy Devasthanam
Dharumapuram Adheenam
Represented by Manager,

R.Sethumanikkam

...Petitioner

Vs.

1.The Assistant Commissioner of Income Tax Officer,
Circle-I, Kumbakonam Income Tax Officer, First Floor,
No.31, Krishnaswamy Road, Gandhi Nagar,
Kumbakonam-612001

2.The Income Tax Officer Exemptions Ward,
Room No.210, 2nd Floor,
No.44, Williams Road, Cantonment,
Trichy-620001

3.The Joint Commissioner of Income Tax (Exemptions),
Coimbatore Range at
No.121, M.G.Road, Nungambakkam,
Chennai-60034/Coimbatore

...Respondents

Prayer in W.P.No.29312 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling of the records of the 1st respondent contained in the impugned notice in No.ITBA/AIM/S/142(1)/2017-18/1007755052(1) dated 23.11.2017, issued u/s 142(1) of the Income Tax Act, 1961 along with proceedings in No.59/JCIT(E)/CBE/144A/AAKTS9055M/2019-20 dated 23.09.2019 issued by the 3rd respondent and quash the same as arbitrary, unjust and illegal and to consequently direct the 1st respondent to treat the income of the petitioner as exempt u/s 10(23BBA) of the Income Tax Act, 1961.

Prayer in W.P.No.29315 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling of the records of the 1st respondent contained in the impugned notice in No.ITBA/AIM/S/142(1)/2017-18/1007803352(1) dated 27.11.2017, issued u/s 142(1) of the Income Tax Act, 1961 along with proceedings in in F/No.JCIT(E)/CBE/144A/Scrutiny/2019-20 dated 18.09.2019 issued by the 3rd respondent and quash the same as arbitrary, unjust and illegal and to consequently direct

the 1st respondent to treat the income of the petitioner as exempt u/s 10(23BBA) of the Income Tax Act, 1961.

(In both WPs)

For Petitioners : Mr.Satyanarayanan (W.P.No.29312 of 2019)
Mr.R.Sivaraman (W.P.No.29315 of 2019)

Speaking Amicus curie for the HR&CE Department:

Mr.Karthikeyan,
Special Government Pleader
Mr.Sriram

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

COMMON ORDER

These writ petitions have been filed by the Sri Vaithiyanathaswamy and Sri Amirthakadeswaraswamy Devasthanams and raise important issues on the interpretation of Section 10(23BBA) of the Income Tax Act, 1961 (IT Act).

2. The impugned notice and order in W.P.No.29315 of 2019 have been issued to Sri Vaithiyanathaswamy Devasthanam, also known as the Velur Devasthanam, comprising the Vaitheeswaran Koil at Sirkazhi Taluk, Thanjavur, Sri Veeratteswara Swami Temple, Korkkai, Mayiladuthurai Taluk, Sri Kutramporutheeswarar Temple, Thalaignayiru, Mayiladuthurai Taluk, Sri Lakshmipureeswarar Temple, Thirunandriyur, Mayiladuthurai Taluk, Sri Maruthapureeswarar Temple, Maruvatthur, Sirkazhi Taluk, Sri Mariyamman

Temple, Sri Angalaparameswari Temple, Sri Ayyanar Temple, Sri Pidariyamman Temple, Sri Thirowbathaiyamman Temple, Vaitheeswaran koil, Sirkazhi Taluk, Sri Ayyanar Temple, Neikuppai, Sirkazhi Taluk, ('constituent temples') shrines in the aforesaid temple premises and endowments and charities. As for the petitioner in W.P.29312 of 2019, the Amirthakadeswaraswamy Devasthanam comprises the Sri Amirthakadeswara Swami Temple, Thirukkadaiyur, Tranqubar Taluk, Sri Veeratteswara Swami Temple, Parasaloor, Tranqubar Taluk, Sri Thuraikattum Vallalar Swami Temple, Vilanagar, Tranqubar Taluk, Sri Mariyamman Temple, Ottangadu Temple, Tranqubar Taluk, Sri Agneeswara Swami Temple, Udayavar Koil Pathu, (Panjakkai), Tranqubar Taluk, Sri Edirkaleswarar Temple, Thirukkadaiyur, Tranqubar Taluk and Sri Kathayamman Temple, Thirukkadaiyur, Tranqubar Taluk ('constituent temples') along with shrines for other deities and endowments. Both Devasthanams come under the supervision and management of the Dharmapuram Adheenam and are jointly referred to as 'devasthanams' and singly as 'devasthanam' for convenience and clarity. All the constituent temples are listed in terms of Section 45(3) of the Tamil Nadu Hindu Religious and Charitable Endowments Act 1959 (HR&CE Act).

3. The Dharmapuram Adheenam ('Adheenam') is a Saivite Mutt, based in Mayiladuthurai that oversees the administration and management of 27

temples dedicated to the worship of Lord Shiva and His consorts. The temples are grouped into smaller devasthanams under the overall management of the Adheenam, each devasthanam administering major and minor temples shrines, charities and endowments.

4. The devasthanams claim that they are regularly audited by the HR&CE Department and the collections from Hundis and donations, and income from endowments and other properties are properly accounted for, deposited in their bank accounts and utilised towards their objects.

5. While so, the devasthanams had made cash deposits of amounts of Rs.11,40,800/- and Rs.38,84,660/- (Sri Vaithiyanathaswamy Devasthanam) and Rs.60,21,054/- (Sri Amirthakadeswara Swami Devasthanam) for assessment year (AY) 2017-18 which came to the attention of the Income Tax Department. No returns of income in terms of the provisions of the IT Act had been filed by the devasthanams and notices under Section 142(1) thus came to be issued calling upon the devasthanams to file returns of income. The notices were followed up with reminders to which also, there was no compliance by the devasthanams. Thus, a communication dated 09.03.2018 came to be issued by the Principal Commissioner of Income Tax bringing to the notice of the devasthanams the extension of due date for filing of a ROI for AY 2017-18, upto 31.03.2018. He urged that the opportunity be utilised and returns of

income filed within the extended period. In response, the devasthanams, setting out the history of their constitution, explained that the deposits comprise voluntary donations made in specified bank notes (SBN) in their hundis. They claimed an exemption in terms of Section 10(23BBA) of the IT Act and prayed that the proposed proceedings for assessment be dropped. The petitioners also requested the refund of any amounts deducted as tax at source.

6. Communication dated 05.08.2019 was thereafter issued by R2, the Income Tax Officer (Exemption Ward), putting the petitioners to notice that the cash deposits made were proposed to be brought to tax as unaccounted cash credits in terms of Section 115 BBE of the IT Act and inviting the petitioners to submit objections to this proposal. The petitioners reiterated the claim of exemption under Section 10(23BBA) stating that they were under no obligation to file returns of income. As far as the cash deposits are concerned, the explanation given was that the offerings in SBN had been made by devotees in the hundis voluntarily during the period of demonetization, and such collections, according to the devasthanams, were not taxable. Several judgements have been relied upon in support of their claim for exemption.

7. On 09.09.2019, the Joint Commissioner of Income Tax (Exemptions)/R3 proposed to complete the assessments to the best of his judgment and, invoking the proviso to Section 144(a) of the IT Act issued show

cause notices, again putting the petitioners to notice that the cash deposits were proposed to be brought to tax. The petitioners reiterated the claim of exemption. On 18.09.2019 directions were issued by the Joint Commissioner/R3 to the Assessing Officer to bring to tax the unexplained cash credits and also initiate proceedings for the levy of penalty. This is an internal communication between R3 and R2, a copy of which was provided to the petitioners by R2, and this, along with initial notices dated 23.11.2017 (Sri Amirthakadeswara Swamy devasthanam) and 27.11.2017 (Sri Vaithyanathaswamy devasthanam) issued by R1, constitute the subject matter of challenge in these writ petitions.

8. In support of their claim for exemption, the petitioners have relied on the following judgments:

i) *Sri La Subramanya Desiga Gnanasambada Pandarasannadhi, Trustee of Sri Vaidyanathaswami Temple Vs. State of Madras* (1965) 2 SCR 934 : AIR 1965 SC 1683

ii) *Commissioner of Income-tax, Kota v. Bade Mathureshji Temple Board* (2018) 99 taxmann.com 452 (Rajasthan)

iii) *Shri Jagannath Temple Managing Committee, Puri Vs. Commissioner of Income-tax, Bhubaneswar and Ors* (2007 SCC OnLine Ori 43)

iv) *Payyanur Sree Subrahmanya Swami Temple Vs. Income Tax Officer & others, High Court of Kerala* in W.P.(c).No.8524 of 2019

v) *Arulmigu Vaithyanathaswamy Devasthanam vs. The Hindu Religious and Charitable Endowments & others* (2012) 2 CTC 218.

vi) *Ramiengar alias Ramanuja Chariyar and 2 others Vs. Gnanasambanda Pandarasannada and others* (Regular Appeal No.12 of 1867).

vii) *S.V.Ramaswamy Poosari and Anr. Vs. Deputy Commissioner, Hindu Religious and Charitable Endowments and Ors.* (1972 3 CTCOL 909).

9. The impugned orders in the case of Sri Vaithyanathaswamy Devasthanam are extracted hereinbelow as being illustrative of the orders passed in both cases, for completion and clarity:

27.11.2017

Notice Under Clause(i), Sub-Section (1) of Section 142 of the Income-Tax Act, 1961

Sir/Madam,

In connection with assessment for assessment year 2017-18, you are required to prepare a true and correct return of your income in respect of which you are assessable under the Income-tax Act, 1961 (Act), during the previous year relevant to the assessment year, mentioned above.

The said return of income should be in appropriate form as prescribed in Rule 12 of the Income Tax Rules, 1962 and duly verified in accordance with provisions of section 140 of the Act.

The said return of income is required to be furnished as per the conditions and manner prescribed in Rule 12 of Income-tax Rules, 1962, on or before 27/12/2017.

*P.VIJAIDEEPAN
CIRCLE 1 KUMBAKONAM*

GOVERNMENT OF INDIA
INCOME TAX DEPARTMENT
OFFICE OF THE JOINT COMMISSIONER OF INCOME TAX
(EXEMPTIONS)

*Room no.308, 3rd Floor, Aannexue Building, Aayakar Bhawan, No.121,
M.G.Road,
Nungambakkam, Chennai-34/Coimbatore*

*F.No.JCIT(E)/BCE/144A/Scrutiny/2019-20
To,
The Income Tax Officer (Exemptions)*

Date-18/09/2019

Trichy.

Sir,

*Sub: Directions u/s 144A-in the case of Sri Vaithiyanatha Swamy
Devasthanam Vaitheeswaran Koil-A.Y.2017-18-reg.*

Ref: 1. Assessee's letter dated 10.08.2019

2. Instructions No.3/2017 dt.21.02.2017

3. Instruction No.4/2017 dt.31.03.2017

4. SOP dated 15.11.2017

5. SOP dated 05/03/2019

6. Internal guidelines dated 13.06.2019

7. Checklist dated 09.08.2019

Please refer to the above subject and references cited above.

1. During demonetization period 09/11/2016 to 31.12.2016, the trust had made cash deposits of Rs.28,57,782/-.

2. It is seen from the e-filing portal that the trust has not filed any Return of Income for the AY 2017-18 within the due date u/s 139 (1) of Income Tax Act, 1961.

3. The assessee trust was also asked to file return of income notice u/s 142(1) and it has failed to file return of income before the time allowed.

4. Further assessee trust also failed to file audit report in form no.10B mandatory for claiming exemption u/s.11 & 12.

5. It was stated before Assessing Officer vide written submission dated 10.08.2019 by the assessee trust that income is exempted u/s 10(23BBA) of Income Tax Act and not liable to file the return of income and requested to drop the proceedings initiated/s. 144. The assessee's AR Shri K.Vishva, CA has appeared before me on 17.09.2019 and the case was discussed on the lines of submission made before Assessing Officer.

6. It was reported by the AO that the claim of exemption u/s.10(23BBA) is not entitled for the assessee trust. In this regard the plain reading of explanatory note in the Finance Act, 1979 (21 of 1979) for insertion of clause 23BBA of sec.10 of Income Tax Act clearly mention that:

'Exemption charitable purposes'. (deleted in the interests of space, as the explanatory memorandum is extracted elsewhere in this order)

Hence as per the proviso to above section the assessee trust is not entitled for exemption of income u/s. 10 (23BBA) as it has not established that the assessee trust was set up by the State Act of Tamilnadu. It is only being managed by the Tamilnadu State Body, HR&CE.

7. In the absence of the return of income for AY 2017-18, Audit report in form 10-B even it has registration u/s 12AA of the Act, the assessee trust is not entitled to claim exemption under Section 11 of the IT Act as per clause (b) to sub section (1) of Sec 12A and therefore the trust has to be treated under AOP Status.

8. The AO is directed to verify the total cash credits reflected in the bank accounts with regular books of accounts to verify an unexplained cash

credits u/s 68 or unexplained money u/s. 69A of the IT Act, 1961, and also verify any inadmissible under AOP status for finalizing the assessment in the lines as per SOPs issued by the CBDT time to time (as mentioned under reference). Necessary penalty proceedings may be initiated. Draft Assessment order may be sent to this office.

10. The counter filed by the respondents adopts the stand that the provisions of Section 10(23BBA) are not attracted to the facts and circumstances of the petitioner devasthanams as, according to them, the constituent temples function under the aegis of the HR&CE Act and the 'body' or 'authority' as referred to in Section 10(23BBA) would be the HR&CE department only with exemption only available to it. Moreover, the proviso to Section 10(23BBA) specifically excludes temples and other religious institutions functioning under the management of the 'body' or 'authority' from the scope of exemption, stating that they fall within the ambit of taxability. Thus, in summation, exemption under Section 10(23BBA) can be claimed only by the HR&CE department and not by the petitioners. If at all the devasthanams believed that they were entitled to an exemption, such exemption can only be in line with the provisions of Section 11 of the Act, subject to all compliances set out thereunder.

11. That apart, the challenge in the writ petitions is to proceedings for assessment that are in line with the provisions of the IT Act. No case has been made to establish how such proceedings are bad in law and it is incumbent

upon the petitioners to appear before the authorities and explain their stand.

The writ petitions, according to the revenue, are devoid of merits on all fronts, liable to be dismissed in limine.

12. The provisions of Section 10(23BBA) of the IT Act are extracted below:

Section 10(23BBA) any income of any body or authority (whether or not a body corporate or corporation sole) established, constituted or appointed by or under any Central, State or Provincial Act which provides for the administration of any one or more of the following, that is to say, public religious or charitable trusts or endowments (including maths, temples, gurdwaras, wakfs, churches, synagogues, agiaries or other place of public religious worship) or societies for religious or charitable purposes registered as such under the Societies Registration Act, 1860 (21 of 1860), or any other law for the time being in force.

Provided that nothing in this clause shall be construed to exempt from tax the income of any trust, endowment or society referred to therein;]

13. Sub-clause 10(23BBA) was inserted by Finance Act, 1979 with retrospective effect from 01.04.1962. At the time of insertion, the memorandum explaining its objects states as follows:

Exemption from income-tax in the case of statutory bodies or authorities for the administration of public religious or charitable trusts or endowments, etc.

Section 9 of the Wakfs Act, 1954 provides for the establishment of the Board of Wakfs for each State for the general superintendence of all wakfs in that State. Section 8A of the Wakfs Act provides for the establishment of the Central Wakf Council for the purpose of advising the Central Government on matters concerning the working of State Wakf Boards and due administration of the wakfs. In the cases of public religious or charitable trusts or endowments of other communities, there are similar bodies set up under enactments in force in different States. These bodies or authorities set up by or under the Central, State or Provincial Acts are entrusted with the administration of public religious or charitable trusts within their jurisdiction. These public religious or charitable trusts also cover

temples, maths, wakfs, churches, synagogues, agiaries and other places of public religious worship, other religious and charitable endowments, as also societies formed for religious or charitable purposes under the Societies Registration Act, 1860. Such bodies or authorities are at times in receipt of income during the course of administration of such public religious or charitable trusts or institutions. Since these bodies or authorities are not engaged in any commercial activity, it is proposed to insert a new clause (23BBA) in section 10 in order to grant exemption in respect of income arising to anybody or authority established, constituted or appointed under any enactment for the administration of such public religious or charitable trusts or endowments or societies for religious or charitable purposes. It is however, being made clear that the exemption would not apply to the income of such trust, endowment or society.

70. The proposed provision will take effect retrospectively from 1st April, 1962 i.e. from the commencement of the Income-tax Act, 1961.

14. The grant of exemption is with specific reference to the hierarchy under the Wakf Act that has constituted Board of Wakfs in each State for the general superintendence of all Wakfs in that State. Overseeing them all is the Central Wakf Council, which also advises the Central Government on all matters concerning the working of the State Wakf Boards. The existence of similar hierarchies in other communities has been recognised.

15. An exemption was thus extended to those bodies or authorities set up under a Central, State or Provincial Act, that are entrusted with the administration of public religious and charitable trusts and endowments that include within their ambit temples, maths, wakfs, churches, synagogues, agiaries and other places of public religious worship and religious and

charitable endowments as also societies formed under the Societies Registration Act for dispensation of religious and charitable purposes.

16. Since the overseeing authorities are constituted only to administer or manage the affairs of the religious and charitable endowments vested in them, and do not engage in any commercial activity, it was felt that any income that may arise or accrue to them would not bear the nature of taxable income for the purposes of the Income Tax Act. Thus, the body/authority constituted under the Central, State or Provincial Act, and vested with the administration of a public religious or charitable trust encompassing places of worship, stood exempted from the application of the IT Act. It was made clear in the proviso to Section 10(23BBA) that the exemption did not extend to the constituents of that body/authority whose income is liable to tax, in accordance with law.

17. A three tier structure is envisaged, a Central, State or Provincial enactment (tier (i)), a body or authority set up under aforesaid Central, State or Provincial enactment in the nature of a public religious or charitable trust (tier (ii)) and temples, maths, wakfs, churches, synagogues, agiaries and other places of public religious worship, religious and charitable endowments and societies (tier (iii)). The grant of exemption is conditional upon the existence of the structure as contemplated above and is directed towards the entity in the second

tier, explicitly excluding all places of public religious worship and charities constituted under them, from the benefit of exemption.

18. This understanding of Section 10(23BBA) is accepted by all parties before me. The question that remains is where the petitioner Devasthanams fall within the aforesaid structure and such determination would be critical to answer the question of their taxability.

19. The Sri Vaithiyanathaswamy Devasthanam was under the supervision and administration of the British till, in 1842, its management was handed over to the Pandarasannadhi of Dharmapuram Adheenam, who has been managing the same since then, through a Kattalai Thambiran. The handing over is pursuant to the enactment of the Religious Endowments Act, 1863.

20. Original Suit (O.S.No.10 of 1911) was filed by Chidambaranatha Tambiran, the then Kattalai Thambiran, seeking removal of the then Pandara Sannidhi of the Dharmapuram Adheenam from the trusteeship of Vaitheeswaran Koil, for appointment of new trustees and for framing of a scheme. A scheme came to be framed by the subordinate Judge of Mayavaram that was challenged in Appeal Suit (A.S.No.181 of 2017). As per the scheme, the administration of the devasthanam vested in the hands of the Kattalai Thambiran appointed by the Pandarasannadhi, assisted by a treasurer, a shroff and an auctioneer,

appointed by Court in rotation every three years. The scheme survived the Madras Hindu Religious Endowments Act, 1926.

21. The Madras Hindu Religious and Charitable Endowments Act, 1951 came into force thereafter and the Commissioner sought amendment of the Scheme under Section 62(3)(a) of that Act alleging various acts of commission and omission by the then trustee and his subordinates in the management of the devasthanam. The Commissioner averred that the interests of the devasthanam had not been secured and that the scheme ought to be modified and machinery set up to ensure proper administration of the devasthanam. Accordingly, the Commissioner sought the substitution of an Executive Officer in the place of the Kattalai Thambiran and treasurer. This was contested by the Pandarasannadhi and the contest was accepted by the Subordinate Judge. An appeal was filed to the High Court which did not disturb any of the findings of the lower Court, despite which the Court modified the Scheme and appointed an Executive Officer, as against which an appeal was filed to the Supreme Court. The Supreme Court in the judgment in *Sri La Subramanya Desiga Gnanasambada Pandarasannadhi, Trustee of Sri Vaidyanathaswami Temple* (supra) para 6 of the judgment (reported in the SCC online report), has extracted the scheme in full. Clauses 1 to 3 are relevant and read as follow:

1. The Temple of Sri Vaithianathaswami at Vaitheeswarankoil, Shiyali Taluk, the shrines and minor temples attached thereto, and charities and endowments thereof, together comprise the “Velur Devasthanam” and it shall be governed with the provisions of Act 19 of 1951 and the rules made thereunder.

2. The properties, movables and immovables, belonging to the Devasthanam that may hereafter be acquired by the Devasthanam shall vest in the deity of Vaithianathaswami.

3. The administration of the Devasthanam and its properties shall vest in Pandarasannadhi at the Dharmapuram Adhinam for the time being, who shall be the “Trustee” of the Devasthanam.

22. The scheme sets out a framework for governance and administration of the assets and receipts of the devasthanam and constituent temples by the Pandarasannadhi, who was named as trustee. Suffice it to say that the Supreme Court set aside the appointment of the Executive Officer confirming the scheme as framed originally. Thus, the temples, endowments and charities comprising the Vaithianathaswami or Velur Devasthanam continue to be administered and managed till date by a Kattalai Thambiran appointed periodically by the Pandarasannadhi in his capacity as trustee under a scheme of administration framed in a scheme suit filed under Section 92 of the Civil Procedure Code 1908 in line with the provisions of the Madras Hindu Religious & Charitable Endowment Act, 1951 (‘1951 Act’) and its precursor enactments, in the year 1919.

23. In light of the above facts, the requirements of Section 10(23BBA) appear to be satisfied in this case (i) the body or authority being the Devasthanam, (ii) the required enactments being the Civil Procedure Code 1909 (Central) and the Madras Hindu Religious & Charitable Endowment Act, 1951 (State) and precursor State enactments (iii) the devasthanam holding within its fold several constituent temples as detailed in paragraph 2 of this order.

24. I had called for the records in A.S.No.181 of 1917 simply to verify whether there were any other documents on file that might facilitate proper understanding of the matter and, I must confess, was pleasantly surprised when the Registry of the Original side did procure some of the documents in A.S.No.181 of 1917, (Index, Memorandum of Appeal and Judgment) though not all. It was a pleasure to hold and peruse century old documents and I commend the efforts of the Registry in book-keeping with the fond hope of improvements in the methodology and efficacy thereof in times to come.

25. Coming to Sri Amirthakadeswaraswamy Devasthanam, there are differences in the history of the management over the years, when compared with the Vaithiyanathaswamy Devasthanam. A certificate issued by the Joint Commissioner, HR&CE Department (date is unclear) states that this devasthanam was being administered under the trusteeship of the Srilasri

Pandarasanadhi of Dharmapuram Adheenakartar appointed in 1841 by the East India Company and his appointment has been accepted without challenge till date, despite the enactment of the Religious Endowment Act, 1863, Madras Hindu Religious Endowment Act, 1926, The Madras HR&CE Act, 1951 and TN HR&CE Act, 1959 in the intervening periods.

26. My attention is drawn to the 1863 enactment, specifically Section 6 thereof, stipulating that the rights, powers and responsibilities of every trustee or manager to whom a religious establishment had been handed over, was to be deemed to have enured always: that is to say that Section 6 deemed the Dharmapura Adheenam as being the trustee of the temple in perpetuity and from earlier times and all forms of authority exerted earlier over that temple stood determined and repealed with the coming into force of the 1863 enactment on 10.03.1863. The statement of objects of the 1863 Act states that it had been enacted '*to enable the Government to divest itself of the management of the religious endowments*'. A specific argument advanced is that the use of the word 'establish' in Section 10(23BBA) of the IT Act, does not necessarily mean only 'created' or 'set up' and should be seen to have a much wider meaning, which is 'to give legal or official form or shape to an entity'. The judgment of the Supreme Court in *R.C. Mitter & Sons vs. Commissioner of*

Income-tax (1959 36 ITR 194 SC) and of the Delhi High Court in *Finite Infratech* (specifically paragraphs 25, 26 & 27) are relied upon in this regard.

27. Reference is made to *Ramiengar alias Ramanuja Chariyar* (supra) wherein the history relating to temples in Thanjavur and their endowments has been referred to in detail. The Court noticed that proper appropriation of the endowments of Hindu and Mohammedan temples and religious establishments and the preservation of the structures and management of their affairs were exercised by officers of the local Government indiscriminately prior to the period before they were assumed by the Government. It was in 1817 that the management of religious establishments and their endowments was made a legal obligation on the Board of revenue and their local agents by virtue of Regulation VII of that year. Act 20 of 1863 also states in Sections 3 and 4 thereof that the two classes of temples and religious establishments referred therein were at the time of its passing subject to the control of the Board of revenue and their local agents.

28. Reference is made to *S.Govinda Menon Vs. The Union of India and Another* (1967 2 SCR 566) that considered certain allegations of misconduct levelled upon the appellant, S.Govind Menon in the discharge of his duties as Commissioner, Hindu Religious and Charitable Endowments. The contention of the appellant that he had a separate legal personality and was exempt from

disciplinary proceedings for any act of omission or commission in his capacity as Commissioner, was rejected. To similar purpose is a decision of the Madras High Court in the case of *S.V.Ramaswamy Poosari* (supra).

29. The cases cited at paragraphs 26, 27 and 28 above are meant to buttress the case of the *Amirthakadeswaraswamy Devasthanam* to show continuity in the management of the Devasthanam from time immemorial till date. To sum up, the argument of the *Amirthakadeswaraswamy Devasthanam*, as I understand it, is that the *Pandarasannadhi* should be deemed to have been appointed under the 1863 Religious Endowment Act which is a Central Act.

30. In the case of *Bade Mathuresh Ji Temple Board* (supra) an appeal had been filed by the Revenue challenging the grant of exemption to the *Bade Mathuresh Ji Temple* on the ground that the Board had been created under Section 92 of the CPC but had not been registered. At para 4, a Division Bench of the Rajasthan High Court noticed that the Tribunal had considered that the Board had been created under the CPC, a Central Act and the Temple was being managed by the Board. In the hierarchy established in line with the provisions of 10(23BBA), the Tribunal dismissed the revenue's appeal as against which a statutory appeal had been filed before the Rajasthan High Court which also dismissed the same.

31. A Division Bench of the Orissa High Court in *Jagannath Temple Managing Committee* (supra) considered a similar issue relating to the claim for exemption by the Managing Committee constituted under the provisions of the Sri Jagannath Temple Act of 1955. Thus, the hierarchy as required under Section 10(23BBA) had been clearly established in that case satisfying the parameters of the exemption provision. In that case, the Bench refers to Circular 4 of 2002 dated 16.07.2002 (256 ITR (Statutes) 22), wherein the Central Board of Direct Taxes has, in the context of Section 10(23BBA), stated that where an entity/authority/board/body by whatever name called, has been granted exemption under Section 10(23BBA), there is no necessity for it to file a statutory return of income and no requirement for deduction of tax at source from income earned by them.

32. In the case of *Payyanur Sri Subramaniam Swami Temple* (supra), a learned Single Judge of the Kerala High Court answered the claim of that temple to exemption under Section 10(23BBA) positively, on the ground that the temple was constituted under the 1951 Act. The matter was decided on a concession by the Income Tax Department, recorded by the Court at paragraph 6, the court then issuing a mandamus for refund of the tax collected. There is no discussion on the interpretation of Section 10(23BBA) itself.

33. The Vaithyanathaswamy Devasthanam had questioned the fixation of salary payable to the employees of the devasthanam contending that the Government had no jurisdiction to fix the salaries of its employees. The matter was held adverse to the petitioner in a decision in 2012 2 CTC 218, *Arulmighu Vaithyanathaswamy Devasthanam, represented by its Hereditary Trustee* (supra). This case does not advance the case of either party before me.

34. The argument of the Sri Amirthakadeswaraswamy Devasthanam to the effect that it should be deemed to have been constituted under the 1863 Central Act is, in my view, not liable to be accepted as the link is too circuitous and indirect. While one could take a purposive view on the meaning of 'established, constituted or appointed' in Section 10(23BBA), the object and spirit of the provision is to bifurcate the managerial entity from the temple/religious establishment that it manages, in order that the roles, functions and two income-generating apparatus, are clearly demarcated. This is not possible in the absence of a scheme as there is no clarity on the bifurcation of assets or functions. The intention of the exemption under Section 10(23BBA) is to benefit only those entities whose role is managerial or administrative and not commercial, engaged with the purpose of income generation.

35. In the case of the Sri Vaithyanathaswamy devasthanam, this cleavage emanates from the clauses in the scheme as extracted in the judgment of the

Supreme Court (see para 21 of this order). The role of the Pandara Sannidhi is as a trustee, and that of the Kattalai Thambiran is as a Manager. All incomes earned by the constituent temples vest in the respective deities. Thus, the apparent division of roles enables the grant of exemption to the managerial entity leaving the constituent temples to bear the brunt of taxation, subject to any claim for exemption that may be made by the latter, to be considered in accordance with law. This enabling feature is absent in the case of the Sri Amithakadeswaraswamy devasthanam and for this reason, I reject its arguments.

36. As regards the argument of the revenue to the effect that 'body' or 'authority' referred to in Section 10 (23BBA) would be the HR&CE Board, this argument is misconceived as the Hindu Religious and Charitable Endowments Department constitutes an arm of the State Government which is, in any event, not liable to tax. The reference in Section 10 (23BBA) to 'body' or 'authority' cannot thus be the HR&CE Department but an independent authority constituted under a Central, State or Provincial Act. The argument that the Central Wakf Board is equitable to the HR&CE department is rejected. I draw support in this regard from a note on the background of the Department, contained in its website, extracted below:

The temples have been under the superintendence and control of the Government even during days of the East India Company.

The Hindu Temples have been in possession of thousands of Acres of lands since ancient times. Even during the times of East India Company, complaints were received regarding maladministration of these institutions. The general public lodged complaints with the kings then and East India Company.

In the meanwhile, the Madras regulation 1817 was enacted. This Act provided for monitoring whether the grants and endowments to temples were properly utilized or diverted for the welfare of private individuals. The Board was empowered to carry out this exercise. Due to this, thousands of temples were brought under the control of the Government.

In 1858, the Indian Government's Administration was transferred to the British crown directly from the hands of the East India Company. It was required for the British Government to win the confidence of the people and to reduce their ill will. Hence, the British Government assured that it will not interfere in the religious matters. Hence, the persons who were managing the affairs of the temples and their properties continue to enjoy them without any hindrance.

Even though, large number of complaints was received, the British Government kept aloof from the temple administration since they did not understand the complexity of the Indian society and the temple activities entwined with it. At the same time, the people continued to lodge complaints regarding mismanagement of valuable assets like icons, jewels, etc. and encroachment of properties.

When the Raja of Panagal, Thiru. Ramaraya Ningar took charge as the Chief Minister of the Madras Presidency; he tried to bring all the temples under the control of the Government. He proposed for enactment of "Hindu Paripalanam" Act in 1922. He explained the intricacies of the proposed bill to the then Viceroy, Lord Irwin, and got his approval. Finally, in 1927 the Hindu Religious and Charitable Endowments Board was constituted. The Board was vested with the power to control and supervise the administration of temple. Similarly, the power to appoint officials to temples for proper administration was also vested with the Board.

Subsequently to streamline the administration of the Board, a special officer was appointed in the year 1940.

It was suggested in 1942 by the non-official committee under the chairmanship of a retired High Court Judge that it will be proper if the Government undertakes administration directly instead of the Board. It was accepted and the Hindu Religious and Charitable Endowments Act, 1951 was promulgated.

Several amendments were brought out and the Government took over the administration of temples and after several detailed amendments were carried out, the Act XXII of 1959 came into force from 1st January 1960. Based on this

Act, a separate Government Department was created for the Administration of temples.

(underlining is for emphasis)

37. W.P.No.29315 of 2019 relating to Vaithyanathaswamy Devasthanam is allowed, but it is made clear that the individual constituent temples, endowments and charities are liable to tax in the light of the proviso to Section 10(23BBA). It is open to the income-tax authorities to proceed accordingly qua the constituents of the devasthanam, in accordance with law. W.P.No.29312 of 2019 relating to Sri Amirthakadeswarasamy Devasthanam is dismissed.

38. I place on record my appreciation of the assistance rendered by Mr.Karthikeyan and Mr.Sriram in my understanding of the issues in question.

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non Speaking Order

WEB COPY

To

- 1.The Assistant Commissioner of Income Tax Officer,
Circle-I, Kumbakonam Income Tax Officer, First Floor,
No.31, Krishnaswamy Road, Gandhi Nagar,
Kumbakonam-612001
- 2.The Income Tax Officer Exemptions Ward,
Room No.210, 2nd Floor,
No.44, Williams Road, Cantonment,
Trichy-620001
- 3.The Joint Commissioner of Income Tax (Exemptions),
Coimbatore Range at
No.121, M.G.Road, Nungambakkam,
Chennai-60034/Coimbatore



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Dr.ANITA SUMANTH, J.

ska/vs/sl



**W.P. Nos.29312 & 29315 of 2019 &
WMP.Nos.29115 & 29111 of 2019 & 2325 of 2020**

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