

**IN THE HIGH COURT OF KERALA  
AT ERNAKULAM**

**ITA.No. 1486 of 2009**

**COMMISSIONER OF INCOME TAX**

**Vs**

**A Y BROADCAST FOUNDATION**

**C N Ramachanran Nair and B P Ray, JJ**

**Dated: March 22, 2011**

**JUDGEMENT**

**Per: Ramachandran Nair:**

This is an Appeal filed by the Revenue challenging the order of the Income Tax Appellate Tribunal directing the Commissioner of Income Tax to grant registration to the respondent Company as a Charitable Institution under Section 12A of the Income Tax Act (hereinafter referred to as the Act for short).

2. We have heard learned Senior Counsel appearing for the appellant Revenue and Shri.A.Kumar learned counsel appearing for the respondent. We have also gone through the orders of the Commissioner issued on the application filed by the assessee under Section 12AA of the Act and the orders of the Tribunal allowing the claim and have also considered the argument note submitted by the assessee's counsel.

3. The assessee is a Company registered under Section 25 of the Companies Act. According to the assessee, it is formed for the purpose of advancement of the object of general public utility, which is one of the charitable purposes covered by Section 2(15) of the Act and so much so it is entitled for registration as "charitable institution" under Section 12A of the Act. In this regard, an application under Section 12AA was submitted before the Commissioner of Income Tax on 27/03/2006 which is for the assessment year 2006-07. However while considering the application, the Commissioner found that the assessee is not entitled to registration under the head "charitable institution" for the following reasons: -

(1) The benefit of the foundation, according to the main object clause, will go to the members of the foundation.

(2) The activities covered by the object clause are essentially business activities which are not intended to serve any benefit for the public generally and so much so it is not formed for advancement of object of any general public utility.

(3) Since the assessee is formed for starting telecasting and broad casting of television and radio programmes respectively, benefits if any of the same are not confined to residents of India and so much so, the activities outside the territories of the country will disentitle the assessee from getting the benefit of exemption because under Section 11 of the Act, exemption is confined to charitable activities carried on in India.

4. On the first objection, the assessee contended before the Commissioner of Income Tax that it made an amendment in the Memorandum and Articles of Association deleting the words "for benefit of the members", and so much so, this clause in the main object should not be a ground for denying the benefit of registration as charitable institution. However, before the Commissioner the assessee had not produced any document or evidence in support of the amendment made to the object clause as stated above. The assessee further contended before the Commissioner that it is specifically provided in the Memorandum and Articles of Association of the Company that it will not declare any dividend to its members, which is a statutory requirement for getting registration under Section 25 of the Companies Act, which the assessee has. So far as the extra territorial operation of the assessee is concerned, the assessee explained before the Commissioner that it has not started operation and it will confine its operations of telecasting and broadcasting of television and radio programmes only within India. The assessee, however, did not explain as to what is the scope of the business it proposes to take up under the main sub clause, namely "to act as an agent, broker, liasioner, introducer etc."

5. So far as the charitable object of the Company by way of advancement of object of general public utility is concerned, the assessee contended before the Commissioner that the television and radio programmes like, documentary, telefilm, serial etc. are proposed to be made and telecasting and broadcasting of the same are intended for promoting social and spiritual upliftment of general public. Even though the Commissioner raised an objection that the general public are not beneficiaries under Memorandum of Association of the Company the assessee contended that benefit that goes to the public from the assessee Company is that programmes to be telecast and broadcast by them will help for spiritual and social upliftment of the public. The Commissioner after considering details of the contentions raised by the assessee, rejected the claim stating that the assessee is not a charitable institution established for advancement of any object of any general public utility.

6. The assessee filed appeal before the Tribunal raising the same contentions raised before the Commissioner. The Tribunal accepted the assessee's contention that the broadcasting and telecasting activities will improve social and spiritual upliftment of general public. So far as the objection raised by the Commissioner on the benefits going to the members of the Company and also about the extra territorial operations of the assessee i.e. telecasting and broadcasting of programmes outside India are concerned, the Tribunal held that these expressions are only "innocuous expressions" in the object clause and therefore the Tribunal allowed the appeal. It is against this order of the Tribunal, the Revenue has filed this appeal before us.

7. During hearing of the appeal, we felt that since the assessee was registered 5 years back it would be beneficial to find out from the assessee as well as from the Department as to whether the assessee was engaged in any charitable activity

including production of television and radio programmes and telecasting and broadcasting of such programmes, for which the assessee is formed. Both sides agreed that the assessee is a complete non-starter in as much as even as on today the assessee has not done any activity pursuant to the object clause contained in the Memorandum and Article of Association of the company. In other words, the assessee for the last 5 years is a paper Company which has not been able to accomplish any of its objects assuming such objects are charitable in nature. In any case, since registration as a charitable institution was sought for the assessment year 2006-07, the issue before us is whether the Tribunal was justified in granting registration overruling the findings of the Commissioner of Income Tax. We have to necessarily consider the object clause with reference to which we have to decide whether the assessee is entitled to be treated as a Company formed for advancement of the object of general public utility, which entitles the assessee for registration as a charitable institution. The main object of the Company as stated in Clause III of the Memorandum of Association of the Company is as follows: -

*"111.(A). The main object of the company to be pursued by the Company on its incorporation are:*

*1. To carry on in India and elsewhere without profit motive and for the benefit of the members of this foundation, the activity to promote, project, participate, prepare, develop, shot, expose, edit, exhibit, mix, remix, display, print, reprint, convert, manipulate, duplicate, finish, buy, sell, run, import, export, acquire, broadcast, distribution and act as agent, types broker, liasioner, introducer, proprietor of all of television, radio programmes, video communication system including video serials, telefilms, documentaries, educational and training films for promoting human and spiritual values aimed at social and spiritual upliftment of general public or sections thereof through company's own or hired channels by satellite uplink, telecommunication, cable, internet, satellite network and / or terrestrial network and / or any other means of broadcasting and multimedia communication using all technological, innovations / methodologies subject to Rules and Regulations prescribed by the Government from time to time."*

8. Admittedly, the assessee is a Company registered under Section 25 of the Companies Act and so much so, there is no provision for declaration of dividend to the members of the Company. What is stated in one of the object clauses is that the entire income of the Company will be utilized for the purpose for which it is formed i.e. to carry on the activities stated in the main clause, which is production of television and radio programmes for the purpose of telecasting and broadcasting through assessee's own network or through network hired by them. We have closely examined each and every object stated in the main object clause. Generally, the activities referred to therein i.e. production of television and radio programmes and telecasting and broadcasting of the same are commercial activities. Further the object clause provided for the assessee to act as an agent, broker, liasioner, introducer etc., which are purely commercial activities intended to make profit. Since the assessee is not holding any business in charity or distributing any surplus for charitable purposes, the question to be considered is whether the carrying on of the activities referred to in the object clause by itself constitute advancement of any object of general public utility within the meaning of Section 2 (15) of the Act. Learned counsel appearing for the assessee specifically referred to the purpose of the telecasting and broadcasting of the programmes as stated in the Memorandum and Articles of Association i.e. social and spiritual upliftment of general public. In our

view, every television or radio programme to some extent promotes social, spiritual and intellectual upliftment of the people in as much as it imparts knowledge and helps to develop one's personality. In fact, it is not uncommon that several television channels and radio stations are occasionally telecasting and broadcasting religious, spiritual and other programmes as well. If the assessee's contention that telecasting and broadcasting of various television and radio programmes will help spiritual and social development is accepted, then probably every television company and radio company whether it is engaged in business or not is entitled to registration as a charitable institution because every programme has some value for human development either social or spiritual. While learned counsel for the Revenue has relied on the decisions of the Supreme Court in *East India Industries (Madras) Private Limited v. Commissioner of Income Tax, Madras*, reported in 1967 (Vol.LXV) ITR 611, and in *U.P.Forest Corporation and Another v. Deputy Commissioner of Income Tax*, reported in 2008 (297) ITR 1 (SC), the assessee's counsel has relied on the decision of the Supreme Court in *Director of Income Tax v. Bharat Diamond Bourse*, reported in 2003 (179) CTR (SC) 225 and the decision of the Privy Council in the case of *The Trustees of the Tribune, In Re*, reported in 1939 (7) ITR 415 (PC) and the decision of the Rajasthan High Court in *Umaid Charitable Trust v. Commissioner of Income Tax*, reported in 1980 (15) CTR (Raj) 217. Other decisions cited by the assessee's counsel are in *Dharmoposhanam Co. v. CIT* reported in 1978 114 ITR 463(SC), and in *Sole Trustee Loka Shikishna Trust v. CIT*, reported in 101 ITR 234 and the decision of the Supreme Court in *Umaid Charitable Trust v. CIT*, reported in 125 ITR 55.

9. After hearing both sides and after going through the object clause we are not persuaded to uphold the order of the Tribunal because in our view, the activities of the assessee stated above i.e. undertaking to telecast and broadcast programmes and to act as an agent, broker, liasioner etc. will not make the object clause charitable. These are purely commercial activities not exclusively intended for advancement of any object of general public utility, no matter as already held by us every publication, telecasting or broadcasting may lead to imparting some knowledge helping human development.

10. So far as other ground on which the Commissioner declined the application such as the profit goes to the members of the foundation in terms of the object clause contained in the Memorandum and Articles of Association is concerned, the assessee's counsel produced documents showing that an amendment is made to the object clause deleting the above provision. However, it is seen from the documents produced that such amendment is certified by the Registrar of Companies only on 01/12/2006. Obviously the assessee has not produced the amendment made to the Memorandum of Association of the Company neither before the Commissioner nor before the Tribunal. In any case, the application for registration has to be considered with reference to the object of the assessee available as on the end of the previous year during which registration is sought under Section 12A of the Act and such amendment probably helps for seeking registration in later years. Of course the assessee's counsel justified the Tribunal's observation that the statement in the Memorandum and Articles of Association i.e. benefit goes to the members of the foundation is innocuous, by stating that the clause should be read in line with other clauses in the Articles of Association which prohibits declaration of dividend to the members of the assessee Company. Of course there is an apparent conflict between these two provisions and probably the assessee did not intend to give away the benefit of the Company to it's members. However, the assessee has not explained as to why the object clause specifically provides that the benefit of the foundation goes

to the members in a narrow sense. This clause can be interpreted to mean that production of programmes for telecasting and broadcasting is for the benefit of members. In any case, since we have already found that the object is not charitable in nature, there is no need for us to consider whether retention of the above provision in the object clause providing that benefits of the assessee go to the members, which was there in the previous year, has relevance at all.

11. So far as the extra territorial operation and activities of the Company as evident from the object clause is concerned, the assessee's counsel also submitted that telecasting and broadcasting will be limited within India. We do not know whether it is physically or practically possible for the assessee to limit broadcasting and telecasting of programmes within the limit of a country. In any case, there is no significance in this, because the assessee has admitted that it has not undertaken any of such activities for the last 5 years and still remains a paper Company. For the reasons stated above, we allow the appeal by reversing the order of the Tribunal and restoring the order of the Commissioner declining registration to the assessee under Section 12A of the Act.