

ORIGINAL JURISDICTION

Mr. Justice Ziyad Rahman A. A.

WP(C) Nos.27452/2023, 20072/2025, 10466, 31059, 31660, and 36964 of 2024

2025 November 7

Madhur Sree Madanantheswara Vinayaka Temple Administrative Body . . . Petitioner

v.

Income Tax Officer and others . . . Respondents

Petitioners, the administrative bodies of various Temples, approached the Court challenging the actions taken by the respondents under the Income Tax Act. According to the petitioners, the temples were in existence from time immemorial and the administrative committees were constituted subsequently under the statute. The petitioners claimed tax exemption and collected Tax Deducted as Source (TDS) from deposits made in the name of the temples in various financial institutions. When notices were issued under Section 148A of the Income Tax Act, the petitioners claimed exemption under Section 10(23BBA), being a body or authority constituted or established under a State enactment. Disposing the Writ Petition (Civil), the Court;

Issue for consideration

Whether tax exemption under Section 10(23BBA) of the Income Tax Act extend to religious institutions that are managed by statutory bodies?

Income Tax Act, 1961 (Central Act 43 of 1961)—Section 10 (23BBA)—Tax exemption under the section applies only to statutory bodies and does not extend to religious institutions which are governed by statutory bodies.

Held:

Thus, it is clear that the public religious establishments governed by the bodies or authorities referred to above, are not eligible for the exemption contemplated under Section 10(23BBA) of the Income Tax Act. To be precise, the exemption contemplated under section 10 (23BBA) is only for the body or authority created by the statute, for governing the public religious institutions, but the said provision is not intended to provide exemptions to the public religious institutions governed by such body or authority. In other words, the exemption contemplated as per the said provision, is for the income of the bodies like, Devaswom Board, Waqf Board etc., and not to the religious establishments governed by such institutions. (*Paragraph 11*)

Income Tax Act, 1961 (Central Act 43 of 1961)—Section 10 (23BBA)—Proviso is only for providing clarity - Scope of proviso to Section 10(23BBA) examined.

Held:

Of course, the learned Senior Counsel for the Malabar Devaswom Board, raised a contention that, the proviso to Section 10(23BBA), is against the statutory stipulations contained in the main provision as such, and the stipulations in the proviso cannot control the main section. It was pointed out that, as far as a proviso is concerned, it is only to exempt something and it cannot take away rights already provided as per the main provision. However, I am not inclined to accept the said contention mainly because, a careful reading of the aforesaid section would indicate that, the main provision itself does not contemplate any exemption to the income of the public religious or charitable trust or endowments (including maths, temples, gurdwaras, wakfs, churches, synagogues, agiaries or other places of public religious worship) or societies for religious or charitable purposes registered as such, under the Societies Registration Act, 1860. Since the main provision itself is very clear, and it does not provide for any exemption to the religious institutions, there is no conflict between the main provision and the proviso referred to above, as contended by the learned Senior Counsel. To be precise, the proviso in Section 10(23BBA) is only for the purpose of providing clarity to the main provision, and in order to avoid any interpretation that provides an exemption to the religious institutions referred to therein, other than the body or authority created for administering such religious institutions. Therefore, the aforesaid contention cannot be accepted. (*Paragraph 19*)

List of Acts:

Income Tax Act, 1961.

List of Keywords:

Exemption, Income tax, Tax, Religious institutions, Statutory body.

Case Laws Cited:

(1) C.D.J. 2021 M.H.C. 1706; (2) A.I.R. 2008 Ori. 37; (3) (2014) 3 S.C.C. 556—
Referred to.

Appearance of Parties:

Sri. Mahesh V. Ramakrishnan . . . for petitioner

Sri. Christopher Abraham, Sri. R. Lakshmi Narayan (Sr.), Smt. R. Ranjanie, SC, Sri. P.R. Ajith Kumar and Sri. Jose Joseph . . . for respondent

JUDGMENT

In all these writ petitions, the petitioners are either administrative bodies of various temples under the Malabar Devaswom Board or the temples represented by their administrative bodies. In all these cases, the respective petitioners are seeking the benefit of Section 10(23BBA) of the Income Tax Act, which contemplates for a complete exemption from the Income Tax.

2. In W.P.(C).No.27452 of 2023, the petitioner is the administrative body of a temple and challenge raised in this writ petition is against Ext.P11 order of assessment

passed against the temple, pertaining to the assessment year 2018-2019. In other writ petitions, the petitioners are seeking refund of the TDS already collected from the deposits made in the name of the respective temples in various financial institutions. In some cases, the petitioners have sought for declaration that the income received by them are entitled to be exempted under Section 10(23BBA) of the Income Tax Act.

3. Counter affidavits have been filed by the respondents disputing the averments contained in the writ petitions and opposing the reliefs sought.

4. I have heard the respective learned counsel for the petitioners and the respective learned standing counsel for the respondents.

5. The main contention raised on behalf of the petitioners is by placing reliance upon the various provisions contained in the Madras Hindu Religious and Charitable Endowments Act, 1951 (*hereinafter called HR & CE Act*), and also the relevant provisions, including Section 10(23BBA) of the Income Tax Act. HR&CE Act is relied on by the petitioners, in view of the fact that, all the temples before this Court are under the Malabar Devaswom Board, which was created under the said statute and all the administrative bodies in charge of the affairs of these temples, are constituted as per the scheme created under the HR&CE Act. Thus, the specific contention raised by the petitioners is that, in all these cases, the petitioners are entitled to the exemption contemplated under the Act, being a body or authority constituted or established under a State enactment.

6. On the other hand, the standing counsel appearing for the Income Tax, opposed the said contention by pointing out that, going by the statutory stipulations contained under Section 10(23BBA) of the Act, the petitioners are not entitled to get any exemption, in view of the fact that, what is exempted is the income of the bodies established under the statute and not the income of the temples as such. Strong reliance was placed on the proviso to Section 10(23BBA), which, according to them, is clarificatory in nature and it confirms the said view.

7. I have carefully gone through the records and examined the relevant statutory provisions. Before, going into the questions that arise in these cases, it is profitable to examine the relevant statutory provisions.

Section 10 of the Income Tax Act, provides for the incomes not included in the total income. What is relevant for this case is Sub section (23BBA) of section 10, which reads as follows:

“(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, gurudwaras, wakfs, churches, synagogues, agiaries or other places 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.

8. Section 58 of the HR&CE Act reads as follows:

“58. Power of Deputy Commissioner to frame scheme.- (1) When the Deputy Commissioner has reason to believe that in the interests of the proper administration of a religious institution, a scheme should be settled for the institution, or when not less than five persons having interest make an application in writing, stating that in the interests of the proper administration of a religious institution a scheme should be settled for it, the Deputy Commissioner shall consult in the prescribed manner the trustee and the persons having interest and the Area Committee, if any, having jurisdiction over the institution; and if, after such consultation, he is satisfied that it is necessary or desirable to do so, he shall, by order, frame a scheme of administration for the institution.

(2) A scheme settled under sub-section (1) for a temple or for a specific endowment other than one attached to a math for may contain provision for-

(a) removing any existing trustee, whether hereditary or non hereditary:

Provided that where provision is made in the scheme for the removal of a hereditary trustee, provision shall also be made therein for the appointment as trustee of the person next in succession who is qualified;

(b) appointing, or directing the appointment of, a paid executive officer, who shall be a person professing the Hindu religion, on such salary and allowances as may be fixed, to be paid out of the funds of the institution; and defining the powers and duties of such officer:

Provided that in making any provision of the nature specified in clause (b) due regard shall be had to the claims of persons belonging to the religious denomination for whose benefit the institution is chiefly maintained.

(3) A scheme settled under sub-section (1) for a math or for a specific endowment attached to a math may contain provision for-

(a) associating one or more persons with the trustee or constituting a separate body for the purpose of participating or assisting in the whole or any part of the administration of the endowments of such math or of the specific endowment; provided that such person or persons or the members of such body shall be chosen from persons having interest in such math or endowment;

(b) appointing or directing the appointment of a paid executive officer, who shall be a person professing the Hindu religion, on such salary and allowances as may be fixed by the Deputy Commissioner, to be paid out of the trust funds, and defining the powers and duties of such officer;

(c) defining the powers and duties of the trustee;

(4) The Deputy Commissioner may determine what the properties of the religious institution are and append to the scheme a schedule containing a list of such properties:

Provided that such determination shall not affect the rights of persons who are in hostile possession of any of the said properties.

(5) Pending the framing of a scheme for a temple or for a specific endowment other than one attached to a math, the Deputy Commissioner may appoint a fit person to discharge all or any of the functions the trustee thereof and define his powers and duties.

(6) The Deputy Commissioner may, at any time, after consulting the trustee and the persons having interest and the Area Committee, if any, having jurisdiction over the institution, by order, modify or cancel any scheme settled under sub-section (1) or a scheme settled by the Board under the Madras Hindu Religious Endowments Act, 1926.

(7) Every order of the Deputy Commissioner settling, modifying or cancelling a scheme under this section shall be published in the prescribed manner and on such publication shall, subject to the provisions of Sections 61 and 62, be binding on the trustee, the executive officer and all persons having interest.

(8) The powers conferred by this section shall, in respect of maths, be exercised by the Commissioner or by a Deputy Commissioner to whom powers in this behalf have been delegated by the Commissioner under Section 10, sub-section (2)."

Section 6(14) of the HR&CE Act reads as follows:

"religious endowment" or "endowment" means all property belonging to or given or endowed for the support of maths or temples, or given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity; and includes the institution concerned and also the premises thereof, but does not include gifts of property made as personal gifts to the archaka, service-holder or other employee of a religious institution;

Explanation (1). - Any inam granted to an archaka, service holder or other employee of a religious institution for the performance of any service or charity in or connected with a religious institution shall not be deemed to be a personal gift to the archaka, service-older or employee but shall be deemed to be religious endowment.

Explanation (2).- All property which belonged to, or was given or endowed for the support of a religious institution, or which was given or endowed for the performance of any service or charity of a public nature connected therewith or of any other religious charity shall be deemed to be a "religious endowment" or "endowment" within the meaning of this definition, notwithstanding that, before or after the commencement of this Act, the religious institution has ceased to

exist or ceased to be used as a place of religious worship or instruction or the service or charity has ceased to be performed:

Provided that this Explanation shall not be deemed to apply in respect of any property which vested in any person before the commencement of this Act, by the operation of the law of limitation.”

9. On carefully going through the statutory stipulations contained in Section 10(23BBA) of the Act, the crucial aspect to be noticed is that, in order to get an exemption, the following conditions are to be satisfied.

(a) There must be an income.

(b) That income must be that of any body or authority

(c) That body or authority must have been established or constituted or appointed by any Central, State or Provincial Act.

(d) The said Act must be one, that provides for the administration of any one or more of the following: public religious or charitable institutions, including temples, wakfs, churches, gurdwaras and other places of public worship or societies for religious or charitable purposes registered under the Societies Registration Act. Proviso to section 10(23BBA) further contemplates that, nothing in the said provision shall be construed to exempt from tax, the income of any trust, endowment or society referred to therein.

10. Thus, on going through the scheme envisaged as per the said provision, it can be seen that, what is exempted is the income of the body or authority, which is created for the purpose of administration of a public religious trust or endowment, which are referred to above. Thus, as pointed out by the learned standing counsel for the income tax, the income of such body or authority alone is exempted, and the establishments/institutions which are under the administration of the said authority as such, is not exempted from the liability to pay the income tax. Proviso to the said provision confirms the said aspect, by clearly specifying that the provisions under the said Act, should not be construed to mean that, the income of any proposed endowment or society which are subjected to the administration by the bodies referred to in the provision is exempted from tax. Therefore, a clear distinction has been drawn as per the aforesaid provision, between the income of the body or authority which is created for the purpose of administering the public religious institutions, including temple, *maths*, gurdwara, wakfs churches etc or referred to in the said provision on one side, and the income of the such public religious institutions referred to therein, including the income of any trust, endowment or society, referred to therein, on the other side.

11. Thus, it is clear that the public religious establishments governed by the bodies or authorities referred to above, are not eligible for the exemption contemplated under Section 10(23BBA) of the Income Tax Act. To be precise, the exemption contemplated under section 10 (23BBA) is only for the body or authority created by the statute, for governing the public religious institutions, but the said provision is not intended to provide exemptions to the public religious institutions governed by such body or

authority. In other words, the exemption contemplated as per the said provision, is for the income of the bodies like, Devaswom Board, Waqf Board etc., and not to the religious establishments governed by such institutions.

12. As rightly pointed out by the learned standing counsel for the respondents, the reason for such restricted exemption could be that, there is a separate provision for exemption contemplated under Section 11, 12 and 12A of the Income Tax Act, for the religious establishments. The religious institutions referred to in section 10(23BBA) including trust, endowment or society, are eligible to exemption under Sections 11 and 12 of the Income Tax Act, upon the said institution complying the conditions stipulated under the said provisions. It is to be noted that, section 11 of the Income Tax Act, deals with the exemption of the income for the properties held for charitable and religious purposes. Section 12 of the said Act deals with the exemption of the income received as contributions to the trusts or institutions created wholly for charitable and religious purposes. Section 12A deals with the conditions applicable to get the exemption under section 11 and 12.

13. However, as far as the body or authority created as per a statute for management of such institutions are concerned, they may not fall under exemptions under section 11 or 12. Thus, when a separate provision is specifically provided for extending the benefit of exemption, subject to certain contentions, to the income of religious institutions, it was not necessary to incorporate another statutory provision for extending a further exemption which is unconditional, as per Section 10(23BBA) of the Act. Thus, while understanding the scheme of the Act, particularly with respect to the exemptions under Section 10(23BBA), Section 11 as well as Section 12, it is very clear that, the intention behind the incorporation of Section 10(23BBA) was to grant exemption to the body or authority referred to in the said provision alone, since the said body or authority may not be eligible to get exemption under Section 11 or 12 of the Act.

14. Apart from the above, another aspect to be noticed is that, even going by the contentions of the respondents, the administrative bodies of the respective temples were created under the scheme formulated as per Section 58 of the HR&CE Act, 1951. The scheme under which these establishments are created is produced as Ext.P3 in W.P.(C).No.36964 of 2024. As rightly pointed out by the learned standing counsel, clause (3) of the said scheme provides that, all the temples covered as per the scheme or the other shrines attached thereto, all the properties and endowments, movable and immovable which belong to or have been or may hereafter be given, dedicated or endowed thereto or acquired for the temple in general or to any one or more for the deities of the respective temples.

15. Thus, it is clear that, all the properties and activities from which the income is generated are that of the deity, which means that of the temple. As far as these temples are concerned, it is to be noted that, all these temples were in existence from time immortal, and respective administrative bodies were created as per the scheme referred to above on the basis of HR&CE Act. Thus, as per the scheme, the income is from the properties belonging to the deity and the role of the administrative body is to manage the properties of the temple, including the income. Since, Section 10(23BBA) does not contemplate any exemption for the income of the temple as such, the income received in the name of the temple or the deity cannot be a subject matter of exemption, as contemplated under

Section 10(23BBA) of the Act. Of course, if the administrative bodies are having separate income of their own, they can probably claim the exemption under Section 10(23BBA), if it is established that they are constituted under the provisions of any of the Central, State or provincial enactment.

16. In this regard, the petitioners have placed reliance upon the decision rendered by a single Bench of this Court in W.P.C. No.8524 of 2019 (**Payyannur Sree Subrahmanya Swami Temple v. Income Tax Officer and others**), wherein, in respect of the Payyannur Subrahmanya Swami Temple, an exemption was extended under Section 10(23BBA) of the Act. However, on going through the observations made in the said judgment, it can be seen that, the said judgment was rendered, not by declaring any position of law and not by clarifying the implications of the law or the application of the relevant provisions. The said decision was taken, based on a statement submitted by the respondents therein, to the effect that, the petitioner therein is entitled to the exemption. Therefore, the fact that the temple in the said writ petition was granted the benefit of Section 10(23BBA) by itself cannot be a ground to accept the contentions raised by the petitioners in this regard.

17. Apart from the above, the petitioners have also relied on various decisions of the other high courts and the Honourable Supreme Court, including the judgment of Madras High Court in **Sri.Amrithakadeswaraswamy Devasthanam Dharumapuram Adheenam v. The Assistant Commissioner of Income Tax Officer, Kumbakonam & Others** [CDJ 2021 MHC 1706], **Jagannath Temple Managing Committee, Puri v. Commissioner of Income Tax Bhuvaneswar and Others** [A.I.R. 2008 Ori.37] rendered by the Orissa High Court and the decision rendered by the Hon'ble Apex Court in **State of Haryana v. Bharti Teletech Ltd.** [(2014) 3 S.C.C. 556].

18. However, in all the above said cases, the issue considered was whether the assessee therein was created or established under the State statute and there was no question as to whether the income is that of the body which is administering the temple or that of the temple/deity. However, in the decision rendered by the Madras High Court, in **Sri.Amrithakadeswaraswamy Devasthanam Dharumapuram Adheenam** (*supra*), this issue was considered and the claims of all the parties except one Vaithiyananthaswamy Devasthanam, were rejected by holding that, the individually constituted temples are liable to pay tax in the light of the proviso to Section 10(23BBA) of the Act. Thus, the view taken by this Court is fortified by the observations made by the Madras High Court in decision in **Sri.Amrithakadeswaraswamy Devasthanam Dharumapuram Adheenam** (*supra*).

19. Of course, the learned Senior Counsel for the Malabar Devaswom Board, raised a contention that, the proviso to Section 10(23BBA), is against the statutory stipulations contained in the main provision as such, and the stipulations in the proviso cannot control the main section. It was pointed out that, as far as a proviso is concerned, it is only to exempt something and it cannot take away rights already provided as per the main provision. However, I am not inclined to accept the said contention mainly because, a careful reading of the aforesaid section would indicate that, the main provision itself does not contemplate any exemption to the income of the public religious or charitable trust or endowments (including maths, temples, gurdwaras, wakfs, churches, synagogues, agiaries or other places of public religious worship) or societies for religious or charitable purposes

registered as such, under the Societies Registration Act, 1860. Since the main provision itself is very clear, and it does not provide for any exemption to the religious institutions, there is no conflict between the main provision and the proviso referred to above, as contended by the learned Senior Counsel. To be precise, the proviso in Section 10(23BBA) is only for the purpose of providing clarity to the main provision, and in order to avoid any interpretation that provides an exemption to the religious institutions referred to therein, other than the body or authority created for administering such religious institutions. Therefore, the aforesaid contention cannot be accepted.

20. Thus, after carefully going through the aforesaid statutory provisions, I am of the view that, if the income, which is the subject matter in these writ petitions, and the proceedings referred to therein, are that of the temples, the same would not get the benefit of exemption under Section 10(23BBA) of the Income Tax Act. However, in case the petitioners have a case that, the income, which is the subject matter in dispute, is the income of the administrative body, they may claim the exemption under the section 10(23BBA), if the other conditions therein are established. Therefore, it is for them to establish before the authorities concerned the above aspects, by invoking the remedies. In these cases, the challenges are raised by the respective petitioners at various stages of the proceedings. Only in W.P(C) No.27452/2023, the proceeding had escalated into an assessment order, which is under challenge therein. As far as the other cases are concerned, those include cases in which, claims for TDS is rejected or claims for TDS is pending or in some cases, notices under Section 148A are issued. Therefore, I am of the view that, even while holding that, if the income is that of the temple, it would not be entitled to exemption under Section 10(23BBA) of the Act, the source of the income or the institution, which received such income being factual dispute, can be left open, to be decided by the appropriate authorities in appropriate proceedings.

In such circumstances, these writ petitions are disposed of holding that, exemption contemplated under Section 10(23BBA) is applicable only in respect of the bodies and authorities constituted, established and appointed under the Central, State or Provincial Act, and the same is not applicable to the public religious or charitable trusts or endowments (including maths, temples, gurdwaras, wakfs, churches, synagogues, agiaries or other places of public religious worship) or societies for religious or charitable purposes registered as such under the Societies Registration Act, 1860, or any other law for the time being in force, which are being administered by the body or the authority referred to above. With the above declaration, the parties are permitted to invoke their remedies available. In W.P(C) No.27452/2023, it is ordered that, it shall be open to the petitioner therein to submit appeal against the assessment order, and while computing the period of limitation for filing the appeal, the period during which this writ petition was pending consideration, which is from 18.08.2023 till the date of receipt of certified copy of the judgment, shall be excluded. In cases where, the applications were submitted seeking refund of the TDS, those can be adjudicated by the appropriate authorities, in the light of the observations made by this Court and after giving the respective petitioners an opportunity to be heard. In respect of the matters where notices are issued under Section 148A or 148, the same can be contested by the appropriate petitioners by submitting objections or additional objections, which shall be considered by the authorities concerned. In all these cases, the proceedings shall be finalized after giving the respective petitioners the opportunity for being heard. In W.P(C) No.27452/2023, the coercive proceedings based on Ext.P11 assessment order

shall be kept in abeyance for a period of three months, to enable the petitioner to invoke the statutory remedies.

Result of the Case:

Writ Petition (Civil) disposed of.

Headnote prepared by A.K.
