

The Supreme Court's decision on exemption to educational institution interpreting the term 'solely' is prospective in nature

Executive Summary

There has been a considerable litigation on whether educational institutions should exist solely for education and consequently whether such institutions are eligible for exemption. The Supreme Court, in the case of American Hotel and Lodging Association¹ and Queen's Education Society² applied the predominant object test and determined whether the 'principal' or 'main' activity was education or not. The Court allowed the exemption to educational institutions where education was the predominant object or activity amongst various other objects, even when it did not exist 'solely' for the purposes of education.

The Supreme Court, in the case of New Noble Educational Society³ (the taxpayer) overruled its earlier decisions⁴ and held that the requirement for the charitable institution, society or trust, etc., is to 'solely' engage itself in education or educational activities and not engage in any activity of profit. Such institutions cannot have objects which are unrelated to education. Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval of the exemption.

Relying on the Supreme Court's decision, tax department filed appeals against the exemption given to taxpayer relating to educational activities. The Orissa High Court in the case of Sikhya 'O' Anusandhan⁵ dealt with such appeals and held that the Supreme Court in the case of New Noble Educational Society clarified that the decision has

departed from the previous rulings regarding the meaning of the term 'solely'. In order to avoid disruption and to give time to institutions likely to be affected to make appropriate changes and adjustments, it would be in the larger interests of society that the decision operates hereafter. As a result, the Supreme Court had directed that the law declared in its decision shall operate prospectively. In view of the above clarification of the Supreme Court, the High Court held that the tax department cannot take advantage of the changed legal position as a result of the decision in New Noble Educational Society. Thus, the High Court dismissed the appeals.

Facts of the case

- For various Assessment Years (AYs)⁶, the Assessing Officer (AO) noticed that the taxpayer had shown the excess of income over expenditure which had been transferred to its capital account.
- The taxpayer having been granted registration under Section 12AA, claimed exemption under Section 11 on the basis that it was carrying on the charitable activity of imparting education. The AO denied the exemption and observed that the taxpayer was charging substantial fees from the students with a view to making profit and that the imparting of education was for commercial motive and for making payments to 'interested persons.'
- The Commissioner of Income-tax (Appeals) and the Tribunal allowed the benefit of exemption under Section 11 to the taxpayer.

¹ American Hotel & Lodging Association, Educational Institute [2008] 301 ITR 86 (SC)

² Queens Educational Society v. CIT [2015] 372 ITR 699 (SC)

³ New Noble Educational Society v. CCIT [2022] 448 ITR 594 (SC)

⁴ Division Bench rulings in Queens Education Society and American Hotels

⁵ Sikhya 'O' Anusandhan v. CIT (ITA Nos.32, 33 & 34 of 2013 and ITA No.17 of 2015 and ITA No.37 of 2018) (Orissa High Court) - Taxsutra

⁶ AY 2007-08 to 2012-13

Tax department's contention

- The tax department contended that the decision of the Supreme Court in the case of New Noble Educational Society had taken a different view from the one expressed in the decisions⁷ relied on by the Tribunal to allow the benefit of exemption under Section 11 to the taxpayer.

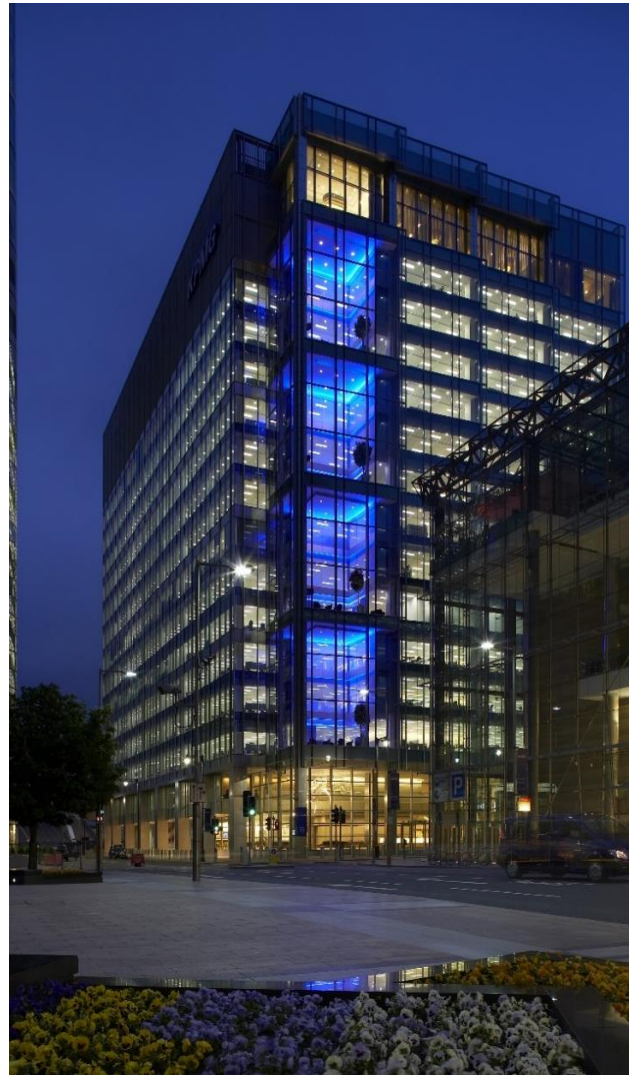
High Court's decision

- The Supreme Court in the case of New Noble Educational Society clarified that since that decision had departed from the previous rulings regarding the meaning of the term 'solely', in order to avoid disruption and to give time to institutions likely to be affected to make appropriate changes and adjustments, it would be in the larger interests of society that the decision operates hereafter. As a result, it was directed that the law declared in the Supreme Court's decision shall operate prospectively.
- In view of the above clarification of the Supreme Court, the tax department cannot take advantage of the changed legal position as a result of the decision in New Noble Educational Society.
- As a result, the High Court in the instant case is not inclined to frame the question urged by the tax department in these appeals. The appeals were accordingly dismissed.

Our comments

While it is reassuring that the High Court has enforced the prospective application of the Supreme Court decision to the present case, the tax department is now likely to challenge the charitable status of any education institution generating significant surplus on a prospective basis.

It will be eminent for educational institutions to realign their objectives and activities in accordance with the principles laid by the Supreme Court.



⁷ Aditanar Educational Institution v. Addl. CIT [1997] 224 ITR 310 (SC), Pinegrove International Charitable Trust v. UOI [2010] 327 ITR 73 (P&H), American Hotel & Lodging Association, Educational Institute [2008] 301 ITR 86 (SC), Queens Educational Society v. CIT [2015] 372 ITR 699 (SC)

KPMG in India addresses:

Ahmedabad

Commerce House V, 9th Floor,
902, Near Vodafone House, Corporate Road,
Prahlad Nagar,
Ahmedabad – 380 051.
Tel: +91 79 4040 2200

Bengaluru

Embassy Golf Links Business Park,
Pebble Beach, 'B' Block,
1st & 2nd Floor,
Off Intermediate Ring Road, Bengaluru – 560071
Tel: +91 80 6833 5000

Chandigarh

SCO 22-23 (1st Floor),
Sector 8C, Madhya Marg,
Chandigarh – 160 009.
Tel: +91 172 664 4000

Chennai

KRM Towers, Ground Floor,
1, 2 & 3 Floor, Harrington Road,
Chetpet, Chennai – 600 031.
Tel: +91 44 3914 5000

Gurugram

Building No.10, 8th Floor,
DLF Cyber City, Phase II,
Gurugram, Haryana – 122 002.
Tel: +91 124 307 4000

Hyderabad

Salarpuria Knowledge City,
6th Floor, Unit 3, Phase III,
Sy No. 83/1, Plot No 2, Serilingampally
Mandal,
Ranga Reddy District,
Hyderabad – 500 081.
Tel: +91 40 6111 6000

Jaipur

Regus Radiant Centre Pvt Ltd.,
Level 6, Jaipur Centre Mall,
B2 By pass Tonk Road,
Jaipur – 302 018.
Tel: +91 141 - 7103224

Kochi

Syama Business Centre,
3rd Floor, NH By Pass Road,
Vytila, Kochi – 682 019.
Tel: +91 484 302 5600

Kolkata

Unit No. 604,
6th Floor, Tower – 1,
Godrej Waterside,
Sector – V, Salt Lake,
Kolkata – 700 091.
Tel: +91 33 4403 4000

Mumbai

2nd Floor, Block T2 (B Wing),
Lodha Excelus, Apollo Mills Compound, N M
Joshi Marg, Mahalaxmi, Mumbai- 400011
Tel: +91 22 3989 6000

Noida

Unit No. 501, 5th Floor,
Advant Navis Business Park,
Tower-A, Plot# 7, Sector 142,
Expressway Noida,
Gautam Budh Nagar,
Noida – 201 305.
Tel: +91 0120 386 8000

Pune

9th floor, Business Plaza,
Westin Hotel Campus, 36/3-B,
Koregaon Park Annex,
Mundhwa Road, Ghorpadi,
Pune – 411 001.
Tel: +91 20 6747 7000

Vadodara

Ocean Building, 303, 3rd Floor,
Beside Center Square Mall,
Opp. Vadodara Central Mall,
Dr. Vikram Sarabhai Marg,
Vadodara – 390 023.
Tel: +91 265 619 4200

Vijayawada

Door No. 54-15-18E,
Sai Odyssey,
Gurunanak Nagar Road, NH 5,
Opp. Executive Club, Vijayawada,
Krishna District,
Andhra Pradesh – 520 008.
Tel: +91 0866 669 1000

home.kpmg/in

home.kpmg/in/socialmedia



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000

© 2023 KPMG Assurance and Consulting Services LLP, an Indian Limited Liability Partnership and a member firm of the KPMG global organization of independent member firms affiliated with KPMG International Limited, a private English company limited by guarantee. All rights reserved.

The KPMG name and logo are trademarks used under license by the independent member firms of the KPMG global organization.

This document is meant for e-communication only.