

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "A" : HYDERABAD  
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI A. MOHAN ALAKAMONY, A.M.  
AND SHRI S.S.GODARA, J.M.**

**I.T.A. No. 2063/HYD/2017**

Assessment Year: 2011-12

Asst.Commissioner  
of Income Tax,  
(Exemptions),  
HYDERABAD

(Appellant)

Nalgonda Diocese Society,  
Vs Nalgonda

[PAN: AAAAN1189Q]

(Respondent)

For Revenue : Shri M. Muralidhar, DR

For Assessee : Shri S. Rama Rao

Date of Hearing : 02.09.2021

Date of Pronouncement : 22 .09.2021

**ORDER**

**PER S.S.GODARA, J.M. :**

This Revenue's appeal for AY.2011-12 arises from the CIT(A)-9, Hyderabad's order dated 31.08.2017 passed in case No. 0077/2014-15 ,involving proceedings u/s. 143(3) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. The Revenue's has raised the following substantive grounds in the instant appeal.

- “2. Whether assessee-society can donate immovable property of agricultural land of 6 acres at Gandhavarigudem, Nalgonda, without any agreement / consideration against the objectives of the society?
3. Whether assessee-society is eligible to sell the land at below the market rate/ as for no consideration?
4. Ld CIT(A) erred in observing the fact that preference to catholic diocese means preference to minorities and accordingly erred in considering that there is no violation of objects of the society.
5. Ld. CIT(A) ought to have observed the fact that as per clause 9 of MOA the society can alienate the property at such price and upon such terms, conditions and rates of interest.”

3. Ld.D.R. vehemently contended during the course of hearing that the CIT(A) has erred in law and on facts in treating the assessee eligible for sec.11 exemption thereby holding that no transfer of its asset in favour of M/s Diocese Society had ever taken place. We find no merit in the Revenue’s instant argument since the CIT(A) has gone by the Assessing officer’s remand report only that the assessee had not transferred any of its asset(s) within the meaning of sec.2(47)(v) of the Act as under:-

4. Deduction u/s 11 :

As already stated the assessee is registered u/s 12A with the following main objects.

- a. To promote social, religious, educational and agricultural welfare.
- b. To own manage and run schools, churches, clubs, orphanages

*boardings and other institutions which may help to achieve the aims of No.(a).*

*c. In general to all other lawful things as are incidental or conducive to the attainment of any or all of the above objects and for the promotion and development of social, religious, cultural and agricultural activities among the people.*

*4.1 During the appellate proceedings, it is observed that assessee society parted \ its lands to (a) the congregation of Rogationist of Heart of Jesus and (b) Silesians of Don Bosco. Assessing Officer held that assessee society is not allowed to part with the fixed assets and hence it violated provisions of Memorandum of Association. Assessee on the contrary submitted that it agreed to donate one acre of land and sell two acres of land for a value of Rs.40,00,000/- to the Congregation of Rotagonist of Heart of Jesus, Eranakulam. The sale / donation of property to other institutions with similar objects is within the powers of governing body of the society. Bishop of Diocese being religious head of diocese is authorised to do so It is stated that as per clause 3(f) and 3(1) and clause 10(9) of the object clauses of memorandum of the governing body to deal with the property which obviously include power to donate / sell to the societies with similar objects. Assessee in this regard relied on the Apex Court decision in case of Dawoodi Bohra Jamat.*

*4.2 With regard to parting of land to Don Bosco society, it is stated that the assessee society has arrangement with the Don Bosco society to allow construction of St. Mary High School on the above property. It is stated that the property is not alienated, but Don*

*Bosco has only right to use the property but no ownership rights on the same. With reference to the preference to be given to Catholics, it is submitted that the same is not contrary to the objects of the society Assessee also stated that giving land to the other societies with same objects was being done in earlier years also and the department never raised any objections to the same. Assessee also submitted copies of agreements entered into with the above two societies. Assessing Officer was asked to submit his comments on the above submissions of the assessee. Vide his remand report dated 22.08.2017 Assessing Officer observed that as per 3(f) and 3(1) and 10(9) of memorandum of association, the governing body is competent enough to improve, development, alter, repair, donate or alienate the properties which come under the Diocese society It is also submitted by Assessing Officer that as per the agreement between assessee and Silesian of Don Bosco there is no transfer of property but the property was only entrusted with the administration of the schools of the Don Bosco Society. Regarding the preference to be given to Catholics of diocese also he did not express any reservations. The relevant portion of the remand report is reproduced hereunder.*

*The Assessing Officer in the last para of the assessment order has concluded that the society has violated the provisions of the Memorandum of Association. In this connection, it is necessary to go through the MOA, wherein, the relevant clauses are reproduced as under for better understanding :*

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THE CLAUSES OF MEMORANDUM OF ASSOCIATION ARE AS  
UNDER :

(d) .....

(e) .....

(f) "For the promotion and realization of the objects and purposes, to acquire, alter or sell movable and immovable property of any tenure, mainly in the districts of Nalgonda and Mahaboobnagar of Andhra Pradesh, according to the needs of the Society/trust may require, with or without buildings and structures, either by way of purchase absolutely or by way of lease, exchange, gift or any other form of acquisition, at such rates, terms and conditions of the Governing Body of the society / trust may agree to.

g) .....

h).....

i) .....

j) .....

k) . .....

i) To co-operate, amalgamate and co-ordinate with other bodies or societies, having similar aims of this society for the purposes of promoting or achieving the objects of the society

10(9) To manage, improve, develop, alter, repair, demolish, sell, alienate, lease, mortgage, charge, pledge, hypothecate, dispose off and otherwise deal with all or any of the properties, funds, assets rights and privileges of the society or part thereof at such price and upon such terms, conditions and rates of interest as governing body may think fit

As could be seen from the above, it is very clear that the Governing Body is competent enough to improve, develop, alter, repair, demolish or alienate the properties which come under the Diocese society.

*To draw further force, as could be seen from the Contract entered into between Nalgonda Diocese Society with the Salesians of Don Bosco, clause no. 12 of the contract clearly states that "the Salesians for whatever reasons would leave, they are free to take of the movable property which they invested", In this case there is no transfer of property but the assessee society entrusted the administration of the school to the second party The Salesians (the second party) are not entitled for any right on the immovable property Hence, there was no transfer of property and its only an arrangement between the Society and the Salesians to promote and achieve the objects as contained in Memorandum of Understanding.*

*The Assessing Officer in his assessment order has observed that as the preference was given to catholic of the diocese, the activities of the trust were in contrary to the objects. The assessee has submitted that without mention of nature of preference in the contract, the same could not be considered as contrary to objects and relied on the decision of CIT Vs Dawoodi Bohara Jamat The Commissioner of Income Tax may take appropriate decision, based on the merits of the case.*

*4.3. In the rejoinder to remand report, assessee stated that Nalgonda Diocese is a religious institution to take care of needs of Catholic religious community. The Diocese has been administering various churches and the establishments since 1990. To administer these institutions, Diocese takes help of various religious congregations. For administrative convenience, religious institutions are invited to take up various activities. In*

*view of the above, it is the practice of Diocese to donate land, building, and churches to many religions institutions under its control. The governing body has authority to alienate the properties under its control and the same is accepted by Assessing Officer in his remand report With regard to preference to Catholics, it is stated that the Diocese is a Christian minority institution and hence preference is given to catholic minorities which is in line with the government direction. To obtain certificate from minority welfare department and to be recognised as Christian minority institution, it is necessary to give preference to minorities in admissions. It is also pointed out that both Don Bosco society and Rogationist Education and charitable trust (part of Rogationist of heart of jesus) are registered u/s 12A. Therefore, it is submitted that there is no violation of objects of the assessee society and hence assessee is eligible for deduction u/s 11.*

5. *I have considered the arguments of the assessee and have gone through the facts on record. It is accepted by Assessing Officer in his remand report that alienation of property to the societies as above is not in violation of the objects of assessee society. It is also accepted by Assessing Officer that the land was not transferred to Don Bosco Society. It is also not disputed that both the societies to which assessee gave land are registered u/s 12A and are having similar religious / charitable objects. Assessing Officer, except alienation of these two properties, did not find any violation of any condition as approved u/s 12A No other violation of Section 11 or 13 is pointed out by Assessing*

*Officer It is also not disputed that registration u/s 12A is in force. Therefore, I am of the considered opinion that Assessing Officer had no reason to recompute the total income of the assessee by treating it as not eligible for exemption u/s 11 Hence, I direct the Assessing Officer to recompute the income of the assessee by allowing exemption u/s 11. The ground relating to levy of interest u/s 234A is treated as consequential and Assessing Officer is directed to recalculate the interest at the time of giving effect to this order.”*

3.1. It is therefore very much evident that the Assessing officer had himself denied any such instance of transfer of asset in his remand report dated 22.8.2017. We quote (i) CIT vs. DM Purnesh (2020) 426 ITR 169 (Kar.) (HC) and (ii) Smt. B Jaya Lakshmi vs. ACIT (2018) 96 taxmann.com 486 (Mad) that the Revenue cannot be held as an aggrieved party in case of Assessing officer's filing favourable remand report before the CIT(A). We adopt the very reasoning mutatis mutandis and delete this former substantive ground for this precise reason alone. Revenue's sole substantive ground fails therefore.

4. This Revenue's appeal is dismissed.

Pronounced in Open Court on 22<sup>nd</sup> September, 2021.

**Sd/-**

**Sd/-**

**(A. MOHAN ALANKAMONY)**  
**ACCOUNTANT MEMBER**

**(S.S. GODARA)**  
**JUDICIAL MEMBER**

Dated: the 22<sup>nd</sup> September, 2021.

\* gmv



Copy of the Order forwarded to:

1. ACIT (Exemptions), Hyderabad
2. M/s Nalgonda Diocese Society, Bishop's House, Rashtrapathi Road, Nalgonda 508 201
3. Dy.CIT (Exemptions), Hyderabad
4. CIT(A)-9, Hyderabad
5. CIT -(Exemptions), Hyderabad
6. DR, ITAT, Hyderabad.
7. Guard File.