Himachal Pradesh National Law University, Shimla (India)

HPNLU JOURNAL OF TAX LAW (JTL)

JOURNAL ARTICLES **ISSN: 2584-0428** **HPNLU JTL**

Volume III (2024)

CASE COMMENT: NEW NOBLE EDUCATIONAL SOCIETY V. CIT, [(2023) 6 SCC 649

Santosh K. Sharma & Girjesh Shukla

CONTENTS

CASE COMMENT
NEW NOBLE EDUCATIONAL SOCIETY V. CIT, [(2023) 6 SCC 649]

Santosh K. Sharma* & Girjesh Shukla**

Abstract

While acknowledging the fact that '*education*' is the *key that unlocks the golden door to freedom*, the Supreme Court has delimited the scope of functioning for the educational institutions by restricting their income-generating capacity to '*solely*' the '*educational activity*.' While interpreting the scope of Section 10(23C)(vi) of the Income Tax Act, 1961, a full bench of the Supreme Court in *New Noble Educational Society* v. *CIT*,[1] hereinafter referred to as '*New Noble*', gave a restrictive meaning to the term '*educational activity*'. It seems that the court has arrived at said conclusion with three preconceived notions. *Firstly*, educational institutions are inherently a not-for-profit venture, and thus any element of profit-making would make them vulnerable to the idea of imparting education. *Secondly*, public goods, i.e. imparting education, are always contrary to private goods, i.e., profit-making. *Thirdly*, legislation dealing with taxation and finances should always be served with strict literal interpretation. These three assumptions led to a narrow interpretation of the law contained under Section 10(23C)(vi), and thus have put the educational institutions at tax vulnerability.

For the reader's convenience, the present work is divided into four parts. Part I is an introduction to the legal dispute raised through the New Noble case. Part II would describe the narrow compass through which the court has approached the dispute. Part III provides a critique of the judicial approach and attempts to provide a larger jurisprudential framework through which the bench should have approached the dispute.

* Dr. Santosh Kumar Sharma, Associate Professor of Law. HPNLU, Shimla

** Dr. Girjesh Shukla, Professor of Law, HPNLU, Shimla

[1] [(2023) 6 SCC 649

Part I

The Dispute

This was a batch of appeals,[2] and the subject matter involved in the *New Noble* dispute was limited to two fundamental questions. The first question was the very scope of Section 10(23C)(vi) and the eligibility criteria for an educational institution to get itself registered under the Income Tax Act, 1961 and thereby receive the benefit of tax exemption. The second question, which is not the subject matter of the debate in this work, deals with the compliance of local laws of registration, etc., with the claim of governmental benefits, including taxes.[3]

Section 10 of the Income Tax Act, 1961, with headnote *'Incomes not included in total income'*, is a special provision and it prescribes a list of incomes which are excluded from the 'total income' of any person while calculating his 'total income' for tax liability purposes. For the reader's convenience relevant provision, which was the subject matter of this dispute, is reproduced herein below; -

> ***10. Incomes not included in total income.***
>
> **10:** *In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included—*
>
> (23C) *any income received by any person on behalf of—*
>
> *(iiiab) any university or other educational institution existing solely for educational purposes and not for purposes of profit, and which is wholly or substantially financed by the Government; or*

[2] *St. Augustine Educational Society* v. *CIT*, [Civil Appeal No. 3793 of 2014]; *St. Patrick Educational Society* v. *CIT*, [Civil Appeal No. 3794 of 2014]; *New Noble Educational Society* v. *CIT*, [Civil Appeal No. 3795 of 2014]; *R.R.M. Educational Society* v. *CIT*, [Civil Appeal No. 6418 of 2012] & *Sri Koundinya Educational Society* v. *CIT*, [Civil Appeal No. 9108 of 2012.]

[3] The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987

> *(iiiad) any university or other educational institution existing solely for educational purposes and not for purposes of profit if the aggregate annual receipts of the person from such university or universities or educational institution or educational institutions do not exceed five crore rupees; or*
>
> *(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the Principal Commissioner or Commissioner; or*

It may be noted that since the inception of the Income Tax Act, 1961, income from educational activities was excluded from taxation by section 10(22). By the Taxation Laws (Amendment) Act, 1975, Section 10(23-C) was inserted for the first time, and by virtue of sub-clauses (iv) and (v), the institutions established for charitable purposes were given beneficial treatment in terms of taxes. The Direct Tax Laws (Amendment) Act, 1987, deleted Sections 10(23-C)(iv) and (v); however, they were soon restored by the Direct Tax Laws (Amendment) Act, 1989, with effect from 1-4-1990. Six *provisos* to Section 10(23-C) were added, broadly dealing with the considerations that were to weigh with the Central Government before issuing notifications exempting the income of such entities. The conditions embodied in the six *provisos* dealt with genuineness of activities of the institution — application of income or its accumulation for its application in future to be wholly and exclusively for the objects for which the institution had been established, and allowing profits and gains for the purpose of exclusion, subject to the business being incidental to the attainment of its objectives and maintenance of separate books of accounts.

By the Finance Act, 1998, significant changes were made to Section 10(23C) by inserting sub-clauses (iii-ab), (iii-ac), (iii-ad) and (iii-ae). Furthermore, two sub-clauses, namely, (vi) and (vi-a), were added. Sub-clause (vi) dealt with education.[4] These amendments created three different categories of educational institutions, which would be eligible for tax benefits. The first category belongs to such institutions that exist *solely for educational purposes and not for purposes of profit*, and which are *wholly or substantially financed by*

[4] At the same time, Parliament deleted Section 10(22) and Section 10(22-A).

the Government.[5] The Second category belongs to such institutions that exist *solely for educational purposes and not for purposes of profit*, and *the aggregate annual receipts of the person from such university or universities or educational institution or educational institutions do not exceed five crore rupees*.[6] There is no further qualification mentioned in their respective clause for claiming any exemption.

The category three, which falls under clause (vi), is worded differently. Under this category, *any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the Principal Commissioner or Commissioner*, can claim exemption.[7]

Argument by the Appellants

The appellants filed their application before the relevant tax authorities for their registration to claim the benefit of Section 10(23C). However, the was rejected and the decision was confirmed by the Andhra Pradesh High Court, *firstly*, on the ground that "*the appellant trusts which claimed benefit of exemption under Section 10(23-C) of the Income Tax Act, 1961 were not created 'solely' for the purpose of education, and that to determine that issue, the Court had to consider the memorandum of association or the rules or the constitution of the trust concerned*." Secondly, the appellants were denied registration on the grounds that they were not registered under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987. The High Court ruled that, while quoting numerous precedents, ruled the following: -

> *"8. In order to be eligible for exemption, under Section 10(23-C)(vi) of the Act, it is necessary that there must exist an educational institution. Secondly, such institution must exist solely for educational purposes and, thirdly, the institution*

[5] The Income Tax Act, 1961. S. 10(23C)(iiiab).
[6] *Id*., Sections 10(23C)(iiiac).
[7] *Id*., Sections 10(23C)(vi).

> *should not exist for the purpose of profit.[8] In deciding the character of the recipient of the income, it is necessary to consider the nature of the activities undertaken. If the activity has no co-relation to education, exemption has to be denied. The recipient of the income must have the character of an educational institution to be ascertained from its objects.[9] The emphasis in Section 10(23-C)(vi) is on the word 'solely'. 'Solely' means exclusively and not primarily.[10] In using the said expression, the legislature has made it clear that it intends to exempt the income of the institutions established solely for educational purposes and not for commercial activities.[11] This requirement would militate against an institution pursuing the objects other than education.[12] Even if one of the objects enables the institution to undertake commercial activities, it would not be entitled for approval under Section 10(23-C)(vi) of the Act.[13] It is only if the objects reveal that the very being of the assessee society, as an educational institution, is exclusively for educational purposes and not for profit, the assessee would be entitled for exemption under Section 10(23-C)(vi) of the Act.[14]"*

Based on the above observation, and while citing that some of the objectives of the society from their memorandum, the high court ruled that those objectives were '*other than educational activities*', and thus the claim of registration was denied.

The contentions the appellants were, *firstly*, that there was no bar or restriction imposed by law on trusts involved or engaged in activities other than education, from claiming exemption under Section 10(23-C)(vi), provided their motive was not for profit; *secondly*, the said provisions required the institutions to *exist solely for educational purposes and not for profit*, and the term "exist" connoted the purpose, goal, object and mission

---

[8] *CIT* v. *Sorabji Nusservanji Parekh*, (1993) 201 ITR 939 (Guj.)
[9] *Aditanar Educational Institution* v. *CIT*, (1997) 224 ITR 310 (SC)
[10] *CIT* v. *Gurukul Ghatkeswar Trust*, (2011) 332 ITR 611 (SC); *CIT* v. *Maharaja Sawai Mansinghji Museum Trust*, (1988) 169 ITR 379 (SC)
[11] *Oxford University Press* v. *CIT*, (2001) 3 SCC 359
[12] *Vanita Vishram Trust* v. *CIT*, (2010) 327 ITR 121])
[13] *American Hotel & Lodging Assn. Educational Institute* v. *CBDT*, (2008) 10 SCC 509
[14] *CIT* v. *Gurukul Ghatkeswar Trust*, (2011) 332 ITR 611 (SC)

of the institution. Where the purpose of the institution and the defining character of its mission were education, and education alone, the test was fulfilled. Any surplus income resulting from *incidental* activities to the main objectives, i.e. *education,* is irrelevant and would not change the essential nature of the institution into a profit-oriented one. The argument of the appellants was based on a settled principle of law, i.e., the '*predominant Object*' test declared by the Apex Court in her previous decisions, primarily, the *CIT* v. *Surat Art Silk Cloth Manufacturers' Assn*..[15]

Part II

The 'Predominant Object' Test

While examining the subject matter of the case raised through New Noble, the apex court started the discussion, stating that "*Education ennobles the mind and refines the sensibilities of every human being. It aims to train individuals to make the right choices. Its primary purpose is to liberate human beings from the thrall of habits and preconceived attitudes [Rabindranath Tagore's Gitanjali, famous for its unforgettable verses, yearns for a place where, "Knowledge is free", and where, "The world has not been broken up into fragments by narrow domestic walls, where words come from the depths of truth", and "Where the clear stream of reason has not lost its way into the dreary desert sand of dead habit".]. It should be used to promote humanity and universal brotherhood. By removing the darkness of ignorance, education helps us discern between right and wrong. There is scarcely any generation that has not extolled the virtues of education and sought to increase knowledge.*"

However, with the end of paragraph 33, judgment jumps to an analysis within the following framework-

> *35. The issues which require resolution in these cases are , firstly, the correct meaning of the term "solely" in Section 10(23-C)(vi), which exempts income of "university or other educational institution existing solely for educational purposes and not for purposes of profit". Secondly, the proper manner in*

[15] *CIT* v. *Surat Art Silk Cloth Manufacturers' Assn.,* (1980) 2 SCC 31

> *considering any gains, surpluses or profits, when such receipts accrue to an educational institution i.e. their treatment for the purposes of assessment, and thirdly, in addition to the claim of a given institution to exemption on the ground that it actually exists to impart education, in law, whether the tax authorities concerned require satisfaction of any other conditions, such as registration of charitable institutions, under local or State laws.*

Within the above interpretational framework, the court applied the plain and grammatical meaning of the term '*solely*'. Relying on its earlier decisions, the court stated that "this Court in subsequent decisions, notably in *Indian Chamber of Commerce* v. *CIT*,[16] followed in principle, the *ratio* in *Lok Shikshana Trust*,[17] and held that profit-making cannot be an object at all in the case of trusts set up with the object of advancing general public utility." It is interesting to see that the court approached the interpretation from the framework of '*institutions existing solely for-profit purposes*', whereas the actual expression used in section 10(23C)(vi) is '*institutions existing solely for educational purposes and not for purposes.'* This deviation seems to have a greater impact on the decision.

Earlier, while looking into such matters, the court has applied the '*predominant object'* test, propounded in *CIT* v. *Surat Art Silk Cloth Manufacturers' Assn.*[18] The assessee in the *Surat Art* case was a trade promotion association set up to advance the interests of silk weavers and promote exports. Some of its objects included permitting the association to obtain export licences and export cloth manufactured by members, "to buy and sell and deal in all kinds of cloth and other goods and fabrics belonging to and on behalf of the Members". The Court was of the opinion that '*the predominan*'" object or purpose of the assessee was to advance the interests of silk manufacturers. The other objects were *only incidental*. According to the New Noble Court, 'it was in that context that the Court held that profit-making in the course of carrying on the *predominant objective* of a trust or other institution is not *per se prohibited*.'

Making a distinction with earlier cases, the case in hand, the *New Noble*

---

[16] *Indian Chamber of Commerce* v. *CIT*, (1976) 1 SCC 324

[17] *Lok Shikshana Trust* v. *CIT*, (1976) 1 SCC 254

[18] *CIT* v. *Surat Art Silk Cloth Manufacturers' Assn.,* (1980) 2 SCC 31

Court bench observed, "the '*predominant object*' test evolved through *the Surat Art case was not rendered in the context of an educational institution, and therefore, the* court observed that the said decision is clearly inapt in the context of charities set up for advancing education."

The New Noble Court then came to one of the most important decisions, i.e. *Aditanar Educational Institution* v. *CIT*.[19] Here in this *Aditanar* case, the assessee society, having objects to impart education, when denied exemption on the ground that it was not engaged in educational activities, but its schools were, the Supreme Court termed it '*unreal and hyper technical*', and hold that "*the object of the society is to establish, run, manage or assist colleges or schools or other educational institutions solely for educational purposes and in that regard to raise or collect funds, donations, gifts, etc. Colleges and schools are the media through which the assessee imparts education and effectuates its objects. In substance and reality, the sole purpose for which the assessee has come into existence is to impart education at the levels of colleges and schools, and so, such an educational society should be regarded as an "educational institution" coming within Section 10(22). We hold accordingly*." It is quite clear that the *Aditanar* Court was conscious of the fact that '*colleges and schools are the media'* through which the assessee would impart education, and that suffices the requirement of the then existing section 10(22). What may be noted again is that the focus was more on 'the media' to impart education than merely the 'kind' of activities.

The court's approach reflected through the *Aditanar* cases became more vocal on this subject matter in *Queen's Educational Society v. CIT*,[20] where the exemption was denied by tax authorities on the grounds that the society's objects included not only education, but others as well, and that its aim was to make a profit. The court, while affirming the "*predominant object*" test, prescribed the following guidelines:

> "*11. Thus, the law common to Sections 10(23-C)(iii-ad) and (vi) may be summed up as follows:*
> *(1) Where an educational institution carries on the activity of education primarily for educating*

[19] *Aditanar Educational Institution* v. *CIT*, (1997) 3 SCC 346; See also, *Queen's Educational Society* v. *CIT*, (2015) 8 SCC 47

[20] *Queen's Educational Society* v. *CIT*, (2015) 8 SCC 47

> *persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit.*
>
> *(2) The predominant object test must be applied—the purpose of education should not be submerged by a profit-making motive.*
>
> *(3) A distinction must be drawn between the making of a surplus and an institution being carried on "for profit". No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit.*
>
> *(4) If after meeting expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes.*
>
> *(5) The ultimate test is whether on an overall view of the matter in the assessment year concerned the object is to make profit as opposed to educating persons."*

In fact, the Punjab and Haryana High Court, through *Pine Grove International Charitable* v. *Union of India*,[21] rejected the idea of assuming a profit motive against the institution, only because the institution was charging high academic fees. The High Court had held that the generation of profits could not be the only reason to deny exemption, and what was relevant was the "predominant" or main object of the society, which in that case was to impart education.

To determine whether an institution is engaging in education or not, the Court has to consider its objects. Once the applicant institution is not engaged in imparting education, but rather is just a publisher of books, etc., its claims are to be rejected.[22] It was also held that the stage of examining whether and to what extent profits were generated and how they were utilised was not essential at the time of the grant of approval,

[21] *Pine Grove International Charitable* v. *Union of India*, (2010) 327 ITR 73 (P&H)

[22] *Oxford University Press* v. *CIT*, (2001) 3 SCC 359; See also *American Hotel & Lodging Assn. Educational Institute* v. *CBDT*, (2008) 10 SCC 509.

but rather formed part of the monitoring mechanism.[23] The basic provision *granting exemption*, thus enjoins that the institution should exist "*solely for educational purposes and not for purposes of profit*". This requirement is categorical. The expression "solely" has been interpreted, as noticed previously, by other judgments as the "dominant/predominant/primary/main" object.

The Fear Became the Reality

The fear expressed by the *New Noble* Court, i.e. the ongoing commercialisation of education, seems to have loomed large over the court when it attempted to re-examine the matter afresh. In search of an answer towards delimiting the commercialisation of education, the court has not reinterpreted the whole clause from the perspective of the term 'solely', which was hitherto ignored by earlier courts.

The *New Noble* court started focusing on the term '*solely*' dictionary meaning, by applying the plain and grammatical rule of interpretation and said that the term '*solely*' means "only" or "exclusively".[24] Relying on its dictionary meaning, the court said that the term "*solely*" is not the same as "*predominant/mainly*". The term "*solely*" means to the exclusion of all others. The court also stated that earlier decisions have never explored the meaning of the term '*solely*',[25] and the '*predominant*' test propounded for charitable institutions was applied unquestioningly in cases relating to charitable institutions claiming to impart education.[26] "*The approach and reasoning applicable to charitable organisations set up for advancement of objects of general public utility are entirely different from charities set up or established for the object of imparting education*," the *New Noble court* concluded.

The court further fortified its argument by re-reading the clause (iiiab), (iiiad, and (vi). According to the court, the educational institutions, the basis of exemption is Sections 10(23-C)(*iii-ab*), (*iii-ad*) and (*vi*), the positive

---

[23] *American Hotel & Lodging Assn. Educational Institute* v. *CBDT*, (2008) 10 SCC 509.

[24] P. Ramanatha Aiyar, *Advanced Law Lexicon*, 6th Edn., pp. 5249-5250 (2019).] explains the term as, "*Solely" means exclusively and not primarily*." *Cambridge Dictionary* defines "solely" to be, "*Only and not involving anyone or anything else*". [4th Edn. (2013).]

[25] *American Hotel & Lodging Assn. Educational Institute* v. *CBDT*, (2008) 10 SCC 509; *Queen's Educational Society* v. *CIT*, (2015) 8 SCC 47

[26] *CIT* v. *Surat Art Silk Cloth Manufacturers' Assn.*, (1980) 2 SCC 31

condition is "*solely for educational purposes*" and the negative injunction "*and not for purposes of profit*". Thus, "*a trust, university or other institution imparting education, as the case may be, should necessarily have all its objects aimed at imparting or facilitating education*." The court reinvigorated the above outcome by quoting a constitutional bench decision which lays down that "*taxing statutes are to be construed in terms of their plain language*".[27] However, it may quickly be noted that said decision also says that "*when the words in a statute are clear, plain and unambiguous and only one meaning can be inferred, the courts are bound to give effect to the said meaning irrespective of consequences. If the words in the statute are plain and unambiguous, it becomes necessary to expound those words in their natural and ordinary sense. The words used declare the intention of the legislature*."[28]

Incidental 'Business'

The *seventh proviso*, to section 10 (23C) states that "*nothing contained in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall apply in relation to any income of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business*". This speaks volumes about the possibility of engaging an institution in different kinds of activities and thereby creating '*profits*' if the activities are '*incidental*' to the main objective. It specifies that an exemption in relation to income or trust of an institution, which is profits or means of business, cannot be exempted "unless the business is incidental, trust or, as the case may be, *institution and separate books of accounts are maintained by such trusts or institution in respect of such business*".

The Courts earlier, while exploring the scope of "*incidental*" business activity in relation to education, stated that imparting education through schools, colleges, and other such institutions would be *per se* charity. Apart from that, there could be activities incidental to providing education. One example is of textbooks.[29] The court outlined that publishing and selling textbooks by state institutions facilitates learning and, thus, would be

[27] *Commr. of Customs* v. *Dilip Kumar & Co.*, (2018) 9 SCC 1.
[28] *Id*., para 11.
[29] *Assam State Text Book Production & Publication Corpn. Ltd.* v. *CIT*, (2009) 17 SCC 391

"incidental" to education. Similarly, running school buses to transport children, summer camps, special education courses such as computer would be an activity "*incidental*" to education. However, the New Noble Court, while accepting the above propositions, made it clear that "*where institutions provide their premises or infrastructure to other entities, trusts, societies, etc. for the purposes of conducting workshops, seminars or even educational courses (which the trust concerned is not actually imparting) and outsiders are permitted to enrol in such seminars, workshops, courses, etc. then the income derived from such activity cannot be characterised as part of education or "incidental" to the imparting education."* And such income can properly fall under the other heads of income."

It is most humbly submitted that such an approach would necessarily limit the revenue generation possibilities of the educational institution and would hinder its progress. The capital already invested in the infrastructure, if it creates incremental benefits for the institution, the same should be considered as '*incidental activities'*, and thus be treated with generosity in the larger interest of the academic institution.

'Education': Restricted Meaning

Though the *New Noble* court was conscious of the fact that "*the subject of education is vast, even sublime*", it adopted a restrictive meaning of the term education. Quoting *T.M.A. Pai Foundation* v. *State of Karnataka*,[30] court ruled that education in a narrower meaning would imply "scholastic *structured* learning". Borrowing from *Lok Shikshana Trust* v. *CIT*,[31] the *New Noble* Court ruled that:

> *"The sense in which the word "education" has been used in Section 2(15) is the instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result*

[30] *T.M.A. Pai Foundation* v. *State of Karnataka*, (2002) 8 SCC 481
[31] *Lok Shikshana Trust* v. *CIT*, (1976) 1 SCC 254, para 5

> *of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. … All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of Section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling." and where, "The world has not been broken up into fragments by narrow domestic walls, where words come from the depths of truth", and "Where the clear stream of reason has not lost its way into the dreary desert sand of dead habit"."*

Thus, according to the court, education, i.e. imparting formal scholastic learning, is what the IT Act provides for under the head of "charitable" purposes, under Section 2(15). This also seems to be in line with the de-commercialisation of education. It is a fact that these days educational institutions are engaged in a variety of educational activities which are neither limited to classroom teaching nor necessarily result in a formal degree or certification. From developing essential skills in computer, Artificial Intelligence, etc., to honing the soft skills, such as drafting, debating, mooting, and personality development, has become the new agenda for education. Most of these programs do not necessarily result in a degree or certification. The New Education Policy 2020 is also reflecting similar changing trends. Yet the court's focus on formal education would be detrimental to the new idea of education and skill development. This will also limit the revenue generation capacity and optimum utilisation of institutional resources.

Part III

'Text is Explicit'

One would wonder why the apex court went for interpreting the term '*solely*', when the otherwise scope of section 10(23C) (iiiab) or (iiiad) or Clause (vi) was more than clear.

On a bare reading of these provisions, it would unambiguously identify

three distinct categories of *educational institutions* that would claim exemption under 10(23C). *Firstly*, 'any university or other educational institution existing solely for educational purposes and not for purposes of profit, and *which is wholly or substantially financed by the Government*.' [emphasis supplied]. *Secondly*, "any university or other educational institution existing solely for educational purposes and not for purposes of profit, *if the aggregate annual receipts of the person from such university or universities or educational institution or educational institutions do not exceed five crore rupees.* [Emphasis supplied] *and thirdly "*any university or other educational institution existing solely for educational purposes and not for purposes of profit*, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the Principal Commissioner or Commissioner.* [emphasis supplied]

All three categories mentioned above have something in common, i.e. "*any university or other educational institution existing solely for educational purposes and not for purposes of profit*". Thus, as and when any educational institute falls under these categories, claiming exemption, the primary requirement is that are '*educational institution, existing solely for education purposes and not for profit'*. The expression '*solely*' used in the provision reflects the identity of the institution and its nature, i.e. an institution which is established solely for imparting 'education' and not doing any business, etc. The term '*solely*' has a limited purpose here. There could be a possibility where an 'institution' is primarily for business purposes, such as providing research and development (R&D) for business entities, and as an 'incidental' work, it engages in academic/research also. Other examples could be 'publishing houses', 'corporate houses engaged in research', ' coaching centres', etc. These institutions, from an external outlook, would look like 'educational' in a larger context, yet their *predominant objectives* would be to continue and support their commercial activities. Thus, the expression 'solely' was considered altogether from a distinct point of view and with altogether different context.

'*But for*' Test

What if the term 'solely' is removed from the text? Will the whole meaning of the clause, especially clause (vi), change? If we replace the term '*solely*', the clause (vi) would look like this: -

> *(vi) any university or other educational institution existing ~~solely~~ for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the Principal Commissioner or Commissioner; or*

The bare reading of the clause (vi) *sans* '*solely*' would still suggest that there should be an "educational institution existing for educational purposes and not for profit." Thus, where an educational institute exists, not for educational purposes, *but for profit*, the said institution would not get the benefit of this clause. Through this reasoning, the court would also have to apply the *predominant object* test to see if the institution is for educational purposes or not. If the answer to this query is 'positive', the rest of the activities are incidental.

It seems that the court has also not examined the scope of the term 'institution', in the light of other expressions, i.e. 'universities', used in the same breath. Had that been examined, probably the court would have gone into the question of formal educational bodies such as schools, colleges, and universities only, within the national or state level legal framework. Any focus on this expression could have easily suggested what should be the true meaning and scope of the expression '*and not for purposes of profit*'. As far as the Indian educational legal framework is concerned, educational institutions are expected to work exclusively for educational purposes, and not for profit. However, once they are recognised as an educational institution, they have been given sufficient space to create and manage their fund/corpus.

Part IV

Institutional Integrity & Value Judgment

The approach adopted by the *New Noble* court seems to be too technical, burdened with moral judgment and bias. The very focus on the expression '*profit*' seems to emanate from the idea that educational institutions are only for imparting education and must not engage in commercial activity. It is true that educational institutions should not engage in commercial

activities, but what about activities that are not commercial but, at the same time, non-formal educational activities? In other words, whether the institution would have no discretion to engage in non-formal education activities, such as training programmes, conferences, school trips, etc. and thereby receive contributions?

Let's reexamine it. Out of the three categories of educational institutions mentioned above, the first would be funded, fully or substantially, by the government, and thus would require no additional funding or at least resources.[32] The institution falling under the second category, there is a blank exemption up to Rs. 5 Cr., annual receipt. The category three is an exclusive category, not covered under the earlier two, and thus requires formal exemption from the Income Tax Department. It is obvious that institutions falling under these categories are big institutions, i.e. above five cr., annual receipt limit, and yet not being funded by the government. The survival and upward momentum of this institution would require continuous generation of funds through institutional activities. Any assumption of profit-making against these institutions, without their being involved in commercial activity, would be a biased opinion.

It seems that the Court leans toward a Kantian deontological ethic, i.e. education is a duty owed to society, not a means for private enrichment. It is also true that there should not be commercialisation of education. But it is equally true that modern-day education, especially secondary and tertiary education, requires a huge investment. And unless the same is funded by the government, the institution cannot supplement it through the tuition fee. In case revenue creation through alternative 'incidental' activities is not permitted, that will create a finance gap and would ultimately kill the institution.

The Court has adopted a narrow, classroom-centric interpretation of "education", limiting it to formal scholastic instruction akin to the traditional model under British law (Oxford, etc.). This restrictive definition excludes many contemporary modes of education: skill development, vocational training, professional seminars, ed-tech, online modules, etc. It risks excluding institutions from tax exemptions even if their broader social utility aligns with educational purposes. This

[32] Section 10(23C) (iiiab).

contradicts Amartya Sen's capabilities approach, where education is seen as expanding freedoms and agency, not confined to syllabi.

CONCLUSION

The insistence on the term '*solely*', the *New Noble* has attempted to idealise the educational institution as an entity that would virtually operate in a non-financial context. This perspective of too rigid moral standards would not be realistic in terms of any institution, including education. It also ignores the financial realities faced by educational institutions in their quest for survival.

The ruling of the *New Noble* court, propounding a restrictive meaning of education, and denial of beneficial tax provisions, based on the technical placing of the word '*solely*', will necessarily cause a blow to already empty coffers of the education institutions. Placing public interest (availability of quality education) over private interest (commercialisation of education) would require thorough examination so that education can liberate all and fill them with human dignity.

It is the human being, their need and development, which should be at the centre of statutory interpretation. Law should be interpreted as a coherent narrative promoting justice, political, social and economic, and not mere rules.