

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3085/MUM/2019  
Assessment Year: 2014-15**

Dy. Commissioner of Income  
Tax (Exemption)-2(1),  
Room No. 519, 5<sup>th</sup> floor,  
Piramal Chambers, Lalbaug,  
Lower Parel, Mumbai-400012.

**Appellant**

Vs. The J.K. Trust Bombay,  
Ground floor, New Hind House,  
Narottam Morarjee Marg,  
Bellard Estate, Mumbai-400001.

**PAN No. AAATT0611L  
Respondent**

Revenue by : Mr. A. Mohan, CIT-DR  
Assessee by : Mr. Rakesh Mohan, AR

Date of Hearing : 02/11/2020  
Date of pronouncement : 04/11/2020

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the Revenue. The relevant assessment year is 2014-15. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-5, Mumbai [in short 'CIT(A)'] and arises out of assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the Revenue read as under :

1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is right in allowing the exemption u/s 11 of The I.T. Act to the assesses in view of proviso to section 2(15) of the I.T. Act, when the receipts from the business of

upgrading the local indigenous low milk yielding cattle by cross breeding them with the use of frozen semen of high pedigree exotic bull through technique of artificial insemination to get resulting better milk yielder exceeded the limit provided in proviso to section 2(15), ignoring the detailed discussion made in assessment order in Para 4.

2. Whether on the facts and circumstances of the case and in law, without prejudice to ground No. 1, the Ld. CIT(A) is right in allowing the exemption u/s 11 of the IT. Act, in view of proviso to section 2(15) of the I.T. Act, when even, after ignoring the receipts of money /consideration being income from Livestock Development Centres received by the assessee for the activities carried out by it on the basis of proper contract/agreement entered into with the State /Central Government where everything has been, decided specifically in proper business/professional manner exceeding the limit provided in proviso to section 2(15) ignoring the detailed, discussion made in assessment order.
3. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is right in directing the AO to allow exemption u/s. 11 of the I.T. Act ignoring the fact that the assessee is doing regular activities of live stock Development Centre where activities of impregnation of Cows and Buffalos are carried out and so the activities are more in the nature of commercial activities. At the most the activities can be considered as charitable activities, in nature of General Public Utility. Then also the proviso to section 2(15) is clearly applicable and the assessee is not entitled for exemption u/s. 11 of the I.T. Act.
4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is right in relying on the decision of the Tribunal while deciding the issue of setting aside the order u/s.263 of the I.T. Act in assessee's own case for A.Y. 2012-13 in ITA No. 3769/Mum/2017, after considering the issue in depth and the said decision of Hon'ble Gujrat High Court in the case of Sabarmati Ashram Gaushala Trust, wherein the same issue of applicability of proviso to section 2(15) of the Act has been decided in assessee's favour ignoring the fact that the

department has not accepted the same decision and has filed further appeal before Hon'ble High Court which is pending of adjudication.

5. The appellant prays that the order of the Ld. CIT(A) be set aside and that of the Assessing Officer be restored.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2014-15 on 29.09.2014 declaring total income at Rs. Nil. The assessee-Trust is registered as a Charitable Organization with CIT(E), Mumbai u/s 12A vide Registration No. BMY/TR/J(A)/9/73-74 dated 19.03.1974 and with Charity Commissioner vide registration No. E-717(Bom). The assessee trust is registered u/s 80G of the I.T. Act. The assessee has accordingly claimed exemption u/s 11 of the I.T. Act.

In the assessment order dated 26.12.2016, the Assessing Officer (AO) arrived at a finding (i) that the object of the Trust is general public utility and it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration, (ii) in the present case, the Trust is taking money/consideration for the same from the State/Central Government and that consideration is not lump-sum or grant which is in case of Sabarmati on which the assessee has relied upon but the same is on the basis of proper contract/agreement where everything has been decided specifically in proper business/professional manner.

Thus the AO held that the case of the assessee is hit by the amendment to section 2(15) of the Act w.e.f. 01.04.2009 and it loses its charitable character for the assessment year in question and therefore is not entitled to

exemption u/s 11 in view of the provision of section 13(8) of the Act. Accordingly, the AO calculated the total income of the assessee as under :

			Rs.
	Income from Other Sources		821228252
Less :	Expenses		
	Amount applied to charitable purpose during previous year		708241507
	Total Taxable Income		112986745
	Rounded Off to		112986740

4. Aggrieved by the order of the, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 08.02.2019, the Ld. CIT(A), by following the decision in *CIT v. Sri Balaji Samaj Vikas Samiti* (91 taxmann.com 26) (Allahabad-High Court); *DIT (Exemption) v. Sabarmati Ashram Gaushala Trust* (44 taxmann.com 141) (Gujarat High Court) and the order of the Tribunal in assessee's own case for AY 2012-13 in ITA No. 3769/Mum/2017 held that the AO was not justified in holding that the activities of the assessee were in the nature of carrying out business or trade and hence hit by the proviso to section 2(15) of the Act. Thus the Ld. CIT(A) held that the assessee is eligible for exemption u/s 11 & 12 of the Act.

5. Before us, the Ld. Departmental Representative (DR) relies on the order of the AO. On the other hand, the Ld. counsel for the assessee refers to and relies on (i) ITAT order dated 15.07.2020 for AY 2009-10 in assessee's own case, (ii) ITAT order dated 15.07.2018 for AY 2012-13 in assessee's own case, (iii) the decision in *Sabarmati Ashram Gaushala Trust* (supra).

6. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

We find that similar issue arose before the ITAT 'F' Bench in assessee's own case for AY 2009-10 in ITA No. 1564 & 3084/Mum/2019. The Tribunal, referring to the decision in Sabarmati Ashram (supra), held as under :

17. With regard to the revenue appeal, we noticed that the Ld CIT(A) has allowed the grounds raised by the assessee on merits by accepting the submissions of the assessee and cases relied. The decisions submitted before him, are the coordinate bench decisions in assessee's own case against the order of section 263 of the Act, in which the coordinate bench has relied on the Hon'ble Gujrat High Court decision in the case of Sabarmati Ashram (supra). Since the decision in the Sabarmati Ashram is similar to the facts in the present case, we are inclined to accept the findings of the Ld CIT(A) and for the brevity, the ratio is reproduced below:-

9. Many activities of genuine charitable purposes which are not in the nature of trade, commerce or business may still generate marketable products. After setting off of the cost, for production of such marketable products from the sale consideration, the activity may leave a surplus. The law does not expect the Trust to dispose of its produce at any consideration less than the market value. If there is any surplus generated at the end of the year, that by itself would not be the sole consideration for judging whether any activity is trade, commerce or business - particularly if generating 'surplus' is wholly incidental to the principal activities of the trust; which is otherwise for general public utility, and therefore, of charitable nature. The Tribunal took into account the objects of the Trust, which are as under:—

"1. To breed the cattle and endeavour to improve the quality of the cows and oxen in view of the need of good oxen as India is prominent agricultural country and the cow milk as food is both conducive to and requisite for good health and longevity of human life. In order to improve the quality of the cattle, it is very essential to use a high quality bulls. Hence to produce and to get produced the best pedigreed bulls and to castrate the scrub bulls and propagate the work to prepare bullocks by castrating the bulls which do not become good bulls.

2. To produce and to sell the cow milk and its various preparations so as to popularize the use of cow milk and do all other works for the same.

3. To hold and cultivate or get cultivated agricultural lands, to keep grazing lands etc necessary or desirable for cattle keeping and breeding or to rehabilitate and assist Rabaris and Bharwads.

4. To hold and cultivate other land also in order to experiment in the improvement in agriculture and obtain finance support in all the activities of the institution.

5. To make necessary arrangements for getting informatics and scientific knowledge and to do scientific research with regard to keeping and breeding of the cattle, agriculture, use of milk and its various preparations etc and to establish scientific laboratories, libraries, reading rooms relating to the keeping of the cattle, improvement of agriculture etc and recognize or assist such institutions.

6. To establish other allied institutions like leather work etc and to recognize and help them in order to make the cow keeping economically viable successfully.

7. To publish books, periodicals, monthlies, advertisements, pamphlets, statements etc from time to time and for that matter to arrange for printing press, building etc in order to popularize the objects of the trust.
8. To accept all the trusts and benefactions not inimical to the trust objects conditionally or otherwise.
9. To open schools and hostels for imparting education in cow keeping and agriculture having regard to the trust objects or to help such schools and hostels and to make suitable arrangements for training workers required for the trust work.
10. To get the money from time to time as required for the trust work by way of gift, borrow on securities of the trust properties or obtain in any other way as deemed fit by the trustees.
11. To undertake such other activities from time to time for achieving or helping the trust objects as deemed fit by the trustees".

10. The Tribunal also noted that the objects were admittedly charitable in nature. The surplus generated was wholly secondary. It was, therefore, that the Tribunal held that the proviso to section 2 (15) of the Act would not apply.

11. We are wholly in agreement with the view of the Tribunal. The objects of the Trust clearly establish that the same was for general public utility and where for charitable purposes. The main objectives of the trust are - to breed the cattle and endeavour to improve the quality of the cows and oxen in view of the need of good oxen as India is prominent agricultural country; to produce and sale the cow milk; to hold and cultivate agricultural lands; to keep grazing lands for cattle keeping and breeding; to rehabilitate and assist Rabaris and Bharwads; to make necessary arrangements for getting informatics and scientific knowledge and to do scientific research with regard to keeping and breeding of the cattle, agriculture, use of milk and its various preparations, etc.; to establish other

allied institutions like leather work and to recognize and help them in order to make the cow keeping economically viable; to publish study materials, books, periodicals, monthlies etc., in order to publicize the objects of the trust as also to open schools and hostels for imparting education in cow keeping and agriculture having regard to the trust objects.

12. All these were the objects of the general public utility and would squarely fall under section 2 (15) of the Act. Profit making was neither the aim nor object of the Trust. It was not the principal activity. Merely because while carrying out the activities for the purpose of achieving the objects of the Trust, certain incidental surpluses were generated, would not render the activity in the nature of trade, commerce or business. As clarified by the CBDT in its Circular No. 11/2008 dated 19th December 2008 the proviso aims to attract those activities which are truly in the nature of trade, commerce or business but are carried out under the guise of activities in the nature of public utility'.

13. Delhi High Court in case of Institute of Chartered Accountants of India v. DGIT [2012] 347 ITR 99/[2011.202 Taxman 1/13 taxmann.Com 175 considered these very provisions in the context of activities of the Institute of Chartered Accountants holding that the fundamental or dominant function of the Institute was to exercise overall control and regulate the activities of the members/enrolled chartered accountants and merely because the Institute was holding coaching classes which also generate income, the Court held that proviso to Section 2 (.15) of the Act would not be applicable. It thus held and observed as under:—

"Section 2 (15) defines the term "charitable purpose". Therefore, while construing the term "business" for the said section, the object and purpose of the section has to be kept in mind. We do not think that a very broad and extended definition of the term "business" is intended for the purpose of interpreting and applying the first proviso to section 2 (15) of the Act to include any transaction for a fee or money. An activity would be

considered "business" if it is undertaken with a profit motive, but in some cases this may not be determinative. Normally, the profit motive test should be satisfied but in a given case activity may be regarded as business even when profit motive cannot be established/proved. In such cases, there should be evidence and material to show that the activity has continued on sound and recognized business principles, and pursued with reasonable continuity. There should be facts and other circumstances which justify and show that the activity undertaken is in fact in the nature of business. The test as prescribed in *State of Gujarat v. Raipur Manufacturing Co.* [1967] 19 STC 1 (SC) and *CST v. Sai Publication Fund* [2002] 258 ITR 70 (SC): [2002] 126 STC 288 (SC) can be applied. The six indicia stipulated in *Lord Fisher* [1981] STC 238 are also relevant. Each case, therefore, has to be examined on its own facts.

In view of the aforesaid enunciation, the real issue and question is that whether the petitioner-Institute pursues the activity of business, trade or commerce. To our mind, the respondent while dealing with the said question has not applied their mind to the legal principles enunciated above and have taken a rather narrow and myopic view by holding that the petitioner-Institute is holding coaching classes and that this amounts to business."

14. In the result, we do not find that the Tribunal has committed any error and the Tax Appeal is therefore dismissed.

Therefore, respectfully following the above, ground raised by the revenue is dismissed."

6.1 The Special Leave Petition filed by the Revenue against the decision in *Sabarmati Ashram Gaushala Trust* (supra) has since been dismissed by the Hon'ble Supreme Court.

7. Facts being identical, we follow the above order of the Co-ordinate Bench and affirm the order of the Ld. CIT(A).

8. In the result, the appeal filed by the Revenue is dismissed.

**Order pronounced in the open Court on 04/11/2020.**

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 04/11/2020

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**