

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA Nos.2025 & 2026/M/2019
Assessment Years: 2012-13 & 2013-14**

Income Tax Officer (Exemptions)-2(3), Room No.513, 5 th Floor, Piramal Chambers, Income Tax Office, Lalbaug, Parel, Mumbai – 400 012	Vs.	M/s. Sri Shanmukhanand Fine Arts and Sangeetha Sabha, Plot No.292, Shanmukhanand Hall, Comrade Harbanslal Marg, Sion (East), Mumbai – 400 022 PAN: AAATS2694E
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Paresh Shaparia, A.R.
Revenue by : Shri T.S. Khalsa, D.R.

Date of Hearing : 23.11.2020
Date of Pronouncement : 28.12.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 24.01.2019 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

ITA No.2025/M/2019 (A.Y. 2012-13)

2. The only issue raised by the Revenue in the various grounds of appeal is against the direction given by ld CIT(A) to the AO to grant benefit of section 11 of the Act to the assessee.

3. At the outset, the Ld. Counsel of the assessee pointed out that the issue has been settled and decided the issue involved in the present appeal in favour of the assessee in A.Y. 2011-12 in ITA No.1975/M/2016 vide order dated 02.03.2018 and prayed before the Bench that the appeal of the Revenue may kindly be dismissed following the said decision of the co-ordinate bench of the Tribunal by upholding the order of Ld. CIT(A).

4. The Ld. D.R., on the other hand, relied on the grounds of appeal and highlighted the fact that appeal against the order of co-ordinate bench of the Tribunal in A.Y. 2011-12 is pending before the Hon'ble Bombay High Court.

5. After hearing both the parties and perusing the material on record, we observe that the same issue under identical facts has been decided by the co-ordinate bench of the Tribunal in A.Y. 2011-12 vide order dated 02.03.2018. The operative part whereof is as under:

6. We have heard the rival submissions and perused the material before us. We find that as per the predominant objects of the assessee, as per the memorandum of association (Pg. A1-A25 of the PB) are to impart education in music, dance, drama, culture and other fine arts, to provide medical relief, health services and yoga to general public, to establish medical centres/ hospitals for providing medical services (Claus 3), that DIT(E), Mumbai had withdrawn the registration granted to it, that the Tribunal reversed the order of the DIT, that the Hon'ble Bombay High Court confirmed the order of the Tribunal. In our opinion, during the continuation of registration, it is not permissible to the departmental authorities to challenge the charitable nature of the objects of a Trust. We would like to refer to the case of Ahmedabad Urban Development Authority (335 ITR 575) wherein the Hon'ble Gujarat High Court has held as under:

"Section 12AA of the Income-tax Act, 1961, lays down the procedure for registration in relation to the conditions for applicability of sections 11 and 12 as provided in section 12A. Therefore, once the procedure is complete as provided in sub-section (1) of section 12AA and a certificate is issued granting registration to the trust or institution the certificate is a document evidencing satisfaction about : (i) the genuineness of the

activities of the trust or institution, and (ii) about the objects of the trust or institution. Section 12A stipulates that the provisions of sections 11 and 12 shall not apply in relation to income of a trust or an institution unless the conditions stipulated therein are fulfilled. Thus, granting of registration under section 12AA denotes that the conditions laid down in section 12A stand fulfilled. The effect of such a certificate of registration under section 12AA, therefore, cannot be ignored or wished away by the Assessing Officer by adopting a stand that the trust or institution is not fulfilling the conditions for applicability of sections 11 and 12."

We find that the main objection of the departmental authorities was that the SH was rented out most of the time and that it was a commercial activity. In our opinion, act of letting out of hall cannot be and should not be considered in isolation. Eligibility or otherwise of benefit u/s. 11 of the Act cannot depend solely on one factor. What has to be seen is as to whether the trust is incurring the expenditure for the objects and purposes for which it was established. We find that the issue of letting out of a hall by a charitable institute was deliberated upon by the Hon'ble Madras High Court in the case of Madras Stock Exchange Ltd (supra) and Women's India Trust (supra). We would like to reproduce the relevant portion of the judgment of the Hon'ble Bombay High Court in the case of Women's India Trust and it reads as under:

"The assessee-trust formed to carry out the object of education and development of natural talents of people having special skills, more particularly women. It trained them to earn while learning. It educated them in the field of catering, stitching, toy making, etc. While giving them training, it used material bought from the open market. This was essential for carrying out the assessee's object. In the process, some finished product such as pickles, jam, etc., were produced and which the assessee sold through shops, exhibitions and personal contacts. The motive of the assessee was not the generation of profit but to provide training to needy women in order to equip or train them in these fields and make them self-confident and self-reliant. There was nursing training, which was also being managed and administered by the assessee. The details of income and expenditure showed that the assessee had received donations of Rs. 36,88,634 and nursing school fees of Rs. 4,46,088. The assessee pointed out that this nursing training provided at the centre of the assessee at Panvel was free of cost. The charge was levied for the mess but accommodation and other facilities were free of cost and apart from community development programmes, which were undertaken to educate rural women, they were taught various skills and made aware of how to live honourably. The Tribunal found that this was not an activity which would fall within the proviso to section 2(15). The Tribunal referred to two letters addressed by the trustees of the assessee-trust clarifying that in the past, such activities had been found to be incidental to the objects of the trust. Secondly, the donation received during the year had been utilised in the assessment year 2009-10 for achieving the object of the trust. However, the bank interest received was continued and, then, there was a deficit. It was

in these circumstances that the argument was canvassed that the fees collected for training women were only to meet the cost of expenses for providing them food items. Their accommodation and other facilities were free of cost. The Tribunal found that the trust may be set up for advancement of any other object of general public utility but that would not cease to be charitable purposes because the activities in which the trust was involved could not be termed as carrying on of trade, commerce or business, that the activity undertaken did not partake of the character of trade, commerce or business nor of rendering of any service in relation thereto but was only to teach or impart skills and to instill confidence that the produced goods or articles were sold. To that extent also deficit had occurred. The Tribunal took a view that occasional sales or the trust's own fund generation were for furthering the objects but not indicative of trade, commerce or business. The proviso did not apply. considering the fact that the trust had been set up and was functional for the past several decades and it had not deviated or departed from any of its stated objects and purpose, utilisation of the income, if at all generated, did not indicate the carrying on of any trade, commerce or business. The Tribunal's view was to be upheld. It was a possible view and could not be termed perverse. The view was taken on an overall consideration and bearing in mind the functions and activities of the trust. In such circumstances, it was not vitiated by any error of law apparent on the face of the record."

6.1. We also find that the assessee had suffered loss in the various activities, carried out by it, to the tune of Rs.32 lakhs(app.)except for eye care department and interest on investment (Pg.50,52, 56-57 of the PB).A perusal of Pg.s 82-84 reveal that expenditure incurred by it during the year under appeal pertained to overall administration and activities. In other words the said expenditure would have to be incurred even if the SH was not let out.SH was rented out when it was not required by the assessee for its own purpose. Here,one important factor to be remembered is that the it could continue to carry out various charitable activities and could achieve the objects at concessional rates due to income received by it from letting out of SH.

6.2.It is also a fact that the departmental authorities have, in the past, admitted that activities carried out by it were of charitable nature. No new fact has been brought on record to prove that during the year some different incidents had taken place as compared to the earlier year to change the nature of the activities. The letting out of SH, during the period when it was not required by the trust, was not considered a commercial activity in the earlier years. It is true that principles of res judicata are not applicable to the income tax proceedings. But, at the same time it is also true that principles of consistency have to be followed while deciding the tax matters. In the case of International tractors Ltd., the Hon'ble Delhi High Court(397 ITR 696)has held that deductions allowed in the earlier assessment years should not be withdrawn unless the circumstances have changed. The Hon'ble Allahabad High Court in the matter of Zazsons export Ltd.(397 ITR 400) has held as under:

"In order to maintain consistency, a view, which had been accepted in an earlier order ought not to be disturbed unless there was any material to justify the Department to take a different view of the matter."

While deciding the appeal, the Hon'ble Court had taken note of the proceedings of the earlier AY.s. As the rule of consistency has not followed without bringing distinguishing features of the year under appeal, as compared to the facts of the earlier years, so, in our opinion the order of the FAA cannot be endorsed on this count.

6.3. We also find that one of the object of the assessee was to impart training in music and that training of music has been considered education by the Hon'ble Court. In that regard we would like to rely upon the cases of Delhi Music Society (supra) Jeevan Vidya Mission (supra) and hold that imparting training of music was an educational activity.

6.4. Finally, we would like to address the argument of the FAA about applicability of proviso to section 2(15) of the Act. We find that the AO as well as the FAA has emphasised the fact that the provisions of the proviso to the section 2(15) the assessee was not entitled to claim the benefit of section 11 of the Act. We would like to reproduce the proviso and it reads as under:

(15) "charitable purpose" includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility :

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if 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, irrespective of the nature of use or application, or retention, of the income from such activity."

If we consider the various activities carried out by the assessee, as evident from the various pages of the PB, it is clear that it was incurring expenditure in the fields of education and medical relief. Therefore, in our opinion, the assessee cannot be denied the benefit of section 11. Here, we would like to refer to the case of Ahmedabad Urban Development Authority (396 ITR 323) of the Hon'ble Gujarat High Court wherein the court has held as under:

"The introduction of the proviso to section 2(15) of the Income-tax Act, 1961, by virtue of the Finance Act, 2008 was directed to prevent the unholy practice of pure trade, commerce and business entities from masking their activities and portraying them in the garb of an activity with the object of a general public utility. It is not designed to hit at those institutions, which had the advancement of the objects of general public utility at their hearts and were charity institutions. The expressions trade, commerce and business as

occurring in the first proviso to section 2(15) must be read in the context of the intent and purport of section 2(15) of the Act and cannot be interpreted to mean any activity which is carried on in an organised manner. The purport of the first proviso to section 2(15) of the Act is not to exclude entities which are essentially for charitable purposes but are conducting some activities for a consideration or a fee. The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit making is the predominant object of the activity, the purpose, though an object of general public utility would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity."

Considering the above, we hold that the assessee is running music school and providing medical services and it is utilising SH for augmenting its funds. In these circumstances in our opinion, it cannot be held that it is carrying out business activities and the charitable activities are by product, as alleged by the departmental authorities. What has to be seen in such cases is a holistic view of the things and not a narrower view. We would like to refer to the matter of Institute of Chartered Accountants of India(358 ITR 91), wherein the Hon'ble Delhi High Court has held as under:

"A plain reading of section 2(15) of the Income-tax Act, 1961, indicates that the expression "charitable purpose" has been divided into six categories, namely, (i) relief to poor, (ii) education, (iii) medical relief, (iv) preservation of environment including watersheds (forest and wildlife), (v) preservation of monuments and places or objects of artistic or historical importance, and (vi) advancement of any other object of general public utility. The first proviso to section 2(15) of the Act carves out an exception which excludes advancement of any other object of general public utility from the scope of charitable purpose to the extent that it involves carrying on any activity in the nature of trade, commerce, or business or any activity of rendering certain services in relation to any trade, commerce, or business, for a cess or fee or any other consideration is irrespective of the nature of the use or obligation, or retention of the income from such activity. The expressions "trade", "commerce" and "business", as occurring in the first proviso to section 2(15) of the Act, must be read in the context of the intent and purport of section 2(15) of the Act and cannot be interpreted to mean any activity which is carried on in an organised manner. The purpose and the dominant object for which an institution carried on its activities is material to determine whether the same is business or not. The purport of the first proviso to section 2(15) of the Act is not to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee. The object of introducing the first proviso is to exclude organisations which are carrying on regular business from the scope of "charitable purpose". The expression "business", "trade" or "commerce"

as used in the first proviso must, thus, be interpreted restrictively and where the dominant object of an organisation is charitable any incidental activity for furtherance of the object would not fall within the expression "business", "trade" or "commerce".

In light of the above discussion, we decide the first ground of appeal in favour of the assessee. As we have allowed first ground of appeal, so, we hold that Gs.AO 2.4 and 5 have become infructuous. Hence we are not adjudicating them.”

6. We find that the Ld. CIT(A) has allowed the appeal of the assessee directing the AO to grant benefit of section 11 of the Act by following the decision of the co-ordinate bench of the Tribunal in assessee own case in the preceding year. Therefore, we do not find any infirmity in the order of the Ld. CIT(A) and accordingly upheld the same by dismissing the appeal of the Revenue. The appeal of the revenue is dismissed.

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7. The issue involved in the present appeal is identical to one as stated above in ITA No.2025/M/2019 A.Y. 2012-13. Therefore, our finding in ITA No.2025/M/2019 A.Y. 2012-13 would, mutatis mutandis, apply to this appeal as well. Accordingly the appeal of the Revenue is dismissed.

8. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on 28.12.2020.

**Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 28.12.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.