

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

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

**ITA No. 4193/MUM/2019  
Assessment Year: 2010-11  
&  
ITA No. 4194/MUM/2019  
Assessment Year: 2012-13**

Acharya Jiyalal Vasant  
Sangeet Niketan,  
Ajivasan Building, Off. Juhu  
Road, Opp. Lido Cinema,  
Santacruz (W),  
Mumbai-400019  
**PAN No. AAATA 5005 F**  
**Appellant**

**Vs.**

ITO (Exemption)-II(1),  
5<sup>th</sup> Floor, Piramal  
Chamber, Lalbaug, Lower  
Parel,  
Mumbai-400013.

**Respondent**

Assessee by : Mr. Anil Sathe, AR  
Revenue by : Ms. Smita Verma, DR

Date of Hearing : 16/02/2021  
Date of pronouncement : 30/03/2021

**ORDER**

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

The captioned appeals filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-3, Mumbai [in short 'CIT(A)'] and arise out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act'). As common issues are involved, we are proceeding to

dispose off these appeals by a consolidated order for the sake of convenience. Facts being identical, we begin with the AY 2010-11.

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

1. The Ld.CIT(A) erred in facts and in law in denying the claim of exemption under section 11 made by the appellant, by treating the income from recording studio as business income under section 11(4A) of the Act.
2. Without prejudice to the above ground, the Ld.CIT(A) ought to have allowed the expenditure of Rs.5,00,151/- lakhs incurred on the objects of the trust.
3. The Ld.CIT(A) ought to have held that the objects and activities of the appellant are "educational" and therefore proviso to section 2(15) is not applicable.
4. Without prejudice to the above ground, the Ld.CIT(A) ought to have held that the percentage of receipts from recording studio to the total receipts is 10.10% as against 28.86%, and in any event the said receipts were less than 25 lakhs which was the threshold to attract the proviso to section 2(15).
5. The Ld.CIT(A) erred in not appreciating that the studio facility is an integral part of the training activities in the field of music and making it available for recording, is merely incidental to the main objects of the appellant and therefore, cannot be considered as business.
6. The Ld.CIT(A) erred in not appreciating that the surplus from recording studio is merely incidental to the activities carried out in pursuance of the main object of the trust and there is no profit motive.
7. Without prejudice to the above grounds and assuming without conceding that the income from recording studio amounts to business income, the Ld.CIT(A) erred in not appreciating that section 11(4A) is not attracted since the said activity is incidental to the main objects and in effect, there is a sufficient compliance of the requirement to maintain separate books of accounts.

3. Briefly stated, the facts of the case are that the assessee filed its return of income for the assessment year (AY) 2010-11 on 28.09.2010 along with

Income and Expenditure Account, Balance Sheet and Audit Report in Form No. 10B declaring total income at Rs. Nil. The assessee is registered u/s 12A and 80G of the Act. It received studio charges of Rs.16,72,197/- from various artists (73 parties) in the year under consideration. The Assessing Officer (AO) observed that the activity of making available the studio to the artists was conducted with an intention to make profits in the shield of charitable activities. The AO arrived at the above finding on the basis of his observation on the continuity, magnitude, quantum and frequency of the activities. Accordingly, the AO brought to tax income of studio charges as business income, by applying provisions of section 11(4A) of the Act and further disallowed expenditure of Rs.5,00,151/- incurred by the assessee towards the "Ajivasan Sounds" from the allowable expenditure on the object of the Trust.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that *vide* order dated 26.04.2019, the Ld. CIT(A) confirmed the disallowance made by the AO by observing that :

"5. **Decision**

I have considered the facts of the case, contentions of the AO and submissions of the appellant. From the details furnished regarding the Studio Charges received, the AO observed that :

- i. The assessee has received Studio Charges from 73 parties throughout the whole year.
- ii. Nowhere in the objects of the institute, mention regarding providing of studio for hire purpose is an incidental object to the main objects of the trust.
- iii. The percentage of the studio charges receipts to the total receipts (leaving aside the passive income of rent and interest) amounts to 28.68%.

- iv. Considering the continuity, magnitude, quantum and frequencies of the activities, which is read in conjunction with the organized manner in which the same are being conducted, it is thus obvious that the same are being conducted with an intention to make profits in the shield of charitable activities.
- v. The intentions to make profit is further substantiated by the fact that irrespective of the continuity of an explicit motive thereof, assessee has not maintained separate books of account as envisaged by the specific provisions of Section 11(4) and (4A) of the Income Tax Act, 1961.
- vi. Separate books of accounts mean separate Bank Account, separate Trial Balance, separate Profit and Loss Account and separate Balance Sheet. The assessee trust has not maintained any separate books of accounts so that such activities are hindered under the blanket of charitable activities.
- vii. The assessee also pays service tax and files its service tax returns on the studio charges receipts. Thus, it is established that the activities of giving the studio for hiring are not a coincidental activity but a well-planned activity with an intention of earning income side by side.

In view of the above observation of the AO, I find no merit in the argument of the appellant. Accordingly, AO is justified in considering the activity of making available this studio with an intention to make profits in the shield of charitable activities and justified in taxing the income of studio charges as business income u/s 11(4A) of the Act. Therefore AO is justified in treating the income for studio charges as business income. AO has already considered the issue of the inapplicability of the proviso to sec 2(15) as the same was raised before the AO. There is no interference required in the order of the AO in this regard.”

5. Before us, the Ld. counsel for the assessee submits that :

“The Trust has a studio namely "Ajivasan Sounds" which has been given to various well known artists for the purposes of recordings. The studio has been utilized by

the trust for providing hands-on training to its students. On account of the availability of the studio, the students have been able to witness performances by various singing Maestros, which adds to their experience. The trust under its 'Gurukul Philosophy' has a belief that a student must understand how his voice needs to be modulated, the care that he needs to take when singing in a controlled atmosphere, has included the hands-on training of the studio-recording in the curriculum of student which in fact has enabled the trust to attend its main object of imparting education of music in true sense."

The Ld. counsel further explains that maintenance of studio is intrinsic and in pursuance of the object of the assessee which is education and it is not trade, commerce or business. Relying on the decision in the case of *Shri Thyaga Brahma Sangeet Sabha* 188 ITR 160 (Mad) and *Swar Sangam & Ors v. CCIT* 368 ITR 395 (Cal), it is argued that teaching of Indian classical music is within the realm of "education". Further, relying on the decision in the case of *ICAI Accounting Research Foundation* 321 ITR 73 (Del) and *Women's India Trust* 379 ITR 506 (Bom), it is stated that the activities of the Trust are carried on in order to achieve the main object of the Trust and cannot be construed as business. Explaining the details, it is argued that the gross receipts are only Rs.16.72 lakhs which subsidize fees of Rs.33.01 lakhs for 785 students which works out to Rs.4,206/- per student per year. Finally the Ld. counsel explains that since the Trust is engaged in education, the proviso to section 2(15) does not apply as per CBDT Circular No. 11 dated 19.12.2008.

6. On the other hand, the Ld. Departmental Representative (DR) submits that studio charges received from various artist is not as per the 'Trust Deed' of the assessee. Relying on the order of the Ld. CIT(A), it is pleaded by her that the same may be affirmed.

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

In *Sri Thyaga Brahma Gana Sabha* (supra), the assessee is a registered Trust and is the owner of the hall called "Vani Mahal". For the AY 1973-74, the AO, after referring to the objects of the assessee, adverted to different types of membership and, thereafter, proceeded to compute the total income of the assessee. The AO denied the exemption claimed by the assessee u/s 2(15) of the Act. The assessee appealed to the first appellate authority (AAC) and claimed exemption u/s 11 r.w. section 2(15) of the Act. The AAC held that barring the activity of letting out the hall on rent, the rest of the income of the assessee would be exempt u/s 11 of the Act, provided the other conditions were satisfied. In the matter of letting out the hall, he held that there was clearly an activity which resulted in a profit and, therefore, the income attributable to such activity would not be exempt u/s 11 of the Act. Accordingly, he directed the AO to apportion from the income and expenditure account of the assessee, the proportionate income attributable to the activity of letting out the hall and then subject it to tax after satisfying himself that, in respect of other items, the prescribed conditions as visualized u/s 11 of the Act were satisfied. Against this order, the assessee filed an appeal before the Tribunal. It is seen that the Tribunal held that looking to the object of the assessee, the hall was utilized only for the purpose of education within the meaning of section 2(15). It further held that even if all the objects of the assessee were not for the purpose of education, they were clearly ones for general public utility. It further held that the activity of letting out the hall is not for profit, and hence the object of the assessee was only for charitable

purposes within the meaning of section 2(15) and, therefore, the rental income from the hall is exempt u/s 11 of the Act, provided the assessee satisfied the other conditions.

The Revenue filed an appeal against the above order of the Tribunal before the High Court. It is seen that the following facts are noted by the High Court :

“9. The Sabha was established to promote the advancement of music and other fine arts. In pursuance of the above objects, the assessee was holding musical entertainments, dramas, kalakshepams, dance, recitals, bhajans, exhibitions and lectures, etc. The assessee is also making arrangements for the exposition of art by competent artistes and thereby encouraging deserving talented people. One of the objects of the assessee is to conduct a school called "Sri Thyaga Brahma Gana Sabha Music and Dance School" for imparting education in music and dance on traditional lines and thus offering facilities for spreading knowledge in music and dance. The assessee is also organizing social gatherings to promote comradeship among members. The assessee started a dramatic wing called "Sri Thyaga Brahma Gana Sabha Amateurs" to stage dramas. Thus, the assessee is also doing all other things which are incidental or conducive to the attainment of the above objects. Therefore, a plain reading of the object clauses contained in the rules and regulations of the Sabha would definitely go to show that the main purpose and object of the assessee is to impart education in several branches of fine arts.”

Further observing that according to section 2(15) of the Act, “charitable purpose” includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit, the Hon’ble High Court concluded that :

“25. As already pointed out, in the present case, Vani Mahal was let out to others whenever the assessee was not utilizing it. Even assuming that the net income of the Sabha is from an activity, the question is whether it is for profit. In the objects of the society, nowhere it is stated that earning of profit is its object. Therefore, there is no profit motive in running the Sabha. It would appear that no specific rate was fixed by the Sabha for letting out the hall and, on several occasions, the hall was let out on concessional rates to various parties. The rates charged are more or less ad hoc and in later stages it was shown as "donations". The rate was usually in the routine of Rs. 100 per day. After examining the income and expenditure statement for the past 25 years and the report of the governing body of the sabha, the Tribunal, on facts, came to the conclusion that the Sabha was running at a loss all these years. Therefore, the Tribunal came to the conclusion that even assuming that there was an activity on the part of the assessee in letting out the hall, it was not an activity for profit within the meaning of s. 2(15) of the IT Act, 1961. Thus, considering the facts appearing on this aspect, in the light of the decisions cited supra, we are of the opinion that the Tribunal was correct in holding that the assessee is entitled to the exemption under s. 11 r/w section 2(15) of the Act in respect of the rental income derived from letting out the Vani Mahal. In that view of the matter, we answer the questions referred to us in the affirmative and against the Revenue.”

7.1 It would be relevant to refer to section 2(15) of the Act which defines “charitable purpose” to include *inter alia* the following :

- i. relief of the poor
- ii. education
- iii. medical relief, and
- iv. the advancement of any other object of general public utility.

Circular No. 11 of 2008 dated 19.12.2008 issued by Central Board of Direct Taxes (CBDT) clarifies that the newly inserted proviso section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e. relief of the

poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute 'charitable purpose' even if it incidentally involves the carrying on of commercial activities.

7.2 In the instant case, as mentioned earlier, the assessee is a charitable trust engaged in imparting education in the field of classical music and light music based on the Gurukul Philosophy, where the student learns by virtually staying with the Guru. The institution was founded in 1932 by Acharya Jialal Vasant and has 84 years of rich heritage. The institution has a repute for providing scientific training in Hindustani Classical Music and Light Music. The trust has a studio namely "Ajivasan Sounds" which is used for the purpose of training students in professional singing and also the same is made available to various artists for the purpose of recording. We find that the gross receipts are only Rs.16.72 lakhs which subsidize the fees for Rs.33.01 lakhs for 785 students which works out to Rs.4206/- per student per year. In the instant case, the maintenance of studio is intrinsic and in pursuance of the objects of the assessee which is education. It is well understood that teaching of Indian Classical Music is within the field of "education". The activities of the studio are carried on in order to achieve the main object of the Trust and cannot be construed as business. As mentioned earlier, since the trust is engaged in education, the proviso to section 2(15) does not apply as clarified by CBDT Circular No. 11 dated 19.12.2008.

As mentioned earlier, in the case of *Sri Thyaga Brahma Gana Sabha* (supra), the Hon'ble Madras High Court affirmed the order of the Tribunal in holding that letting out of building did not involve profit-earning activity even

assuming it to be an activity. The trust deed is to be read as a whole. Similar are the facts in the instant case. Therefore, following the above decision of the Hon'ble Madras High Court, we set aside the order of the Ld. CIT(A). Facts being identical, our decision for the AY 2010-11 applies *mutatis mutandis* to AY 2012-13.

8. In the result, the appeals are allowed.

**Order pronounced in the open Court on 30/03/2021.**

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

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

Mumbai;  
Dated: 30/03/2021  
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./Assistant Registrar)  
**ITAT, Mumbai**