

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

BEFORE SHRI SANJAY ARORA, HON'BLE ACCOUNTANT MEMBER &
SHRI SANDEEP GOSAIN, HON'BLE JUDICIAL MEMBER

I.T.A. No. 02 & 03/COCH/2022
(Asst. Years: 2017-18 & 2018-19)

Biowin Agro Research, MP 5/587 D, Vemom, Mananthawady, Wayanad. [PAN: AAFCB 6169 B]	vs.	ITO, Exemption Ward, Kozhikode
(Appellant)		(Respondent)

Appellant by : Ms. Krishna. K, Advocate
Respondent by : Smt. J.M. Jamuna Devi, Sr. DR

Date of hearing : 02/02/2023
Date of pronouncement : 24/02/2023

ORDER

Per Bench:

This is a set of two Appeals by the Assessee directed against the Order by the National Faceless Appeal Centre (NFAC), Delhi ('CIT(A)', for short) dismissing the assessee's appeal against its assessments for Assessment Years (AYs.) 2017-18 (dated 30/12/2019) & 2018-19 (dated 20/4/2021) under section 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter), vide orders dated 30/10/2021 & 08/11/2021 for the two consecutive years respectively

2. The issue arising in the instant case is the denial of exemption u/s. 11 of the Act to the assessee, a company formed and registered u/s. 8 of the Companies Act, 2013 (corresponding to sec. 25 of the Companies Act, 1956), i.e., for carrying out public charitable objects, registered as a charitable institution u/s. 12A of the Act. It is engaged in trading in agricultural produce procured from, as stated, small and

marginal farmers located in Wayanad district of Kerala, selling the same in both the domestic and international markets. During the relevant years, its turnover was at Rs. 59.03 cr. and Rs. 66 cr. The purpose, as explained to us by Ms. Krishna, the ld. counsel for the assessee, is to fetch a good price for the same and, thus, uplift of the farmers, thereby undertaking 'relief to the poor', a charitable purpose u/s. 2(15) of the Act. The assessing authority found the assessee's claim untenable. There was nothing to show, firstly, that the farmers from whom the agricultural produce stands sourced qualify to be 'poor' which, a term of indefinite import, could, in the Indian context, only be regarded as those below the poverty line, and who are therefore entitled to various schemes of the State, be it the Central or the State Government. Nothing toward the same has been brought on record. The assessee carried the matter in appeal, whereat the first appellate authority held the assessee's activities of purchase and sale of agricultural produce as a commercial activity, which could at best be regarded as 'advancement of an object of general public utility', falling under the residual limb of sec. 2(15). However, the turnover, extending to almost the entirety of the gross receipt, as against the cap of 20% thereof, it did not fall to be covered u/s. 2(15), as amended. Aggrieved, the assessee is in second appeal.

3. We have heard the parties, and perused the material on record.

3.1 The main objects of the assessee-company as per its Memorandum of Association (MoA), are as under:

"1. To establish a world class research centre in the field of organic farming and to promote, encourage, establish, develop maintain, organize, undertake, manage, operate, research in all kinds of biotechnological, organic, agricultural, horticultural, dairy, poultry and farm produces and products and to encourage research and development for promoting nutritious food-grains, cereals, seeds, soya-beans, corn, corn oils, cash crops, plants, flowers, vegetables, spices, coffee, edible oils, meat, fish, eggs, and other human food products to ensure quality food products are made available to the society.

2. To initiate, carry out, execute, implement, aid and assist activities towards development in the organic farming sector in India and meeting the entire value

chain's requirements of appropriately trained manpower in quality and quantity on a sustained and evolving basis and to prevent use of harmful chemicals and pesticides in agricultural activities in land through establishing, promoting academies of excellence and to coordinate participation of social partners, employers in the private sector, training providers, professional societies and NGOs/civil society groups in the process of skill development for the organic farming sector and to facilitate in setting up a robust and stringent certification and accreditation process for the Organic farming sector to ensure consistency and acceptability of standards with approval of appropriate authorities.

3. To buy, sell, resell, import, export, transport, store, develop, promote, market or supply, trade, deal in any manner whatsoever in all type of agro-products and related goods on retail as well as on wholesale basis in India or elsewhere.”

3.2 During hearing, Ms. Krishna would take us through a list of 13320 farmers (containing their names; village, panchayat/taluk and land area), from whom purchase of agricultural produce, viz. coffee, spices, fruits, etc. is claimed to have been made during the relevant years. She was, however, unable to answer as to how do they qualify as 'poor', and how have they been, i.e., apart from making purchases therefrom, benefited by the appellant-company which, as explained, using its marketing skills and reach, been able to, after meeting operational expenditure, generate profit (at Rs. 375.67 lacs & Rs. 322.23 lacs for the two years respectively), exemption from tax on which is the bone of contention between the parties. This is as a purchase cannot be regarded as anything more than a normal commercial transaction, undertaken at the ruling market price, without thus any element of charity, or otherwise construed as bestowing any benefit to the supplier, with goods for equal value having been procured from him. The question assumes further relevance as the assessee, whose membership cannot exceed 50 on account of it being a private limited company, cannot, by virtue of being a charitable company, declare dividend. As such, neither can the supplier-farmers be co-opted as members, nor distributed profit, so as to be regarded as being helped thus. There is, to be fair, no claim to this effect. No response was forthcoming on the Bench seeking answers to these questions, arising in the facts of the case, during hearing,

nor stand explained before the Revenue authorities. *There is nothing to show of the goods to be sourced from, or profit distributable to, small & marginal the farmers.*

3.3 Continuing further, the avowed object of ‘relief to the poor’ does not emanate from any of the assessee’s three main/principal objects, afore-noted, to pursue which the assessee-company stands formed, with objects incidental thereto being only in the nature of preparatory and ancillary activities that would be required to be undertaken toward the main objects. Sure, the ‘business’ of trading in agricultural produce could stand to be regarded as a ‘property held under the trust’, income from which could then be deployed toward the assessee’s charitable object, i.e., as stated, ‘relief to the poor’. The same, however, is conspicuous by its absence in its MoA, much less shown to have been actually pursued by distributing profit among the farmers, i.e., even assuming them to be poor. In other words, without any object to that effect, there is no legal obligation on the appellant-company to apply its profits for alleviating or providing relief to the poor, be it the farmers from whom the assessee procures its trading stock, or generally. There is, as such, no legal basis for the same to be regarded or construed as it’s object, so as to be regarded as being formed or constituted therefor. Reference in this regard be made to the decision in *Delhi Stock Exchange Association Ltd. v. CIT* [1997] 225 ITR 235 (SC), wherein it stands clarified that in the absence of any legal obligation compelling the assessee to utilize its profits for the stated object/s, its business could not be stated to be a property held under trust for the said charitable purpose. The assessee’s reliance on the decision in *Asst. CIT v. Thanthi Trust* [2001] 247 ITR 785 (SC), whereby a business was clarified as being liable to be regarded as ‘property held under trust’ provided it served the attainment of a charitable object, would not be of any assistance to the assessee. In fact, inasmuch as profits of any business could be, in the absence of any legal restraint, applied for the charitable purpose of ‘relief to the poor’, it cannot be said to be incidental to the attainment of the said object, itself not shown. As clarified in *Thanthi Trust* (supra), as indeed

per the explicit law in the matter (sec. 11(4A)), it is only where the carrying on the business is incidental to the attainment of the object, that it can validly be regarded as a property held under trust, income from which, on being so applied, would stand to be exempt u/s. 11, i.e., to the extent specified therein and in terms thereof. As clarified once again in *New Noble Education Society v. Chief CIT* [2022] 448 ITR 594 (SC), the word 'incidental' occurring in s. 11(4A), means something connected with the principal activity/object, i.e., providing relief to the poor, in the instant case. The said business could at best be regarded as incidental to providing relief to the farmers from whom the agricultural produce is procured, which could be regarded as a charitable object where they are shown to be poor. In fact, here, again, the exemption would only be upon application of profits, and subject to being allowed to be accumulated for the purpose, to the extent applied, toward which there is no finding by the Revenue authorities, nor indeed even any claim.

3.4 Whichever way one may therefore look at it, the appellant-company's case is without any legal or factual basis. In fact, the at length hearing was an exercise by us to fathom any such, to find it as *sans* any. In fact, as far as we have been able to discern from the assessee's submissions before the Revenue authorities, the assessee regards the activity of purchase from the farmers itself as a relief to the poor, and which by its very nature, as explained hereinbefore, cannot be, unless and to the extent the purchase price is shown to be in excess of the prevailing market price of the goods bought, of which there is no whisper. This is as to this extent a 'benefit' can be said to have been passed to the farmers. However, being only a manner of transfer of profit thereto, proscribed for distribution to members, the same cannot legally form part of it's objects. The assessee's submissions, we further observe, speak of direct purchases from the farmers, avoiding middle men and, thus, enabling a better price thereto. However, in the absence of any material in support, the same remains a bald claim. *Two, it is only to this extent, then, that the farmers can be said to be benefitted.* Further still, purchase being a normal cost

and incident of a business, the same is deductible in full in computing the assessee's profit/income, while exemption u/s. 11 would stand to arise only *qua* such profit, on application thereof. Thus, in addition to the conceptual issue arising on treating the purchase as helping the seller, adverted to earlier (para 3.2), the same also raises a computational issue, basic to an exemption u/s. 11, failing it. Even, if therefore, procurement from a particular segment or section of public may under some circumstances be regarded as benefitting them, the same cannot be regarded as an application of profit, only whereupon would s. 11 exemption inure. Intrinsic to the concept of application is the delivery of value to that extent, while this profit, even if utilized for making further purchases, value to equivalent extent is obtained as stock-in-trade. This, it may be appreciated, is a reflection of the inherent contradiction in regarding a supplier as, for that reason, a beneficiary. Thus, even where regarded as 'poor', as the assessee claims with reference to the Board Circular 11/2008, dated 19/12/2008 (reported at [2009] 308 ITR (St.) 5), and which we, subject to verification, consider as not incorrectly so, the same would be to no consequence. Why, the said Circular itself clarifies of the need for inclusion of the same as one of its objects to qualify as eligible for exemption, absent in the instant case. *There is no mention of procurement, for the purpose of the assessee's trading business, to be sourced from small and marginal farmers, as defined per the extant Government policy.* Further, purchase being a value-exchange, there is neither provision of any relief nor application of profit. Rather, the profit earned by the company, exemption on which is sought, is equally liable to be regarded as earned at the expense of the farmers.

3.5 We are conscious, we clarify, that any other class of beneficiaries, i.e., apart from farmers, who are poor, would equally satisfy the object of 'relief to the poor'. However, the agri-trading business, exemption in respect of income of which is sought, could, as afore-explained with reference to sec. 11(4A) and *Thanthi Trust* (supra), only be regarded as an eligible business and, thus, a property held under

trust, income from which on application could be exempt u/s. 11, where the said class is drawn from the farmers from whom the trading stock is purchased, or even the farming community in general. That is, the assessee's business would in such a case be ineligible for being regarded as a property held under trust, which perhaps also explains the absence of 'relief to the poor' as among its stated objects.

3.6 Though not canvassed before us, we may yet consider the assessee's case from the stand-point of advancement of an object of general public utility, and under which it's main Objects 1 & 2 fall. To this extent, we are in agreement with the Id. CIT(A). So, however, even as pointed out by him, the same, the residuary limb of sec. 2(15) defining 'charitable purpose', could be validly invoked for claiming u/s. 11 only where the turnover does not exceed a threshold limit, defined at 20% of the gross receipt, while in the instant case the same extends to nearly the entirety of it, foreclosing the assessee's case. This is as, even as observed by the Bench during hearing, commerciality is central to the assessee's trading activity; the whole premise being to fetch a better realization by marketing the agricultural produce in India and abroad, maximizing it's profits. As explained per it's recent decision in *Asst. CIT v. Ahmedabad Urban Development Authority* [2022] 449 ITR 1 (SC), commerciality is integral to the application of the amended law. That apart, as afore-stated, it is only on the application of income for the stated objects being shown would exemption u/s. 11, to the extent eligible, arise. We find no claim toward such application, much less it being shown at any stage. In fact, in this context we may again emphasize that only on the business being shown as incidental to the attainment of the stated objects, i.e., Objects 1 & 2, could the same be regarded as a property held under the trust, the basic requirement for any income therefrom to qualify for exemption u/s. 11. We again find no claim toward the same, much less it being shown, i.e., the assessee's trading business being incidental to it's said objects.

4. We may finally sum-up our findings. The assessee's case, based on the object of 'relief to the poor', is a non-starter in the absence of the said object in its charter, which it claims to have pursued, so that it would be of no consequence even if it indeed has, i.e., in the absence of any legal obligation in its respect. Further, inasmuch as the agri-trading business, income of which is claimed exempt u/s. 11, cannot be regarded as incidental to the attainment of the said object, it is not a property held under trust, the basic requirement for invocation of s. 11(1). The assessee has, further, not shown to have applied its income for Objects 1 & 2, which surely are objects of general public utility inasmuch as they promote production of quality human food/food products, as well as knowledge and skill-set required for the same. In fact, even if it had, of which there is even no claim, the objects are themselves not liable to be regarded as a charitable purpose in view of the amended law (s. 2(15)). Object 3, i.e., the agri-trading business, cannot itself be regarded as a charitable object. In fact, there is nothing therein which obliges the assessee to source its trading stock only from small & marginal farmers, the bed-rock of its case. Sourcing *per se* cannot be regarded as providing relief thereto and, thus, to a section of the public deemed poor. It is a part of the trading business, profit whereof, which cannot be distributed to the farmers, is to be applied. There is *per se* no application of income on purchase, which represents an exchange of value, contributing to and, thus, deductible in computing, income. Every business, by employing people, as indeed sourcing goods/services, promotes employment, both directly and indirectly, as also the skill-set required for the same. It cannot, however, for that reason, be regarded as 'charitable', assigned a specific meaning in law. Basic to a claim of providing relief through sourcing, i.e., the assessee's case in fine, is, a legal obligation in its respect apart, a better value transfer to a class of farmers on a regular basis, both absent/unshown, which could also further it as regards its business being not a pure commercial exercise, favourably impacting it *qua* income application for Objects 1 & 2, where shown.

5. There is, in view of the foregoing, nothing to hold that the assessee's trading business is being run for the benefit of the poor, the sub-stratum of it's case, much less as part of it's mandate. It's claim for exemption u/s. 11 on the profits of the said business, constituting the primary source of it's income for the relevant years, cannot, accordingly, be upheld, and stands rightly denied by the Revenue. The assessee has filed a compilation of case law, which were not referred to during hearing and, accordingly, not responded to by the other side. The same, accordingly, do not form part of the Tribunal's record. This explains our non-reference thereto, which though stand browsed to find as not in conflict with anything stated herein so as to impact our adjudication, which is based on the facts borne out by the record; the first legal principles; and the settled law in the matter.

6. In the result, the assessee's appeals are dismissed.

*Order pronounced under Rule 34(4) of The Income Tax (Appellate Tribunal)
Rules, 1963*

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Dated: 24/02/2023

vr/-

Copy to:

1. The Appellant.
2. The Respondent.
3. The Principal CIT concerned.
4. The Sr. DR, ITAT, Cochin.
5. Guard File.