

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH MUMBAI
BEFORE MS KAVITHA RAJAGOPAL, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 3266 & 3267/MUM/2023
Assessment Year: 2017-18 & 2016-17

Deputy Commissioner of Income Tax (Exemption) – 2(1), Mumbai	Vs.	Saurashtra Trust Janmabhoomi Bhavan, Janmabhoomi Marg, Dr. D.N. Road, Fort, Mumbai – 400001 (PAN : AAATS2786B)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Y.P. Trivedi, Advocate &
Ms. Usha Dalal, Advocate

Revenue : Dr. Kishor Dhule, CIT DR

Date of Hearing : 12.08.2024

Date of Pronouncement : 30.09.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

These two appeals filed by the Revenue are against separate orders of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order nos. ITBA/NFAC/S/250/2023-24/1054648220(1) and ITBA/NFAC/S/250/2023-24/1054648066(1), both dated 27.07.2023, passed against the assessment orders by the ACIT (Exemption), Circle-2, Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the “Act”), dated 25.12.2019 and 5.12.2018 for Assessment Years 2017-18 and 2016-17 respectively.

2. Grounds taken by the Revenue are reproduced as under:

ITA No. 3266/MUM/2023

1. "Whether on facts and circumstances of the case and in law, the Ld. CITA) justified in treating the Income from House Property as exempt u/s 11 of the Act to the assessee without appreciating the fact that the case of assessee clearly falls under the proviso to section 2(15) of the Act as the assessee is engaged in the advancement of any other object of general public utility and there is no provision in law which allows for such treatment?"

2. Whether on the facts and circumstances of the case and in laws, the Ld. CIT(A) has erred in allowing exemption u/s 11 of the L.T. Act despite the applicability of proviso and provisions of section 13(8) of the IT. Act, under which no exemption u/s 11 is admissible once the proviso to section 2(15) is attracted".

3. Whether on the facts and circumstances of the case and in law, the Ld.OTA) was right, despite the fact that the definition of charitable activities has been amended by insertion of proviso to section 2(15) of the LT Act and even if the assessee's objects are considered charitable, they will fall in the category of the "advancement of any other object of general public utility attracting proviso to sec. 2(15) of I.T. Act on income from the activities, which clearly are activities in the nature of commerce or business and such income is not exempt in view of section 13(8) of I.T. Act, 1961".

4. "Whether on facts and circumstances of the case and in law, the Ld. CITA) was 4 right to not adjudicating the issue pertaining to deduction u/s 11(1)(a) of the Act claimed by the assessee, on earlier year income chargeable to tax u/s 11(3) of the Act on the basis of the decision of the Hon'ble ITAT vide ITA. No. 2114/2015 dated 06.12.2019 in the assessee's own case for A.Y 2010-11, without appreciating the fact that neither the assessee has raised any ground before Hon'ble ITAT related to the deduction u/s 11(1)(a) of the Act on earlier year income chargeable to tax u/s 11(3) of the Act nor the Hon'ble ITAT has given any decision on the same?"

ITA No. 3267/MUM/2023

1. "Whether on facts and circumstances of the case and in law, the Ld.CIT(A) was justified in treating the Income from House Property as exempt u/s 11 of the Act to the assessee without appreciating the fact that the case of assessee clearly falls under the proviso to section 2(15) of the Act as the assessee is engaged in the advancement of any other object of general public utility and there is no provision in law which allows for such treatment?"

2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing exemption u/s 11 of the L.T. Act despite the applicability of proviso and provisions of section 13(8) of the L.T. Act, under which no exemption u/s 11 is admissible once the proviso to section 2(15) is attracted".

3. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was right, despite the fact that the definition of charitable activities has been amended by insertion of proviso to section 2(15) of the L.T. Act and even if the assessee's objects are considered charitable, they will fall in the category of the

"advancement of any other object of general public utility" attracting proviso to sec. 2(15) of L.T. Act on income from the activities, which clearly are activities in the nature of commerce or business and such income is not exempt in view of section 13(8) of I.T. Act, 1961".

4. "Whether on facts and circumstances of the case and in law, the Ld.CIT(A) was right to not adjudicating the issue pertaining to deduction u/s 11(1)(a) of the Act claimed by the assessee, on earlier year income chargeable to tax u/s 11(3) of the Act, on the basis of the decision of the Hon'ble ITAT vide ITA. No. 2114/2015 dated 06.12.2019 in the assessee's own case for A.Y 2010-11, without appreciating the fact that neither the assessee has raised any ground before Hon'ble ITAT related to the deduction u/s 11(1)(a) of the Act on earlier year income chargeable to tax u/s 11(3) of the Act nor the Hon'ble ITAT has given any decision on the same and even in the Assessment order for AY 2010-11 no such issue was dealt by the assessing officer?"

3. The moot point involved in the present appeals are common for both the Assessment Years and therefore taken up together for adjudication by this consolidated order. The issue common to both the appeals is in respect of whether assessee is to be held as an organisation carrying on objects/activity for advancement of General Public Utility (GPU) activity resulting in denial of exemption claimed u/s. 11 of the Act. In this respect at the outset, ld. Counsel for the assessee pointed out that the issues so raised by the Revenue in both the years is squarely covered by the decision of Co-ordinate Bench of ITAT, Mumbai in assessee's own case vide two different orders, first being for Assessment Year 2010-11 and 2011-12 in ITA No.2114 and 5305/Mum/2015, dated 06.12.2019 r.w. order dated 03.09.2021 disposing miscellaneous applications filed by the Revenue in MA No. 231 and 232/Mum/2020 and the second order being dated 22.07.2024 for Assessment Year 2009-10, 2012-13, 2013-14, 2014-15, 2015-16 and 2018-19 in ITA Nos. 3247, 3246, 3245, 3244, 3270 and 3265/Mum/2023. Ld. Counsel has placed on record the copy of said orders in the paper book. Ld. CIT DR placed reliance on the order of ld. Assessing Officer and did not accept the submission made by the ld. Counsel about its coverage by the decisions of the Co-ordinate Bench in assessee's own case for the earlier years as submitted above.

He made request to grant liberty for filing a written submission for distinguishing the case of the assessee with the decisions of Co-ordinate Bench as stated above. However, until the dictation of the present order, no such submission is placed on record by the Id. CIT, DR as requested. Accordingly, we take up the matter for adjudication on the strength of oral arguments made before us by both the parties and material placed on record by the Id. Counsel of the assessee.

4. We have perused the order of the Co-ordinate Bench, dated 22.07.2024 which has extensively dealt with the issues raised before us, elaborately dealing with the facts of the case and the applicable law contained in section 2(15) r.w.s. 13(8) of the Act along with subsequent amendments and circular issued by Central Board of Direct Taxes (CBDT), so also with the decision of Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (2022) 143 taxmann.com 278(SC) and decision of Co-ordinate Bench of ITAT, Chandigarh in Chandigarh Lawn Tennis Association vs. ITO(Exemptions) in ITA No.1382/CHD/2016 dated 26.07.2018 and do not find anything more to add on to it. The said order is extracted below which squarely covers the present case before us in both the Assessment Years, there being no material change in the facts and circumstances in the case as well as applicable law.

“6. The relevant facts, common to all the appeals, are that the Assessee is a charitable trust founded in 1931. Over the years, for the purpose of claiming exemption under Section 11 of the Act, the Assessee has contended that it was undertaking the activity of publishing newspapers to fulfill its object of educating people and therefore, is carrying the activity of providing education. However, the aforesaid contention of the Assessee was not accepted by the tax authorities and the Assessee was held to be organization ITA No. 3244 to 3247, 3265, 3270/MUM/2023 Assessment Years: 2009-10, 2012-13 to 2015-16 & 2018-19 carrying on objects/activity for advancement of General Public Utility [for short 'GPU Activity'].

7. When the case of the Appellant was taken up for scrutiny for the relevant assessment year(s), the Assessing Officer formed a view that the activity of publishing newspaper etc. carried on by the Appellant was in the nature of a commercial activity for consideration and the receipts from the same exceeded

the threshold limit [i.e. INR 25 Lakhs or 20% of total receipts, as applicable]. Therefore, the provisions contained in the Proviso to Section 2(15) of the Act were attracted. Accordingly, the Assessee was asked to show-cause (a) why the activities of the Assessee- Trust should not be regarded as activities in the nature of trade, commerce or business and (b) why the exemption claimed by the Assessee under Section 11 of the Act should not be denied keeping in view the provisions contained in Section 13(8) of the Act. In response, it was contended on behalf of the Assessee that the Assessee was engaged in the charitable activities. The publication of newspaper was to fulfill the object of providing education to people. Even if the activity of publication of newspaper is considered as GPU Activity, the same was not in the nature of trade, commerce or business. In this regard it was submitted that though some of the newspapers being published by the Assessee were consistently making losses, their publication was not stopped and therefore, it cannot be said that the newspaper publication was carried out for the earning profits. Thus, it was contended that provisions contained in proviso to Section 2(15) of the Act were not applicable to the Assessee; and that the Assessee had not claimed exemption in respect of activity of publication of newspapers only on a conservative basis. Without prejudice to the aforesaid, it was submitted that even if the provisions contained in Proviso to Section 2(15) of the Act were to be attracted, as per Section 13(8) of the Act only the receipts covered by the Proviso ITA No. 3244 to 3247, 3265, 3270/MUM/2023 Assessment Years: 2009-10, 2012-13 to 2015-16 & 2018-19 to Section 2(15) of the Act (i.e. receipts from the activity of publication of newspaper in the present case - which has already been offered to tax) would be excluded from the total income of the previous year for the purpose of determining exemption under Section 11 of the Act and the Assessee would be entitled to claim exemption under Section 11 of the Act in respect of other income. However, the Assessing Officer was not convinced. Relying upon the language of Section 2(15) of the Act, the Assessing Officer concluded that (a) the object of the Assessee fell under the category of objects for advancement of general public utility - the Assessee is undertaking GPU Activity; (b) the Assessee was engaged in commercial activity for fee/consideration; and (c) the commercial receipts from such commercial activity were more than the specified threshold limit. Thus, provisions contained in proviso to Section 2(15) of the Act were attracted and therefore, as per Section 13(8) of the Act the Assessee was not entitled to claim any exemption under Section 11 of the Act.

8. In the appellate proceedings before the CIT(A), vide order dated 27/07/2023, the CIT(A) allowed the appeal preferred by the Assessee holding that the Assessee was eligible to claim exemption under Section 11 of the Act in respect of other income (i.e. rental income from house property and interest income). While arriving at the aforesaid conclusion the CIT(A) relied upon the decision of the Tribunal in the case of the Assessee for the Assessment Years 2010-11 & 2011-12 [ITA No. 2114 & 5305/Mum/2015, dated 06/12/2019] and the order, dated 03/09/2021, disposing off the Miscellaneous Applications filed by the Revenue [MA No. 231 & 232/Mum/2020] The CIT(A) observed that vide order, dated 03/09/2021, passed in Miscellaneous Application No. 231 & 232/Mum/2020, the Tribunal has accepted the contention of the Appellant that even after the amendment to Section 2(15) of the ITA No. 3244 to 3247, 3265, 3270/MUM/2023 Assessment Years: 2009-10, 2012-13 to 2015-16 & 2018-19 Act, only the business income of the charitable trust his by the proviso to Section 2(15) of the Act can be brought to tax. Since, the income from activity of newspaper publication was offered to tax by the Assessee, the Assessee was

entitled to claim exemption under Section 11 of the Act in respect of rental income from house property and interest income from other sources.

9. Being aggrieved by the relief granted by the CIT(A), the Revenue has preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 2 above.

10. We have heard both the sides. The oral arguments made during the course of the hearing were supported by the written synopsis/submission dated 06/05/2024 filed by the Revenue and written synopsis/submission dated 25/04/2024 and 06/05/2024 filed by the Assessee.

11. We have given thoughtful consideration to the rival submission and carefully perused the material on record including the judicial precedents cited by both the sides.

12. We note that the CIT(A) had allowed the appeal preferred by the Assessee holding as under:

"5.3 In this particular case, income arising out of sale of Newspaper(s) has been offered for taxation. As the decision of the Hon'ble ITAT vide MA No. 231/Mum/2020 and MA No. 232/Mum/2020, pronounced on 03.09.2021 in assessee appellant's own case has accepted the view that even after the amendment u/s 2(15) of the Act only the business income of the charitable trust can be brought to tax and all other income will be exempted, the issues of Ground Nos. 2 to 5 taken by the appellant are thus already a covered issue. Therefore, respectfully following the same, these grounds are allowed." (Emphasis Supplied)

12.1. The facts peculiar to the present case are that for the Assessment Years 2010-11 and 2011-12 also the exemption claimed by the Assessee under Section 11 of the Act in respect of income from house property and interest income was denied by the Assessing ITA No. 3244 to 3247, 3265, 3270/MUM/2023 Assessment Years: 2009-10, 2012-13 to 2015-16 & 2018-19 Officer. The issue travelled to the Tribunal. Vide common order, dated 06/12/2019, the Tribunal reversed the decision of the Assessing Officer and accepted the aforesaid claim of the Assessee partly allowing the appeals for the AY 2010-11 [ITA No. 2114/Mum/2015] and Assessment Year 2011-12 [5306/Mum/2015] preferred by the Assessee. The Revenue filed Miscellaneous Application [M.A. No. 231 & 232 of 2022] seeking recall/rectification of the aforesaid common order, dated 06/12/2019, on the ground that the Tribunal had granted relief to the Assessee without taking into consideration the amended provisions contained in Section 2(15) of the Act which came into effect from the assessment year 2009-10. It was also contended that once provisions contained in Proviso to Section 2(15) are triggered no exemption could be allowed under Section 11 of the Act in view of the provisions contained in Section 13(8) of the Act. Vide, order dated 03/09/2021, the Tribunal dismissed the aforesaid miscellaneous application relying upon the decision of the Chandigarh Bench Tribunal in the case of Chandigarh Lawn Tennis Association Vs. ITO [ITA No. 1382/CHD/2016, dated 26/07/2018] thereby rejecting contentions of the Revenue identical to the ones raised in the appeal before us. The Revenue preferred appeal against the aforesaid order, dated 03/09/2021, dismissing the miscellaneous applications before the Hon'ble Bombay High Court. However, the same were withdrawn with liberty to file writ petition. The Assessee has placed on record copy of order, dated 22/03/2024,

passed in Income Tax Appeal (1) No. 38211 of 2022 whereby the Hon'ble Bombay High Court had dismissed the aforesaid appeal of Revenue as withdrawn. Nothing has been placed on record to show that any appeal/writ was preferred by the Revenue challenging either the common order dated 06/12/2019 passed by the Tribunal accepting identical claim of exemption made by the Assessee for the Assessment Years ITA No. 3244 to 3247, 3265, 3270/MUM/2023 Assessment Years: 2009-10, 2012-13 to 2015-16 & 2018-19 2010-11 and 2011-12; or against the order, dated 26/07/2018, passed by the Chandigarh Bench of the Tribunal in the case of Chandigarh Lawn Tennis Association (supra) which was relied upon by the Tribunal in aforesaid common order, dated 03/09/2021, dismissing the aforesaid miscellaneous application of the Revenue. Therefore, as per material on record, the aforesaid orders of the Tribunal continue to hold the field. The CIT(A) granted relief to the Assessee following the common order, dated 06/12/2019, passed in ITA No. 2114/Mum/2015 and 5306/Mum/2015 and the common order, dated 03/09/2021, passed in MA No. 231 & 232/Mum/2020 which were binding upon the CIT(A). Therefore, in our view, the order passed by the CIT(A) cannot be flouted to this extent. Therefore, given the facts of the present case, we are not inclined to interfere with the order passed by the CIT(A).

13. During the course of hearing reliance was placed on behalf of the Revenue on the provisions contained in Section 2(15) of the Act inserted by the Finance Act 2008 (as amended from time to time thereafter) as well as the judgment of the Hon'ble Supreme Court in the case of Assistant Commissioner of Income-Tax (Exemptions) Vs. Ahmedabad Urban Development Authority & Ors: 449 ITR 1 (SC). The relevant extract of the written submission in this regard reads as under:

"8. It may be appreciated that the Hon. Supreme Court in the case of Assistant Commissioner of Income-tax (Exemptions) vs. Ahmedabad Urban Development Authority and others (143 taxmann.com 278 (SC) has held that the paradigm change achieved by section 2(15) after its amendment in 2008 and as it stands today, is that firstly a general public utility (GPU) charity cannot engage in any activity in the nature of trade, commerce, business or any service in relation to such activities for any consideration (including a statutory fee etc.). This is emphasized in the negative language employed by the main part of section ITA No. 3244 to 3247, 3265, 3270/MUM/2023 Assessment Years: 2009-10, 2012-13 to 2015-16 & 2018-19 2(15). Therefore, the idea of a predominant object among several other objects, is discarded. The prohibition is relieved to a limited extent, by the proviso which carves out the condition by which otherwise prohibited activities can be engaged in by GPU charities.

8.1. The conditions are: (a) That such activities in the nature of trade, commerce, business or service (in relation to trade, commerce or business for consideration) should be in the course of "actual carrying on" of the GPU object, and (b) The quantum of receipts from such activities should not exceed 20 per cent of the total receipts. (c) Both parts of the proviso: (i) and (ii) (to section 2(15)) have to be read conjunctively-given the conscious use of "or" connecting the two of them. This means that if a charitable trust carries on any activity in the nature of business, trade or commerce, in the actual course of fulfilling its objectives, the income from such business, should not exceed the limit defined in sub-clause (ii) to the proviso.[Para 153 of the order of Hon. Supreme Court]"

13.1. It was contended that the Tribunal while deciding appeal for the Assessment Years 2010-11 and 2011-12 had failed to appreciate that as per Section 13(8) of the Act, once provisions contained in proviso to Section 2(15) of the Act are triggered, entire exemption claimed by the Assessee under Section 11 of the Act would have to be mandatorily rejected. The aforesaid contention of the Revenue is premised upon the understating that the provisions contained in Proviso to Section 2(15) of the Act are attracted in the facts of the present case. On perusal of the judgment of the Hon'ble Supreme Court in the case of Assistant Commissioner of Income-Tax (Exemptions) Vs. Ahmedabad Urban Development Authority & Ors: 449 ITR 1 (SC) we find that before examining the applicability of Section 13(8) of the Act, it would be pertinent to test the aforesaid premise of the Revenue. For the same, we deem it appropriate to refer to the history of legislative amendments to Section 2(15) and insertion of Section 13(8) of the Act and the relevant circulars ITA No. 3244 to 3247, 3265, 3270/MUM/2023 Assessment Years: 2009-10, 2012-13 to 2015-16 & 2018-19 issued by the Central Board of Direct Taxes (CBDT) which were taken into consideration by the Hon'ble Supreme Court.

13.2. Section 2(15) of the Act was as substituted by Finance Act, 2008 with effect from 01.04.2009 and read as under:

"2(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 applications, or retention, of the income from such activity"
(Emphasis Supplied)

13.3. Subsequently, by the Finance Act, 2010 Second Proviso to Section 2(15) of the Act was inserted, with retrospective effect from 01/04/2009. The same read as under:

"Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year;"
(Emphasis Supplied)

13.4. Thereafter, by the Finance Act, 2011, the reference to INR 10 Lakhs in the Second Proviso to Section 2(15) of the Act was substituted by INR 25 Lakhs with effect from 01/04/2012.

13.5. Subsequently, by Finance Act, 2015 (w.e.f. 01/04/2016), the First & Second Provisos to Section 2(15) of the Act were deleted, and instead, the following proviso was inserted:

"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, ITA No. 3244 to 3247, 3265, 3270/MUM/2023 Assessment Years: 2009-10, 2012-13 to 2015-16 & 2018-

19 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, unless:

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;" (Emphasis Supplied)

13.6. Meanwhile, Circular No. 11 of 2008 and Circular No. 1 of 2009 were issued by the CBDT in relation to the applicability of the newly inserted provisions contained in Section 2(15) of the Act and proviso thereto.

13.7. On 19/12/2008, Circular No. 11 of 2008, was issued by the Central Board of Direct Taxes (CBDT) clarifying the applicability of the provisions contained in Section 2(15) of the Act to the industry/trade associations dealing with members and non- members. The relevant extract of the said circular reads as under:

"3. The newly inserted proviso to section 2(15) will apply only to entities whose purpose is 'advancement of any other object of general public utility' i.e. the fourth limb of the definition of 'charitable purpose' contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

3.1 There are industry and trade associations who claim exemption from tax u/s 11 on the ground that their objects ITA No. 3244 to 3247, 3265, 3270/MUM/2023 Assessment Years: 2009-10, 2012-13 to 2015-16 & 2018-19 are for charitable purpose as these are covered under 'any other object of general public utility'. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants.

Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2 (15).

3.2 In the final analysis, however, whether the assessee has for its object 'the advancement of any other object of general public utility' is a question of

fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of 'general public utility' will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible. Assesseees, who claim that their object is 'charitable purpose' within the meaning of section 2(15), would be well advised to eschew any activity which is in the nature of trade, commerce or business or the rendering of any service in relation to any trade, commerce or business." (Emphasis Supplied)

13.8. Reference was made to the above circular, by Circular No. 1 of 2009, containing explanatory notes to provisions of the Finance Act, 2008, which, inter alia, provided following explanation about ITA No. 3244 to 3247, 3265, 3270/MUM/2023 Assessment Years: 2009-10, 2012-13 to 2015-16 & 2018-19 the newly substituted/inserted provisions contained in Section 2(15) of the Act:

"5. Streamlining the definition of "charitable purpose"

5.1 Sub-section (15) of section 2 of the Act defines "charitable purpose" to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility. It has been noticed that a number of entities operating on commercial lines are claiming exemption on their income either under sub-section (23C) of section 10 or section 11 of the Act on the ground that they are charitable institutions. This is based on the argument that they are engaged in the "advancement of an object of general public utility" as is included in the fourth limb of the current definition of "charitable purpose". Such a claim, when made in respect of an activity carried out on commercial lines, is contrary to the intention of the provision.

5.2 With a view to limiting the scope of the phrase "advancement of any other object of general public utility", sub-section (15) of section 2 has been amended to provide 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. Scope of this amendment has further been explained by the CBDT vide its circular no. 11/2008 dated 19th Dec 2008.

5.3 Applicability - This amendment has been made applicable with effect from 1st April, 2009 and shall accordingly apply for assessment year 2009-10 and subsequent assessment years." (Emphasis Supplied)

13.9. The above legislative amendments and the circulars, were taken into consideration by the Hon'ble Supreme court while interpreting the provisions of Section 2(15) of the Act, in the case of Ahmedabad Urban Development Authority (Supra) cited on behalf ITA No. 3244 to 3247, 3265, 3270/MUM/2023 Assessment Years: 2009-10, 2012-13 to 2015-16 & 2018-19 of the Revenue during the course of hearing. On perusal of the same we find that the Hon'ble Supreme Court has, inter alia, held as under:

"IV. Summation of conclusions

253. *In view of the foregoing discussion and analysis, the following conclusions are recorded regarding the interpretation of the changed definition of "charitable purpose"*

(w.e.f. 1-4-2009), as well as the later amendments, and other related provisions of the IT Act.

A. General test under section 2(15)

*A.1. It is clarified that **an assessee advancing general public utility cannot engage itself in any trade, commerce or business**, or provide service in relation thereto for any consideration ("cess, or fee, or any other consideration");*

A.2. xx xx

*A.3. **Generally, the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost-basis or nominally above cost, cannot be considered to be "trade, commerce, or business"** or any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of "cess, or fee, or any other consideration" towards "trade, commerce or business". In this regard, the Court has clarified through illustrations what kind of services or goods provided on cost or nominal basis would normally be excluded from the mischief of trade, commerce, or business, in the body of the judgment.*

xx xx

H. Application of Interpretation

*H. At the cost of repetition, it may be noted that the conclusions arrived at by way of this judgment, neither precludes any of the assessees (whether statutory, or non- statutory) advancing objects of general public utility, from claiming exemption, nor the taxing authorities from denying exemption, in the future, if the receipts of the relevant year exceed the quantitative limit. **The assessing authorities must, on a yearly basis, scrutinize the record to discern whether the nature of the assessee's activities amount to "trade, commerce or business" based on its receipts and income (i.e., whether the amounts charged are on cost-basis, or significantly higher).** If it is found that they are in the nature of "trade, commerce or business", then it must be examined whether the quantified limit (as amended from time to time) in proviso to section 2(15), has been breached, thus disentitling them to exemption.*

In view of the above, the first step to discern whether the nature of assessee's activities amount to trade commerce or business. In a case where the charging of any amount towards consideration for activity for the advancement of the object of the general public utility is on cost-basis or nominally above cost, it cannot be considered to be "trade, commerce, or business". (Emphasis Supplied)

13.10. On perusal of the above judgment of the Hon'ble Supreme Court it is clear that (a) the applicability of the provisions of Section 2(15) of the Act would have to be examined on yearly basis for each assessment year; (b) the first step

should be to discern whether the general purpose utility activities amount to trade, commerce or business and (c) in case the answer is in affirmative, examine ITA No. 3244 to 3247, 3265, 3270/MUM/2023 Assessment Years: 2009-10, 2012-13 to 2015-16 & 2018-19 whether quantified limits specified in proviso to Section 2(15) of the Act have been breached, thus, disentitling charitable organization from claiming exemption under Section 11 of the Act.

13.11. For the purpose of discerning whether general purpose utility activities amount to trade, commerce or manufacture; the receipts/income of the charitable organization would have to be taken into consideration. Generally, the charging of any amount towards consideration for general public utility activity, which is on cost-basis or nominally above cost, would not be considered to be 'trade, commerce, or business'. It is only when the charges are significantly above the cost incurred that they would fall within the mischief of 'cess, or fee, or any other consideration' towards 'trade, commerce or business'.

13.12. In view of Circular No. 11 of 2008 issued by the Central Board of Direct taxes, whether an assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, is to be decided on the facts of each case and no generalization is possible.

13.13. Accordingly, on examining the facts of the present case it emerged that in the present case it was admitted position that the CIT(A) has allowed the claim of the Assessee under Section 11 of the Act only in respect of passive rental income from house property and interest income since the same satisfied the requirements of application/accumulation as per Section 11 of the Act. The newspaper publication activity had generally resulted in losses during the relevant previous year(s). Probably, on account of the aforesaid that the Assessee had, on a without prejudice and on a conservative basis, not claimed exemption under Section 11 of the Act in respect of activity of newspaper publication. It is not the case of Revenue that substantial profits were earned and/or ITA No. 3244 to 3247, 3265, 3270/MUM/2023 Assessment Years: 2009-10, 2012-13 to 2015-16 & 2018-19 accumulated by the Assessee in the garb of charity during the relevant previous year(s), and in our view it cannot be so contended by the Revenue in the facts of the present case as the Assessee had been incurring losses in the activity of newspaper publication. Before the authorities below it was contended by the Assessee that even though the publication activity in respect of some newspapers was running into losses the Assessee had continued to pursue the same. Further, there is nothing on record to suggest that charges/receipts sufficient to generate income significantly above the cost incurred was charged/received by the Assessee in relation to newspaper publication activity. Therefore, in view of the judgment of the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (Supra), the aforesaid charges/receipts would fall outside the ambit of 'cess, or fee, or any other consideration' towards 'trade, commerce or business'. Therefore, in the facts and circumstances of present case the newspaper publication activity (which had resulted into losses or nominal profits during the relevant previous years), could not have been regarded as activity in the nature of trade commerce or business in terms of the judgment of the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (Supra). Consequently, the question of examining the breach, if any, of the quantified limits specified in proviso to Section 2(15) of the Act does not arise. Thus, in the present case, the very premise on which the Revenue had

sought to invoke the provisions of Section 13(8) of the Act by placing reliance on the judgment of the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (Supra) does not hold good. Thus, in the facts and circumstances of the present case the aforesaid judgment of the Hon'ble Supreme court does not advance the case of the Revenue. For the aforesaid reason also we are not inclined ITA No. 3244 to 3247, 3265, 3270/MUM/2023 Assessment Years: 2009-10, 2012-13 to 2015-16 & 2018-19 to interfere with the order passed by the CIT(A) given the facts and circumstances of the present case.

13.14. In view of paragraph 13.13 above, the broader issue of interpretation/applicability of Section 13(8) of the Act and its interplay with provisions of Section 2(15) of the Act has become academic in the present case and therefore, we deem it appropriate to leave the issue raised by the Revenue open for adjudication in an appropriate case.

14. We have, in paragraph 12.1 and 13.13 hereinabove, concluded that we are not inclined to interfere with the order passed by the CIT(A) given the peculiar facts of the present case. However, before parting we would like to clarify that during the course of hearing it was pointed out by the Learned Departmental Representative, that in the Order, dated 03/09/2021, passed by the Tribunal in MA No. 231 & 232/Mum/2020 pertaining to Assessment Years 2010-11 and 2011-12 reference has been made to order, dated 26/07/2018, passed in ITA No. 1382/Chd/2016 in the case of Chandigarh Lawn Tennis Association Vs. ITO(Exemptions) Ward, Chandigarh in the following manner : "Special Bench of the ITAT Chandigarh Bench in the case of Chandigarh Lawn Tennis Vs ITO (Exemptions) in ITA No. 1382/Chd/2016, vide order dated 26.07.2018". However, the aforesaid decision of the Tribunal has not been rendered by the Special Bench of the Tribunal. We find that the aforesaid averment made by the Learned Departmental Representative is factually correct. We find that decision of Special Bench of the Tribunal was constituted in the case of the Appellant in relation to appeal for the Assessment Years applicable to the assessment years 1984-85 to 1986-87 and 1990-91. Vide order dated 19/10/2006 [reported in (2007) 106 ITD 1 (MUM) SB] the Tribunal had, while interpreting the provisions of Section 2(15) and Section 11 of the Act as ITA No. 3244 to 3247, 3265, 3270/MUM/2023 Assessment Years: 2009-10, 2012-13 to 2015-16 & 2018-19 applicable at the relevant time, held that since the provisions of Section 11(4A) of the Act were attracted since the Assessee during those assessment years was earning substantial profits, and therefore, Assessee would not be entitled to claim exemption under Section 11 of the Act. However, the Assessee would, nevertheless, be entitled to exemption in respect of other incomes, such as 'income from house property', 'capital gains' and 'income from other sources'. Same view was taken by the Tribunal in the case of Chandigarh Lawn Tennis Association (supra), while interpreting the substituted provisions contained in Section 2(15) of the Act effective for Assessment Year 2009-10 and onwards. It was held by the Tribunal that even if provisions contained in Proviso to Section 2(15) of the Act are attracted, other income which is not from commercial activity would be eligible for exemption under Section 11 of the Act. Reliance was placed on the aforesaid decision by the Tribunal, while passing vide Order, dated 03/09/2021, rejecting the miscellaneous applications filed by the Revenue [MA No. 231 & 232/Mum/2020] in relation to appeals for the Assessment Years 2011-12 and 2012-13. The CIT(A) has followed the aforesaid decision of the Tribunal while deciding appeal for the relevant assessment year(s). Recently, in the case of Indian Chamber of Commerce. Kolkatta Vs.

DCIT, Circle 1(1) Exemptions: [ITA No. 933 & 934/Kol/2023, dated 22/12/2023, Assessment Years 2013-14 & 2014-15] the Kolkata Bench of the Tribunal has also taken a view similar to the Chandigarh Bench of the Tribunal in the case Chandigarh Lawn Tennis Association (supra) while allowing assessee's claim for exemption in respect of rental and interest income in that case (see para 19).”

5. Before us, Id. Counsel of the assessee has referred to the computation of the total income for both the Assessment Years, placed in the paper book substantiating the claim made by it which are also extracted below for ease of reference.

SAURASHTRA TRUST

STATEMENT OF TOTAL INCOME FOR THE YEAR 2016-2017

Status	: Company		
Previous Year	: 31.03.2016		
Address	: Janmabhoomi Bhavan, Janmabhoomi Marg, Fort, Mumbai 400 001.		
PAN No.	: <u>AAATS-2786 B</u> DC. (E) I (2)		

	Rs.	Rs.
INCOME FROM BUSINESS (As per statement)		(21,748,429)
INCOME FROM HOUSE PROPERTY (As per Annexure I)		31,417,426
LONG TERM CAPITAL GAIN Profit on Redemption of Bonds Less Exempt Under Section 11(1A)	0 0	
INCOME FROM OTHER SOURCES		
Interest on Investments	29,069,196	
Other Income	42,153	
Add: Income Chargeable U/S 11(3) -not applied in earlier Assessment years	17,500,000	46,611,349
		56,280,346
Less : Accumulation u/s. 11(1)(a) @ 15%		6,442,052
		47,838,294
Less : Amount Applied for the object of the trust On Education		9,150,000
		38,688,294
Less : Accumulation of Income u/s. 11(2)	20,000,000	
	20,000,000	
Taxable Surplus	Rs.	20,000,000 18,688,294
Tax Payable	5,431,488	
Add: Surcharge @ 12%	651,779	
	6,083,267	
Add: Education Cess @ 3%	182,498	
	6,265,765	PROVISION FOR T/
Less : Tax deducted at source		7,881,560
Refund due	Rs.	(1,615,795)

SAURASHTRA TRUST

23

STATEMENT OF TOTAL INCOME FOR THE YEAR 2017-2018

Status	: Company		
Previous Year	: 31.03.2017		
Address	: Janmabhoomi Bhavan, Janmabhoomi Marg, Fort, Mumbai 400 001.		
PAN No.	: <u>AAATS-2786 B</u> DC. (E) I (2)		
		Rs.	Rs.
<u>INCOME FROM BUSINESS</u>			Rs.
(As per statement)			(2,08,85,298)
<u>INCOME FROM HOUSE PROPERTY</u>			3,49,24,677
(As per Annexure I)			
<u>LONG TERM CAPITAL GAIN</u>		0	
Profit on Redemption of Bonds		0	-
Less Exempt Under Section 11(1A)			
<u>INCOME FROM OTHER SOURCES</u>			
Interest on Investments		2,94,36,960	
Interest on Fixed Deposit with Bank		<u>3,81,286</u>	<u>2,98,18,246</u>
			4,38,57,625
Less : Accumulation u/s. 11(1)(a) @ 15%			<u>65,78,644</u>
			<u>3,72,78,981</u>
Add: Income Chargeable U/S 11(3) -not applied in earlier Assessment years			<u>2,00,00,000</u>
			5,72,78,981
Less : Amount Applied for the object of the trust On Education			<u>92,75,750</u>
			4,80,03,231
Less : Accumulation of Income u/s. 11(2)		<u>2,60,00,000</u>	
		<u>2,60,00,000</u>	
Taxable Surplus		<u>Rs.</u>	<u>2,60,00,000</u>
			<u>2,20,03,231</u>
Tax Payable		64,25,969	
Add: Surcharge @ 15%		<u>9,63,895</u>	
		73,89,865	
Add: Education Cess @ 3%		<u>2,21,696</u>	
		76,11,561	
Less : Tax deducted at source		78,09,098	
Refund due	Rs.		<u><u>(1,97,537)</u></u>

6. Considering the above facts on record and the judicial precedent in assessee's own case for past several Assessment Years, so also following the principle of judicial discipline and following the rule of consistency, with no change in material facts and applicable law, we dismiss the appeals of the Revenue by holding that only the business income is hit by the proviso to section 2(15) of the Act, which can be brought to tax. Following the above stated judicial precedents, we are also of the view that even if provisions contained in proviso to section 2(15) of the Act attracted, other income which are not from

commercial activity, would be eligible for exemption u/s. 11 of the Act. Assessee had been incurring losses in the activity of news paper publication, as is evident from the computation income extracted above. Thus, the activity of publication of news papers falls outside the ambit of "Cess or fee or any other consideration" towards "trade, commerce or business". Thus, in these set of facts and circumstances, newspaper publication activity which has resulted into losses cannot be regarded as activity in the nature of trade, commerce or business, in view of the judgment of Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (Supra). Accordingly, we do not find any reason to interfere with the findings arrived at by ld. CIT(A). Accordingly, grounds taken by the Revenue are dismissed.

7. In the result, both the appeals by Revenue are dismissed.

Order is pronounced in the open court on 30 September, 2024

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 30 September, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai