

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “D”, MUMBAI
BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER
AND**

SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.4545/M/2023

[Assessment Year: 2018-19]

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| Income Tax Officer, Exemption Ward- 2(4) 609, 6 th floor, MTNL Building, Cumballa Hill, Mumbai- 400026. | Vs. | Mehli Mehta Music Foundation 2, Banoo Mansion, Cumballa Hill Road, Kemps Corner, Mumbai- 400026. PAN: AAATT2799K |
| (Appellant) | | (Respondent) |

Present for:

Assessee by : Shri P. J. Pardiwala & Mayank Thosar

Revenue by : Shri R. R. Makwana (SR. D.R.)

Date of Hearing : 12.11.2024

Date of Pronouncement : 22.11.2024

ORDER

Per Beena Pillai, JM:

Present appeal filed by the revenue arises out of order dated 16.10.2023 passed by Ld.CIT(A) on following grounds of appeal:

“1. On the facts and circumstances of the case and in law the Ld. CIT(A) NFAC erred in allowing the claim of exemption u/s.11 of the I. T. Act, 1961, to the assessee holding that it is engaged in the activity of education. without appreciating the fact that as observed by the Hon'ble Apex Court in the case of Sole Trustee, Lok Shikshana Trust v. CIT (1975) 101 ITR 2.34 (SC), this word should be rather narrowly construed and its



meaning be restricted to what goes as normal schooling, and accordingly, the activity of the assessee would not be construed as education within the meaning of Section 2(15) of the Act.

2. On the facts and circumstances of the case and in law the Ld. CIT(A) NFAC erred in allowing the claim of exemption u/s.11 of the I. T. Act, 1961. to the assessee holding that it is engaged in the activity of education, without appreciating the fact that as observed by the Hon'ble Apex Court in the case of New Noble Society v/s CCIT (2022) 143 Taxmann.com 276 (SC). The activity of the assessee would not be construed as education within the meaning of Section 2(15) of the Act.

3. On the facts and circumstances of the case and in law the Ld. CIT(A) NFAC erred in allowing the claim of exemption u/s. 11 of the I. T. Act, 1961, to the assessee without appreciating the fact that the assessee did not fulfill the criteria set out by the Hon'ble Apex Court, for claiming exemption u/s.11 of the Act since the other activity of organizing concerts etc. was not related to the primary object of the assessee.

4. On the facts and circumstances of the case and in law the CIT(A) NFAC erred in specifically allowing the claim of exemption u/s.11(1)(d) of the I. T. Act, 1961, to the assessee in respect of claim of corpus donations received without appreciating the fact that the assessee did not fulfill the criteria set out by the Hon'ble Apex Court, in the case of ACIT(E) Vs. Ahmedabad Urban Development Authority 449 ITR 1 (SC), for claiming exemption u/s.11 of the Act since the other activity of organizing concerts etc. was not related to the primary object of the assessee and hence, the assessee would not be eligible to exemptions u/s.11 and 11(1)(d) of the Act. (TFE 786569 included in above)

5. Whether on facts and circumstances of the case and in law the Ld. CIT(A) is right in allowing exemption u/s 11 of the IT Act, 1961 without appreciating that the major activities of the assessee are in nature of trade, commerce or business and are not charitable in nature in view of section 2[15] of the I.T Act? (TE 8383346 included in above).”

2. We have already considered this issue in assessee's own case for assessment year 2009-10, 2014-15, 2016-17 and 2017-18 in ITA No. 4261, 4260, 4306 & 4307/M/2023 order dated 22/11/2024. The operative part of the observations by Coordinate Bench of this Tribunal are as under:-



6. At the outset it is noted that the assessee has been granted deduction in respect of the interest income and receipts from donation. However, in respect of income received by way of fee from students, sale of concert tickets and concert receipts (sponsorship) the authorities below denied the exemption by holding that these activities fell within the purview of proviso to section 2(15) of the act being “advancement of any other object of general public utility”.

6.1. Ld.Sr.Counsel has placed reliance on the decision of coordinate bench of this Tribunal in assessee’s own case for A.Y. 2012-13 supra wherein this Tribunal observed and held as under:

15. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee's trust is a trust for the propagation of music and promotion of musical talent. The assessee's trust is conducting various music classes for the students on regular basis for last several years. According to us, training being in the nature of normal schooling or class room education is within the object of importing education of music. According to us, the activities of the trust thus falls within the term of education as specified in section 2(15) of the Act. Therefore, now we will consider the decision of Delhi High Court in the case of Delhi Music Society, wherein Hon'ble Delhi High court has considered this Issue in Para 8 which read as under: -

“8. The object clause of the memorandum of association of the petitioner says that the objects of the school are to teach western, classical music to promote musical knowledge and the appreciation among the students as well as among the interested public by means of workshops, lectures/demonstrations, recitals etc., to acquire and maintain instruments for teaching purposes, to create and update a world class library of music literature both audio and video to add more class rooms and other required facilities for the purpose of musical education and to construct and maintain concert hall/auditorium for the school. Clause (vi) of the memorandum of association declares that the petitioner is not a society for profit and the income and property of the society shall be applied solely towards the promotion of the objectives of the society and no portion thereof shall be paid, directly or indirectly, as dividend or bonus or any other manner to any member of the society or its officer or servant or any other person. It is true that the petitioner is not affiliated to any university



in India and is not recognized by any statutory body having anything to do with education. It is also a fact that the petitioner does not have a syllabus of its own and it awards grade certificates to the students depending upon their proficiency as declared by the Trinity College, London and the Associated Board of Royal School of Music, London on the basis of the examinations conducted by them. The question before us is whether the reasons given by the prescribed authority are germane to the question as to whether the petitioner is an educational institution within the meaning of Section 10(230) (vi).”

16. As regards to the other incomes, the learned Counsel for the assessee relied on the decision of Hon'ble Madras High court in the case of CIT vs. Sri Thyaga Brahma Gana Sabha (Regd.) (1991) 188 ITR 160 (Madras), wherein it is held that the assessee is owner of hall and deriving income from letting out the same, though the objects of the assessee was not to earn profit by letting out wholly. since the profits were utilized for the purpose of charity, the assessee is entitled to earn exemption under section 11 read with section 2(15) of the Act. We find that this issue in the given facts and circumstances is covered in favour of assessee and hence, respectfully following the decision of Hon'ble Delhi High Court, we are of the view that the assessee trust is running the education institute, which is within the purview of section 11 of the Act and assessee is entitled for the exemption. We allow the appeal of the assessee.”

17. In the result, the appeal of assessee is allowed.

6.2. In the present facts of the case it is noted that the reopening of the assessment for A.Y. 2009-10 was based on the additions made by the Ld.AO for A.Y. 2012-13, and this Tribunal on merits deleted the addition made by the Ld.AO for A.Y. 2012-13, as has been reproduced herein above.

6.3. Be that as it may, there is no denial by the Ld.AO regarding the training of children in the field of music does not fall within the term education, as specified in section 2(15) of the act. This is clear from the fact that the Ld.AO granted deduction in respect of the interest earned and donation received by the assessee. This is further fortified by the fact that, the exemption u/s. 12A has not been denied in any of the years under consideration or in any of the past assessment years. We refer to the decision of Hon'ble Supreme Court in case of New Noble Education society



vs. CCIT reported in [2022] 448 ITR 549. Hon'ble Supreme Court while deliberating on what constitutes the term "education", observed as under:

"33. The subject of education is vast, even sublime. Yet, it is not the broad meaning of the expression which is involved in this case. As was held in T.MA Pai Foundation (supra), education in the narrower meaning of the term as scholastic structured learning is what is meant in Article 21-A, Articles 29-30 and Articles 45-46 of the Constitution. As to what is 'education' in the context of the IT Act, was explained in Sole Trustee, LokaShikshana Trust v. CIT (1975) 101 ITR 234 (SC)/[1976] 1 SCC 254 in the following terms:

"5. The sense in which the word "education" has been used in section 2(15) is the instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge.... All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by formal schooling."

Thus, education i.e., imparting formal scholastic leaning, is what the IT Act provides for under the head of "charitable" purposes, under section 2(15)."

Hon'ble Supreme Court thus enunciates that, once the object of the assessee falls within the category of education, the first proviso to section 2(15) does not apply as it does not fall within the residual category of "general public utility".

6.4. Hon'ble Supreme Court in the case of ACIT(E) vs. Ahmedabad Urban Development Authority reported in [2022] 143 taxmann.com 278 observed as under:

"126. As observed at the beginning of this judgment, GPU charities have been recognized as distinct from the 'per se categories' of charity (education, medical relief, relief to the poor; and later - preservation of water sheds, monuments, environment, and yoga). The judgment of this court in Dharmadeepti (supra) has clarified that the per se categories- are not subjected to the restrictive condition of eschewing activities of profit. This enunciation of the principle has



been endorsed in all later decisions starting with Surat Art Silk (supra). Therefore, the restriction imposed by Parliament against charities - prohibiting them from carrying on activities of profit do not apply to the first six categories..."

From the above ratios there is no doubt that the assessee falls within the specific category being education and does not fall within "general public utility" category, the first proviso section 2(15) does not apply.

6.5. Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (supra) has also considered as to what would constitute an activity in the nature of trade, commerce or business for the purposes of proviso section 2(15) as under:

131. The term "in the nature of occurring in Section 2(15) has frequently been interpreted by this court. In G. Venkataswami Naidu v. CIT 1959 (Supp.) SCR 646 the isolated transaction of sale of land was held not to be activity in the nature of trade or business. In State of Tamil Nadu v. Burmah Shell Oil Storage Distribution Co. of India Ltd. (1973) 2 SCR 636 the test indicated was whether the "frequency, volume, continuity and regularity of transactions carried on with a profit-motive". In State of Tamil Nadu v. Shakti Estates [1989] 1 SCR 408, the assessee's activities in leasing forest lands, clearing them, and creation of wooden sleepers, which were sold, as well as charcoal, which was sold, in a series of "sustained, systematic and organised activities" was held to be in the nature of business. In Director of Civil Supplies v. Member Board of Revenue [1967] 3 SCR 778 this court outlined, what would be activity in the nature of business:

"To regard an activity as business, there must be a course of dealings, either actually continued or contemplated to be continued with a profit-motive; there must be some real and systematic or organized course of activity or conduct with a set purpose of making profit. To infer from a course of transactions that it is intended thereby to carry on business ordinarily there must exist the characteristics of volume, frequency, continuity and system indicating an intention to continue the activity of carrying on the transactions for a profit. But no single test or group of tests is decisive of the intention to carry on the business."

.....
170. Classically, the idea of charity was tied up with eleemosynary. However, "charitable purpose-and charity as defined in the Act have a wider meaning where it is the object of the institution which is in focus. Thus, the idea of providing services or goods at no consideration, cost or nominal consideration is not confined to the

provision of services or goods without charging anything or charging a token or nominal amount. This is spelt out in Indian Chamber of Commerce (supra) where this Court held that certain GPUs can render services to the public with the condition that they would not charge "more than is actually needed for the rendering of the services, -

may be it may not be an exact equivalent, such mathematical precision being impossible in the case of variables, may be a little surplus is left over at the end of the year - the broad inhibition against making profit is a good guarantee that the carrying on of the activity is not for profit".

The GPU category referred to in the above decision refers to 'General Public Utility'. Therefore, the Supreme Court held that one of the essential elements for an activity to be construed as a business activity is yielding of profit from such activity.

6.6. Hon'ble Supreme Court further held as under:

"171. Therefore, pure charity in the sense that the performance of an activity without any consideration is not envisioned under the Act. If one keeps this in mind, what section 2(15) emphasizes is that so long as a GPU's charity's object involves activities which also generates profits (incidental, or in other words, while actually carrying out the objectives of GPU, if some profit is generated), it can be granted exemption provided the quantitative limit (of not exceeding 20%) under second proviso to section 2(15) for receipts from such profits, is adhered to.

172. Yet another manner of looking at the definition together with sections 10(23) and 11 is that for achieving a general public utility object, if the charity involves itself in activities, that entail charging amounts only at cost or marginal mark up over cost. and also derive some profit, the prohibition against carrying on business or service relating to business is not attracted if the quantum of such profits do not exceed 20% of its overall receipts."

A. General test under section 2(15)

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.”

6.7. CBDT Circular No. 11/2008 dated 19-12-2008 (Point No. 2.1) also clarified that, proviso to section 2(15) of the Act will not apply to medical relief etc. and 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. For sake of convenience, the clarification issued by the CBDT reads as under:

"The newly inserted proviso to 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."

6.8. It cannot be lost out of sight that this Tribunal for assessment year 2012-13 upheld the object of the trust was for 'advancement of education', and that by conducting concerts and selling tickets of such concerts and charging fees from students, would not change the dominant object of the trust which was 'advancement of education' in the field of music. We refer to the decision of Hon'ble Bombay High Court in DIT(E) vs. M/s Shri Vile Parle Kelavani Mandal reported in (2015) 232 ITR 459 and Circular no.11 of 2008 dated 19th December 2008 in support of this observation.

6.9. The activity of conducting concerts and selling tickets of such concerts and charging fee from students, in our view are incidental to the principal activity of the assessee of imparting education in the field of music. The allegations by the revenue that, these are business income is not accepted, as assessee could have exploited the sources to earn huge profit. Further, it is noted that the receipts for sale of tickets from concert and sponsorship fees is less than 20% of the total receipts of the assessee. It is also noted that the assessee never had any intention to earn profits from these activities is clear from the admitted fact that, the assessee would be in a deficit if the receipts from sale of concert ticket and the sponsorship fees is not considered.”



3. Respectfully following the above issue, we do not find any merit in the grounds raised by the revenue and the view taken by Ld.CIT(A) is upheld.

Accordingly, the grounds raised by revenue stands dismissed.

In the result the appeal filed by the revenue stands dismissed.

Order pronounced in the open court on 22-11-2024.

**Sd/-
PRABHASH SHANKAR
ACCOUNTANT MEMBER**

**Sd/-
BEENA PILLAI
JUDICIAL MEMBER**

Mumbai, Dated: 22.11.2024.
Snehal C. Ayare, Stenographer/ Dragon

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai