IN THE INCOME TAX APPELLATE TRIBUNAL,

MUMBAI BENCH "D", MUMBAI

BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER

AND

SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.4260/M/2023
[Assessment Year: 2014-15]
ITA No.4261/M/2023
[Assessment Year: 2009-10]
ITA No.4306/M/2023
[Assessment Year: 2016-17]
ITA No.4307/M/2023
[Assessment Year: 2017-18]

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

Present for:

Assessee by : Shri P. J. Pardiwala/ Nitesh Joshi & Mayank Thosar

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

Date of Hearing : 11.11.2024

Date of Pronouncement : 21.11.2024

ITA No.4545/M/2023
[Assessment Year: 2018-19]

Income Tax Officer, Exemption Ward- 2(4) 609, 6th 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 : 21.11.2024

O R D E R

Per Beena Pillai, JM:

Present appeals are filed by the assessee for the years under consideration arising out of separate orders passed by Ld.CIT(A) /NFAC dated 16.10.2023.

2. The Ld. Senior Counsel submitted that assessee has challenged before this *Tribunal* assessee legal issue regarding reopening of assessment for A.Y.2009-10.He submitted that for remaining assessment years, the orders passed by Ld.AO are u/s.143(3) of the act. It is further submitted that, on merits of the addition made by

the Ld.AO are identical disallowance for all the years under consideration. The Ld. Sr. Counsel thus submitted that A.Y.2009-10 may be considered as it covers all the issues alleged by the assessee in present appeals even on merits. The submissions of the Ld. Sr. Counsel was acceptable to the Ld. DR.

Accordingly, grounds pertaining to A.Y. 2009-10 raised by the assessee are reproduced as under:

Grounds of Appeal: (A.Y. 2009-10)

As regards validity of Reassessment Proceedings

1. *The learned Commissioner (Appeals) erred in upholding the validity of the reassessment proceedings.*
2. *The learned Commissioner (Appeals) was wrong in holding that reassessment was not initiated on the basis of change in opinion.*
3. *The learned Commissioner (Appeals) was not justified in holding that the reassessment proceedings were not barred by limitation.*
4. *The learned Commissioner (Appeals) failed to appreciate that non-disposal of objections raised by the appellant before proceeding with assessment rendered the reassessment proceedings null and void*
5. *The learned Commissioner (Appeals) erred in not granting an opportunity of hearing through videoconference though a request had been made by the appellant, and in stating that a notice had been issued for videoconferencing on 19.9.2023 but the appellant did not respond to the same*

As regards denial of exemption under section 11

6. *The learned Commissioner (Appeals) erred in upholding the denial of exemption under section 11 to your appellant, on account of the applicability of the proviso to section 2(15).*
7. *The learned Commissioner (Appeals) was not justified in holding that the appellant's activities fell under the category of "advancement of any other objects of general public utility and not under "education".*
8. *The learned Commissioner (Appeals) was wrong in not following the decision of the Tribunal in the appellant's own case for Assessment Year 2012-13.*
9. *The learned Commissioner (Appeals) failed to appreciate that sponsorship fees of Rs 2,45,63,861 should not be considered for computing surplus from activity of concerts, and that all the concerts*

resulted in a deficit, which was made good only on account of such sponsorship fees received for one concert

As regards Taxation of Corpus Donations

10. The learned Commissioner (Appeals) erred in upholding the taxing of corpus donations of Rs 3,64,60,524.

11. The learned Commissioner (Appeals) failed to appreciate that such donations were capital receipts, not in the nature of income.

Relief Sought

Your appellant prays that:

1. *The reassessment proceedings be held as invalid, null and void;*
2. *The reassessment order be modified by holding that your appellant is entitled to the benefit of exemption under sections 11 and 12:*
3. *The addition of corpus donations of Rs 3,64,60,524 be deleted.*

The above grounds are independent of and without prejudice to one another.

Your appellant craves leave to add to, modify or delete any of the above grounds, if and when required"

BREF FACTS OF THE CASE ARE AS UNDER:

3. The assessee is a trust registered as charitable organization with charity commissioner vide registration no. C-16116. Assessee is also registered under 12A of the act, vide certificate no.TR/32045 dated 16.08.1996. It is noted by the authorities below that, the assessee is formed with object to propagate and promote music and musical talents. The main objects of the assessee as per the trust deed placed in the paper book at page 22-23 are reproduced as under:

i. " to foster, encourage and develop music in all its aspects including on the stage, screen, radio, television and in all its varieties;

ii. to educate the public in the utility of music from a sociological, and cultural of view; maintenance and educational support point of schools, educational institutions and persons interested in music;

iii. advance of learning in all its branches especially research work in connection with music; giving scholarships or travelling fellowships in assisting students to study abroad;

iv. *advancement of any other object of general public utility not involving the carrying on any activity for* profit."

3.1. For the year under consideration, the assessee filed its return of income on 27.10.2009, claiming exemption u/s.11 of the act and declared total income at Rs.NIL. The assessee also filed income and expenditure account, balance sheet and audit report in Form 10B. The Ld.AO during the assessment proceedings accepted the return of income filed by the assessee and the assessment order was passed u/s.143(3) of the act on 30.11.2011.

3.2. Subsequently, the case was reopened on the basis of the reason that, the objects of the foundation are only in the nature of advancement of any other object of general public utility, with an intention to earn profit, and that, prima facie activities of the assessee were commercial in nature. Accordingly, notice u/s.148 of the act was issued to the assessee on 15.03.2016.In response to the notice, letter dated 06.04.2016 was filed by the assessee enclosing copy of the ROI and the requested to provide copy of the reasons recorded.

3.3. The Ld.AO issued notice u/s.143(2) and 142(1) of the act on 06.06.2016 along with copy of the reasons for reopening of the assessment. Inresponse to the notices issued, the representative of the assessee attended the assessment proceedings from time to time and submitted necessary details as called for.

3.4. The Ld.AO after considering all details filed by assessee was of the opinion that, the activities of the assessee falls within the category of "*objects of general public utility*" as the main activity of

the assessee is to impart musical training and conduct shows and concerts and charging fees for the shows. The Ld.AO thus was of the opinion that the objects of imparting education of music is indirectly connected with motive to earn profit, by sale of programs and conducting orchestra. The Ld. AO thus invoked the provision to section 2(15) of the Act.

3.5. The Ld.AO also observed from the income and expenditure account that, the assessee earned huge surplus of Rs.2,13,45,167/- during the year without fulfilling fulfill the object of imparting education of music, and therefore held that the assessee was not doing any charitable work. The Ld.AO thus completed the reassessment by assessing Rs.5,78,04,28/- in the hands of the assessee.

Aggrieved by the order of the Ld.AO assessee preferred appeal before the Ld.CIT(A).

4. The Ld.CIT(A) on the legal issue upheld the reopening by observing as under:

> *4.1.1. First objection is that the re-assessment proceedings has been time barred and the re-assessment proceedings have been initiated after the statutory period. Perusal of the re-assessment order reveals that there was tangible materials in his hand while recording the reason of believe for reopening of assessment and all procedures/conditions have been duly complied before issuing notice u/s 148 of the Act. Also, it is seen that the re-opening has been done before the expiry of 6 years from the end of the assessment year 2009-10 after recording reason to believe and approval from the competent authority due to failure on the part of the appellant to disclose fully and truly all material facts necessary for its assessment. Thus, this contention of the appellant is rejected.*
> *4.1.2 Second objection relates to non-disposal of objection raised by the appellant during re-assessment proceedings. Perusal of the assessment order reveals that a copy of reasons recorded was provided to the*

appellant on 06.06.2016 in response to the appellant's request and the appellant furnished it's object vide letter dated 07.11.2016, which has been discussed in the re-assessment proceedings at para 9.1 to 9.4 before proceeding to decide the issue on merit. The Hon'ble Supreme Court in the case of GKN Driveshaft (India) Ltd Vs ITO 259 ITR 19(2003) clearly laid down the procedure for objection & disposal of objection against notice u/s 148 of the Act and the remedial action lies in writ before the Court as per the procedure laid down in the case of GKN Driveshaft. Thus, this contention of the appellant is rejected.

4.1.3 Perusal of the re-assessment order at Para 9.1 to 9.4, it reveals that the AO has already discussed about the reason for reopening of the case and mentioned that the re-opening of the assessment for A.Y. 2009-10 was made in the light of the assessment proceedings for A.Y. 2012-13, wherein the appellant's activities were primarily held to be in the nature of advancement of any other object of general public utility'. Hence, the AO has tangible material to form reason to belief for the reopening of the case. The AO has relied on the decision of the jurisdictional Bombay High Court in the case of Multiscreen Media (P) Ltd Vs UOI [2010] 324 ITR 54 (Bom) wherein it was held that reassessment on the basis of additional material discovered in assessment proceedings of a subsequent year was justified. The AO also discussed that the change of opinion necessarily postulates and requires application of mind by the AO and formation of opinion at the first instance in the original proceedings. It is also stated that the AO didn't made an application of his/her mind on the issue. Hence, it can't be held that it is a case of change of opinion and in fact, the instant case is an example that the Assessing Officer had specific reason to form a belief that income chargeable to tax had escaped assessment. Further, this view has been supported by the judgement of the Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock Brokers (P) Ltd [2007] (291 ITR 500) wherein it was held that on the basis of audit objection, the AO can initiate re-assessment proceedings and the reason to believe is not a conclusion of escapement and sufficiency of reasons cannot be questioned. The Hon'ble Supreme Court further held that "Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the Assessing Officer has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the Assessing Officer should have finally ascertained the fact by legal evidence or conclusion. The function of the Assessing Officer is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in Central

Provinces Manganese Ore Co. Ltd. v. ITO, [1991] 191 ITR 662, for initiation of action under Section 147(a) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is "reason to believe", but not the established fact of escapement of income. At the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the Assessing Officer is within the realm of subjective satisfaction." Several other relevant decisions of various court on the issue are as under:-

- *Innovative Foods Ltd V/s Union of India (2013) 37 taxmann.com 463(Kerala HC)- Where reasons given in notice for effecting reassessment were not matters that were considered by assessing authority while passing assessment order and no opinion was formed in this regard, it could not be said that no new material had been brought to invoke power and proceeding under section 147 and that reassessment was proposed by way of change of opinion. Fateh Chand Charitable Trust V/s CIT(2013) 36 taxmann.com 67 (All. HC)- Since in original assessment order Assessing Officer had not expressed any opinion with regard to genuineness of donation or creditworthiness of 'N', reassessment notice could not be said to have been given on basis of mere change of opinion.*
- *Consolidated Photo & Finvest LTd V/s ACIT (2006) 151 Taxman 41 (Del. HC)- Action under section 147 is permissible even if Assessing Officer gathered his reasons to believe from very same record as had been subject-matter of completed assessment proceedings. Further, the principle that a mere change of opinion cannot be a basis for reopening completed assessments would have no application where order of assessment does not address itself to aspect which is basis for reopening of assessment.*
- *Export Credit Guarantee Corporation of India Ltd. V/s Addl.CIT (2013) 30taxman 211 (Bombay HC)- Even in absence of assessee's, failure to disclosematerial facts, where there is complete failure on part of Assessing Officer toapply his mind, during original assessment proceedings, to points on whichassessment is sought to be reopened, it can be said that there is tangiblematerial and reason to believe that income has escaped assessment.*

- *Yuvraj V/s Union of India (Bom.) (2009) 315 ITR 84- The issue, which has not been decided while passing assessment order under section 143(3), cannot be said a case of change of opinion.*

- *Nishith Madanlal Desai V/s CIT-11, Mumbai(2014) 49 taxmann.com 336 (Bom HC)- In course of assessment proceedings for subsequent assessment year, Assessing Officer obtained fresh material from which it was found that during earlier assessment year assessee had claimed deduction under section 57 in respect of interest on loan obtained from bank (HDFC), however, purpose of said loan was purchase of residential house property Assessing Officer, thus, taking a view that assessee wrongly claimed deduction of interest under section 57, initiated reassessment proceedings. Thus, the initiation of reassessment proceedings even after expiry of four years from end of relevant assessment year was justified.*
- *Sohar Siraj Lokhandwala V/s ACIT (1994) 77 Taxman 302 (Bombay HC)- Mere production of evidence before Assessing Officer is not enough and there may be an omission or failure on part of assessee to make a 'full' and 'true' disclosure if some material for assessment lies embedded in that evidence which assessee could uncover but did not. The production of trust deed or assignment deed by itself did amount to full disclosure of material facts within meaning of section 147(a).*
- *Raymond Woollen Mills Ltd. V/s Income Tax Officer and Others (1999) 236 ITR 34 (S.C.)- In determining whether commencement of reassessment proceedings was valid it has only to be seen whether there was prima facie some material on the basis of which the department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage.*

In view of the above facts& case laws, I am of the considered view that the AO didn't form any opinion in his/her mind in the original assessment on the contentious issue and a detailed reason for reopening of the assessment have been recorded on the basis of new tangible materials in hand. Thus, the contention of the appellant that it is a case of change of opinion is herby rejected and the validity of order u/s 147 of the Act is upheld. Thus, this ground of appeal is dismissed."

4.1. On the issue of denial of exemption under section 11,, the Ld.CIT(A) observed as under:

"On perusal of the above decision of the ITAT reveals that the appellant didn't had any positive income from concerts in the A.Y. 2012-13 but it incurred huge loss in organising concerts/shows during FY 2011-12. Further, 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) relied by the ITAT pertains to prior period of insertion of proviso below to section 2(15) of the Act. Also, the decision of Hon'ble Delhi High Court in

the case of Delhi Music Society Vs DGIT (357 ITR 265) doesn't deal with section 2(15) and proviso below to section 2(15) of the Act and the issue before this court was "whether an educational institution is eligible for exemption under section 10(23C)(vi), if it is not recognised by any university or Board and has not been awarding its own degrees or certificates". In view of the above reasons, the decision of the Hon'ble ITAT in appellant's own case for AY 2012-13 is not applicable in the present assessment year."

4.2. On the issue of taxability of corpus donation,Ld.CIT(A) took the view that, since the assessee could not fall under the category of *charitable purpose*and the denial of exemption u/s.11 is upheld, therefore all receipts including corpus donations were assessable as business receipts in the hands of the assessee.

Aggrieved by the order of the Ld.CIT(A) the assessee is in appeal before this *Tribunal*.

5. The Ld. Sr. Counsel submitted that **Ground no. 6-9** raised by the assessee are in respect of denial of exemption u/s.11.

5.1. He submitted that the Ld.AO was not justified in invoking provisoto section 2(15) of the act. It is submitted that, the assessee is pursuing charitable activity of imparting *"education"*, and its activities do not fall within the last limb, i.e.,*advancement of any other object of general public utility*, which alone is hit by the proviso to section 2(15) of the Act.

5.2. He submitted that, conducting of classes for students and charging for the same, holding of concerts and selling its tickets, and raising sponsorship, cannot be regarded as involving an activity in the nature of trade, commerce or business or any activity of rendering any services in relation to trade, commerce, or business.

The Ld.Sr.Counsel submitted that, these are to be considered as the part of the education process. He submitted that, the assessee organizes concerts, where its students get opportunity to perform on stage or, witness performance by masters and experts in the field.

5.3. The Ld.Sr.Counsel submitted that, the assessee conducts various music classes for students on regular basis for the past several years in a structural manner. He submitted that, the training is in the nature of normal schooling or classroom education which is within the object of imparting education of music and activity of the assessee. Ld.Sr.Counsel thus submitted that, these activities carried on by the assessee falls within the term of *"education",* as specified in section 2(15) of the act. The Ld.Sr.Counsel emphasized that, the assessee conducts music classes like cello, choir classes, discover music class, group theory class, guitar classes, piano classes for toddlers, violin classes, etc. on regular basis in a structured manner, and these classes are being taken by experienced faculty on predetermined days for fixed hours in a classroom.

5.4. Ld. Sr. Counsel submitted that, the assessee also conducts various music concerts for promoting western classical music with a motive to promote musical knowledge and with an appreciation among the student as well as among the interested public with all forms of music. He submitted that the concerts/recitals are

performed by local artists as well as visiting artists which in turn brings awareness of outside talent. He submitted in brief, the activities of the assessee and that relating to concerts as under:

- On a monthly basis in-house performances are organized where the performances are given by the students and the audience is primarily their parents.
- It also organizes an annual chamber music festival being 'Sangat', wherein its students get an opportunity to perform along with various participating national artists and musicians. This also allows an opportunity to the students to practice and rehearse with them for the performance.
- Concerts featuring an international orchestra are held once every few years. Here, though very few of its students get to perform, but they primarily form part of the audience along with other music lovers. For the year under consideration, these concerts featuring an international orchestra was performed by the Israel Philharmonic Orchestra in October 2008 wherein various artists including world renowned conductor Mr. Zubin Mehta and Daniel Barenboim including other performers like Placido Domingo, Pinchas Zukerman, Ms. Barbara Frittoli, Amanda Forsyth and Tatiana Goncharova performed. They performed/held five concerts during their visit to India. It also organized a performance of the Vienna Philharmonic Orchestra held on 11 and 12 March, 2009 at the Homi Bhabha Auditorium, wherein, Mr. Zubin Mehta conducted and Mr. Lang Lang performed along with the Philharmonic for two concerts during their visit.
- In respect of the annual festival being 'Sangat' and the International Orchestra, the Appellant generates receipt by way of sale of tickets and sponsorship. It is submitted that, its activities have to be looked at from an overall manner and cannot be restricted only to the holding of the international orchestras has been done by the AO as well as the CIT(A). The whole concept of organizing concerts is primarily with a view to expose the students to actual performances, which is an essential part of music education.

5.5. Ld.Sr.Counsel submitted that, the assessee charges fees for the said concerts that helps assessee to meet its administrative expenses and not with an intention to run it as a business. He submitted that during A.Y.2009-10 the assessee earned gross

receipts of Rs.6,21,61,026/- including interest of Rs.45,19,954/- and donation of Rs.64,25,770/-. He submitted that the authorities below did not apply the proviso to section 2(15) to these receipts. However, after reducing total expenses of Rs.4,08,15,858/- the assessee had surplus at the end of the year amounting to Rs.2,13,45,167/-. In support the Ld.Sr.Counsel referred to page 4 of the paper book wherein the income and expenditure account of the assessee is placed.

5.6. The Ld.Sr.Counsel emphasized that, in the event the receipts from students towards fee for classes and the receipt on sale of tickets for concerts are excluded, the net result would be a deficit. He submitted that, the surplus arose only on account of donations received by the assessee, receipts from sale of tickets of concert, and fee from students towards music classes. In support, he drew attention to table reproduced by Ld.CIT(A) at page 21 of the impugned order. For the sake of consideration it is reproduced as under:

	Fees from Students from classes	Sale of ticket Concerts
INCOME		
Fees/ Receipts	2,621.337	22.228.900
Total (A)	2,621,337	2.228,900
EXPENSES		
Direct	2.007,725	30.485.094

Depreciation & Other Exp related to	4,933,004	
property		
Establishment Expenses/Depreciation/ Other	2,542,527	847,509
Expenses (75:25)		
(B)	9,483,256	31,332,603
Surplus/(Deficit (A-B)	(6,861,919)	(9,103,703)

5.7. Ld. Sr.Counsel emphasized that, the activities undertaken by the assessee are with the primary object of dissemination of music education, to train and prepare those interested in music without having any profit motive that falls under the limb *"education"*, as specified in section 2(15) of the act. He took support from the decision of coordinate bench of this *Tribunal* in *assessee's own case for A.Y. 2012-13* in *ITA No. 7608/Mum/2016 vide order dated 12.06.2019*. Ld.Sr.Counsel submitted that this *Tribunal* on identical issue and similar fact, held that the activity of assessee was within the purview of section 11 of r.w.s. 2(15) of the Act, and that, the assessee was entitled for the exemption under section 11. The said order of this *Tribunal* is placed at page 131-146 of the paper book. The Ld.Sr.Counsel also relied on the circular issued by CBDT No.14/2015 dated 17.08.2015 wherein, it is clarified that, collection of reasonable amounts under different heads of fee, which are essentially in the nature of fee connected with imparting education

that do not violate any central or state regulation, doesn't in general represent a profit making activity. For the sake of convenience the relevant extract from the CBDT circular is reproduced as under:

> *"Section 2(15) of the Income Tax Act, 1961 ("Act') defines "charitable purpose" to include the following:-*
> *(i) Relief of the poor*
> *(ii) Education*
> *(iii) Medical relief, and*
> *(iv) the advancement of any other object of general public utility.*
> *An entity with a charitable object of the above nature was eligible for exemption from tax under section 11 or alternatively under section 10(23C) of the Act. However, it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of "charitable purpose". Therefore, section 2(15) was amended vide Finance Act, 2008 by adding a proviso which states that the 'advancement of any other object of general public utility shall not be a charitable purpose if it involves the carrying on of-*
> *(a) any activity in the nature of trade, commerce or business; or*
> *(b) 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.*
> *2. The following implications arise from this amendment-*
> *2.1 The newly inserted proviso to section 2(15) will not apply in respect of the first thire limbs of section 2(15), ie, relief of the poor, education or mantical relief. Consequently, where the purpose of a trust er institution is relief of the poor, education er medical relief, it will constitute 'charitable purpose even if it incidentally involves the carrying on of commercial activities.*
> *2.2. "Relief of the poor" encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It wil therefore, include within its ambit purposes such as relief to detenie, orphans of the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(230) which are that*

(i) the business should be incidental to the attainment of the objectives of the entity, and
(ii) separate books of account should be maintained in respect of such business.
Similarly, entities whose object is 'education" or "medical relief would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on a commercial activity subject to the conditions mentioned above.
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 in the fourth limb of the definition of under section 11 or under section 10(230) 'charitable purpose' contained of the Act if they carry or business is a question of fact which will in section 2(15). Hence, such entities will not on commercial activities. Whether such be decided based t be eligible for exemption an entity is carrying on an activity in the nature of trade, commerce Ion 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 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 relationswith any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must beempire identity between the contributors andthe participants.
Therefore, where industry or trade associations claim both to be charitable institutions as Therefore, where industry 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 assessen has for its object "the advancement of any other object of general public utility is a question of fact. if much 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 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 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 ar business.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.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 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 ar business."

5.8 Ld.Sr.Counsel thus placed reliance on the decision of *Hon'ble Supreme Court* in case of *New Noble Educational Society vs. Chief Commissioner of Income Tax reported in [2022] 143 taxmann.com 276, decision of High Court of Andhra Pradesh in case of New Noble Educational Society vs. Chief CIT [2011] 12 taxmann.com 267, decision of Hon'ble Supreme Court in case of Queen's Educational Society vs. CIT [2015] 55 taxmann.com, decision of Hon'ble Supreme Court in case of Aditanar Educational Institution vs. Addl. CIT [1997] 90 taxmann 528, decision of Hon'ble Supreme Court in case of Addl. CIT VS. Surat Art Silk Cloth Manufacturers Association [1979] 2 taxman 501, decision of Hon'ble Supreme Court in case of Sole Trustee Loka Shikshana Trust vs. CIT [1975] 101 ITR 234.*

5.9. On the contrary the Ld.DR relied on the orders passed by the authorities below and submitted that the activities carried on by the assessee in the form of sale of tickets for the concerts and concert receipt were in the nature of trade and therefore the assessee falls outside the purview of *charitable* nature to that extent, and the deduction cannot be granted to such receipts which are commercial in nature with a profit motive embedded in it.

We have perused the submissions advanced by both sides in the light of the records placed before us.

6. At the outset, it is noted that, the assessee is 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. On identical facts, coordinate bench of this *Tribunal* in assessee's own case for A.Y. 2012-13 (supra) 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*

pürpose 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, we note 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. This *Tribunal* for A.Y.2012-13 on

merits, deleted the addition made by the Ld.AO, as is clear from the reproduction herein above.

6.3. Be that as it may,there isno denial by the Ld.AO regarding the training of children in the field of music does not falls within the term *education*, as specified in section 2(15) of the act. This is clear from the fac that the Ld.AO granted deduction in respect of the interest earned and donation received by the assessee. This is further fortifiedby 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 tothe 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, Loka Shikshana 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 activityin 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 rom 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.

Accordingly, the grounds 6- 9 raised by the assessee for assessment year 2009-10 stands allowed.

7. The Ld. Sr. Counsel did not press the legal issue challenging the reopening of the assessment.

Accordingly, Grounds 1-5 stands dismissed as not pressed.

8. Both eased submitted that the merits of the addition for assessment years 2014-15, 2015-16 and 2017-18 are on identical facts and reasoning by the authorities below vis -a-vis assessment year 2009-10.

8.1. As we have decided the issue on merits in favour of assessee for assessment year 2009-10 in the preceding paragraphs, the same is applicable *mutatis mutandis* for assessment years 2014-15, 2015-16 and 2017-18.

Accordingly, the grounds 6 - 9 raised by the assessee for assessment year 2014-15, 2016-17 and 2017-18 stands allowed.

In the result the appeal filed by the assessee for assessment year 2009-10 stands partly allowed and appeals for assessment years 2014-15, 2016-17 and 2017-18 stands allowed.

Order pronounced in the open court on 21-11-2024.

Sd/-	**Sd/-**
PRABHASH SHANKAR	**BEENA PILLAI**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated:21.11.2024.
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