IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "G" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
932/Mum/2023	2013-14	Shree Sai Baba Sansthan Trust (Shirdi), C/o. 804-B, Sai Niketan, Dr.Ambedkar Road, Dadar (East), Mumbai PAN : AAATS2581C	Deputy Commissioner of Income Tax (Exemption)-2(1), 6th Floor, MTNL Building, Cumballa Hill, Mumbai
935/Mum/2023	2013-14	Deputy Commissioner of Income Tax(Exemption)-2(1), 6th Floor, MTNL Building, Cumballa Hill, Mumbai	Shree Sai Baba Sansthan Trust (Shirdi), C/o. 804-B, Sai Niketan, Dr.Ambedkar Road, Dadar (East), Mumbai PAN : AAATS2581C

Assessee by : Shri S. Ganesh, Sr.Counsel
Shri S.D. Srivastav
Shri Deepak Tikekar, CA &
Shri S.P. Lanke, Accounts Officer

Revenue by : Dr. Kishor Dhule, CIT-DR

Date of Hearing : 26-12-2024
Date of Pronouncement : 17-01-2025

PER B.R. BASKARAN, A.M :

These cross appeals are directed against the order dated 31-01-2023 passed by the Ld.CIT(A), NFAC, Delhi and they relate to the Assessment Year (AY.) 2013-14.

2. The Revenue initially had raised seven grounds of appeal in the Appeal memo filed before the Tribunal. Thereafter, the revenue has filed "Revised grounds of appeal" consisting of 10 grounds. We notice all those grounds are related to a single issue, viz., whether the Ld.CIT(A) was justified in holding that the anonymous donations received by the assessee by way of Hundi collections/Charity box collections are not taxable under sec. 115BBC of the Act, accepting the claim of the assessee that it is a trust existing both for charitable and religious purposes.

3. The grounds of appeal raised by the assessee give rise to the following issues:-

(a) Whether the assessment order has been passed within the limitation period prescribed u/s 153 of the Act or not?

(b) Whether reopening of assessment of the year under consideration u/s 147 of the Act, without bringing any new tangible material to support his view of escapement of income is valid or not?

(c) Whether the Ld CIT(A) was justified in rejecting the claim of the assessee that the deduction of 15% allowed u/s 11(1)(a) of the Act should be allowed on gross receipts?

(d) Whether the Ld CIT(A) was justified in rejecting the claim for accumulation of income u/s 11(2) of the Act?

4. The facts relating to the case are discussed in brief. The assessee is having a temple complex in the town of Shirdi consisting of Samadhi of a popular Saint fondly called as "Shri Sai Baba" and also other deities. Shri Sai Baba has got millions of followers/devotees spread across the world, who worship the Samadhi of Shri Sai Baba, who departed from this mortal world on 15thOctober 1918.Hence, millions of people visit the temple

shrine every day. The assessee was originally constituted as a public trust in the year 1953 under the name and style of 'Shirdi Sansthan of Shri Sai Baba'. It was registered under the Bombay Public Trust Act. Subsequently, vide order dated 18.10.1982 passed by Hon'ble Bombay High Court, the administration of the Trust was vested in Board of Management, constituted by the Charity Commissioner, Government of Maharashtra. Thereafter, on 17-08-2004, Shri Sai Baba Sansthan Trust (Shirdi) Act of 2004 [in short 'Sai Baba Trust Act'] was promulgated by the Government of Maharashtra, which reconstituted the public Trust of 'Shirdi Sansthan of Shri Sai Baba' as 'Shri Sai Baba Sansthan Trust (Shirdi)' which is the present name of the assessee herein.

5. The assessee is registered as a Charitable Organisation with Director of Income tax (Exemption) (DIT(E)), Mumbaiu/s 12A, vide Registration No.TR/3033 dated 24-08-1977. The assessee is also approved u/s 80G, vide approval no.1896/2008-09 dated 25-08-2009. As per the provisions of the Act, the approval u/s 80G of the Act is granted to only charitable trusts/Institutions. The assessee has also been approved in terms of Section 10(23C)(v) of the Act by the Ld. Chief Commissioner of Income Tax, Mumbai [in short 'CCIT, Mumbai']. If a trust is registered u/s 12A of the Act, the income derived from property held under the trust wholly existing for charitable or religious purposes is exempt u/s 11 of the Act. The donations including anonymous donations received by the assessee were also treated as income derived from the property held under the Trust eligible for exemption u/s 11 of the Act. This was the position of law up to 31-03-2007. However, the Income tax Act was amended by Finance Act, 2006 w.e.f 1.4.2007 in order to tax ‘anonymous donations’ received by charitable trusts by inserting sec. 115BBC in the Act. The “anonymous donations” are those donations for which the identity of donor, i.e., his name and address is not maintained by the recipient trust.

6. Since the dispute between the parties revolves around the provisions of sec.115BBC of the Act, we extract the samebelow:-

> ***"115BBC. Anonymous donations to be taxed in certain cases.***
>
> *(1)Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via) or any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) of clause (23-C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of-*
>
> > *(i) the amount of income-tax calculated at the rate of thirty per cent. on the aggregate of anonymous donation received in excess of the higher of the following, namely:-*
> >
> > > *(A)five per cent. of the total donations received by the assessee; or*
> > >
> > > *(B)one lakh rupees; and*
> >
> > *(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received.*
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> *(2) The provisions of sub-section (1) shall not apply to any anonymous donation received by-*
>
> > *(a)any trust or institution created or established wholly for religious purposes;*
> >
> > *(b)any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.*
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> *(3)For the purposes of this section, "anonymous donation" means any voluntary contribution referred to in sub-clause (iia) of clause (24) of section 2, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed."*

It can be noticed that the anonymous donations received by a charitable trust is made taxable u/s 115BBC of the Act. However, if the trust is created wholly for religious purposes or wholly for religious and charitable purposes, the same is exempted from the applicability of the provisions of sec.115BBC of the Act, meaning thereby, the anonymous donations are not taxable in its hands.

7. The assessee filed return of income for AY.2013-14 on 26-09-2013 declaring NIL income. Later on, the assessee filed a revised return of income on 13-11-2013 again declaring NIL income. The assessee usually receives huge amount of cash donations by way of hundi collections / charity box collections from the followers/devotees of Shri Sai Baba. Those donations fall under the category of "anonymous donations", since the identity of donors could not be maintained by the assessee.While computing total income under the Act, the assessee treated the same as its normal income and accordingly filed its return of income, i.e., it did not declare such kind of donation receipts as "anonymous donations".The return of income so filed by the assessee was processed u/s 143(1) of the Act on 14-03-2015 accepting the NIL income declared by the assessee.

8. We noticed earlier that the assessee has been registered as a "charitable trust/institution" under sec.12AA and 80G of the Act. The assessing officer, while completing the assessment of the assessee for AY 2015-16, took the viewthat the assessee is a charitable trust/institution only and hence the anonymous donations received by the assessee by way of Hundi collection/charity box collection is taxable u/s 115BBC of the Act, since they were received without name and address of the contributor. The AO did not accept the contentions of the assessee that it is a trust existing wholly for charitable and religious purposes and hence the provisions of sec.115BBC will not apply to it. The AO held that the

assessee cannot be considered as a religious trust, since it is recognised as a charitable trust only u/s 80G of the Act and further the recognition u/s 80G is granted only to charitable trust. Accordingly, he held that the exception provided in sec.115BBC for wholly religious trusts and wholly religious and charitable trusts will not be applicable to the assessee. Accordingly, the AO brought to tax the hundi collections/charity box collections as anonymous donations in AY 2015-16, in the assessment order passed by him on 31-12-2017.

9. The AO noticed that the assessee has not offered the hundi collections/charity box collections as the income taxable as anonymous donations u/s 115BBC of the Act in assessment year 2013-14, even though the assessee has been registered u/s 80G of the Act as a charitable organisation. The AO also noticed from the Annual Information Report (AIR) relating to AY 2013-14 that the assessee has made cash deposits of around Rs.257 crores in its bank accounts, which would include anonymous donations also. Accordingly, based on the stand taken by him in AY 2015-16, the AO entertained the belief that the income taxable u/s 115BBC of the Act has escaped assessment in the hands of the assessee in the assessment year 2013-14. Accordingly, he reopened the assessment of the year under consideration, i.e., AY 2013-14 by issuing notice u/s 148 of the Act on 23-3-2018, after getting due sanction u/s 151(3) of the Act.

10. The assessee objected to the reopening of assessment, which was disposed of by the AO. Subsequently, the assessee filed a writ petition before the Hon'ble High Court of Bombay, which was rejected by the Hon'ble High Court on 24-10-2018. The assessee filed SLP before Hon'ble Supreme Court challenging the order of the Hon'ble High Court of Bombay. However, the Hon'ble Supreme Court, vide its order dated 18-01-2019, declined to interfere with the assessment proceedings. However, it gave

liberty to assessee to urge the legal issue on validity of notice issued u/s 148 of the Act in appropriate proceedings. Thereafter, the assessing officer proceeded to pass the reassessment order, wherein he determined the total income of the assessee at Rs.67.01 crores, besides bringing the anonymous donations of Rs.175.53 crores to tax @ 30% u/s 115BBC of the Act.

11. The assessee challenged the assessment order so passed by the AO by filing appeal before the Ld.CIT(A). It, inter alia, challenged the validity of reopening of assessment of this year u/s 147 of the Act.It also, inter alia, contended that the assessment of AY 2013-14 has been reopened without bringing any fresh or tangible material on record by the AO. The Ld.CIT(A) noticed that the return of income filed by the assessee had been processed u/s 143(1) of the Act and the notice u/s 148 has been issued by the AO within four years from the end of the assessment year. Accordingly, he held that the reopening of assessment is valid. The observations made and the decision taken by Ld CIT(A) on this legal issue are extracted below:-

> *"5.4.3 A number of Judicial authorities have concerned themselves with the issue if an information coming to the notice of AO during the course of proceedings in the case of assessee himself in subsequent AY, will constitute fresh tangible material, on the foundation of which a reason to believe can be formed. The AO has aptly relied upon the authority of Hon'ble Supreme Court in the case of Kalyanji Mavji vs. CIT (SC)102 ITR 287 In addition to that it is pertinent to refer to the authority of Hon'ble Supreme Court in case of Ess Ess Kay Engineering Company Pvt. Ltd. (2001) 247 ITR 818 (SC). To quote from the decision -*
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> > *"This is a case of reopening. We have perused the documents. We find there was material on the basis of which the Income Tax Officer could proceed to reopen the case, it is not a case of mere change of opinion. We are not inclined to interfere with the decision of High Court merely because the case of the assessee was accepted as correct in the original assessment of this AY. It does not preclude the ITO to reopen the assessment of an earlier year on the basis of his finding of facts made on the basis of fresh materials in the course of assessment for the next assessment year."*
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> *In the case of NDTV vs DCIT CA no. 1008 of 2020. It was again held by the Supreme Court that the subsequent fact that come to the knowledge of the*

assessing officer can be taken into account to decide whether the assessment proceeding should be reopened or not. Information which comes to the notice of the AO during proceedings for subsequent AY can definitely form tangible material to invoke powers vested with the AO u/s 147 of the act.

5.4.4 Apart from the above authorities of Hon'ble Supreme Court, division bench of jurisdictional high Court in the case of Anusandhan Investment Ltd. Vs M R Singh DCIT (2007) 207 CTR Bombay 350 have reaffirmed the same ratio. On the basis of above binding authorities it is found that the AO had tangible fresh material in his hand before he proceeded to form reason to believe.

5.4.5 On the basis of the finding in the subsequent AY 2015-16 and applying the same the same to the facts of the assessee for the AY 2013-14 particularly, specific information available with the AO in form of annual information return (AIR) for AY 2013-14, wherein cash amounting to Rs. 257 crores was reportedly deposited in the bank account of the assessee and also based upon the information contained in the return of income filed by the assessee that no income has been offered for taxation u/s 115BBC of IT Act and also that assessee continued to enjoy its approval u/s 80G of Income Tax Act, the AO has rightly formed a reason to believe that income had escaped assessment in AY 2013-14. The AO has rightly pointed out that assumption of jurisdiction u/s 148 in the case of the assessee wherein the original order was passed u/s 143(1)(a) is as per the law decide by Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock Broker Pvt Ltd. [2007] 291 ITR 500 (SC). Wherein it was decided that existence of reason to believe only in case the return of income was just processed u/s 143(1)(a) vests the AO to assume the jurisdiction under section 148. Itis further pertinent to point out though this argument is not part of the written submission of the assessee, that reopening of the assessment for the present AY is not change of opinion as the original order was passed u/s 143(1)(a) as ratio decided by Hon'ble Supreme Court in the case of Zuari Estate DevelopmentandInvestments 373 ITR 661 (SC). In this situation the only requirement for the AO is to have a proper reason to believe formed on the basis of tangible material and on the basis of information available on the record. This proposition also finds support from the ratio of the case of Khubchandani Healthparks Pvt. Ltd. vs. ITO [2016] 384 ITR 322 (Bom.)(HC) relied upon by the AR in the Video Conference.

5.4.6 It will pertinent to note that though in the impugned order the AO had tangible material in his hand on the basis of which here proceeded to form in reason to believe in recent case of Indu Lata Rangwalav. Deputy Commissioner of Incometax[2017] 80 taxmann.com 102 (Delhi) the hon'ble Delhi High Court has extensively reviewed the judicial pronouncement of Hon'ble Supreme Court existing of the subject of assumption of jurisdiction by AO to reassess a return where only 143(1)(a) order of processing was earlier passed and have summarised the legal requirement as follows-

"Summary of the legal position

35.1 The upshot of the above discussion is that where the return initially filed is processed under Section 143 (1) of the Act, and an intimation is sent to an Assessee, it is not an 'assessment' in the strict sense of the term for the purposes of Section 147 of the Act. In other words, in such event, there is no occasion for the AO to form an opinion after examining the documents enclosed with the return whether in the form of balance sheet, audited accounts, tax audit report etc.

35.2 The first proviso to Section 147 of the Act applies only (i) where the initial assessment is under Section 143 (3) of the Act and (ii) where such reopening is sought to be done after the expiry of four years from the end of the relevant assessment year. In other words, the requirement in the first proviso to Section 147 of there having to be a failure on the part of the Assessee "to disclose fully and truly all material facts" does not at all apply where the initial return has been processed under Section 143 (1) of the Act.

35.3 As explained in Rajesh Jhaveri Stock Brokers (P.) Ltd. (supra) "an intimation issued under Section 143 (1) can be subjected to proceedings for reopening", "so long as the ingredients of Section 147 are fulfilled."

35.4 Explanation 2 (b) below Section 147 states that for the purposes of Section 147, where a return of income has been furnished by the Assessee but no assessment has been made and it is noticed by the AO that the Assessee has understated the income and claimed excessive loss, deduction, allowance and relief in the return then that "shall also be deemed to be a case where the income chargeable to tax has escaped assessment".

35.5 As explained by the Supreme Court in Rajesh Jhaveri Stock Brokers (P.) Ltd. (supra) and reiterated by it in Zuari Estate Development & Investment Co. Ltd. (supra) an intimation under Section 143 (1) (a) cannot be treated to be an order of assessment. There being no assessment under Section 143(1)(a), the question of change of opinion does not arise.

35.6 Whereas in a case where the initial assessment order is under Section 143 (3), and it is sought to be reopened within four years from the expiry of the relevant assessment year, the AO has to base his reasons to believe that income has escaped assessment on some fresh tangible material that provides the nexus or link to the formation of such belief. In a case where the initial return is processed under Section 143 (1) of the Act and an intimation is sent to the Assessee, the reopening of such assessment no doubt requires the AO to form

reasons to believe that income has escaped assessment, but such reasons do not require any fresh tangible material.

35.7 In other words, where reopening is sought of an assessment in a situation where the initial return is processed under Section 143 (1) of the Act, the AO can form reasons to believe that income has escaped assessment by examining the very retum and/or the documents accompanying the return. It is not necessary in such a case for the AO to come across some fresh tangible material to form 'reasons to believe that income has escaped assessment.

35.8 In the assessment proceedings pursuant to such reopening, it will be open to the Assessee to contest the reopening on the ground that there was either no reason to believe or that the alleged reason to believe is not relevant for the formation of the belief that income chargeable to tax has escaped assessment.

35.9 The decisions of this Court and other Courts to the extent inconsistent with the above decisions of the Supreme Court cannot be said to reflect the correct legal position.

5.4.7 Further, the reason to suspect is a wider term and enquiry carried on by AO pursuant to receipt of "reason to suspect" leads to formation of "reason to believe" or otherwise. The availability of tangible material alone gives a reason to suspect that income might have escaped assessment. However, when this "reason to suspect" is calibrated against the AIR information and the information contained in the ITR filed by the assessee has given rise to reason to believe in the case of the Assessee. Since the reason to believe is specific, no imputation can be made that the case has been reopened for roving and fishing enquiry. Roving and fishing enquiries are requirement and a corollary consequence of an investigation wherein the AO has merely 'reason to suspect or non specific reason before he proceeds to reassess a return. On the contrary, in the present case the AO has pin pointed the income which he believes has escaped assessment and what can also be appreciated that during the course of reassessment proceeding, the AO has directed himself to enquiry connected with the reason to believe. In such circumstances no fishing or roving enquiry, as an intention of the AO, before assuming jurisdiction u/s 148 can be imputed.

5.4.8 The argument of the assessee that the AO should have bound himself with the decision of ITAT Mumbai in view of the decision of Mumbai High Court in the Writ Petition No. 395 of 2018 filed by the assessee himself, needs to be examined in detail. In the case of Gurudev Siddha Peeth vs. ITO [2015] 59 taxmann.com 400 (Mum.), a case which constitute part of assessee's argument repetitively in the present appeal, including in the present ground no. 1. What needs to be appreciated that in the case of Gurudev Siddha Peeth, the issue of nature of trust was not at all subject matter of consideration of the ITAT. The ITAT has also assigned a lot of

weightage to the facts and orcumstances of the trust and only after examining the nature of trust it has come to an opinion that object of introduction of section 115BBC is of cardinal importance while taxing an anonymous donation u/s 115BBC in case of a trust like the assessee. In the operative paragraph the Hon'ble jurisdictional ITAT has observed as follows:-

> *"A Perusal of entire section 115BBC shows that the provisions of said sections are not applicable to the institutions like that of the assessee trust as the same are meant to check the inflow of unaccounted Black money into the system"*

The meaning as assigned by the ITAT to the phrase "A Institution like that assessee trust can be understood clearly by the following observation of the ITAT in the sameparagraph.

> *"When we read clause (a) and clause (b) of sub section (2) in harmony and in consonance with each other then it become clear that the provisions of sub section (1) will not apply to the donations like that has been received by the assessee in donation boxes from numerous devotees who have offered the offerings account of respect, esteem, regard, reference and their prayer for the deity/ Sidhapeeth. Such type of offering are made/put into the duration box by numerous visitors anits generally not possible for any such type of institutions to make an keep record of each of the donor with his name address etc."*

A plain reading of this part of operative paragraph indicates that ITAT was aware that Gurudev Seedhapeeth was either religious or wholly religious and charitable trust. From the decision of the ITAT in this case it is clear that in order to understand the scope of under section 115BBC the object for the Trust is of guiding importance. However, there is no discussion on the issue if the assessee before the ITAT was purely charitable and therefore the provisions of section 115BBC(2) did not apply on the assessee.

5.4.9 It is trite that what is binding on the Sub-ordinate Judicial Authority is the ratio decided and not merely what has been decided. There are number of authorities which have explained the Doctrine of binding precedence. In the decision in State Financial Corporation. v. Jagadamba Oil Mills (AIR 2002 SC 834) the Supreme Court has observed as follows:

> *"19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of Courts are not to be construed as statutes. To interpret*

words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes.

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21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

In the decision in Padmasundara Rao v. State of T.N. (AIR 2002 SC 1334) a five Judges Bench of the Supreme Court has observed as follows:

"8 A Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, and said Lord Morris in Herrington v. British Railways Board (1972) 2 WLR 537. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

5.4.10 As pointed out earlier, the context, facts and the circumstances of the assessee is entirely different from that of Gurudev SeedhaPeeth (supra). The ratio of decided in the case of Gurudev SeedhaPeeth (supra) does not cover the main dispute of the present lis. Therefore, the assumption of jurisdiction to reassess the case even after considering the ratio of above cited case does not in any way amounts to re-agitating a legal issue on which the binding precedence is already available.

5.4.11 in terms of the discussion above read along with the order of the AO dt. 31.08.2018 rejecting the objection filed by the assessee against assumption of jurisdiction u/s 148. ground no. 1 and 3 are dismissed so far it relates to assumption of jurisdiction by the AO under section 148 and legality of assessment order passed is concerned. So far as these grounds relates to quantum of addition it will be decided on the basis of subsequent decision on other grounds of appeal."

On merits, the Ld CIT(A) held that the assessee is both charitable and religious trust and hence it would fall within the exceptions provided u/s 115BBC(2) of the Act. Consequently, he held that the anonymous

donations received by the assessee are not taxable in the hands of the assessee. The Ld CIT(A) confirmed other additions made by the AO. Aggrieved, both the parties have filed these appeals before the Tribunal.

12. Since the legal issue relating to validity of reopening of assessment of AY 2013-14 raised by the assessee would go to the root of the matter, we shall proceed to adjudicate the same first.

12.1. The Ld A.R submitted that the assessing officer has reopened the assessment without bringing any fresh tangible material relating to the year under consideration on record, i.e., he has relied upon the very same material already available on record in order to entertain the belief that there was escapement of income, which is not in accordance with law. He further submitted that the AO has mentioned in the reasons for reopening that the assessee is registered as a charitable organization u/s 80G of the Actand hence the anonymous donations received by way of Hundi Collections/Charity box collections is liable to be taxed u/s 115BBC of the Act. However, the provisions of sec.80G(5B) permits spending of money towards religious purposes upto 5% of its gross revenue, meaning thereby, the provisions of sec. 80G also recognizes the fact that a portion of revenue of charitable organization may be spent for religious purposes also. Accordingly, he submitted that the provisions of sec.80G would also be applicable to charitable organization with both the objects, viz., charitable and religious objects.

12.2. The Ld A.R further submitted that assessee has got three types of registration under the Income tax Act, viz., under sec. 12A, under sec. 80G and under sec.10(23C)(v) of the Act. He submitted that the registration u/s 10(23C)(v) is given only to a " wholly religious institution" or to a "wholly religious and charitable institution". The assessee was granted approval u/s 10(23C)(v) of the Act by the Chief Commissioner of Income

tax, vide his order dated 17th March, 2008. In the said order, it is specifically mentioned that the approval u/s 10(23C)(v) of the I.T Act, 1961 will be valid from AY 2008-09 and onwards until withdrawn. He submitted that the registration granted u/s 10(23C)(v) of the Act is subsisting till date. Hence the revenue has already recognized the assessee trust as "wholly religious and charitable trust". He submitted that the assessing officer is well aware of the approval granted by the Chief Commissioner of Income tax u/s 10(23C)(v) of the Act. However, he ignored the same and preferred to refertothe registration granted u/s 80G of the Act. This is done only for the reason that the assessee trust is registered as charitable organization u/s 80G of the Act and hence, the assessee would be covered by sec.115BBC of the Act. He has taken this kind of view in assessment year 2015-16 and accordingly assessed the anonymous donations received by the assessee in the form of Hundi collections/charity box collections as income of the assessee u/s 115BBC of the Act. Since the anonymous donations received by the assessee during the year under consideration, i.e., in AY 2013-14 have not been offered to tax, the AO has entertained the belief that there was escapement of income in AY 2013-14 and accordingly reopened the assessment. He submitted that the AO has conveniently ignored the registration granted by a higher authority u/s 10(23C)(v) of the Act, which is granted only to a wholly religious institution &wholly religious and charitable institution. Had the AO considered the approval granted u/s 10(23C)(v) of the Act, he could not have formed the belief that the provisions of sec.115BBC of the Act will be applicable to the assessee and consequently, the question of escapement of income would not have arisen. The Ld A.R contended that it is imperative for the AO to consider all the documents available in the record before reopening of assessment and he cannot pick and choose only one of the documents to suit his convenience in order to form the belief that there was escapement

of income. Accordingly, he submitted that the opinion so formed by the AO in not valid and hence the reopening of assessment is not in accordance with law. Further, the AO has not brought on record any fresh tangible material to support his view of escapement of income. Accordingly, he contended that the impugned assessment order is liable to be quashed.

12.3. The Ld D.R, on the contrary, submitted that the return of income filed by the assessee for this year has only been processed u/s 143(1) of the Act. i.e., no regular assessment has been passed u/s 143(3) of the Act for this year. Further, the AO has reopened the assessment before expiry of four years from end of the assessment year. Hence the strict requirements generally attached to the reopening of assessment, like change of opinion, lack of tangible material, live link between the material and reasons etc., will not be applicable to the facts of the present case. He submitted that the assessing officer has formed opinion that there was escapement of income in this year, on the basis of facts found by him in the assessment order passed for AY 2015-16. By placing reliance on the decision rendered by Hon'ble Supreme Court in the case of Kalyanji Mavji vs. CIT (192 ITR 287)(SC) and also in the case of Ess Ess Kay Engineering Company P Ltd (2001)(247 ITR 818)(SC), the LdD.R submitted that the facts found by the AO in AY 2015-16 shall constitute tangible material and there was live link between that material and the reasons recorded for reopening of assessment of the year under consideration. Accordingly, the Ld D.R contended that the fresh tangible material need not come to the notice of the AO from external sources and it can be noticed by the AO from internal records also.

12.4. The Ld D.R further submitted that it is not correct to say that the AO has based his reasons only on the registration granted u/s 80G of the

Act. He further submitted that the AO should be aware that the assessee has been granted registration u/s 10(23C)(v) of the Act also, which is granted to religious institution and religious and charitable institution. However, from the reasons recorded by the AO, it can be noticed that the AO has also referred to the AIR transaction report, wherein it is reported that the assessee has deposited huge amount of cash into various bank accounts, which would include anonymous donations also. Hence the information about huge cash deposits made by the assessee was also one of the reasons recorded by the AO to form belief that there was escapement of income. In this regard, the Ld D.R submitted that the revenue has reopened assessments in many cases, where huge cash deposits were made into the bank accounts by various assessees during demonetisation period, even if it is case of deposit made out of cash balance available in the books. Accordingly, he submitted that it is not correct to say that the AO has not based his reasons on registration granted u/s 80G alone.

12.5. He further submitted that it is well settled proposition of law that the belief entertained by AO at the time of recording reasons for reopening has to be a prima facie belief only, i.e., it is not required that the escapement of income should be proved to the hilt at the time of recording reasons itself. Further, it may so happen that the prima facie belief may fail ultimately at the time of framing of assessment resulting in accepting total income determined earlier without making of any addition, but it will not make the reopening invalid.

12.6. With regard to the contention of Ld A.R that the provisions of sec.80G permits spending of money for religious purposes upto 5% of its revenue, the Ld D.R submitted that it is leverage given to the Charitable organizations and hence, merely, because a charitable organizations spends upto 5% of its revenue for religious purposes, the same would not

make that trust as a mixed trust of both charitable and religious nature. Its character would remain as Charitable trust only as per the deeming provision inserted in sec. 80G(5B) of the Act. The Ld D.R submitted that the ITAT has held in AY 2015-16 that the assessee is both charitable and religious institution and hence the provisions of sec.115BC will not be applicable and the said decision has also been upheld by Hon'ble High Court of Bombay also. He submitted that these are subsequent developments, which were not available to the AO at the time of recording of reasons for reopening of assessment of AY 2013-14. He also submitted that it is quite possible that the revenue may challenge the decision rendered by Hon'ble Bombay High Court in AY 2015-16 before Hon'ble Supreme Court. Accordingly, the Ld D.R contended that the decision rendered by Ld CIT(A) in upholding the reopening of assessment does not call for any interference.

12.7. In the rejoinder, the Ld A.R submitted that the assessing officer had also reopened the assessment of the succeeding year, i.e., AY 2014-15 on identical reasons. The assessee challenged the same by filing a writ petition before the Hon'ble High Court of Bombay and it was numbered as "Writ petition No.4817 of 2022". The said writ petition has since been disposed of by the Hon'ble High Court by its order dated 20th December, 2024, wherein the reopening of assessment of AY 2014-15 has been quashed. He submitted that the facts, being identical, the above said decision of the jurisdictional High Court will fully be applicable to this year also. Accordingly, he prayed that the reopening of assessment of this year may be held to be not valid following the above said decision rendered by the Hon'ble Bombay High Court. He further submitted that the assessee has already filed a caveat petition before Hon'ble Supreme Court in respect of decision rendered by Hon'ble Bombay High Court for AY 2015-16 and it is noticed that the revenue has not preferred appeal before Hon'ble

Supreme Court, even though the decision for AY 2015-16 was rendered by Hon'ble Bombay High Court on 8th October, 2024.

13. We heard rival contentions on the legal issue of validity of reopening of assessment. There cannot be any dispute that the reopening of assessment is required to be done by the AO after recording his reasons for reopening. This is so because, through the reasons so recorded, the AO is required to establish that he has entertained belief that there was escapement of income. When the validity of reopening of assessment is being challenged, it is imperative for the appellate authorities to examine the reasons so recorded by the AO. In this year, the reasons recorded by the AO read as under:-

> *"The assessee M/s Shree Sai Baba Sansthan Trust (Shirdi) has filed its return of Income for the A.Y. 2013-14 on 26.09.2013 which was later revised on 13.11.2013: The return was processed us 143(1) on 14.03.2015.*
>
> *2. The trust is registered as a Charitable Organization with DIT(E). Mumbai u/s.124 vide Registration No. TR/3033 dated 24.08.1977. The trust is also approved u/s 80G vide approval no. 1896/2008-09 dated 25.08.2009. The approval u/s 80G(5) is available to Charitable Trusts/Institutions only indicating that the assessee is a charitable organization. The assessee trust receives anonymous donations (Hundi Collection/ Charity Box collection) running in crores which was to be offered for tax as: per provision of section 115BBC which the assessee has failed to do. From perusal of the AIR transaction report a cash deposit of Rs.2576108508/- were made in different banks which includes anonymous donations also.*
>
> *3. In view of this fact, that the assessee is enjoying registration w/s 80G and is thus, a charitable trust, has not offered the anonymous donations for tax u/s 115BBC, I have reasons to believe that the income of the assessee has escaped assessment for AY. 2013-14 within the meaning of section 147 of the IT Act, 1961 and it is a fit case for issue of notice u/s 148 of the IT Act, 1961. The Hon'ble Supreme Court in the case of Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) 291 ITR 500 (SC) has held that Section 147 authorizes and permits the Assessing Officer to assess or re-assess 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. This judgment was rendered by the Hon'ble Supreme Court in the above case in view of the fact that only 143(1) had taken place and no scrutiny was done u/s. 143(3) and reopening was held to be valid.

4.In this case return of income was though filed for the year under consideration but no scrutiny assessment u/s 143(3) of the Act was made. Accordingly, in this case, the only requirement to initiate proceedings u/s.147 is reason to believe which has been recorded above in para 2 & 3.

5. It is pertinent to mention here that in this case the assessee has filed return of Income for the year under consideration but no assessment as stipulated u/s. 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the Act. In view of the above, the provisions of clause (b) of Explanation 2 to action 147 are applicable to facts of this case and the assessment your under consideration is deemed to be case where income chargeable to tax has escaped assessment.

This case is within four years from the end of the assessment year under consideration. Hence necessary sanction to issue the notice u/s. 148 has been obtained separately from Addl. Commissioner of income Tax (E), Range 2, Mumbai as per provisions of section 151 of the Act."

13.1. The gist of reasons is summarized by us below:-

(a) The assessee is registered u/s 80G of the Act. The approval u/s 80G(5) is granted only to trusts/ institutions registered as Charitable Trusts/Institutions. Hence the assessee can be considered as a charitable organization only. The assessee trust has received anonymous donations by way of Hundi collections/charity box collections running in crores, which was not offered to tax by the assessee as per the provisions of sec.115BBC of the Act.

(b) From the perusal of AIR transaction report, a cash deposit of Rs.257.61 crores were made in different banks which includes anonymous donations also.

(c) The return of income filed by the assessee has been processed u/s 143(1) of the Act only and no assessment order has been passed as stipulated u/s 2(40) of the Act. Hence, the provisions of clause (b) of Explanation 2 to section 147 are applicable to the facts of this case (as there is understatement of income by the assessee by not offering the anonymous donations u/s 115BBC of the Act).Hence, the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment.

(d) The assessment is being reopened within four years from the end of the assessment year under consideration.

The observations made by AO with regard to the points mentioned in (c) and (d) above are only statement of relevant law and the facts, as interpreted by the AO.

13.2. With regard to the observations referred to in point (b) above, it is the contention of the Ld D.R, the same would form a separate and independent reason of the AO to believe that there was escapement of income. We are unable to agree with the above said contentions of Ld D.R. It may be noticed that the assessing officer is referring to the quantum of cash deposits made into different banks only to emphasis that the said deposits includes anonymous donations. Hence, in our view, the AO has referred to the quantum of cash deposits only to support his view that the anonymous donations are taxable u/s 115BBC of the Act in the hands of the assessee and the fact the assessee has received anonymous donations is proved by the quantum of cash deposits made into various bank accounts of the assessee. Accordingly, in our view, the observations referred to in points (b) and (a) have to read together, i.e., point (b) above only supports/substantiates point (a) above. Accordingly, we are of the

view that the deposit of cash into various bank accounts of the assessee cannot be read in isolation as an independent reason, as contended by the Ld D.R.

13.3. Hence, in effect, the only reason cited by the AO for reopening of assessment is that the assessee is classified a charitable organization as per the approval given u/s 80G of the Act and hence the anonymous donations received by the assessee are taxable u/s 115BBC of the Act.

14. We noticed that the registration has been granted to the assessee u/s 10(23C)(v) of the Act also by Ld CCIT and it is still subsisting.The provisions of sec. 10(23C)(v) read as under:-

> *"10 In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included--*
>
> *……..*
>
> *(23C) any income received by any person on behalf of ---*
>
> *……..*
>
> *(v) any trust (including any other legal obligation) or institutions wholly for public religious purposes or wholly for public religious and charitable purposes, which may be approved by the prescribed authority, having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof."*

14.1. At the time of recording reasons for reopening, the AO should be aware of the approval granted to the assessee u/s 10(23C)(v) of the Act, which is granted to a trust (including any other legal obligation) or institutions existing wholly for public religious purposes or wholly for public religious and charitable purposes. Thus, it is seen that the assessee is recognized as charitable trust u/s 80G and wholly charitable and religious trust u/s 10(23C) of the Act. If both these approvals granted by

the income tax authorities are read together, there should not be any doubt that they have recognized the assessee trust existing "wholly for charitable and religious purposes". Accordingly, had the AO considered both these approvals, he would not have entertained the belief that the assessee would be covered by sec. 115BBC of the Act.

14.2. Since the AO has relied upon the approval granted to the assessee u/s 80G of the Act only and did not refer to the registration granted u/s 10(23C)(v) of the Act, there is merit in the contentions of the assessee that the AO has chosen a document, which would suit his requirement and ignored another important document, which goes in favour of the assessee. Accordingly, we are of the view, the AO was not right in ignoring the approval granted to the assessee u/s 10(23C)(v) of the Act. Had the AO duly considered the same, he could not have entertained the belief that the provisions of sec.115BBC are applicable to the assessee. Hence, we are of the view that the belief entertained by the AO, without considering the record in totality, cannot be considered as a legally valid belief and the same is not in accordance with law contemplated u/s 147 of the Act.

15. The Ld D.R contended that the AO could entertain belief that there was escapement of income, on the basis of information available in the internal records also. In this regard, the Ld D.R also placed reliance on the decision rendered by the Hon'ble Supreme Court in the case of Kalyanji Mavji vs. CIT (supra) and also Ess Ess Kay Engineering Company P Ltd (supra). There should not be any quarrel on this proposition. We noticed earlier that the AO has formed the belief that there was escapement of income in the instant year on the basis of the view taken by him in the assessment order passed for AY 2015-16. However, the view so taken by the AO in that year can only be considered as an opinion expressed by him on the law and it cannot be considered as a tangible

material within the meaning of sec. 147 of the Act, since the said opinion has been expressed by considering only one of the documents available on record and not on the basis of all documents available in the record. Accordingly, in the facts and circumstances of the case, the above said contentions of the assessee are liable to be rejected.

16. The Ld A.R submitted that the assessing officer had also reopened the assessment of the assessee of the succeeding year also, i.e., AY 2014-15 after completing the assessment of that year u/s 143(3) of the Act. The primary reason for reopening the assessment of that year was also related to the donations received by the assessee in cash or in kind and the AO was of the view that the cash donations received in the boxes falls within the definition of "anonymous donations" u/s 115BBC(3) of the Income tax Act and hence, such donations were taxable u/s 115BBC(1) of the IT Act, unless exempted under sub-section (2) of sec. 115BC of the Act. The other reason recorded by the assessing officer was to the effect that the income received by the assessee in the form of ornaments and jewellery has not been disclosed in the Income and Expenditure account, which prima-facie shows failure on the part of the assessee to comply with the provisions of sec.13(1)(d)(iia) of the IT Act. In the writ petition filed by the assessee challenging the reopening of assessment of AY 2014-15, the Hon'ble jurisdictional Bombay High Court allowed the writ petition of the assessee and quashed the reassessment notice issued by the AO for AY 2014-15. The gist of reasoning given by the Hon'ble High Court is summarized below:-

(a) The reasons for reopening of assessment is not based on any fresh/new tangible material but on a new opinion being formed on the legal provisions.

(b) In fact, the reasons point out that the notice u/s 148 has been issued on the basis of material which were already part of the assessment proceedings and which were furnished by the petitioner and which formed basis of the assessment order passed u/s 143 dated 24November, 2016.

(c) It is not the case of the revenue that the reopening is on the basis of fresh tangible material which later on had come to the knowledge of the AO and which did not form part of assessment proceedings.

(d) The contention of the revenue that the reopening has been done within a period of four years on the basis of materials already available on record before the AO and which were ignored in finalization of assessment, cannot be accepted.

After referring to host of decisions, the Hon'ble Bombay High Court held as under:-

> *"45. In the light of the above discussion and as crystal clear from the reading of reasons for reopening that the same have been issued on the materials already available and on the record of the Assessing Officer in the course of the assessment proceedings and to his knowledge. It was not a fresh discovery to the Assessing Officer that the petitioner was receiving anonymous donations in a cash or in kind. He also could not have been oblivious to the provisions of Section 115BBC and Section 11(5) or Section 13 of the IT Act, in finalizing the petitioner's assessment for the assessment year in question. On such a backdrop, on a plain reading of the reasons for reopening as furnished to the petitioner,* ***it is clear that the Assessing Officer has sought to reopen the assessment on a change of opinion in the application of the provisions of the IT Act or on interpretation of law differently, on facts which were abundantly within his knowledge at the time of original assessment.*** *This is certainly not permissible. Hence, such reopening of the assessment, being not on any fresh tangible material, the Assessing Officer would not have jurisdiction to proceed with the re-assessment, as this would be purely in the realm of a review and/or on a mere change of opinion. If such course of action is recognized, it would lead to arbitrary consequences and result in multiple assessment orders being passed on the same materials available with the*

Assessing Officer, which is not the legislative intention Section 147 would wield."

17. Even though the reopening of the assessment of AY.2014-15 has been done after completion of original assessment u/s 143(3) of the Act, yet the settled principle is that the basic ingredients to be fulfilled for reopening of assessment will not change, even if the return of income filed by the assessee had been processed u/s 143(1) of the Act. It is pertinent to note that the return of income filed by the assessee for the year under consideration has been processed u/s 143(1) of the Act. In support of this legal proposition, we may rely on the decision rendered by Hon'ble Delhi High Court in the case of CIT vs. Orient Craft Ltd (354 ITR 536)(Del). In this case, the Hon'ble Delhi High Court held as under:-

"We think that the point taken on behalf of the assessee that even an assessment made under Section 143(1) of the Act can be reopened under Section 147 only subject to fulfillment of the conditions precedent, which include the condition that the Assessing Officer must have "reason to believe" that income chargeable to tax has escaped assessment, is sound. It is true that no assessment order is passed when the return is merely processed under Section 143(1) and an intimation to that effect is sent to the assessee. However, it has been recognised by the Supreme Court itself in Assistant Commissioner of Income Tax vs. Rajesh Jhaveri Stock Brokers P. Ltd.(2007) 291 ITR 500, a decision that was relied upon by the revenue, that even where proceedings under Section 147 are sought to be taken with reference to an intimation framed earlier under Section 143(1), the ingredients of Section 147 have to be fulfilled; the ingredient is that there should exist "reason to believe" that income chargeable to tax has escaped assessment. This judgment, contrary to what the Revenue would have us believe, does not give a carte blanche to the Assessing Officer to disturb the finality of the intimation under Section 143(1) at his whims and caprice; he must have reason to believe within the meaning of the Section. It would be appropriate to reproduce the following portions from the judgment:-

> *"The scope and effect of section 147 as substituted with effect from April 1, 1989, as also sections 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of section 147, separate clauses (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under section 147(a) two conditions were required to be*

satisfied : firstly the Assessing Officer must have reason to believe that income, profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the Assessing Officer could have jurisdiction to issue notice under section 148 read with section 147(a). But under the substituted section 147 existence of only the first condition suffices. In other words if the Assessing Officer for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is, however, to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to section 147. The case at hand is covered by the main provision and not the proviso.

So long as the ingredients of section 147 are fulfilled, the Assessing Officer is free to initiate proceeding under section 147 and failure to take steps under section 143(3) will not render the Assessing Officer powerless to initiate reassessment proceedings even when intimation under section 143(1) had been issued.

The inevitable conclusion is that the High Court has wrongly applied Adani's case [1999] 240 ITR 224 (Guj) which has no application to the case on the facts in view of the conceptual difference between section 143(1) and section 143(3) of the Act."

.....

11. The entire law as to what would constitute "reason to believe" was summed up by H.R.Khanna, J, speaking for the Supreme Court in Income Tax Officer v LakhmaniMewaldas (1976) 103 ITR 437. The following principles were laid down:-

(a) The powers of the Assessing Officer to reopen an assessment, though wide, are not plenary.

(b) The words of the statute are "reason to believe" and not "reason to suspect".

(c) The reopening of an assessment after the lapse of many years is a serious matter. Since the finality of a judicial or quasi-judicial proceedings are sought to be disturbed, it is essential that before taking action to reopen the assessment, the requirements of the law should be satisfied.

(d) The reasons to believe must have a material bearing on the question on escapement of income. It does not mean a purely subjective satisfaction of the assessing authority; the reason be held in good faith and cannot merely be a pretence.

(e) *The reasons to believe must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Assessing Officer and the formation is belief regarding escapement of income.*

(f) *The fact that the words "definite information" which were there in section 34 of the Act of 1922 before 1948, are not there in section 147 of the 1961 Act would not lead to the conclusion that action can now be taken for reopening an assessment even if the information is wholly vague, indefinite, far-fetched or remote.*

12. In Commissioner of Income Tax vs. Kelvinator of Income-tax &Anr. (supra) the Supreme Court observed as under:-

> *"However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review ; he has the power to reassess. But reassessment has to be based on fulfilment of certain preconditions and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer."*

It was also observed that after 1.4.1989 the Assessing Officer has power to reopen provided there is "tangible material" to come to the conclusion that there is escapement of income. This judgment has laid emphasis on two more aspects: that there can be no review of an assessment in the guise of reopening and that a bare review without any tangible material would amount to abuse of the power.

13. Having regard to the judicial interpretation placed upon the expression "reason to believe", and the continued use of that expression right from 1948 till date, we have to understand the meaning of the expression in exactly the same manner in which it has been understood by the courts. The assumption of the Revenue that somehow the words "reason to believe" have to be understood in a liberal manner where the finality of an intimation under Section 143(1) is sought to be disturbed is erroneous and misconceived. As pointed out earlier, there is no warrant for such an assumption because of the language employed in Section 147; it makes no distinction between an order passed under section 143(3) and the intimation issued under section 143(1). Therefore it is not permissible to

adopt different standards while interpreting the words "reason to believe" vis-à-vis Section 143(1) and Section 143(3). We are unable to appreciate what permits the Revenue to assume that somehow the same rigorous standards which are applicable in the interpretation of the expression when it is applied to the reopening of an assessment earlier made under Section 143(3) cannot apply where only an intimation was issued earlier under Section 143(1). It would in effect place an assessee in whose case the return was processed under Section 143(1) in a more vulnerable position than an assessee in whose case there was a full-fledged scrutiny assessment made under Section 143(3). Whether the return is put to scrutiny or is accepted without demur is not a matter which is within the control of assessee; he has no choice in the matter. The other consequence, which is somewhat graver, would be that the entire rigorous procedure involved in reopening an assessment and the burden of proving valid reasons to believe could be circumvented by first accepting the return under Section 143(1) and thereafter issue notices to reopen the assessment. An interpretation which makes a distinction between the meaning and content of the expression "reason to believe" in cases where assessments were framed earlier under Section 143(3) and cases where mere intimations were issued earlier under Section 143(1) may well lead to such an unintended mischief. It would be discriminatory too. An interpretation that leads to absurd results or mischief is to be eschewed.

14. Certain observations made in the decision of Rajesh Jhaveri (supra) are sought to be relied upon by the revenue to point out the difference between an "assessment" and an "intimation". The context in which those observations were made has to be kept in mind. They were made to point out that where an "intimation" is issued under section 143(1) there is no opportunity to the assessing authority to form an opinion and therefore when its finality is sought to be disturbed by issuing a notice under section 148, the proceedings cannot be challenged on the ground of "change of opinion". It was not opined by the Supreme Court that the strict requirements of section 147 can be compromised. On the contrary, from the observations (quoted by us earlier) it would appear clear that the court reiterated that "so long as the ingredients of section 147 are fulfilled" an intimation issued under section 143(1) can be subjected to proceedings for reopening. The court also emphasised that the only requirement for disturbing the finality of an intimation is that the assessing officer should have "reason to believe" that income chargeable to tax has escaped assessment. In our opinion, the said expression should apply to an intimation in the same manner and subject to the same interpretation as it would have applied to an assessment made under section 143(3). The argument of the revenue that an intimation cannot be equated to an assessment, relying upon certain observations of the Supreme Court in Rajesh Jhaveri (supra) would also appear to be self-defeating, because if an "intimation" is not an "assessment" then it can never be subjected to section 147 proceedings, for, that section covers only an "assessment" and we wonder if the revenue would be prepared to concede that position. It is nobody"s case that an "intimation" cannot be subjected

to section 147 proceedings; all that is contended by the assessee, and quite rightly, is that if the revenue wants to invoke section 147 it should play by the rules of that section and cannot bog down. In other words, the expression "reason to believe"cannot have two different standards or sets of meaning, one applicable where the assessment was earlier made under section 143(3) and another applicable where an intimation was earlier issued under section 143(1). It follows that it is open to the assessee to contend that notwithstanding that the argument of "change of opinion" is not available to him, it would still be open to him to contest the reopening on the ground that there was either no reason to believe or that the alleged reason to believe is not relevant for the formation of the belief that income chargeable to tax has escaped assessment. In doing so, it is further open to the assessee to challenge the reasons recorded under section 148(2) on the ground that they do not meet the standards set in the various judicial pronouncements.

14. In the present case the reasons disclose that the Assessing Officer reached the belief that there was escapement of income "on going through the return of income"filed by the assessee after he accepted the return under Section 143(1) without scrutiny, and nothing more. This is nothing but a review of the earlier proceedings and an abuse of power by the Assessing Officer, both strongly deprecated by the Supreme Court in CIT vs. Kelvinator (supra). The reasons recorded by the Assessing Officer in the present case do confirm our apprehension about the harm that a less strict interpretation of the words "reason to believe" vis-à-vis an intimation issued under section 143(1) can cause to the tax regime. There is no whisper in the reasons recorded, of any tangible material which came to the possession of the assessing officer subsequent to the issue of the intimation. It reflects an arbitrary exercise of the power conferred under section 147.

15. For the above reasons, we answer the substantial question of law framed by us in the affirmative, in favour of the assessee and against the Revenue. The appeal of the Revenue is accordingly dismissed. There shall be no order as to costs."

18. In the instant case, we noticed that the AO has entertained the belief on the basis of view taken by him in AY.2015-16 and the same has been held by the Hon'ble Bombay High Court as the opinion of the AO on legal provisions, i.e., the same cannot be considered as a tangible material warranting reopening of assessment of earlier years. We noticed that the revenue has recognized the assessee trust as both charitable and religious in nature in terms of registration/approval granted to the assessee under

various provisions of the Act. Hence, the assessee would be covered by the exceptions prescribed in sec.115BBC(2) of the Act and hence, the anonymous donations received by the assessee are not liable to be taxed u/s 115BBC of the Act. Hence, it cannot be held that the AO has formed a legally valid belief and accordingly, we hold that the reopening of assessment of the year under consideration is not valid.

19. We also prefer to address the grounds urged on merits. We shall first take up the appeal filed by the Revenue. As noticed earlier, the Revenue has challenged the decision of the Ld.CIT(A) in holding that the assessee is established for wholly religious and charitable purposes and hence, the provisions of section 115BBC of the Act will not be applicable to it.

20. We heard the parties and perused the record. We notice that the Ld CIT(A) has followed the decision rendered by the Co-ordinate Bench of the Tribunal in the assessee's own case in the order dt. 25-10-2023 passed for AYs. 2015-16 to 2018-19 in ITA Nos. 3049, 3210 and 3204/Mum/2022 respectively in holding that the provisions of sec.115BBC are not applicable to the assessee. The Tribunal had held in the above said appeals that the assessee herein is a charitable and religious trust. We notice that the order so passed by the Co-ordinate Bench of the Tribunal has since been upheld by the Hon'ble Bombay High Court vide its order dt. 8th October, 2024 passed in Income Tax Appeal Nos. 598, 14650 and 14652 of 2024. Since the view taken by the Tribunal has been approved by the Hon'ble jurisdictional Bombay High Court and since the Ld CIT(A) has followed the decision of the Tribunal, we do not find any reason to interfere with the order passed by Ld CIT(A) on this issue. Accordingly we reject the appeal of the revenue.

21. We shall take up the appeal filed by the assessee for adjudicating the grounds urged on merits. The first issue relates to granting of deduction u/s.11(1)(a)of the Act on the "net receipts" instead of allowing the same on "gross receipts" as claimed by the assessee. We notice that the claim of the assessee is supported by the decision rendered by the Hon'ble Supreme Court in the case of CIT vs. Programme for Community Organisation 248 ITR 1 (SC), wherein the Hon'ble Supreme Court has held that the accumulation allowed u/s.11(1)(a) of the Act is on the income derived from trust and accordingly allowed deduction on the gross receipts. We notice that an identical issue has been examined by the Kolkata Bench of the Tribunal in the case of Indian Chamber of Commerce vs. DCIT [2024] 162 taxmann.com 43 (Kol, Trib), wherein the Tribunal, following the decisions rendered by the Hon'ble Supreme Court in the case of Programme for Community Organisation(supra) and in Addl.CIT vs. The A.L.N. Rao Charitable Trust [1995] 216 ITR 697 has decided the issue in favour of the assessee. For the sake of convenience, we extract below the operative portion of the order passed by the Tribunal in the above said case:-

> ***"31.*** *The assessee raised said issue before the Ld. CIT(A) but the Ld. CIT(A) did not decide the same on the ground that exemption to the assessee has been denied as a result of enhancement of income and thus there is no need to adjudicate the same thereby dismissing the ground raised by the assessee.*
>
> ***32.*** *After hearing the rival contentions and perusing the material on record, we find that* ***accumulation u/s 11 is to be computed on the gross receipts and not the net receipts.*** *The issue settled by the Hon'ble Supreme Court in the case of Addl. CIT v. A.L.N. Rao Charitable Trust [1995] 83 Taxman 252/216 ITR 697 wherein it has been held that statutory accumulation u/s 11(1)(a) has to be computed on the gross receipts of the assessee. The relevant extract of the decision held as under:*
>
> *"A mere look at section 11(1)(a) as it stood at the relevant time clearly shows that out of the total income accruing to a trust in the previous year from property held by it wholly for charitable or religious purposes, to the extent the income is applied for such religious or*

charitable purpose, the same will get out of the tax net but so far as the income which is not so applied during the previous year is concerned, at least 25 per cent of such income or Rs. 10,000, whichever is higher, will be permitted to be accumulated for charitable or religious purpose and it will also get exempted from the tax net. Then follows sub-section (2) which seeks to lift the restriction or ceiling imposed on such accumulated income during the previous year and also brings such further accumulated income out of the tax net if the conditions laid down in section 11(2) are fulfilled. The contention that the investment as contemplated by section 11(2)(b) must be investment of all accumulated income in the Government securities, etc., namely, 100 per cent of the accumulated income and not only 75 per cent thereof and if that is not done then, only the invested accumulated income to the extent of 75 per cent will get excluded from income-tax assessment, the remaining 25 per cent of the accumulated income will not earn such exemption, could not be accepted. Section 1^(1)(a) operates on its own. By its operation two types of income earned by the trust during the previous year from its properties are given exemption from income-tax(i) that part of the income of the previous year which is actually spent for charitable or religious purposes in that year, and (ii) out of the unspent accumulated income of the previous year 25 per cent of such total property income or Rs. 10,000, whichever is higher, can be permitted to be accumulated by the trust, earmarked for such charitable or religious purposes. Such 25 per cent of the income or Rs. 10,000, whichever is higher, will also get exempted from incometax. That exhausts the operation of section 11(1)(a). Then follows sub-section (2) which deals with the question of investment of the balance of accumulated income which has still not earned exemption under sub-section (1)(a). So far as that balance of accumulated income is concerned, that balance also can earn exemption from income-tax meaning thereby the ceiling or the limit of exemption of accumulated income from income-tax as imposed by section 11(1)(a) would get lifted if additional accumulated income beyond 25 per cent or Rs. 10,000 whichever is higher, as the case may be, is invested as laid down by section 11(2) after following the procedure laid down therein. Therefore, sub-section (2) only will have to operate qua the balance of 75 per cent of the total income of the previous year or income beyond Rs. 10,000, whichever is higher, which has not got the benefit of tax exemption under section 11(1)(a). If 100 per cent of the accumulated income of the previous year was to be invested under section 11(2) to get exemption from income-tax then the ceiling of 25 per cent or Rs. 10,000, whichever is higher which was available for accumulation of income of the previous year for the trust to earn exemption from income-tax as laid down by section 11(1)(a) would be rendered redundant and the said exemption provision would become otios. Out of the accumulated income of the previous year an amount of Rs. 10,000 or 25 per cent of the total income from property, whichever is higher, is given exemption from income-tax by section 11(1)(a) itself. That exemption is unfettered and not subject to any conditions. In other words, it is an absolute exemption. If sub-section (2) is so read as suggested by the revenue, what is an absolute and unfettered exemption

of accumulated income as guaranteed by section 11(1)(a) would become a restricted exemption as laid down by section 11(2). Section 11(2) does not operate to whittle down or to cut across the exemption provisions contained in section 11(1)(a) so far as such accumulated income of the previous year is concerned It has also to be appreciated that sub-section (2) of section 11 does not contain any non obstante clause like notwithstanding the provisions of sub-section (1)' Consequently, it must be held that after section 11(1)(a) has full play and if still any accumulated income of the previous year is left to be dealt with and to be considered for the purpose of income-tax exemption section 11(2) can be pressed in service and if it is complied with then such additional accumulated income beyond 25 per cent or Rs. 10,000, whichever is higher, can also earn exemption from income-tax on compliance with the conditions laid down by section 11(2). It is true that section 11(2) has not clearly mentioned the extent of the accumulated income which is to be invested. But on a conjoint reading of the aforesaid two provisions of sections 11(1) and 11(2) this is the only result which can follow. Therefore, if the entire income received by a trust is spent for charitable purposes in India, then it will not be taxable but if there is a saving, i.e., to say an accumulation of 25 per cent or Rs. 10,000, whichever is higher, it will not be included in the taxable income, section 11(2) further liberalizes and enlarges the exemption. A combined reading of both the provisions would clearly show that section 11(2) while enlarging the scope of exemption removes the restriction imposed by section 11(1)(a) but it does not take away the exemption allowed by section 11(1)(a). The combined operation of section 11(1)(a) and section 11(2) as applicable at the relevant time would yield the following result:—

(i)	*If the income derived from property held under trust wholly for charitable or religious purposes during the previous year was Rs. 1 lakh and if Rs. 20,000 therefrom were actually applied to such purposes in India then those Rs. 20,000 would get exempted from payment of income-tax as per the first part of section 11(1)(a).*
(ii)	*Out of the remaining accumulated income of Rs. 80,000for the previous year, a further sum of Rs. 25,000 would get exempted from payment of income-tax as per second part of section 11(1)(a). Thus, out of the total income derived from property during the previous year, that is, Rs. 1 lakh, Rs. 45,000 in all, would get excluded from the tax net on a combined operation of first and second part of section 11(1)(a).*
(iii)	*The aforesaid ceiling of Rs. 25,000 of accumulated income from property of previous year, would get lifted under section 11(2) to the extent the balance of such accumulated income was invested as laid down by section 11(2). To take an illustration if, say an additional amount of Rs. 20,000 out of the balance of accumulated income of Rs. 55,000 was invested as per section 11(2) then this*

	additional amount of Rs. 20,000 of accumulated income would get excluded from the tax net as per section 11(2).
(iv)	*The remaining balance of the accumulated income out of Rs. 55,000 that is Rs. 35,000 if not invested as per sub-section (2) of section 11 would be added to the taxable income of the trust and would not get exempted from the tax net.*
(v)	*If on the other hand, the entire remaining accumulated income of Rs. 55,000 was wholly invested as per section 11(2) the said entire amount of Rs. 55,000 will get exempted from the tax net.*

Therefore, the appeal was dismissed. "

32.1. *Similarly in the case of CIT v. Programme for Community Organization [2001] 116 Taxman 608/248 ITR 1 (SC) wherein it has held that the accumulation u/s 11(1)(a) has to be computed on the gross income by observing and holding as under:*

> *"3. The question that really required consideration is whether, for the purposes of section 11(1)(a) of the Income Tax Act, 1961 ("of the Act), the amount for the grant of exemption of twenty five percent should be the income of the trust or it should be its total income determined for the purposes of assessment to income tax. This question has to be answered in the light of these facts the assessee trust, received donations in the aggregate sum of Rs. 2,57,376/- It applied thereoffor its charitable purpose the aggregate sum of Rs. 1,70,369/-leaving a balance of Rs. 87,010/-. The question is whether the assessee is entitled to accumulate twenty five percent of Rs. 2,57,376/- as it contends, or twenty five percent of Rs. 87,010/- as the revenue appeared to contend."*

32.2. *Considering the facts of the case and ratio laid down by the Hon'ble Apex Court we are inclined to direct the AO to allow the accumulation u/s 11(1)(a) of the Act on the gross receipt of the assessee and not on the net receipt. Accordingly ground raised by the assessee is allowed."*

Accordingly, we allow this ground of the assessee, since it is supported by the decisions rendered by Hon'ble Supreme Court.

22. The next ground urged by the assessee on merits is the rejection of enhanced claim of deduction u/s 11(2) of the Act. In the return of income, the assessee had claimed deduction of accumulation of income u/s 11(2)

of the Act to the tune of Rs.183.26 crores. During the course of assessment proceedings, it came to light that the assessee had omitted to disclose receipts from educational and medical activities to the tune of Rs.78.84 crores. The assessee agreed to the addition of above said amount and prayed that the deduction u/s 11(1)(a) @ 15% of the above receipts and further the deduction u/s 11(2) of the Act for the balance amount of Rs.67.01 crores.

23. The AO noticed that the assessee has filed Form No.10 during the course of assessment proceedings. However, he found certain deficiencies therein, i.e, it did not mention the date and the quantify the amount to be accumulated. The above said Form No.10 should be accompanied by a Board resolution. The AO noticed that the Board resolution passed for accumulation of income mentioned all types of objects and further the amount to be accumulated was mentioned as Rs.575 crores. Accordingly, he rejected the claim for enhancement of deduction u/s 11(2) of the Act. However, he allowed the deduction to Rs.183.26 crores, as originally claimed in the return of income. The Ld CIT(A) also confirmed the same.

24. We heard the parties on this issue and perused the record. We notice that the assessing officer has found certain deficiencies in Form No.10 and also in the Board resolution for rejecting the enhanced claim made u/s 11(2) of the Act. However, it is pertinent to note that the AO, relying on the very same documents, has allowed the deduction of Rs.183.26 crores u/s 11(2) of the Act. Hence, we do not find any reason to reject the enhanced claim made by the assessee during the course of assessment proceedings.

25. The question whether the deficiencies, if any, in Form No.10 will disqualify the assessee from claiming deduction u/s 11(2) of the Act has been examined by Hon'ble Gujarat High Court in the case of CIT (E) vs.

Bochasanwasi Shri Akshar Purshottam Public Charitable Trust (2019)(102 taxmann.com 122)(Guj) and it has been held that any inaccuracy or lack of full declaration in the prescribed format by itself would not be fatal to the claimant. The relevant observations made by Hon'ble Gujarat High Court are extracted below:-

> ***"8.*** *Section 11(2) of the Act provides that eighty five percent of the income which is not utilized by the Trust for charitable or religious purposes would not be included in the total income of the previous year of receipt of the income provided the conditions laid down in clause (a) to (c) contained therein are satisfied. Clause (a) in particular, which is applicable, provides that such person furnishes the statement in the prescribed form and in prescribed manner to the Assessing Officer staying the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart which shall in no case exceed five years.* ***Undoubtedly therefore, the statement of purpose for which the income is being accumulated or set apart is one of the requirements which must be satisfied before the assessee can avail the benefit under sub-section (2) of section 11 of the Act. However, that by itself would not mean that any inaccuracy or lack of full declaration in the prescribed format by itself would be fatal to the claimant.*** *The prime requirement of this clause is of stating of the purpose for which the income is being accumulated or set apart. In the present case, we are prepared to accept the Revenue's stand that the declaration made in Form 10 by the assessee was not sufficient to fulfill this requirement. However, as noted, during the course of assessment proceedings, the Assessing Officer called upon the assessee to explain the position in response to which, the assessee in detail pointed out background under which the board of trustees had met, considered the material and eventually passed a formal resolution setting apart the funds for the ongoing hospital projects of the Trust and for modernization of the existing hospitals. There was thus a clear statement made by the assessee setting out the purpose for which the income was being set apart. We therefore do not find any error in the view of the Tribunal."*

The Ld A.R brought to our notice that the SLP filed by the revenue against the above said decision of Hon'ble Gujarat High Court has been dismissed by Hon'ble Supreme Court and the same is reported in (2019)(105 taxmann.com 97)(SC).

26. In the instant case, we noticed that the AO, even after pointing out the deficiencies in Form No.10, has allowed the initial claim for deduction

u/s 11(2) of the Act made by the assessee. Hence those deficiencies should not in the way to allow the enhanced deduction claimed by the assessee as per the AO's own action and also as per the decision rendered by Hon'ble Gujarat High Court in the above said case. We further notice that the assessee has mentioned specific purposes in the resolution and also earmarked specific amounts for each of the purposes. For example, a sum of Rs.40 crores has been earmarked for construction of internal roads in Shirdi Nagarpanchayat area to facilitate Sai devotees; a sum of Rs.50 crores for redevelopment of temple complex; a sum of Rs.50 crores for construction of additional buildings etc. Hence, we are of the view that the AO was not justified in rejecting the enhanced claim made u/s 11(2) of the Act. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow the enhanced amount of deduction claimed u/s 11(2) of the Act.

27. In the result, the appeal filed by the assessee is allowed and the appeal of the Revenue is dismissed.

Order pronounced in the open court on 17-01-2025

Sd/-	Sd/-
[RAJ KUMAR CHAUHAN]	[B.R. BASKARAN]
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai,
Dated: 17-01-2025

TNMM

Copy to :

1) The Appellant
2) The Respondent
3) The CIT concerned
4) The D.R, "G" Bench, Mumbai
5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai