

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI
BEFORE SHRI B R BASKARAN, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA No.2441/Mum/2023
(Assessment Year: 2015-16)

Income Tax Officer (Exemption)-2(3) Room No. 617, 6 th Floor, MTNL Building, Cmballa Hill, Mumbai-400 026	Vs.	Satvichar Darshan 3 rd Floor, Nirmal Niketan, 2 Dr Bhajekar Street, Khetwadi Main Road, Mumbai-400 002
PAN/GIR No. AAOFS 8427 K		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Rajesh P. Shah
Respondent by	:	Smt. Sujatha P Iyengar
Date of Hearing	:	20.11.2023
Date of Pronouncement	:	30.01.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Ld.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2015-16.

2. The Revenue has challenged the appeal on the following grounds:

1. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in holding that activity of printing, publishing and distribution of journal and magazines is incidental to the attainment of the objects of the trust and directing the AO to allow exemption u/s 11 of the Income Tax Act, 1961 ?"

2. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in allowing claim of the assessee for exemption u/s 11 by ignoring the fact that the Assessing Officer in his order has pointed out that the assessee trust is engaged only in the activity of printing, publishing and distribution of journal and magazines and major part of the income of the assessee is from sales and subscription at Rs.2, 82, 28, 399/- which is 63% of total receipts of Rs.4,50, 71, 671/- which is clearly hit by the provisions of section 2(15) of the Act and

accordingly, in view of provisions of section 13(8) of the Act assessee is not eligible for exemption u/s. 11 of the Income Tax Act, 1961 ?”

3. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) is justified in deciding the issue in favour of the assessee on the basis of judgment in Civil Appeal 9445 of 1996 which relates to indirect tax (Sales Tax) and does not relate to sec. 2(15) of the Income Tax Act?"

4. "Whether on the facts and circumstances of the case and in law, the Ld.CITA) has erred in law and fact in not assigning any reasons as to how the facts of the case in Civil Appeal No. 9445 of 1996 are applicable to the assessee Trust?"

5. "Whether on the facts and circumstances of the case and in law, the CIT(A) is justified in not considering the ratio of Hon'ble SC judgement in the case of Assistant Commissioner of Income Tax (Exemption) v. Ahmedabad Urban Development Authority (Civil Appeal No. 21762 of 2017) before allowing exemption to the assessee Trust?"

3. The brief facts are that the assessee is a Trust registered with the Directorate of Income Tax (Exemption), Mumbai u/s. 12A of the Income Tax Act, 1961 under Registration No. TR/1456 dated 30.09.1974 and has also registered with the Charity Commissioner, Mumbai claiming exemption u/s. 11 of the Act. The assessee had filed its return of income dated 19.09.2015 along with the income and expenditure account, balance sheet and audit report in Form No. 10B declaring total income at Rs. Nil. The assessee's case was selected for scrutiny and notice u/s. 143(2) and 143(1) of the Act were issued and duly served upon the assessee.

4. During the assessment proceeding, the Id. Assessing Officer ('A.O.' for short) observed that the assessee Trust is a proprietor of "Prabodhak Mudranalaya" and has generated income of Rs.2,82,28,399/- majorly from subscription of books, sales of books and sales of cards which according to the Id. A.O. are in the nature of trade and commerce. The Id. A.O. further observed that the assessee is merely engaged in the activities of printing, publishing and distribution of journal and magazines and has received the impugned income which forms 63% of the assessee's total receipts

amounting to Rs.4,50,71,671/-. The assessee has also claimed expenses under the head (amount spent on the object of the Trust) which consists of the sales promotion circulations promotion expenses and exhibition and fair expenses. The assessee contended that out of the other objects of the Trust one of it is to propogate and spread Indian Culture by publishing booklets, magazines and periodicals based on the discourse of Rev Dada without any profit motive. The Id. A.O. rejected the assessee's contention and held that the assessee Trust is not eligible for exemption u/s. 11 of the Act where the assessee's case is hit by proviso to section 2(15) of the Act, thereby holding that the assessee's activities are not charitable in nature as per section 2(15) of the Act and proviso to section 13(8) of the Act. The Id. A.O. added the entire income of the assessee as taxable income in the hands of the assessee. The Id. A.O. determined the total income at Rs.3,64,34,690/- vide assessment order dated 26.12.2017 passed u/s. 143(3) of the Act.

5. Aggrieved the assessee was in appeal before the first appellate authority.
6. The Id. CIT(A) allowed the appeal filed by the assessee by relying on the decision of the Hon'ble Supreme Court in the case of *CIT vs. Sai Publication Fund* [2002] 122 Taxman 437 (SC) where on identical facts the Hon'ble Apex Court has deleted the impugned addition.
7. The Revenue is in appeal before us, challenging the order of the Id. CIT(A).
8. The learned Departmental Representative ('ld.DR' for short) for the Revenue contended that the activities of the assessee trust is in the nature of trade, commerce or business and the income generated out of it was rightly taxed by the Id. A.O. in the hands

of the assessee. The ld. DR further contended that the assessee's case would be covered by the proviso to section 2(15) of the Act and proviso to section 13(8) of the Act where the assessee is in the nature of charitable trust and is not entitled to claim exemption u/s. 11 of the Act. The ld. DR relied on the order of the Hon'ble Supreme Court in the case of *Asst. CIT vs. Ahmedabad Urban Development Authority* Civil Appeal No. 21761 of 2017. The ld. DR also relied on the order of the ld. A.O.

9. The learned Authorised Representative ('ld. AR' for short), on the other hand, controverted the said fact and stated that the assessee was engaged in imparting education through printing of books and various other publication on discourses (Pravachans) pertaining to Gita, Vedas and Upanishads from the Vyaspeet thereby educating the society at large. The ld. AR further contended that the books or magazines printed by the assessee trust are on Dadaji's Pravachans which no doubt is not in the nature of commercial activities. The ld. AR further contended that the assessee is also engaged in the charitable activities which are reflected in the income and expenditure account enclosed at pg. no. 35 of the paper book. The ld. AR relied on a catena of decisions to substantiate the assessee's claim. The ld. AR also relied on the order of the ld. CIT(A).

10. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee trust is engaged in the activity of imparting education by means of printing of books and publication related to swadhyayees of discourses on Gita, Vedas and Upanishads and also printing of books and magazines based on Dadaji's Pravachans which the ld. A.O. claims to be in the nature of trade, commerce or business and the assessee claims it to be part of the charitable activity

carried out by the assessee trust. The Id. A.O. has rejected the assessee's contention on the ground that the assessee's entire revenue is out of the sales and subscription which are not relatable to the charitable activities as claimed for by the assessee.

11. The Id. CIT(A) by placing reliance on the decision of Hon'ble Apex Court in the case of *Sai Publication Fund* (supra) deleted the impugned addition made by the Id. A.O. The moot question here is whether the income generated out of the sale and subscription of journals, magazines would be in the nature of business activity mentioned in the proviso to section 2(15) of the Act? It is observed that the assessee Trust was established on 24.09.1962 on the object of educating to the followers of Rev. Pandurang Shastri Athavle (Popularly known as Rev Dada) where he conducted discourses containing his teachings on Bhagwad Gita, Upanishads, etc. in various parts of India and outside the country. The assessee contends that it is educating the humanity based on social, moral and spiritual upliftment of people at large. The publication activity carried on by the assessee is only on the teachings of Rev Dada which it claims it to be without profit motive and not a commercial activity in any manner whatsoever may be. The assessee has stated that the Id. A.O. for A.Y. 1990-91 has held that the activities of the assessee would fall within the definition of clause 2(15) of the Act and the Id.A.O. in A.Y. 1999-2000 and A.Y. 2006-07 has not made any addition u/s. 143(3) of the Ac. It is also pertinent to point out that the assessee trust has stated that the assessee had never advertised for sale of books or subscription of magazines and that it was not even supplying the demanded quantity of books and that it was neither carrying out any job work where it can earn profit. The assessee has also reiterated that the profit earned out of

the said activity is due to the reason that the activities are carried out voluntarily by swadhyayees themselves without any profit motive. It is also to be noted that neither Shri Pandurang Shastriji nor their family members from the Trust have charged any 'royalty' from the trust to print the pravachans. The assessee has placed reliance on various decisions supporting the claim of the assessee.

12. In the above factual matrix, it is also pertinent to rely on the decision of the Hon'ble Apex Court in the case of *Sai Publication Fund* (supra) where the Hon'ble Apex Court has elaborated whether the assessee was carrying on business or charitable activity as per the provisions of the Act. This decision has also been relied upon by the Id. CIT(A) in deleting the impugned addition made by the Id. A.O. The said decision has considered various other decisions which has reiterated that the publication and distribution of books which contained the preaching's of Shirdi Sai Baba was held to be incidental or ancillary to the main object of the Trust without any profit motive and the same would not be termed as 'business' where the assessee trust does not fall within the meaning of 'dealer' u/s. 2(11) of the Act. This view according to us on identical facts would be applicable for the present case in hand where the assessee trust is not merely engaged in the business of printing, publication and subscription of books, but rather incidental to the main activity of the trust which is nothing but the spreading the message of Rev Dada. The relevant extract of the said decision is cited hereunder for ease of reference:

11. No doubt, the definition of "business" given in Section 2(5A) of the Act even without profit motive is wide enough to include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture and any transaction in connection with or incidental or ancillary to the commencement or closure of such trade, commerce, manufacture, adventure or concern. If the main activity is not business, then any transaction

incidental or ancillary would not normally amount to "business" unless an independent intention to carry on "business" in the incidental or ancillary activity is established. In such cases, the onus of proof of an independent intention to carry on "business" connected with or incidental or ancillary sales will rest on the Department. Thus, if the main activity of a person is not trade, commerce etc., ordinarily incidental or ancillary activity may not come within the meaning of "business". To put it differently, the inclusion of incidental or ancillary activity in the definition of "business" pre-supposes the existence of trade, commerce etc. The definition of "dealer" contained in Section 2(11) of the Act clearly indicates that in order to hold a person to be a "dealer", he must 'carry on business' and then only he may also be deemed to be carrying on business in respect of transaction incidental or ancillary thereto. We have stated above that the main and dominant activity of the Trust in furtherance of its object is to spread message. Hence, such activity does not amount to "business". Publication for the purpose of spreading message is incidental to the main activity which the Trust does not carry as business. In this view, the activity of the Trust in bringing out publications and selling them at cost price to spread message of Saibaba does not make it a dealer under Section 2(11) of the Act.

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17. *This decision is directly on the point supporting the case of the respondent after noticing number of decisions on the point including the decisions cited by the learned counsel before us. It may be stated that the question of profit motive or no profit move would be relevant only where person carries on trade, commerce, manufacture or adventure in the nature of trade, commerce etc. On the facts and in the circumstances of the present case irrespective of the profit motive, it could not be said that the Trust either was "dealer" or was carrying on trade, commerce etc. The Trust is not carrying on trade, commerce etc., in the sense of occupation to be a "dealer" as its main object is to spread message of Saibaba of Shridi as already noticed above. Having regard to all aspects of the matter, the High Court was right in answering the question referred by the Tribunal in the affirmative and in favour of the respondent- assessee. We must however add here that whether a particular person is a "dealer" and whether he carries on "business", are the matters to be decided on facts and in the circumstances of each case.*

18. *For what is stated above, we answer the question set out in the beginning in the negative and in favour of the respondent- assessee and dismiss the appeal finding no merit in it but with no order as to costs.*

13. As per the proposition laid down by the Hon'ble Apex Court in the above said decision, the onus of proof lies on the Revenue to prove that the assessee was "carrying on business" in respect of the impugned receipt. Even in the case of the present assessee, the dominant purpose was to spread the message based on preaching's which the above decision has held to be not a business activity. It is also observed that in the said decision the term "business" and "carrying on business" has been widely interpreted. To hold the incidental or ancillary activity to be business, the Revenue is put to strict proof. Further the presumptions in these cases are also in favour of the assessee unless rebutted by the

department. It is pertinent to point out that earning of profit *per se* would not be a criteria to decide whether such activity is a commercial activity or not.

14. By respectfully following the above said decision, we hold that the assessee trust is not into the business of publishing, printing and subscription of the said books as the same is not the main object of the assessee trust. We, therefore, deem it fit to dismiss the grounds raised by the Revenue.

14. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 30.01.2024

Sd/-

(B R Baskaran)
Accountant Member

Sd/-

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 30.01.2024

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai