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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI OM PRAKASH KANT, AM

आयकरअपीलसं/I.T.A. No.3049/Mum/2022
(**निर्धारणवर्ष** / Assessment Year: 2015-16)
&
आयकरअपीलसं/I.T.A. No.3210/Mum/2022
(**निर्धारणवर्ष** / Assessment Year: 2017-18)
&
आयकरअपीलसं/I.T.A. No.3209/Mum/2022
(**निर्धारणवर्ष** / Assessment Year: 2018-19)

DCIT (Exemptions)-2(1) Room No. 519, 5th Floor, Piramal Chambers,LalbaugLower Parel, Mumbai-400021.	**बनाम** / Vs.	Shree Sai Baba Sansthan Trust (Shridi) C/o 804-B, Sai Niketan, Dr. Ambedkar Road, Dadar (East), Mumbai – 400014. **PAN NO.AAATS2581C**

आयकरअपीलसं/I.T.A. No.3010/Mum/2022
(**निर्धारणवर्ष** / Assessment Year: 2015-16)

Shree Sai Baba Sansthan Trust (Shridi) C/o 804-B, Sai Niketan, Dr. Ambedkar Road, Dadar (East), Mumbai – 400014. **PAN NO.AAATS2581C**	**बनाम** / Vs.	DCIT (Exemptions)-2(1) Room No. 519, 5th Floor, Piramal Chambers, Lalbaug Lower Parel, Mumbai-400021.

Revenue by:	Dr Kishor Dhule (CIT-DR) Shri Prakash D Choughule (CIT-DR)
Assessee by:	Shri S. Ganesh – Sr. Counsel, Deepak Tikekar (CA), Pravesh Advani (CA) Ashwin Shete (Adv) S. P. Lanke (Accounts Officer)

सुनवाईकीतारीख / Date of Hearing: 02/06/2023/(06/10/2023)
घोषणाकीतारीख /Date of Pronouncement: 25/10/2023

आदेश / O R D E R

PER ABY T. VARKEY, JM:

The Revenue has preferred appeals against the orders of the Ld. CIT(A), NFAC [in short 'CIT(A)'] dated 06.10.2022 for AY. 2015-16 (ITA. No. 3049/Mum/2022), AY. 2017-18 (ITA No. 3210/Mum/2022)

and for AY. 2018-19 (ITA. No.3209/Mum/2022). The assessee has preferred appeal against the order of the Ld. CIT(A), NFAC for AY. 2015-16 (ITA No. 3010/Mum/2022). Since the issues involved across these appeals are common, all of them were heard together. Both the parties also argued them together raising similar arguments on the common issues. Accordingly, for the sake of brevity, we dispose all these appeals together.

2. We first take up AY 2015-16 as the lead case. The decision taken in this AY shall apply *mutatis mutandis* to the other AYs as well. There are cross appeals for AY 2015-16 in ITA Nos. 3049 & 3010/Mum/2022. We first take up the appeal filed by the Revenue. Before we advert to the grounds taken in the appeals, it would first be relevant to cull out the background facts of the case.

3. The assessee is a public trust which was constituted in 1953 under the name and style of 'ShirdiSansthan of Shri Sai Baba', registered under the Bombay Public Trust Act. Vide order dated 18.10.1982 of the 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 which reconstituted the public Trust of 'ShirdiSansthan of Shri Sai Baba' as 'Shri Sai Baba Sansthan Trust (Shirdi)' which is the assessee before us. The assessee is also registered under Section 12A and 80G of the Income-tax Act, 1961 [in short 'the Act']. 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'].

4. For the relevant AY 2015-16, the assessee had filed its return of income on 01.12.2015 along with copy of Income Expenditure Account, Balance Sheet and Audit Report in Form 10B declaring Nil total income. The case of the assessee was selected for regular scrutiny and accordingly, notices u/s 143(2) and 142(1) of the Act was issued by the Dy. Commissioner of Income Tax (Exemptions) -2(1), Mumbai [in short 'AO']. The AO noted that, during the year the assessee Trust had received aggregate donations of Rs.228.25 crores, out of which Rs.159.12 crores was by way of hundi collections (anonymous donations). The AO accordingly required the assessee vide order sheet entry dated 18.12.2017 to explain as to why provisions of Section 115BBC of the Act should not be applied. According to the AO, the assessee was a charitable trust and since the anonymous donations exceeded 5% of the total donations, the same was taxable u/s 115BBC(1) of the Act. The AO was of the view that, the status of the assessee as a trust existing solely for charitable purposes was evident from the certificate obtained u/s 80G of the Act. It was the AO's case that, the registration under Section 80G of the Act was given to only those trusts, which were established in India solely for charitable purposes and which did not have any religious purposes. For this, the AO referred to the definition of the term '*charitable purpose'* as set out in Explanation 3 to Section 80G of the Act, which provides that '*charitable purpose'* does not include any purpose, the whole or

substantially the whole of which was religious in nature. The AO also referred to sub-section (5) of Section 80G of the Act which provided that, the eligible institution or trust cannot be for the benefit of any particular religious community or caste or exist for any purpose other than charitable purposes. The AO thus observed that, as the assessee was a charitable organisation registered u/s 80G of the Act having no religious purpose, it was not entitled to avail the benefit of exclusion set out in Section 115BBC(2)(b) of the Act. The AO thus sought to tax the anonymous donations of Rs.159.12 crores u/s 115BBC of the Act.

5. In response thereto, the assessee is noted to have filed several explanations on 18.12.2017, 21.12.2017, 26.12.2017 and 28.12.2017. To put it briefly, the assessee submitted that, it was both a religious as well as charitable trust and therefore fell within the exception set out in Section 115BBC(2)(b) of the Act. For this, the assessee relied upon the registration granted u/s 10(23C)(v) of the Act dated 17.03.2008 by the Ld. CCIT, Mumbai which was valid till date. The assessee also referred to its objects set out in the Trust Deed and pointed out that there were several places of worship within its premises, which evidenced that the assessee was a mixed purpose trust i.e. both charitable and religious purpose. As far the certificate held u/s 80G of the Act was concerned, the assessee explained that the term '*charitable purpose*', as defined in Explanation 3, excluded only those entities whose purpose wholly or substantially the whole of which, was religious in nature. The assessee claimed that the entities having mixed charitable and religious purposes were not excluded. The assessee

explained that, only where the religious purposes contained in the objects were the whole or the dominant purpose of the Trust, were hit by Explanation (3) to Section 80G of the Act. According to assessee however, its objects and activities were predominantly charitable and it also served religious purposes which overlapped the charitable purpose. The assessee thus submitted that the AO's interpretation that the registration u/s 80G was available only to institutions existing solely for charitable purpose was misplaced. For this, the assessee is noted to have referred to Section 80G(2)(b) of the Act, to show that even sums paid by the assessee to places of public worship of renown, such as temple, mosque, gurudwara, church etc. was notified by the Legislature qualify as donations eligible for deduction u/s 80G of the Act. The assessee also referred to Section 80G(5B) of the Act which prescribed limits on expenditure of religious nature to an amount not exceeding 5% of the total income. These provisions contained in Section 80G, according to the assessee, negated the stand of the AO that, the provisions of Section 80G of the Act applies to only those trusts which exists solely for charitable purposes. The assessee explained that, where any trust or institution existed both for charitable and religious purposes and the expenditure for religious purpose was less than 5% of the total income then, such trust or institution was eligible to obtain certificate u/s 80G of the Act. The assessee further furnished the details of the expenses incurred for religious purposes incurred during the year, which comprised of 0.49% of the total income. The assessee thus contended that this material fact showed

that it did not exist wholly or substantially for religious purposes and that the assessee was in compliance with the conditions set out in Section 80G(5B) of the Act. According to assessee therefore, its holding of certificate u/s 80G of the Act was valid and at the same time since it was existing both for charitable and religious purposes, it was also entitled to avail benefit of exclusion set out in Section 115BBC(2)(b) of the Act.

6. The AO however did not agree with the submissions put forth by the assessee. The AO emphasized that a trust can be registered u/s 80G of the Act only if it is purely charitable in nature and that even after insertion of sub-section (5B), the provisions of Section 80G applies only to a charitable organisation, though some expenditure incurred on religious activities has been allowed. The AO observed that the exclusion set out in Section 115BBC(2)(b) of the Act was meant for the trusts established for both religious and charitable purposes which would suggest that at least one of the objectives of the trust was wholly or substantially religious in nature. Therefore, according to the AO, the bar set out in Explanation (3) to Section 80G of the Act would hit such mixed trusts. The AO observed that a charitable organisation registered u/s 80G cannot be permitted to misuse the provisions of Section 115BBC of the Act. The AO further observed that the contention of the assessee, that it was both a charitable and religious trust was untenable, as according to him, the objects of the Trust revealed that it was wholly or substantially a charitable trust. Taking note of the objects of the Trust, the AO

observed that the first objective of the assessee trust was to propagate the teaching of Shri Sai Baba. The AO observed that the religion accepted, followed and preached by Sai Baba was the religion of humanity and therefore held that anything linked with Sai Baba cannot be construed as a religion. The AO also noted that, one of the other objects was to worship Lord Shiva, Hanuman ji, Goddess Durga, maintenance of temples and providing services & amenities to devotees. According to the AO, worship of these Gods/Goddesses did not represent any particular religion and that Hinduism is not a religion but a way of life. With these observations, the AO concluded that celebration of festivals, worship of Hindu Gods and preaching of Sai Baba teachings cannot be considered as religious activities. The AO accordingly concluded that, the nature and constitution of the assessee trust was of a charitable organisation and therefore the benefit of exclusion set out in Section 115BBC(2)(b) was not available to the assessee. With these findings, the AO taxed anonymous donations to the extent of Rs. 147,71,54,875/- u/s.115BBC(1) of the Act. Aggrieved by this action of the AO, the assessee preferred an appeal before the Ld. CIT(A).

7. On appeal, the Ld. CIT(A) noted that the primary issue for consideration was whether the assessee existed both for charitable and religious purposes or was it existing solely for charitable purposes. After examining the objects of the Trust, the Ld. CIT(A) observed that the main object of the assessee trust had always been to carry out the activities associated with prayers, maintenance of temple and

providing facilities to the devotees who come for darshan including food and propagation of the teachings of Shri Sai Baba. The Ld. CIT(A) upon examining in detail the meaning of the term '*religious purpose*' in the context of Income-tax Act, 1961, observed that it cannot be interpreted in a narrow sense to denote furtherance of only a particular religion but the same has to be interpreted inclusively and in a broad sense. The Ld. CIT(A) observed that, in Indian culture, religion has always been concerned with upliftment of society and humanity and it has to be understood as a righteous way of life. The Ld. CIT(A) thus held that charitable and religious purposes overlap and cannot be considered to be mutually exclusive, as wrongly suggested by the AO. The Ld. CIT(A) relied upon the decision rendered by the Hon'ble Bombay High Court in the case of DIT vs Bombay Pinjrapole Trust (59 taxmann.com 364) in which even maintaining and running gaushalas was also considered to be both charitable and religious purpose. Having regard to the objects and activities of the assessee Trust, the Ld. CIT(A) held that the assessee was also existing both for charitable as well as religious purpose. The Ld. CIT(A) also laid emphasis on the approval received by the assessee u/s.10(23C)(v) of the Act from CCIT, Mumbai, which had not been withdrawn so far. The Ld. CIT(A) noted that this approval carried immense evidentiary value as it signified that a superior authority had enquired into the objects, constitution and affairs of the assessee trust and found it to be wholly for public, religious and charitable purposes.

8. The Ld. CIT(A) further observed that the AO had dominantly relied on the existing approval u/s 80G of the Act to deny the benefit of exclusion set out in Section 115BBC(2)(b) of the Act. The Ld. CIT(A) noted that the benefit of deduction u/s 80G on donation made to an approved trust is available to the donor and not to the assessee. He noted that, in the present case, it was the taxability of the income in the hands of the assessee trust, which was required to be adjudicated upon. Hence, whether the assessee trust was eligible for approval u/s 80G or not did not have any bearing on the impugned issue involving taxability of anonymous donations u/s.115BBC of the Act. The Ld. CIT(A) however, still proceeded to examine as to whether the assessee, which was held to be existing for both charitable and religious purpose, was eligible to hold certificate u/s 80G of the Act or not. The Ld. CIT(A) took note of the provisions of Section 80G as it stood prior to AY 2000-01 and the amendment made by way of insertion of sub-clause (5B) in Section 80G of the Act. The Ld. CIT(A) noted that, the non-obstante clause contained in Section 5B override Explanation 3. Hence, according to Ld. CIT(A), with effect from 1st April 2000 and onwards, notwithstanding that one or more of the objects of the trust is religious in nature, but if the income expenditure ratio of the expenditure incurred on such religious purposes is within the limits specified in sub-section (5B), then the provisions of Section 80G would apply. He took note of the fact that the assessee had complied with provisions of Section 80G(5B) of the Act. The Ld. CIT(A) accordingly held that, the 80G registration of the

assessee had no relevance to ascertain the taxability of anonymous donations received by the assessee. For the aforementioned reasons, the Ld. CIT(A) held that since the assessee Trust was existing both for charitable and religious purposes, it was entitled to claim benefit of Section 115BBC(2)(b) of the Act. The Ld. CIT(A) accordingly deleted the impugned addition made by the AO. Aggrieved by the order of Ld. CIT (A), the Revenue is in appeal before us by raising the following revised grounds:-

> "1. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in holding that the assessee trust as an organization established for both charitable and religious purposes, when the facts of the case and the objects of the trust clearly show that the assessee is a charitable organization and therefore the anonymous donations received by it shall be taxed as per the provisions of section 115BBC of the Income-tax Act?
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> 2. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in not appreciating that the assessee has spent a miniscule amount of its income towards purely religious purposes and thus the trust has to be acknowledged as a charitable institution as per the provisions of section 80G(5B) of the Income-tax Act?
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> 3. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in interpreting that the charitable activities are a part of religious activities and thus some of the objects of the trust qualify to be of both religious and charitable nature?

4. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in holding that the activities of assessee trust are charitable and religious in nature considering the objects and in light of the activities conducted by the trust?

5. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in considering the assessee trust created or established wholly for religious and charitable purpose when the assessee has obtained certificate u/s 80G(5) of the Income-tax Act and whether the benefit of exclusion is available to the assessee trust u/s 115BC(2) in light of the certificate u/s 80G(5) of the Income tax Act so obtained ?

6. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in holdinginhis order in para 5.2.4that anonymous donation of 'trust created and established for mixed purposes are exempt, when the section 115BBC(b) clearly states that only anonymous donation made with specific directions are exempt?

7. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in adjudicating that the assessee trust shall be covered under the exceptions provided in section 115BBC(2)(b) of the Income-tax Act and therefore the provisions of sections 115BBC(1) shall not apply to the assessee?

8. Whether, the impugned religious expenditure claimed by the assessee is incurred wholly for religious purpose within the meaning of constitution and objects of the of the Trust?

9. Without prejudice to the above and not conceding that the impugned expenditure is incurred for religious purpose even if it is

considered for academic discussion that such expenditure is incurred for religious purpose, whether it will alter the nature and character of the trust from charitable trust to mix purpose trust within the meaning of provisions of the Act?

10. Whether in the facts and circumstances of the case in law, the assessee has made contradictory claims, if yes, which of the claim of the assessee maybe considered?"

9. It is noted that in the several grounds raised in the appeal, the Revenue has in sum and substance challenged the action of the Ld. CIT(A) deleting the addition of Rs.159,12,82,169/- made by the AO u/s 115BBC in relation to anonymous donations received by the assessee Trust. Before us, the Ld. CIT DR for Revenue, Dr. Kishor Dhule, argued that, the AO had rightly held that the assessee was only a charitable organization and not both charitable & religious organization and therefore not entitled to avail the benefit of exclusion set out in Section 115BBC(2)(b) of the Act to the assessee. Like the AO, the Ld. CIT DR also laid emphasis on the certificate held by the assessee u/s 80G of the Act to support his contention that the assessee was only a charitable organization. The Ld. CIT DR took us through the provisions of Section 80G of the Act and argued that only those trusts which existed solely for charitable purposes was eligible to be registered under 80G of the Act. The Ld. CIT DR laid particular emphasis on the definition of '*charitable purpose'* as set out in Explanation (3) to Section 80G. He supported the order of the AO by contending that, even if any one of the several objects of the Trust was

wholly or substantially whole of religious nature, then such trusts would automatically not qualify to be engaged for '*charitable purpose'* and thus would be debarred from availing the benefit of Section 80G of the Act. According to Ld. DR, the fact that the certificate u/s 80G was still valid and subsisting supported the AO's case that the assessee existed solely for charitable purposes.

10. Assailing the action of the Ld. CIT(A) holding that sub-section (5B) of Section 80G overrides Explanation (3) to Section 80G, the Ld. CIT DR submitted that this proposition laid down by the Ld. CIT(A) was not justified. He placed before us the Board Circular No. 779 of 14.09.1999 explaining the amendment made to Section 80G by way of insertion Clause (5B) by the Finance Act, 1999. Referring to Para 33.2 of the said Circular, the Ld. DR submitted that, prior to the amendment, only those trusts which existed solely for charitable purpose were entitled for registration u/s 80G of the Act. According to him, the Legislature noted that certain charitable trusts would spent miniscule sum towards religious purpose which would result in denial of registration u/s 80G of the Act. Hence, to remove the difficulties faced by such charitable trusts, sub-section (5B) was inserted to allow such charitable trusts to be registered u/s 80G which had less than 5% of their income towards religious purpose. According to him, the definition of '*charitable purpose'* set out in Explanation (3), as explained by him in the foregoing, continued to hold ground post insertion of Section 80G(5B) of the Act.

11. To buttress his contentions, the Ld. DR also took us through the objects of the assessee Trust and claimed that none of its objects was religious in nature. He submitted that the assessee was registered under the Bombay Public Trusts Act, 1950. Taking us through Chapter III of the Bombay Public Trusts Act, 1950, the Ld. DR pointed out that, in terms of Section 9, any trust whose purpose was exclusively for religious teaching or worship, would not qualify as a public trust for charitable purposes. According to Ld. DR, the fact that the assessee Trust was earlier registered under this Act substantiated the AO's case that it existed solely for charitable purposes. The Ld. DR also placed before us the Suit No. 3457/1960 filed before Bombay City Civil Court in which the draft scheme of erstwhile 'ShirdiSansthan of Shri Sai Baba' was placed for registration under the Bombay Public Trusts Act, 1950. Taking us through its Preamble, he pointed out that, it had been *inter alia* stated therein, that nobody knew the religion which Sai Baba professed. This according to him, further supported his case that the assessee Trust, whose primary object was to propagate the teachings of Shri Sai Baba, did not have any religious purposes whatsoever.

12. According to Ld. DR, the Ld. CIT(A) had also erred in relying upon the certificate u/s 10(23)(v) of the Act issued by the Ld. CCIT, Mumbai to hold that the assessee Trust existed both for charitable and religious purposes. He pointed out that, nowhere did the Ld. CCIT,

Mumbai had explicitly mentioned in the certificate dated 17.03.2008 that the assessee existed both for charitable and religious purposes.

13. The Ld. DR further submitted that the teachings of Sai Baba were humanitarian in nature and did not have any religious overtone. He also submitted that even if certain Hindu Gods viz., Lord Shiva, Hanuman ji, Goddess Durga were being worshipped in temples within the premises, the same cannot be considered to be religious in nature as according to him, Hinduism is not a religion but a way of life. For this, he relied upon the decision of this Tribunal in the case of **Tarehati Charitable Trust Vs CIT in ITA No.7503/Mum/2016**. According to him, the objects of the Trust involving preaching the teachings of Sai Baba qualified as object of '*general public utility'*. He further submitted that provisions of Section 115BBC of the Act was brought in to curb anonymous donations received by charitable trusts. The Ld. DR explained that the Legislature was aware that certain charitable trusts may receive some donations in cash or anonymously, and had therefore fixed limit of 5% of total donations as permissible anonymous donations to charitable trusts which would not be hit by rigors of Section 115BBC of the Act. According to him, since the assessee Trust had received anonymous donations in excess of the prescribe limit, the AO had rightly invoked the provisions of Section 115BBC of the Act. He thus urged that the order of the Ld. CIT(A) be reversed and the addition made by the AO be restored.

14. Per contra, the Ld.Sr.Counsel for assessee Shri S.Ganesh, supported the order of the Ld. CIT(A) on this issue. And the Ld.Sr.Counsel relied upon the approval received by the assessee Trust u/s 10(23)(v) of the Act which was applicable to institutions existing for both religious and charitable purposes. This certificate, according to him settled the impugned issue beyond doubt that the benefit of exclusion set out in Section 115BBC(2)(b) of the Act was rightly allowed by the Ld. CIT(A). The Ld.Sr.Counsel further submitted that the reasoning given by the AO to say that the assessee did not have any religious purpose and that the objects of the assessee was not in pursuance of any particular religion was far-fetched and unjustified. He explained that, one was not required to be a scholar or an accomplished philosopher to determine what is the true meaning of '*religion*' and which activity can be regarded as '*religious purpose'*. The Ld.Sr.Counsel submitted that, the term '*religious purpose'* was nowhere defined in the Income-tax Act, 1961 and therefore it was required to be understood in the common and popular sense. He explained that colloquially a religious place involves a place of worship, a deity to whom prayers are offered, significant number of devotees who visit and pray and also make offerings, celebrations in form of pujas / ceremonies to honour the deity etc. He accordingly pointed out that, the assessee is one of the most well-known religious places in the India; and placed before us the data available in this regard in the public domain at Pages 7 to 10 of the Paper Book. He also placed before us the information available on the website of the

assessee, which showed that there were temples and places of worship within the premises in which the devotees would attend, pray, make offerings etc. in the hundi box etc. The Ld.Sr.Counsel also explained that Shri Sai Baba had attained the status of a deity and had a significant number of devotees who followed his teachings. He took us through the background history, which led to promulgation of Shri Sai Baba Sansthan Trust (Shirdi) Act of 2004. The Ld.Sr.Counsel explained that Shri Sai Baba had attained great fame and attracted significant amount of devotees and that he was worshipped as a Saint after his death. Taking into account the manner in which the assessee Sansthan had flourished after his death and the increase in asset base and also the number of devotees who would visit his shrine, the Government intervened and a scheme was formulated for the better administration of the said religious and charitable trust. He took us through the relevant Clauses 2(c), 13(2), 17(1), 17(2)(l) & (m), 19, 21(1) of the Shri Sai Baba Sansthan Trust (Shirdi) Act of 2004 to show that there were several religious objects, duties and obligations on the assessee Trust and thus the assessee Trust was existing both for charitable and religious purpose.

15. The Ld.Sr.Counsel further submitted that, whether Shri Sai Baba was a Hindu or Muslim or whether his preachings were meant for any particular religion or not, was irrelevant to decide whether the assessee Trust was existing for religious purposes or not. He submitted that the judgments cited by the AO in which Hinduism was referred to as a way of life and not a religion was in a different context and not

decisive in relation to the provisions of the Income-tax Act, 1961, more particularly Section 115BBC of the Act. Instead, he submitted that the case of the assessee was squarely covered by the decision of the jurisdictional Bombay High Court in the case of **Bombay Pinjrapole Trust (supra)**. The Ld.Sr.Counsel explained that, when the activity of maintaining gaushalas, animals and birds was held to be not merely charitable but religious as well, then having regard to the objects and activities of the assessee, there was no doubt it was existing both for charitable and religious purposes. The Ld.Sr.Counsel also relied on the decisions of the Hon'ble Supreme Court in the case of **CIT Vs Dawoodi Bohra Jamat (364 ITR 31)** and Hon'ble Delhi High Court in the case of **CIT Vs Bhagwan Shree LaxmiNaraindham Trust (378 ITR 222)**. In both these cases, according to him, it was held that '*religious purpose'* under the Act has a wider meaning and even the spreading of spirituality is a religious purpose.

16. The Ld.Sr.Counsel further submitted that Section 80G operates in a completely different sphere and is different from Section 115BBC(2)(b) and Section 10(23C)(v) of the Act. He explained that, the non-obstante clause of Section 80G(5B) employs the test or criterion of quantum of expenses incurred on religious purpose as compared with charitable purpose, whereas, Section 115BBC(2)(b) and Section 10(23C)(v) only employs the test of object or purpose of the trust. He thus urged that the fact that the assessee holds certificate u/s 80G of the Act was irrelevant and immaterial to determine

application of Section 115BBC of the Act. The Ld.Sr.Counsel accordingly submitted that the decision of Tarehati Charitable Trust Vs CIT (supra) relied upon by Ld. DR was irrelevant as it was rendered in context of Section 80G of the Act which had no bearing on application of Section 115BBC of the Act. The Ld.Sr.Counsel further pointed out that the certificate u/s 80G of the Act was issued in 2009 i.e. subsequent to the issuance of certificate u/s 10(23C)(v) of the Act. This fact according to him, established that the Revenue itself did not consider holding of certificate u/s 80G to be contradictory or inconsistent with certificate held u/s 10(23C)(v) of the Act. The Ld.Sr.Counsel thus submitted that the reliance placed by the Revenue on the 80G certificate to deny the benefit of Section 115BBC(2)(b) was untenable and thus deserves to be rejected. For the aforesaid reasons, Shri S. Ganesh, Sr.Counsel, prayed that the order of the Ld. CIT(A) deleting the addition made u/s 115BBC of the Act be upheld.

17. We have heard both the parties and perused the material & submissions placed before us. The facts as noted in the foregoing are that, the assessee had received aggregate donations of Rs.228,25,45,877/- during the year, which comprised of anonymous donations (*hundi collections*) of Rs.159,12,82,169/-. After allowing benefit of 5%, sum of Rs.147,71,54,875/- was taxed by the AO under Section 115BBC(1) of the Act. The case of the assessee is that, it exists both for charitable and religious purposes and thus the provisions of Section 115BBC(1) does not apply to it, in light of the specific exclusion set out in Section 115BBC(2)(b) of the Act. The

Revenue however has disputed the same. The Revenue's case before us is that, the assessee is only a charitable institution having no religious purpose. According to Revenue, the certificate held by the assessee u/s 80G of the Act, which is only issued to charitable trusts, fortifies their position. We are therefore required to ascertain as to whether the anonymous donations received by the assessee Trust is liable to tax u/s 115BBC(1) or is it excluded from the purview of tax by virtue of Section 115BBC(2) of the Act. For doing so, we are first required to ascertain as to whether the assessee Trust is existing solely for charitable purposes or for both charitable and religious purposes.

18. Before dwelling into the facts of the case, let us first have a look at the relevant provisions of Section 115BBC of the Act, which reads as follows :-

> "(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 (23C) 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—
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> (i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely:—
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> (A) five per cent of the total donations received by the assessee; or
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> (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 in excess of the amount referred to in sub-clause (A) or sub-clause (B) of clause (i), as the case may be.

(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.

(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."

19. It is noted that the above provision was inserted by the Finance Act, 2006 with effect 01.04.2007 with the intent to check introduction of unaccounted monies in the garb of anonymous donations. The legislative intent behind the same was explained the CBDT in their **Circular No. 14/2006 dated 28.12.2006** wherein it was stated as follows:-

"25. Taxation of anonymous donations received by wholly charitable trusts or institutions including non-profit educational or medical institutions

25.1 Income of wholly charitable or religious trusts or institutions as well as partly charitable or religious trusts or institutions is exempt from income-tax under sections 11 and 12, subject to the fulfilment, inter alia, of certain conditions of application of income and investment in specified modes. Similarly, income of any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (via) or any hospital or other medical 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 (23C) of section 10, is exempt from income-tax subject to the fulfilment of conditions specified in the said clause.

25.2 With a view to prevent channelisation of unaccounted money to these institutions by way of anonymous donations, a new section 115BBC has been inserted to provide that any income of a wholly charitable trust or institution by way of anonymous donation shall be included in its total income and taxed at the rate of 30 per cent. Anonymous donation made to wholly charitable and religious trusts or institutions, i.e. mixed purpose trusts or institutions shall be taxed only if it is for any university or other educational institution or any hospital or other medical institution run by them. Anonymous donation to wholly religious trusts or institutions will not be taxed."

20. Careful reading of the provisions along with the Circular explaining the same reveals that this provision was intended to check inflow of unaccounted monies into the institutions such as Universities, educational institutions, medical institutions etc. and it required that all such institutions ought to maintain complete details and records of the donor. At the same time, it was also made clear that anonymous donations received by trusts, which existed solely for religious purposes or both religious & charitable purposes, would not be taxed under Section 115BBC of the Act. The only qualification was

that, anonymous donations received by such trusts, which existed both for religious & charitable purposes, should not be received with a direction to be used towards Universities, educational institutions, medical institutions etc. It is thus evidently clear that the provisions of Section 115BBC of the Act introduced by the Legislature was never meant to tax the charities or offerings received from devotees at religious places, without any direction / instruction, across India in hundis / donation boxes. India is a land of culture, rituals, beliefs and superstitions. It is a well-known culture in India that devotees who visit religious institutions make offerings on account of respect, love, regard and their reverence for the deity or towards the pious-status of the place/shrine etc. Such types of offerings are collected in hundis/donation boxes, which are placed within the premises of such institutions where the devotees donate their offerings. Understandably, it is not possible to maintain the name, details and records of such donors/devotees making their offerings. There are also instances where the devotees do not want their name to be registered or glorified because of the offerings made by them, having regard to the respect, love and regard which they have for the deity or out of selflessness. It may also be because of their ingrained belief that the deity is the ultimate giver, because of whom they have what they are offering, and that the offerings made by them is not a donation but a way of giving it back to the deity to whom it always belonged. It is for these reasons that, the trusts / institutions which are existing for religious purposes or both religious & charitable purpose, have been kept out of the ambit of

Section 115BBC of the Act. The intent of the Legislature is thus clear that such anonymous donations received in hundis/ donation boxes etc. at the aforesaid trusts/ institutions from their devotees is not to be taxed u/s 115BBC of the Act.

21. We now come back to the facts involved in the present case. It is not in doubt that Shri Sai Baba had a large number of devotees and was accorded the status of 'Saint' upon his demise on 15th October 1918. The place i.e. Shirdi from where he left for his heavenly abode was converted into a shrine and thousands of devotees would visit his shrine to pay their respects, spread his teachings and celebrate the festivals etc. His devotees are noted to have originally started a trust namely 'Shirdi Sansthan of Shri Sai Baba' which was registered under the Bombay Public Trusts Act, 1950. Having regard to the enormous increase in asset base and number of devotees visiting his shrine and the general aspects of the approach of society towards religious and charitable institutions and to necessitate the channelization of funds of the Trust for betterment and upliftment of devotees and society, the Hon'ble Bombay High Court vested the management of the Trust in Board of Management, constituted by the Charity Commissioner, Government of Maharashtra. The Scheme for management and administration of Trust as set out in the Suit No. 3457/1960 before the Hon'ble Bombay High Court, mentions that, *this Trust shall be essentially a* ***public religious institution with a charitable bias*** *enabling the sansthan to set apart funds for different charitable purposes as provided for*. Pursuant thereto, a new Act titled Shri Sai

Baba Sansthan Trust (Shirdi) Act of 2004 was promulgated on 17.08.2004 and the public Trust of 'Shirdi Sansthan of Shri Sai Baba' was reconstituted as 'Shri Sai Baba Sansthan Trust (Shirdi)' i.e. the assessee before us. It is noted that, the initial recital of this Sai Baba Trust Act recognizes that the assessee Trust has large properties and it is highly popular and revered and has large number of devotees across India. The objects of the assessee Trust are noted to be as follows :-

> "The aims an objects of the sansthan stated in it are as under-
>
> a. To ensure the perpetuation of the traditional forms of worship of Shri, Sai Baba at Samadhi Mandir, Dwakamai, Guru Padukas, Chavadi and Lendi Baugh at Shridi
>
> b. To celebrate the conventional festivals and fairs of Shri Ram navmi, Guru Pournima, Gokul Ashtami and Punyatihi of Sai Baba at Shridi in accordance with the established practice.
>
> c. To disseminate useful knowledge about life, activities, leelas and teaching of Shri Sai Baba.
>
> d. To maintain and expand a library of Shri Sai Literature and other religious and philosophical books.
>
> e. To organize and promote the feelings of brotherhood, unity, faith, service and equality among the devotees of Sai Baba and with that in view:
>
> i) to hold conference, seminars, lectures, competitions among the devotees and members.
>
> ii) to feed the poor from the fund established for the purpose.
>
> iii) to perform such other functions and festivals as may be decided by the Board of Management.

> iv) to give aids to the poor and deserving at Shirdi provided donations are received" Specifically in that behalf (and for no other purpose) and also to give necessary assistance inclusive of financial help to the poor and deserving institute at Shirdi elsewhere"

22. It is noted that amongst the several objects of the assessee Trust, one of the objects has been associated with activities associated with worshiping Shri Sai Baba, spreading spirituality, his teachings, offering prayers, celebrating religious festivals and ceremonies taking care of devotees etc. It is noted that Section 21 of the said Sai Baba Trust Act also provides for maintenance of temple, conduct and performance of rituals & ceremonies therein and providing facilities for darshan of deity, offering of prayers and performing any religious service. The relevant extract of this Section is set out below:-

> "21(1) The Trust Fund shall be utilized by the Committee for all or any of the following purposes:-
>
> a. the maintenance, management administration of the Temple and the properties of the Trust,
>
> b. the conduct and performance of the rituals, worship ceremonies and festivals in the Temple according to the customs and usages;
>
> c. providing facilities and amenities to the devotees for darshan of the deity and for offering prayers or performing any religious service or ceremony in the Temple:
>
> d. to provide meals to the devotees and to run Annachatra,
>
> e. for propagating the teaching of Shree Sai Baba."

23. Section 19 of the Sai Baba Trust Act further provides that there shall be a *Bhakta Mandal* which shall recommend about ceremonies, festivals and poojas etc. to be performed. Section 14(2) of the Sai Baba Trust Act further lays down that the Executive Officer shall be responsible for making proper arrangements for collection and deposit of offerings made at the Temple. Section 17 of the Sai Baba Trust Act further provides the duties of the Committee to maintain and manage the Temple, make proper arrangements for the conduct and performance of rituals, worship ceremonies, and festivals in the Temple, also ensure proper facilities and amenities to the devotees and disseminate teachings of Shri Sai Baba and promote unity, faith and brotherhood amongst his devotees. The relevant extract of Section 17 of the Sai Baba Trust Act is as follows :-

> "17 (1) Subject to any general or special orders of the State Government, it shall be the duty of the Committee to manage the properties and affairs of the Sansthan Trust, efficiently, to make proper arrangement for the conduct and performance of rituals, worship ceremonies, and festivals in the Temple according to the custom and usages, to provide necessary facilities and amenities to the devotees and to apply the income of the Trust to the objects and purposes for which the Trust is to be administered under this Act.
>
> (2) In particular and without prejudice to the generality of the provisions contained in sub-section (1), the Committee shall –
>
> (l) Disseminate and propagate useful knowledge about the life, activities, Leelas and teachings of Shri Sai Baba, and maintain and expand the library of Shri Sai literature;
>
> (m) organise or undertake activities or programmes aimed at promoting the feelings of brotherhood. unity, faith and equality among the devotees of Shri Sai Baba."

24. The Ld.Sr.Counsel had pointed out to us that, Section 2(m) of the Sai Baba Trust Act provided that any words or expression, not expressly defined, shall have the meaning as assigned in Bombay Public Trusts Act, 1950. It is noted that, the word '*Temple'* is not defined in the Trust Act, but the same is defined in Section 2(17) of the Bombay Public Trusts Act, 1950 as follows :-

> "temple" means a place by whatever designation known and used as a place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu community or any section thereof as a place of public religious worship."

25. It is further noted that the *website* of the assessee Trust, extracts of which are available at Pages 5 to 6 of Paper-book, mentions the details of the temples located within the shrine at Shirdi. The website also gives details of the rituals, poojas, ceremonies etc., which are being performed throughout the day along with timings etc. for the information, and knowledge of the devotees. We also note that the assessee Trust is also regarded as a must visit religious place in Maharashtra for tourists and public at large.

26. It is noted that the Revenue has deep-dived into the meaning of the term 'religion' to aver that Hinduism is not a religion but a way of life and therefore any activities associated with worshipping Hindu Gods, maintaining temples etc. cannot be regarded as 'religious purposes'. The Revenue has further claimed that because the assessee Trust is devoted to the teachings of Shri Sai Baba who treated all religions equally and did not promote any particular religion, it cannot be held to be existing for 'religious purposes'. We however are unable

to persuade ourselves to agree with such proposition. It is noted that the Revenue has interpreted the term 'religion' in a very narrow and restrictive sense, for ascribing meaning to 'religious purposes' in the context of Section 115BBC of the Act, which we find to be untenable. Instead, we are in agreement with the assessee that, in absence of any definition of 'religious purpose' having been provided for in Section 115BBC of the Act, any trust, which is existing for wholly religious purposes or both charitable and religious purposes, has to be understood in the popular sense and with the intent of making the provisions of Section 115BBC(2) workable. If any trust / institution operates and maintains any temple / mosque / church etc., which constitutes a place of worship, where a deity to whom prayers are offered, devotees who visit, pray and also make offerings, celebrations are held in form of pujas / ceremonies to honour the deity etc., then such trust / institution will be held to be existing for religious purposes, irrespective whether the devotees belong to different religions, caste or race. It is well known that numerous devotees in such places of worship etc. make offerings, which is collected in hundis / boxes etc. There are no names, details or records maintained of such devotees. The legislative intent behind Section 115BBC(2)(a) & (b) is to exclude such trusts/ institutions which *inter alia* exists for religious purposes and not tax the anonymous donations received by them. The Revenue erred in singling out Shri Sai Baba or Hindu Gods in an Ultra-philosophical manner to say that their worship cannot be said to be religious purpose, as neither Sai Baba nor Hinduism is a religion, but a

way of life or spirituality. To put it in another way, if one chooses to subscribe to the Revenue's contention that, then it would mean that since Hinduism is not a religion, worshipping Hindu deities and maintaining temples cannot be regarded as religious purpose for the purposes of Section 115BBC of the Act. In such a scenario, the hundi collections / anonymous donations received by almost all the revered temples of India, without naming any, shall be liable to be taxed u/s 115BBC of the Act. In our considered view, such a proposition put forth by the Revenue is wholly inconceivable, fallacious and untenable.

27. Instead, we find that the Ld. CIT(A) had rightly relied on the decision of the Hon'ble jurisdictional Bombay High Court in the case of **DIT(E) Vs Bombay Panjrapole Trust (supra)**. In the decided case also, the assessee trust which was maintaining gaushalas and protecting animals was in receipt of anonymous donations in their hundis/ boxes, which was taxed by the AO u/s 115BBC of the Act. The stand taken by the AO was identical to the present case, as it was contended that maintaining and protecting animals does not tantamount to 'religious purpose'. The Hon'ble High Court however held that, the supply of fodder to cattle and animals is a good religious trust for Hindus and may be a good charitable trust for others. The Hon'ble High Court thus explained that religious and charitable purposes may overlap as charitable activities arise out of compassion, while religion treat compassion as a religious attribute. The Hon'ble

High Court thus upheld the order of this Tribunal deleting the addition made u/s 115BBC of the Act by observing as under:-

> "7. We find that the Commissioner of Income Tax (Appeals) has inter alia recorded the following fact that:—
>
> "The Trust was declared by Sir JamsetjeeJeejeebhoy, Knight by a Trust Deed dated October 18, 1834 for the keep of stray cattle and other animals with a view to protect their lives. … … …
>
> For last more than 176 years, the trust has been engaged in taking care of the old, infirm and disabled animals and birds. For this purpose, apart from the panjrapole at Bhuleshwar it has branches at Raita, Mala, Walsing, Lakhivali, Chembur and Bhilad. As of February 2010, the Trust had in all 1800 animals and birds in the panjrapole including approximately 1100 cows, 50 bullocks, 50 dogs, 250 goats, 200 pigeons and 150 other birds, etc. The Courts, the Police and the public at large leave the animals and birds who have met with some accident, or who have been ill treated by their owners or who have been rescued from the slaughter houses into the Trust panjrapole. The Trust provides such animals and birds with medical care, food and shelter."
>
> This shows that the Trust was created/established for charitable purposes. Thereafter, the Commissioner of Income Tax (Appeals) as well as the Tribunal have decided the appeal before them by placing reliance upon the binding decision of this Court in the case "VallabhdasKarsondasNatha" (supra) wherein the Court inter alia considered the issue whether supply of fodder to animals and cattle would amount to a charitable and/or religious purpose. In the above context, the Court observed that "that to a Hindu nothing can be of greater religious merit than to relieve suffering of dumb cattle and animals by giving them fodder. It is hardly necessary to emphasize that, according to Hindu religion and philosophy, animals have the same soul as human beings have and the spark of divinity is as much present in them as in human beings." Thereafter, concluded by holding that "supply of fodder to cattle and animals is not only a good religious trust but it is also a good charitable trust." Therefore,

> the submissions of the Revenue is in the face of the decision of this Court in "VallabhdasKarsondasNatha" (supra) wherein taking care of animals is considered to be a charitable as well as religious activity. We may also refer to the decision of Gujarat High Court in the case of Swastik Textile Trading Co. (P.) Ltd. (supra) wherein the issue for consideration was whether establishing, maintaining, running and helping gaushalas, panjarapoles and other similar institutions for animals, would be considered to be a charitable and religious purpose…..
>
> In fact at times religious and charitable purposes may overlap. Charitable activities in all cases arise out of compassion while most religion treat compassion as a religious attribute.
>
> 8. In view of the fact that the Tribunal has dismissed the Revenue's appeal by following the binding decision of this Court in the case of "VallabhdasKarsondasNatha" (supra)", no substantial questions of law arise for our consideration. Accordingly, the appeal stands dismissed."

28. At this juncture, we may also gainfully refer to the decision of the Hon'ble Supreme Court in the case of **Dawoodi Bohra Jamat (supra)**, wherein after analysing the objects of the Trust in that case, the Hon'ble Apex Court held that they were *"not indicative of a wholly religious purpose but were collective indicative of both charitable and religious purposes."* The Hon'ble Court held that in certain cases, the activities of the Trust may contain elements of both religious and charitable and thus, both the purposes may be overlapping. The religious activity carried on by a particular section of people could be a charitable activity for or towards other members of the community or public at large. The Hon'ble Court explained it by way of an example viz., the practice of option charity in the form of Khairat or Sadaquah

under the Mohammadan Law would be covered under religious purpose for Muslims, whereas it would only be charitable activity for other communities. Similarly, providing food and fodder to animals especially cow is religious activity for Hindus, however it would be charitable in respect to non-Hindus as well. Likewise, service of water to the thirsty would find mention as religious activity in sacred texts and at the same time would qualify as a charitable activity.

29. The reliance placed by the assessee on the decision of **CIT Vs Bhagwan Shree LaxmiNaraindham (supra)** is also found to be relevant. In this case also, the assessee had *inter alia* received anonymous donations which was brought to tax by the AO u/s 115BBC of the Act. It was noted that the assessee was mainly involved in imparting of spiritual education through the lectures/samagam delivered by Brahmarishi Shree Kumar Swami Ji and distribution of medicines and clothes to the needy and destitute. According to AO however, the activity of the Trust could be said to be spiritual but not religious in nature. The Hon'ble High Court did not subscribe to this narrow line of thought propounded by the AO but held that the term '*religious purpose'* used in Section 115BBC of the Act has to be understood in broad sense. It accordingly held that the activities described by the assessee, as having been undertaken by it during the year, can be included in the broad conspectus of Hindu religious activity. The relevant portion of the judgment is set out below :-

> "5. In the impugned order dated 20th August 2014 the ITAT while allowing the Assessee's appeal concluded, after discussing the relevant clauses of the Trust Deed as well as the decision of the

Supreme Court in CIT v. Dawoodi Bohra Jamat [2014] 364 ITR 31/222 Taxman 228 (Mag.)/43 taxmann.com 243, that the AO and CIT had proceeded "on a very narrow and incorrect understanding in holding that the Assessee Trust was engaged in spreading spirituality and since Section 115BBC only exempts religious trust, a trust allegedly imparting spiritual knowledge was consequently not contemplated as an exception by the Legislature as much as it consequently is barred to claim exemption vis-a-vis the anonymous donation." The ITAT held that the "said aim has to be understood in the context of and read along with the other objects of the trust whose target groups are widows, orphans, old and infirm people, destitute, illiterate, handicapped, mentally retarded, providing food and shelter to poor and needy, night shelter, nari-niketan, mahila ashram, weaker sections and all other groups who can be included in the phrase 'in need of physical, mental and financial help." Further the ITAT held that the "objects of the Trust and the context in which spiritual lectures espousing the philosophy, i.e, the spirituality of the major and predominant religious of the country needs to be considered in the light of the well-accepted and well-known fact that all the major religious of the world with one voice eulogise the importance of taking care of the old, infirm, disabled. . . ." Accordingly, it was held that the Revenue had incorrectly applied Section 115BBC to the facts of the Assessee's case.

…..

9. The question posed arises in the context of the anonymous donations received by the Assessee Trust and the view of the AO that such donations would not be exempt within the scope of Section 115 BBC of the Act since the activity of the Trust was 'spiritual' and not 'religious'.

…

11. …..As rightly pointed out by the ITAT itself, the above question cannot be addressed within the narrow scope of the specific wording of some of the clauses of the Trust Deed but in the overall context of the actual activities in which the Trust is involved in including imparting spiritual education to the persons of all castes and religions, organizing Samagams, distribution of

free medicines and clothes to the needy and destitute, provision of free ambulance service for needy and destitute patients and so on.

…..

13. What can constitute religious activity in the context of the Hindu religion need not be confined the activities incidental to a place of worship like a temple. The Supreme Court in Commissioner, Hindu Religious Endowments, Madras v. LakshmindraThirthaSwamiarAIR 1954 SC 282 held that "a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters."

14. This position was reiterated by the Supreme Court in RatilalPanachand Gandhi v. State of Bombay AIR 1954 SC 388 In the case of SastriYagnapurushadji v. MuldasBhudardas Vaishya AIR 1966 SC 1119 the Supreme Court pointed out that what constitutes a religious activity under the Hindu faith is very broad in nature. It held:

"29. When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it. . . . It may broadly be described as a way of life and nothing more."

15. It might well be that a Hindu religious institution like the Assessee is also engaged in charitable activities which are very much part of religious activity. In carrying on charitable activities along with organising of spiritual lectures, the Assessee by no means ceases to be a religious institution. The activities described by the Assessee as having been undertaken by it during the AY in question can be included in the broad conspectus of Hindu religious activity when viewed in the context of the objects of the Trust and its activities in general.

16. For the aforementioned reasons, the Court finds no legal infirmity in the conclusion of the ITAT that for the purpose of Section 115 BBC (2) (a) anonymous donations received by the

> Assessee would qualify for deduction and it cannot be included in its assessable income."

30. We further note that somewhat identical issue was considered by the Bangalore Bench of this Tribunal in the case of **ITO Vs Sri Shirdi Sai Samaj in ITA No. 1044/Bang/2015 dated 11.05.2016**. In this case also, the assessee was both charitable and religious trust *inter alia* involved in propagating teachings & preachings of Sai Baba, pooja offerings, temple worship etc. The AO taxed the hundi collections of the assessee Trust u/s 115BBC of the Act. On appeal this Tribunal is noted to have deleted the impugned addition holding that the assessee trust was existing both for charitable and religious purposes and therefore the anonymous donations received by them was not liable to tax in terms of the exclusion set out in Section 115BBC(2)(b) of the Act.

31. Hence, having regard to the facts of the case as discussed in preceding paragraphs and in light of the above judgements (supra), we countenance the action of Ld. CIT(A) holding that the assessee was existing both for charitable and religious purposes and thus eligible to avail the benefit of exclusion set out in Section 115BBC(2)(b) of the Act.

32. Before us the Revenue has primarily laid emphasis on the certificate held by the assessee u/s 80G of the Act to justify their stand that the assessee was only a charitable trust with no religious purpose. According to us, this line of argument taken by the Revenue is completely irrelevant as the question before us is taxability u/s 115BBC of the Act and not the eligibility of the assessee trust to obtain

registration u/s 80G of the Act. We are required to ascertain as to whether on the given facts the assessee was a charitable and religious trust in order to avail the benefit of Section 115BBC(2)(b) of the Act. Now, whether the assessee Trust is rightly registered u/s 80G of the Act is not the issue before us. Academically speaking, if the objects of any trust is not solely charitable but is mixed purpose, and the Revenue is of the view that such trust cannot be registered u/s 80G of the Act, then it is up to Revenue to take appropriate action in accordance to law regarding the certificate issued u/s 80G of the Act. But, it cannot be the other way round i.e., for the Revenue to argue that because such Trust is registered u/s 80G of the Act, it would nullify the jurisdictional fact that the Trust exists for mixed purpose. For the aforesaid reasons, we also hold that the decisions in the case of Shiv Mandir Devsttan Panch Committee Sanstan Vs CIT (56 SOT 456) and Tarehati Charitable Trust Vs CIT (supra) relied upon by the Revenue is not relevant as they were rendered in the context of registration under Section 80G of the Act.

33. Even otherwise, addressing the merits of this argument of the Revenue, we note that, the assessee was accorded approval by the Ld. Chief Commissioner of Income-tax, Mumbai under Section 10(23C)(v) of the Act vide order dated 17.03.2008. Undisputedly, the approval u/s 10(23C)(v) is accorded to those trusts which are wholly for public religious purposes and charitable purposes. We agree with the Ld. CIT(A) that this approval carries significant evidentiary value as it shows that the affairs of the assessee Trust had been verified by a

superior authority and the assessee was found to exist for both religious and charitable purpose. On query from the Bench, the Revenue was unable to show that this approval granted u/s 10(23C)(v) of the Act has been withdrawn or rescinded by the Ld. CCIT. We further note that this approval u/s 10(23C)(v) of the Act was available on record, when the CIT(E) accorded registration u/s 80G of the Act vide order dated 25.03.2009. This supports the contention put forth by the assessee that, at that material time even the Revenue itself did not consider holding of certificate u/s 80G to be contradictory or inconsistent with certificate held u/s 10(23C)(v) of the Act.

34. Moreover, according to us, the provisions of Section 115BBC(2)(b) are independent of the provisions of Section 80G of the Act. Merely because an assessee is registered u/s 80G of the Act will not automatically mean that such Trust cannot have any religious purpose and therefore cannot avail benefit of Section 115BBC(2)(b) of the Act. As rightly pointed out by Ld.Sr.Advocate, Shri Ganesh, the provisions of Section 80G lays down quantum test i.e., the amount spent for religious purposes to ascertain whether the charitable trust is eligible for registration or not, whereas for the purposes of Section 115BBC(2)(b) what is relevant is the object and nature of the trust / institution. The relevant non-obstante clause of Section 80G(5B) of the Act is extracted below:-

> "(5B) Notwithstanding anything contained in clause (ii) of sub-section (5) and Explanation 3, an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding five per cent of its total income

in that previous year shall be deemed to be an institution or fund to which the provisions of this section apply."

35. The above non-obstante clause has been held to override Explanation (3) to Section 80G and therefore this clause and the Explanation has to be read harmoniously to make the provision workable. For this, we may gainfully refer to the following observations of the Hon'ble Rajasthan High Court in the case of **Shri Marudhar Kesari Sthanakwasi Jain Yadgar Samiti Trust Vs UOI (273 ITR 425)**, which reads as follows:-

"..we may notice that since the judgment was delivered in Upper Ganges Sugar Mills Ltd. v. CIT [1997] 227 ITR 578 (SC), Parliament has intervened and inserted sub-section (5B) in section 80G with effect from April 1, 2000, which reads as under :

"(5B). Notwithstanding anything contained in clause (ii) of subsection (5) and Explanation 3, an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding five per cent. of its total income in that previous year shall be deemed to be an institution or fund to which the provisions of this section apply."

The aforesaid provision is a non obstante clause and overrides Explanation 3 and declares that to the extent any institution or fund incurs not exceeding five per cent. of its total income for religious purposes, it does fall within the ambit of section 80G and it shall be deemed to be an institution to which section 80G apply. To such institutions the restriction of Explanation 3 will not be attracted. Thus, the position with effect from April 1, 2000 would be that notwithstanding one or more clauses of the trust deed being wholly or substantially religious, if the income-expenditure ratio in respect of the expenses incurred on such purposes falls within the ambit of sub-section (5B), it shall still be treated to be an institution to which the provisions of section 80G would apply and the donations to which would qualify for deduction."

36. In view of the above, the position which emerges is that, there may be instances where a trust which is existing both for charitable and religious purpose, has incurred religious expenditure which is less than 5% of the total expenses of the Trust. In such a case, the trust may be eligible for certificate u/s 80G of the Act and at the same time would not be liable to be taxed for the anonymous donations received by virtue of Section 115BBC(2)(b) of the Act. We thus find merit in the submission of the Ld.Sr.Counsel for assessee that, the exclusion set out in Section 115BBC(2)(b) of the Act can co-exist with Section 80G of the Act. Hence, the proposition put forth by the Revenue placing reliance on 80G registration to ipso facto deny the exclusion set out in Section 115BBC(2)(b) of the Act is held to be untenable.

37. In light of the above reasons, we thus do not find any reason to interfere with the order of Ld. CIT(A) deleting the addition of Rs.147,71,54,875/- made u/s 115BBC of the Act. Accordingly, all the grounds taken by the Revenue stands dismissed.

38. We now take up the appeal filed by the assessee for AY 2015-16. Ground Nos. 1 & 2 of the appeal reads as under:-

> "1. On the facts and under the circumstances of the case and in law, the 784094- Commissioner of Income Tax Appeals, National Faceless Appeal Centre, erred in confirming the disallowance of accumulation of income under section 11(2) of the I. T. Act, 1961 amounting to Rs. 230,68,39,506/- for non-filing of Form No. 10 with Deputy Commissioner of Income Tax within stipulated time in the absence of any specific time limit under the section 11(2) as it existed at the relevant time.
>
> 2. On the facts and under the circumstances of the case and in law, the Commissioner of Income Tax Appeals, National Faceless

> Appeal Centre, erred in not appreciating the facts that amount of accumulated income was available on record in return of income & in Form 10B and further Form 10 was submitted in course of appeal proceedings which are extension of assessment proceedings."

39. Briefly stated, these grounds relates to the Ld. CIT(A)'s action of upholding the order of the AO denying the benefit of exemption in relation to accumulation of income u/s 11(2) of the Act. The AO is noted to have observed that, the assessee did not file the prescribed Form 10 in relation to accumulation u/s 11(2) of the Act, before the expiry of time allowed u/s 139(1) of the Act. The assessee instead is noted to have filed the copy of Form 10 along with resolution in the office of the AO only on 06.10.2017. The AO accordingly denied the benefit of accumulation of income claimed u/s 11(2) of the Act. On appeal, the Ld. CIT(A) noted that the Board had issued Circular No.7/2018 dated 20.12.2018, in which jurisdiction was conferred with the Commissioner to admit belated application in filing Form 10 and condone the delay for AY 2016-17. The Ld. CIT(A) observed that the AY in question was 2015-16 and therefore this Circular cited by the assessee was not applicable. The CIT(A) further observed that, under any circumstance, the power to condone the delay in filing Form 10 was only with the Principal Commissioner and not vested with him. Hence, in absence of any order condoning the delay in filing of Form No. 10, the Ld. CIT(A) upheld the action of the AO denying the accumulation of income to the assessee u/s 11(2) of the Act.

40. At the time of hearing, the Ld.Sr.Counsel for assessee furnished the copy of the order passed u/s 119(2)(b) of the Act by the CIT(Exemptions), Mumbai dated 16.03.2023, wherein, the Ld. CIT(Exemption) has since condoned the delay in filing of Form 10 by the assessee for AY 2015-16. The Ld.Sr.Counsel accordingly prayed that, since the delay in filing the Form No. 10 has now been condoned by the competent authority, the AO may be directed to allow the benefit of exemption in relation to the accumulation of income u/s 11(2) of the Act. The Ld. CIT DR appearing for the Revenue did not dispute the same. Considering the foregoing factual position, the AO is directed re-compute the total income of the assessee and allow the admissible exemption u/s 11(2) of the Act as claimed by the assessee in the return of income, since the delay in filing of Form 10 has since been condoned by the Ld. CIT(Exemptions). Ground Nos. 1 & 2 of the assessee's appeal therefore stands allowed.

41. Ground No. 3 raised by the assessee is as under:-

> "3. On the facts and under the circumstances of the case and in law, the Commissioner of Income Tax Appeals, National Faceless Appeal Centre, erred in not deciding/allowing the claim of the appellant that exemption under section 11(1)(a) is allowable on Gross Receipts without reducing expenditure amounting to Rs. 83,42,02,880/-."

42. This ground is noted to be against the AO's action of not allowing the 15% accumulation of income in terms of Section 11(1)(a) of the Act with reference to the gross receipts but restricting the same to the net sum, while computing the assessable income. On appeal, the

Ld. CIT(A) is noted to have disposed of this ground holding it to be consequential in nature.

43. Having heard both the parties, the limited issue to be answered is whether 15% accumulation u/s 11(1)(a) of the Act has to be calculated on gross receipt or net receipt after deduction of revenue expenditure. We find that this issue is no longer *res integra* in light of the decision of the Special Bench of this Tribunal in the case of **Bai SonabaiHirji Agency Trust Vs. ITO (93 ITD 70)**wherein it was held as under:-

> "9. Coming to the merits of the issue, we are of the view that the same is clearly covered by the decision of the Hon'ble Supreme Court in the case of CIT vs. Programme for Community Organization (supra). In the decision, their Lordships, after taking note of provisions of s. 11(1)(a), have held as under :
>
> > "Having regard to the plain language of the above provision, it is clear that a charitable or religious trust is entitled to accumulate twenty-five per cent of its income derived from property held under trust. For the present purposes, the donations the assessee received, in the sum of Rs. 2,57,376, would constitute its property and it is entitled to accumulate twenty-five per cent thereout. It is unclear on what basis the Revenue contended that it was entitled to accumulate only twenty five per cent of Rs. 87,010. For the aforesaid reasons, the civil appeal is dismissed."
>
> It is clear from the above that deduction of twenty-five per cent was held to be allowable not on total income as computed under the IT Act. Any amount or expenditure, which was application of income, is not to be considered for determining twenty five per cent to be accumulated. Their Lordships, as noted earlier, affirmed the decision of Kerala High Court in (1997) 141 CTR (Ker) 502 : (1997) 228 ITR 620 (Ker) (supra) wherein it is held as under :
>
> > "At the outset, the statutory language of s. 11(1)(a) of the IT Act, 1961, relates to the income derived by the trust from property. The trust is

> required to be wholly for charitable or religious purposes, and the income is expected to have relation to the extent to which such income is applied to such purposes in India. It is thereafter the statutory provision proceeds further that such income is not to be understood to be in excess of 25 per cent of the income from such properties. In other words, the very language of the statutory provision under consideration sets apart 25 per cent of the income from the source of property with reference to the extent to which such income is applied for such purposes, charitable or religious. In other words, for the purpose of s. 11(1)(a) of the Act, the income in terms of relevance would be the income of the trust from and out of which 25 per cent is set apart in accordance with the spirit of the statutory provision."

This means that, when it is established that trust is entitled to full benefit of exemption under s. 11(1), the said trust is to get the benefit of twenty-five per cent and this twenty- five per cent has to be understood as income of the trust under the relevant head of s. 11(1). In other words, income that is not to be included for the purpose of computing the total income would be the amount expended for purposes of trust in India. Their Lordships in the above case have emphasized on the clear and unambiguous language of s. 11(1)(a) and decided the matter on the basis of the same. It has been held that as per the statutory language of the above section the income which is to be taken for purpose of accumulation is the income derived by the trust from property. If both the decisions are carefully read, it becomes evident that any expenditure which is in the shape of application of income is not to be taken into account. Having found that trust is entitled to exemption under s. 11(1), we are to go to the stage of income before application thereof and take into account 25 per cent of such income. Their Lordships have pointed that the same has to be taken on "commercial" basis and not "total income" as computed under the IT Act. Their Lordships in the decided case rejected the contention of the Revenue that the sum of Rs 1,70,369 which was spent and applied by the assessee for charitable purposes was required to be excluded for purpose of taking amount to be accumulated.

Having regard to the clear pronouncement of their Lordships of the Supreme Court, it is difficult to accept that outgoings which are in the nature of application of income are to be excluded. The income available

to the assessee before it was applied is directed to be taken and the same in the present case is Rs. 3,42,174. Twenty five per cent of the above income is to be allowed as a deduction. Similar view has also been taken by the Hon'ble Madhya Pradesh High Court in ParsiZorastrianAnjuman Trust vs. CIT (supra). No reason whatsoever has been given by the Revenue authorities for deducting Rs. 2,17,126 in this case for purposes of s. 11(1)(a). The decision cited on behalf of the Revenue did not take into account the decision of the Supreme Court referred to above. The circular of CBDT has also been considered by the Hon'ble Kerala High Court in its decision referred to above. Accordingly, the question referred to is answered in the affirmative and in favour of the assessee."

44. It is further noted that identical issue came up before the coordinate Bench of this Tribunal at Bangalore in **ACIT (Exemption) Vs. Bhagwan Mahaveer Memorial Jain Educational & Cultural Trust**, ITA Nos. 1514 & 1515/Bang/2016 for AYs 2020-11 and 2011-12 and ITA No. 137/Bang/2017 for AY 2012-13 dated21.08.2019, wherein it was held as under:

"16. The third issue that arises for consideration in ITA No.1515/Bang/2016 for AY 2011-12 is as to whether 15% accumulation for application in future has to be calculated on gross receipts or net receipts after deduction of revenue expenditure. The Assessee claimed accumulation of income for application for charitable purpose at 15% of the gross receipts. The AO was of the view that accumulation will be allowed only to the extent of 15% of the income after revenue expenditure. In other words income to be set apart u/s.11(1)(a) of the Act has to be computed at 15% of the net income i.e., gross receipts minus revenue expenditure and not on the gross receipts as claimed by the Assessee. Since in the case of the Assessee, the gross receipts after revenue expenditure was nil, the AO denied the benefit of accumulation to the Assessee.

17. On appeal by the Assessee, the CIT(A) allowed the claim of the Assessee. Aggrieved by the order of the CIT(A), the Revenue has raised the aforesaid ground of appeal before the Tribunal.

18. The issue to be decided is therefore as to whether for the purpose of computing accumulation of income of 15% under Sec.11(1)((a) of the Act, one has to take the gross receipts or gross receipts after expenditure for chartiable purpose i.e., the net receipts. This is issue is no longer res integra and has been decided by the Special Bench Mumbai in the case of Bai SonabaiHirjiAgiary Trust Vs. ITO 93 ITD 0070 (SB). The facts in the aforesaid case were that the assessee was a public charitable trust enjoying exemption under s. 11 of the IT Act. As per the requirement of s. 11(1) of the IT Act, as it prevailed at that point of time, the assessee had to apply 75 per cent of its income for the objects and purposes of the trust and the assessee was permitted to accumulate or set apart up to 25 per cent of its income, which was subject to fulfilment of other conditions. While calculating the aforesaid 25 per cent, the important question which arose was as to whether for this purpose, the gross income earned by the assessee is relevant or the income as computed in accordance with the provisions of IT Act. In other words, whether outgoings from out of gross income which are in the nature of application of income, should be first deducted from the gross income and 25 per cent of only the remaining amount should be allowed to be accumulated or set apart. The Special Bench of the ITAT on the issue held as follows:

……

19. The aforesaid decision clearly supports the plea of the Assessee. Following the same, we hold that the accumulation u/s.11(1)(a) of the Act should be allowed as claimed by the Assessee. The relevant ground of appeal of the revenue is accordingly dismissed."

45. Respectfully following the above decisions (supra), we hold that the accumulation u/s. 11(1)(a) of the Act should be allowed in the manner as claimed by the assessee and the AO is directed to do so. Ground No. 3 of the assessee's appeal is accordingly allowed.

46. Ground Nos. 4 & 5 of the appeal of the assessee are as follows:-

> "4. On the facts and under the circumstances of the case and in law, the 8670814- Commissioner of Income Tax Appeals, National Faceless Appeal Centre, erred in confirming addition of Rs. 25,50,98,981/-u/s 11(1)(d) of I T Act, 1961 without giving opportunity to the appellant to accumulate the same under section 11(2) of the I. T. Act, 1961.
>
> 5. On the facts and under the circumstances of the case and in law, the A.O. ought to have allowed as deduction expenditure under the head Grant-in-aid Charity Rs.17,64,54,309/- Services to Sai Devotees Rs. 18,77,189/-, Expenses on Other Objects Rs. 19,37,850/- Expenditure Building Fund Rs. 12,15,87,500/- and Expenditure 35AC Fund Rs. 9,20,04,557/- when relevant information was available on record."

47. Ground No. 4 relates to the Ld. CIT(A)'s action of confirming the order of the AO denying the benefit of exemption u/s 11(1)(d) of the Act in relation to the interest earned on corpus funds. Ground No. 5 raised by the assessee, is noted to be *without prejudice* to Ground No. 4, wherein the assessee has claimed that the AO be directed to allow deduction for the expenses incurred out of the interest earned from such corpus funds.

48. The facts in brief are that, in the course of assessment, the AO observed that, the assessee had shown corpus donation which was exempt u/s 11(1)(d) of the Act. Upon perusal of details, the AO further noted that the interest of Rs.25,50,98,981/- was earned on corpus funds, which were invested as per provisions u/s 11(5) of the Act, and the same was also claimed by the assessee as exempt u/s 11(1)(d) of the Act. The AO required the assessee to explain as to why the exemption u/s 11(1)(d) on this interest should not be disallowed. In response, the assessee is noted to have relied on the decisions of **DIT**

vs Shri Ram Krishna SevaAashrama (18 taxmann.com 37) and **CIT(E) vs Mata Amrithanandamayi Math (85 taxmann.com 261)**. The AO noted that, in both the cases, the donor had instructed that the interest earned shall be earmarked for specific purpose was accordingly added to the corpus of the Trust and thus treated as capital in nature. The AO however observed that, in the present case, the assessee was unable to produce any such evidence or instructions from the donor and thus the decisions relied upon by the assessee was held to be distinguishable. Hence, the AO added the interest on corpus donations as normal donation income of the assessee. On appeal, the Ld. CIT(A) upheld the action of the AO as the assessee was unable to adduce evidence that the interest earned from corpus had also been earmarked by the donor for a specific purpose in terms of Section 11(1)(d) of the Act.

49. Before us, the Ld.Sr.Counsel reiterated the submissions made before the Ld. CIT(A). Per contra, the Ld. DR supported the order of the lower authorities.

50. Having perused the material available on record, we find merit in the findings of the lower authorities that the interest earned on corpus funds did not constitute voluntary donation received under the instructions of the donor to be earmarked for specific purpose *viz.*, towards the corpus of the trust. Instead, the proximate source of interest was that, it had been earned from fixed deposits made by the assessee. We are therefore in agreement with the Ld.CIT(A) that it did not qualify for exemption u/s 11(1)(d) of the Act. As rightly noted by

Ld. CIT(A), the assessee's reliance upon the decisions rendered in the cases of DIT vs Shri Ram Krishna SevaAashrama& CIT(E) vs Mata Amrithanandamayi Math (supra) was misplaced. In these cases, the donor had made a specific direction that the interest earned on corpus donation shall also be towards corpus and therefore on such unique facts the benefit of exemption u/s 11(1)(d) of the Act was allowed to that assessee. The facts involved in the present case are found to be distinguishable. Before us also, the assessee has not been able to adduce any evidence or letter or directions from the corpus donors that the interest derived from investment of the corpus funds would also be towards the corpus of the assessee.We thus hold that the Ld.CIT(A) had rightly denied the exemption claimed by the assessee u/s 11(1)(d) of the Act in relation to the interest income of Rs.25,50,98,980/- derived from investment of corpus funds. The findings of the Ld. CIT(A) upholding the action of the AO is found to be relevant and is therefore extracted below:-

> "7.4 A careful reading of section 12 would reveal that the voluntary contributions ('Donations" under common parlance) are divided into two categories under the Act. viz..
>
> (a) Voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.
>
> (b) Voluntary contributions made without any such direction.
>
> The first category of voluntary contributions, i.e., those referred in (a) above are called 'corpus donations. Voluntary contributions received with a specific direction as stated above, ie, corpus donations enjoy exemption under section 11(1)(d); However, the voluntary contributions received without any such direction shall be deemed to be income derived from

property held under the trust and accordingly, the conditions prescribed under section 11(1)(a) regarding its accumulation and application of income shall apply to it.

7.5 The classification of the 'voluntary contributions' depends upon the specific direction. The group of words 'voluntary contributions made with a specific direction' implies that the direction should come from the person who is making the voluntary contribution, i.e. the concerned 'Donor'. If the concerned donor gives a specific direction that his donation shall form part of corpus of the trust, then such voluntary contributions are classified as 'corpus donations' exempt under section 11(1)(d). Since the Act refers to the specific direction of the 'donor, the option, whether a donation would be for the corpus or not, lies with the donor. Thus, it is clear that the classification of 'voluntary contributions' does not depend upon the sweet will and pleasure of the donee trust/institution. Hence, neither the assessee nor the Assessing Officer is authorized to change the character of voluntary contribution from 'corpus' to 'ordinary contribution or vice versa. It is only the prerogative and privilege of the concerned donor to specify the purpose for which the voluntary contribution are given.

7.6 From the above discussion is clear that in order to be eligible for exemption u/s 11(1)(d), the amount should have two characteristics-

(a) The amount should be received by the Assessee Trust as voluntary contribution.

(b) There has to be specific direction of the donor that this donation shall be towards corpus of the trust.

In absence of any of the two attributes the amount shall not be eligible for exemption u/s 11(1)(d). In the present case the proximate source of the amount is interest earned on fixed deposit and not any voluntary donation. And there has not been any instruction whatsoever, by the original donor of the corpus funds that this amount has to be used for corpus of the assessee trust only. Therefore, in absence of any of the characteristics mandatory for exemption u/s 11(1)(d) the amount of interest earned on the corpus fund shall not be eligible for the above mentioned exemption.

7.7 It is considered essential here to point out, as to why, the cases relied upon by the assessee are distinguishable and as a corollary does not entitle Assessee Trust to avail the exemption provided u/s 11(1)(d).

I. In the case of Mata Amrithananadamayi Math (supra). The fact of the case was that the donors had made specific direction that the interest earned on the corpus donation shall also be treated as corpus donation. The court have made the following observation before making the interest Income eligible for exemption u/s 11(1)(d).

> 5. *Having considered the submissions made, we are of the view that the question that is framed has to be answered in the light of Section 11(1)(d) of the Act. A reading of Section 11 shows that subject to the provisions of Sections 62 and 63, the incomes enumerated therein shall not be included in the total income of the previous year of the person in receipt of the income. The person in receipt of the income, insofar as these cases are concerned, is the respondent assessee. One of the income that is enumerated in clause (d) of sub-Section (1) of the Section is the income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution. The fact that the donors had instructed that the interest earned shall be added to the corpus of the trust is undisputed. If that be so, the interest earned on the contributions already made by the donors would also partake the character of income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust. If that be so, conclusion is irresistible that the Tribunal has rightly held that the interest earned would qualify for exemption under Section 11(1)(d) of the Income Tax Act."*

It is apparent that in this case, based upon the unique facts, the Hon'ble High Court of Kerala, has deemed the income from the interest on the corpus funds to be voluntary donation, and the specific instruction to treat this income as corpus donation in any case was in existence. Therefore, the twin requirement of eligibility of exemption u/s 11(1)(d) was considered to

have been met and as a consequence exemption was allowed to the assessee.

(ii) In case of Ramakrishna Sewa Ashram (supra) The decision of the Karnataka High Court distinguishes the case from that of the assessee trust.

> 17. *Insofar as the argument that the persons who made these contributions does not specifically direct that they shall form part of the corpus of the trust is concerned, it has no substance. In view of the language employed in Clause (d) of sub-section (1) of Section 11, the requirement is that the voluntary contributions have to bemade with a specific direction. The law does not require that the said direction should be in writing. In the absence of the direction in writing, the only way that one can find out whether there was a specific direction and to find out how the money so paid it is utilized. If the money so received by way of voluntary contributions, it is meant to use for the Leprosy patients and is credited to a particular account and from the income from the said capital, the said activity is carried on the requirement of Clause (b) of sub-section (1) of Section 11 is complied with. In the instant case, on record, we see that those people who have paid amounts by way of donation that includes the cheque with a letter with a specific direction, which is in compliance with Section (1) (d) of the Act. But, in case if the contributions are made without cheques i.e.. by cash, and oral direction has been issued to the trust to utilize the said fund for the purpose of treating the leprosy patients and if such amounts arc credited to the account meant for it, even then the requirement of clause (d) of sub-section (1) of Section 11 is complied with. Therefore, we do not see any substance in the said contention"*

From the facts of the case above we can appreciate that the amount in question here in this case was the voluntary donation, Secondly the courts have observed existence of written direction on the donation received by cheque and existence of oral instruction in case of donations received in cash. What has also been observed by the court that the instruction received orally has been acted upon by the assessee. In the present lis, we are not

concerning ourselves with any voluntary donation and the assessee has not lead us to any evidence to suggest existence of any instruction in whatsoever manner or form by the donors to lead to the conclusion that this amount is to be treated as corpus donation.

7.8 Therefore none of the case laws relied upon by the assessee lead the undersigned to conclude that the amount Rs. 25,50,98,980 earned as interest from the property of the trust can be treated either as voluntary donation and much less a voluntary donation with a specific instruction. Accordingly, it is decided that the said amount shall not be eligible for exemption u/s 11(1)(d). As a result the ground of appeal No. 3 is dismissed."

51. Before us the assessee was unable to dislodge the above findings of Ld. CIT(A), and therefore we see no reason to interfere with the same. Ground No. 4 of the appeal is therefore dismissed.

52. Having held so above, we now proceed to examine the alternate contention raised by the assessee in Ground No. 5. The assessee has alternatively claimed deduction of the expenses incurred out of such interest income by way of application of income. Inviting our attention to Page 110 of the Compilation – II, the Ld.Sr.Counsel submitted that, out of the gross interest income of Rs.25.50 crores, the assessee had incurred several expenses towards the objects of the Trust as well. The Ld.Sr.Counsel thus contended that, if the interest income from corpus funds is held to be taxable, then the corresponding expenses towards the objects of the Trust incurred out of the same ought to be allowed as and by way of application of income. The assessee has also placed before us the details of the expenses in the paper-book compilation along with a prayer for admission of the same. The Ld. DR for the Revenue argued that this alternate claim was never raised before the

Ld.CIT(A)/AO and therefore should not be entertained at this stage. He alternatively prayed that the same be set aside back to the file of the AO to examine it *de novo*.

53. We have heard both the parties. It is noted that the assessee Trust had received corpus contributions towards various specific Funds, which in turn were invested in modes specified u/s 11(5) of the Act. It is noted from the Schedule –A of the financials that, out of the corpus funds (including interest), the assessee has also spent amounts which was in excess of the interest income in question. Although this fact was discernible from the face of the accounts, we find that the lower authorities overlooked the same while seeking to tax the gross interest income from corpus funds. At the same time however, it is noted that even the assessee failed to bring the details of the amounts spent out of these funds to the attention of the lower authorities. According to us, the amount spent out of such interest income from corpus funds which are towards the objects of the Trust has to be allowed by way of application of income, while computing the assessable income of the assessee Trust. In the fitness of the matters therefore, we set aside this issue back to the file of the AO with the direction to examine the details of the amount spent out of the interest from corpus funds and allow the deduction in relation thereto as discussed (supra) and in accordance to law. Ground No. 5 is therefore allowed for statistical purposes.

54. Overall therefore, the appeal of the assessee in ITA No. 3010/Mum/2022 for AY 2015-16 stands partly allowed and the appeal of the Revenue in ITA No. 3049/Mum/2022 stands dismissed.

55. We now take up the appeal of the Revenue in ITA No.3210/Mum/2022 for [AY 2017-18] & ITA No.3209/Mum/2022 for [AY 2018-19]:

56. All the grounds raised by the Revenue for AY 2017-18 and AY. 2018-19 being similar/identical as that of AY. 2015-16, the decision of ours for grounds of appeal for AY. 2015-16 would apply *mutatis mutandis* for that of AY 2017-18 & AY 2018-19. Therefore, we confirm the action of the Ld.CIT(A) and accordingly, all the grounds taken by the Revenue stands dismissed.

57. In the result, appeal of assessee is partly allowed and appeals of the revenue are dismissed.

Order pronounced in the open court on this 25/10/2023.

Sd/-	**Sd/-**
(OM PRAKASH KANT)	**(ABY T. VARKEY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 25/10/2023.
Vijay Pal Singh, (Sr. PS)

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
5. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

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आयकरअपीलीयअधिकरण, मुंबई / **ITAT, Mumbai**