

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No. 907/PUN/2017

निर्धारण वर्ष / Assessment Year : 2010-11

Oswal Bandhu Samaj, Shah Khandel Jain & Associates, Chartered Accountants, Level 3, Business Bay, Plot No.84, Wellesley Road, Near RTO, Pune 411 001 PAN : AAATO0138K	Vs.	ITO (Exemptions)-1, Pune
Appellant		Respondent

Assessee by
Revenue by

Shri Neelesh Khandelwal
Shri Piyush Kumar Singh Yadav

Date of hearing

03-03-2022

Date of pronouncement

07-03-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee arises out of the order dated 17-03-2017 passed by the CIT(A)-10, Pune in relation to the assessment year 2010-11.

2. The only issue raised in the appeal is against the denial of exemption u/s.11 of the Income-tax Act, 1961 (hereinafter also called 'the Act').
3. Succinctly, the facts of the case are that the assessee is registered as a Public Charitable Trust under the BPT Act, 1950

vide order dated 16-09-1970. The return of income was filed declaring Nil income. The Assessing Officer (AO) observed that there was excess of Income over Expenditure to the tune of Rs.1,52,58,353/- (including income from mutual funds and dividends) that was claimed as exempt by the assessee u/s.11 of the Act. The AO rejected the assessee's claim of exemption on the *raison d'etre* that it failed to obtain registration u/s.12A of the Act. Without prejudice to that, the AO also observed that even if the assessee's contention of registration was accepted, it did not fulfill the conditions laid down in section 11 of the Act. He jotted down the Objects of the assessee-trust, running into 15 in number, from its Trust-deed and observed that certain objects were of the nature of 'advancement of any other object of general public utility' as per section 2(15) of the Act. On a perusal of the Income and expenditure account, the AO observed that the assessee had shown income of Rs.33.26 lakh from Cultural hall rent; Other income of Rs.88.34 lakh and Interest from fixed deposits in banks and others at Rs.1.09 crore. He noticed that the assessee had two halls which were let out by it from time to time on which rental income was earned totaling to Rs.1.09 crore. He noted that the assessee had shown certain receipts of Rs.93.95 lakh towards

Amenity charges, DG set receipts, Electricity charges received etc. Invoking the mandate of the first proviso to section 2(15), the AO held that the assessee-trust was carrying out objects of general public utility and in view of the fact that it generated income from letting out of building and cultural hall etc., which was in the nature of business activity, was hit by the said proviso and hence ceased to have any 'Charitable purpose'. He, therefore, declined the exemption of Rs.1,46,97,602/- u/s.11 of the Act. The Id. CIT(A) accepted the contention of the assessee having been registered u/s 12AA of the Act w.e.f. A.Y. 1978-79. He, however, confirmed the order of the AO on the denial of exemption on merits as discussed by the AO. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. We have heard the rival submissions and perused the relevant material on record. The aspect of non-registration of the assessee-trust as noted by the AO got resolved in favour of the assessee at the hands of the Id. CIT(A), which is not under challenge before the Tribunal. The denial of exemption by the AO on merits is based on the fact that the assessee was mainly pursuing objects of general public utility by getting engaged in letting out its building and halls and was hence hit by the proviso

to section 2(15) of the Act. In order to appreciate the facts in correct perspective, it would be useful to refer to the relevant part of the provision of section 2(15) of the Act at the material time, which runs as under: -

"charitable purpose" includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity”

5. On circumspection of the above definition, it transpires that the term `charitable purpose` covers, to the extent it is relevant for our purpose, (a) relief to the poor, (b) education, (c) medical relief and (d) advancement of any other object of general public utility. The proviso, attaching a condition of not carrying on any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, applies only to advancement of any other object of general public utility, that is (d) above. In other words, the proviso has no application to (a) to (c) above. To put it simply, if a charitable trust is providing

Relief to the poor or Education or providing Medical relief and for funding such activities, it is carrying on activity in the nature of trade, commerce or business etc., for which a cess or fees etc. is charged, the `charitable purpose' will remain intact and the case will not be hit by the proviso and *ex consequenti*, the exemption will continue. It is only when the (d) category of section 2(15) as discussed above about advancement of any other object of general public utility is pursued that the disability enshrined in the proviso gets magnetized.

6. Now, we turn to examine the objects of the assessee-trust, as have been extracted in para 9 of the assessment order, reading as under:

- “1. to work for the social, educational, physical, cultural & industrial progress of society.
2. to improve interaction & unity amongst various sections of society.
3. to set up organize & manage cultural centres, sanatoriums, dharmashalas, hostels, halls, industrial units, libraries reading rooms, health centres, business centres and other centres of social utility for social, cultural and overall use.
4. to buy, take on lease, rent, accept as gift & through other modes land, property or any movable or immovable assets.
5. to accumulate & earn income by way of donations, gifts, grants, fees, loans & other means.
6. to build & buy halls on rent, accept halls etc as gift or donation for the assessee.

7. to let out on rent or lease its movable or immovable property, to sell off property that is not required.
8. to aid people & institutions that are useful to the assessee.
9. to mortgage the movable & immovable property for the purpose of taking loan.
10. to donate, gift, give loans to needy children for educational purposes.
11. to help orphans, handicapped, poor ailing widows, old people etc.
12. to organize financial help, loans etc. for people who wish to set up new industries, business etc.
13. to give financial aid to organizations having similar objects.
14. to buy furniture, vessels & other movable property as per need & to sell them when not required.
15. to do all such things as would aid the achievement of the assesses objects.”

7. On going through the above objects, it can be seen that the object at Sl.No.10 pertains to Education, falling in the category (b) as discussed above. The object at Sl.No.11 is of category (a) discussed above, namely, Relief to the poor. Objects at Sl.Nos.1, 2,3,4,8 and 13 are in the nature of category (d), being, advancement of any other object of general public utility. The other so-called objects in the trust-deed, such as, given at Sl.No.4, namely, to buy, take on lease, rent, accept as gift & through other modes land, property or any movable or immovable assets; or at Sl.No.5 of earning income by way of donations, gifts, grants, fees, loans and other means; or at Sl.No.6 to build & buy

halls on rent, accept halls etc.; or at Sl.No.7 of letting out on rent or lease etc., are not truly in the nature of objects of the trust but activities for financing the objects of the category (a) to (d). Which of the objects of a trust are actually pursued during the year can be deduced by examining the expenses incurred and having an eye on the Expenditure side of the Income & Expenditure of the trust.

8. The Id. AR contended that the assessee was engaged in providing Medical help, Relief to the poor and Education only and no other object was pursued. He attempted to fortify his view by showing that major items of expenses in the assessee's Income & Expenditure account were for Medical help of Rs.50.54 lakh; Education help of Rs.62.25 lakh; Relief to the poor covered under the head 'Education and Charity expenses' of Rs.3.46 lakh. In order to examine the true nature of such activities recorded as such by the assessee, the Id. AR was directed to place on record necessary evidence to show as to how the assessee was extending Medical help, Relief to the poor and Education. The relevant material has been placed on record.

9. First of all, we take up the expenses incurred on Education help. The assessee spent Rs.62.25 lakh on education help to the

deserving sections of the society. The break-up of such an amount has been given at pages 26 to 44 of the paper book. All the payments have been made to the eligible students for pursuing post-school education. The payments have been made through banking channel only directly in the accounts of the students. To demonstrate the way in which such an activity was taken up, the Id. AR explained the *modus operandi* with the help of one of the cases for the year under consideration. He invited our attention towards the payment of Rs.10,000/- made to Ms. Darshna Rasik Chordia on 31-07-2009 through HDFC S.B. Account vide Cheque No.336111 against the entry appearing at page 27 of the Paper book. He took us through page 264 of the paper book, which is a copy of the application filed by Ms. Darshna Rasik Chordia addressed to the assessee requesting for the grant of scholarship, containing all the relevant details of her performance in previous classes and the need of scholarship for MCS (computer science) course. There is further elaboration of annual income of her father at Rs.60,000/- and request for scholarship of Rs.20,000/- in such application. This application is duly signed by Principal of the Educational institution where she wanted to pursue her MCS (computer science). It is accompanied by her mark-sheet in the

earlier class of BCS. This application is counter-signed by father of Ms. Darshna Rasik Chordia, again stating his annual family income of Rs.60,000/- along with the nature of his service/profession. On receipt of such application and after its examination by the assessee, an interview was held vide interview-call dated 25-07-2009, whose copy has been given at page 263 of the paper book, notifying the date of interview to candidate on 31-07-2009 at its premises. Her request was for scholarship of Rs.20,000 against fees paid by her amounting to Rs.30,072/- as per page 269 of the paper book. After considering the necessary documents and finding her to be an eligible candidate, the assessee-trust sanctioned scholarship of Rs.10,000/- and deposited the same in her bank account by means of cheque. Similar is the position regarding all other cases of extending education help. In all these cases, the deserving students applied for scholarship; their cases were examined by the assessee; such applications were duly signed by the Principal of the concerned educational institution and parent of the student; all of them were called for interview and after finding the case to be genuine, a scholarship in the shape of *lump sum* amount of Rs.10,000/- or

Rs.15,000/-, Rs.5,000/- was given by means of cheque in favour of the concerned student.

10. Now we turn to the head of 'Medical help' amounting to Rs.50.54 lakh. The medical help was extended to the deserving patients on the basis of either recommendation by concerned hospital or on the application given by patient or his family members, showing the disease from which the patient was suffering; the estimated amount of expenditure on medical treatment; family income etc. Item-wise details of such expenses are given at page 45 onwards of the paper book, giving the date on which the amount was paid, cheque number and the amount of medical help. After evaluating the necessary details, the assessee-trust extended help by means of a lump sum payment of Rs.3,000/- or Rs.5,000/- or Rs.7,000/- or Rs.10,000/- or Rs.15,000/- or Rs.19,000/- or the maximum of Rs.20,000/-. These amounts have been directly deposited in the bank account of the concerned hospital through banking channel.

11. The last item is 'Relief to the poor'. Ledger account of 'Charity expenses' has been given at page 242 onwards of the paper book. To explain, one of the items is the expenditure of Rs.35,475/- incurred on purchase of certain items, like, Sugar,

Gud, Atta, Dal etc., in different quantities amounting to Rs.35,475/- by means of invoice from one M/s. Vinod Trading Company. The items so purchased were distributed to the persons in deserving sections of the society, whose names and signatures have also been obtained that have been placed at page 246 onwards of the paper book. Payment of Rs.35,475/- was made to M/s. Vinod Trading Company by means of Cheque No.493938/- dt. 15-10-2009. Similar is the position regarding other amounts spent by the assessee on charity, which is in the nature of relief to the poor.

12. On an overview of the copious details furnished by the assessee, it is more than clear that the assessee was genuinely pursuing activities in the nature of Medical help to the patients, Education expenses of the deserving students and Relief to the poor.

13. In order to ascertain as to which activities of the nature as given under (d) above, hit by the proviso to section 2(15), were pursued by the assessee, we proceeded to examine the Income and Expenditure Account of the assessee. Total of the Expenditure side for the year ending 31-03-2010 on page 2 of the Paper book in Income and Expenditure Account is Rs.1.92 crore.

Expenditure on Medical help of Rs.50.54 lakh; Education help of Rs.62.25 lakh; and Relief to the poor covered under the head 'Education and Charity expenses of Rs.3.46 lakh, totals up to Rs.1.16 crore. There is no dispute that the assessee let out its Cultural halls and Building from time to time for earning revenue so as to fund its charitable objects. Income from such revenue-generating activities has been recognized on the Income side of the Income and Expenditure account. In addition to Cultural hall receipts and Building rent, the assessee expressly recovered Amenity charges of Rs.20.93 lakh; Furniture and municipal taxes of Rs.56.87 lakh; Municipal receipts of Rs.11,164/-; and DG set receipts of Rs.6.74 lakh. These recoveries were made from the persons taking Cultural Hall and Building on rent basis. As against these specific recoveries, the assessee paid Municipal taxes of Rs.23.26 lakh; Repairs and maintenance of Rs.4.77 lakh; Security staff expenses of Rs.8.18 lakh; Washing and cleaning charges of Rs.4.98 lakh; Electricity charges of Rs.5.26 lakh; DG set expenses of Rs.6.37 lakh etc. Such expenses are mostly in the nature of the amounts spent by the assessee against which specific recoveries were obtained from the users of the Building and Cultural halls. Thus, these costs are identifiable with the receipts

and included in the income side of Income and Expenditure Account. Total of such costs, which have no connection with the activities for advancement of any other object of general public utility, comes to Rs.52.82 lakh. If this amount is added to expenditure incurred on Medical help; Education; and Food/relief to the poor, the total comes to Rs.169.03 lakh, as against total expenses booked on the Expenditure side at Rs.192 lakh. Remaining expenses are of usual running of the trust, such as, Depreciation amounting to Rs.7.78 lakh; Salaries of Rs.4.19 lakh; and other Administrative expenses, such as, Printing and stationery; Audit fee; Professional charges, Postage etc., leaving hardly any amount for pursuing 'advancement of any other object of general public utility'.

14. From the above discussion, it is discernible that albeit the assessee has the objects of 'advancement of any other object of general public utility' in its trust-deed, but none of such objects was actually pursued during the year under consideration. Whereas the objects and activities of the trust are germane at the time of grant of registration u/s 12AA of the Act, what becomes relevant for consideration at the time of assessment is to see which of the objects, having charitable purpose, were actually

carried out so as to decide the question of exemption. The above discussion makes it graphically clear that the assessee actually pursued only the objects as classified in categories (a) to (c). viz., Medical Relief to the poor patients, Education to the deserving students and Relief to the needy sections of the society and hence shied away from taking up any of the objects in category (d), viz., advancement of any other object of general public utility. Once this is the position, it becomes explicitly clear that the proviso to section 2(15), which attracts only when objects of the category (d) above are pursued, did not trigger in the instant case. The sequitur is that the assessee is entitled to exemption. It is pertinent to mention that the AO did not dispute the fulfillment of any other requirements for claiming exemption u/s 11 of the Act. We, therefore, hold that the assessee is entitled to exemption. The impugned order is, therefore, set-aside.

15. In the result, the appeal is allowed.

Order pronounced in the Open Court on 07th March, 2022.

Sd/-
(S.S.VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 07th March, 2022

Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-10, Pune
4. The CIT (Exemptions), Pune
विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "B" /
5. DR 'B', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,**// True Copy //**

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	03-03-2022	Sr.PS
2.	Draft placed before author	07-03-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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