IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH, 'A' PUNE

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

आयकर अपील सं. / ITA No.2640/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Maharaja Shivchatrapati Pratishthan, Vishrambaug Wada, Kumthekar Road, Sadashiv Peth, Pune 411 030 PAN : AAATM5937E	Vs.	ITO (Exemptions), Ward-2, Pune
Appellant		Respondent

Assessee by	Shri Sunil U. Pathak
Revenue by	Shri Ramnath P. Murkunde
Date of hearing	18-01-2023
Date of pronouncement	19-01-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A), Pune-10 on 11-09-2017 in relation to the assessment year 2013-14.

2. It is a recalled matter inasmuch as the earlier *ex parte* order passed by the Tribunal on 04-05-2022 was subsequently recalled vide its later order dated 06-01-2023 in M.A.No.225/PUN/2022.

3. The only issue raised in this appeal is against the denial of exemption u/s.11 of the Income-tax Act, 1961 (hereinafter also called `the Act').

4. Succinctly, the facts of the case, are that the assessee is a Trust claimed to be engaged in highlighting life of Chatrapati Shree Shivaji Maharaj. It was registered under section 12A of the Act on 20-06-1974. A return was filed for the year declaring total income at Nil. During the course of assessment proceedings, the Assessing Officer (AO) observed that the assessee was mainly engaged in organizing drama `Janta Raja' on commercial basis under the head "*Historical Education*" and received an income of Rs.1,96,70,577/- on this count. Expenditure of Rs.1,16,38,841/- was incurred for earning such income. On being called upon to explain as to how it was entitled to exemption u/s 11 of the Act, the assessee submitted that the activity of organizing drama Janta Raja was an "*educational activity*". On a perusal of the agreements made by the assesee-trust with different institutes/companies, the AO noted that the drama was organized on commercial basis by charging fee/consideration. These institutes/companies were, in turn, collecting huge amounts from viewers by way of sale of tickets, entrance fees, passes, VIP passes, VVIP passes etc. In the absence of the assessee imparting education by any other mode, the AO held that the judgment of the Hon'ble Supreme Court in *Sole Trustee Loka Shikshana Trust*

Vs. CIT (1975) 101 ITR 234 (SC) was applicable and hence, the assessee was not covered within the meaning of `education' u/s.2(15) of the Act. Thereafter, it was held that the objects of the assessee fell under the last limb of section 2(15), namely, "*advancement of any other object of general public utility*". Since the activity was carried on a totally commercial basis, the AO denied the exemption for the profit element in this transaction. The ld. CIT(A) echoed the assessment order on this point, against which the assessee has come up in appeal before the Tribunal.

5. We have heard the rival submissions and gone through the relevant material on record. The assessee claims itself to be imparting "*education*" as per section 2(15) and hence eligible for exemption u/s 11 of the Act. Before analyzing the connotation and applicability of the expression `education', it would be worthwhile to note the actual activity carried on by the assessee. It can be seen from para 7 of the assessment order, which factual position has not been controverted by the assessee either before the ld. CIT(A) or the Tribunal, that it was organizing drama `Janta Raja' for different institutes/companies for fee. Such institutes/companies were, in turn, selling tickets and passes etc. on commercial basis. This shows that the assessee was

organizing the drama for the payer institutes/companies, who were then exploiting it commercially by selling tickets and earning revenue at their own end. The assessee, as such, is not directly organizing the drama for any education, but for earning profit. This gets fortified by the fact that as against the receipts of Rs.1.96 crore, the assessee incurred costs only to the tune of Rs.1.16 crore on this activity.

6. The term "*education*" has not been defined in the Act. It has been interpreted in the context of section 2(15) by the Hon'ble Supreme Court in *Sole Trustee Loka Shikshana Trust (supra)* by holding that: `The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. …. But that is not the sense in which the word "education" is used in cl. (15) of s. 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling.' It clearly emerges

from the factual narration made above that the assessee is not into developing any knowledge of students by normal schooling. In view of the above interpretation of the term, it is ostensible that the activity carried on by the assessee does not fall in the realm of "*education*" as used in section 2(5) of the Act.

7. The ld. AR submitted that the assessee's case also falls within the last clause of "*charitable purpose*" as used in section 2(15), namely, "*the advancement of any other object of general public activity*". He submitted that albeit the authorities below covered the assessee's case within the ambit of this expression, but still failed to grant benefit of the exemption. He focussed on the nature of activity carried on by the assessee with a view to persuade the bench that it was for the "*the advancement of any other object of general public activity*", eligible for the exemption.

8. Section 11 of the Act grants exemption in respect of income from property held for *charitable* or religious purposes. Section 2(15) defines "*charitable purpose*". This section, *inter alia,* talks of "*the advancement of any other object of general public activity*". A proviso has been attached to this provision, which restricts the scope of the expression as covered within the ambit

of section 2(15) of the Act. The impact of the proviso is that the advancement of any other object of general public activity shall not be considered as a "*charitable purpose*", if it involves carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to the trade, commerce or business for a cess or fee or any other consideration. This proviso has an exception which says that such an activity will continue to be charitable if the requisite conditions are satisfied. The first condition is that such an activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and the, second, is that the aggregate receipts from such activity do not exceed 20% of the total receipts. Both the conditions have to be cumulatively satisfied. We are not delving into the scope of the first condition for the time being with a view to ascertain if the activity done by the assessee is for the advancement of any other object of general public activity? Howbeit, it is pertinent to note that the last limb of section 2(15), as is the case under consideration, recently came up for consideration before the Constitution Bench of the Hon'ble Supreme Court in *ACIT(E) Vs. Ahmedabad Urban Development Authority (2022) 115 CCH 0253*

ISCC. The Hon'ble Apex court interpreted the last branch of section 2(15) under various categories of assessees, including the authorities established by statute, non-statutory bodies and private trusts. Crux of the interpretation of the relevant part of section 2(15) by the Hon'ble Apex Court is to, first, examine if the receipts of the assessee from pursuing such object of general public utility are on cost-to-cost basis or having a minimal profit on one hand or having significant mark-up on costs on the other. Whereas the latter is a business activity but the former is non-business. The object of general public utility will be considered as pursued by the concerned authority/trust for charitable purpose u/s 2(15) of the Act, if the receipts from the above referred business activity are not more than 20% of the total receipts from business and non–business activities. Per contra, if receipts from the business activity are more than 20% of the total receipts, the character of "*charitable purpose*", as given in section 2(15), will be lost. The ld. AR relied on certain decisions to buttress the claim for exemption. In our view, such judgments interpreting the relevant part of section 2(15) need to be aligned with the interpretation as given by the Hon'ble Summit Court. Since such judgments are anterior in time and running contrary to the view

point of the highest court of the land in the above referred case, we desist from separately discussing each one of them just by holding that they do not survive in the current panorama.

9. Adverting to the facts of the extant case, it is seen that the assessee performed the drama for various institutes/companies earning revenue of Rs.1.96 crore. The costs incurred for performing such activity are only Rs.1.16 crore. This transpires that the profit element in the performance of the drama is more than 40% of the gross receipts. Such profit rate patently falls in the category of `significant mark-up cases' and hence business activity. No further break-up of the revenue into cost-to-cost basis or nominal mark-up *por una parte* and significant mark-up *por otra parte*, has been brought to our notice. This deciphers that the activity of the drama was done in a uniform way on significant margin of 40%. Considering the fact that the assessee earned huge margin on performance of the activity, which is in the nature of business, it ceases to fall within the domain of "*charitable purpose*", as the business receipts exceed 20% of the total receipts. We thus hold that the assessee does not satisfy the condition of "*advancement of any other object of general public*

utility" so as to be covered u/s.2(15) and, *ex consequenti*, becoming eligible for the benefit of exemption u/s.11 of the Act.

10. As a last weapon in arsenal, the ld. AR urged that a review petition has been filed in *Ahmedabad Urban Development Authority (SC)(supra),* which is still pending and hence the Bench should not get influenced with its *ratio* and decide the matter as per the other existing law *de hors* the apex judgment. In our opinion, the contention is devoid of merit because pendency of a review petition does not dilute or alter in any manner the binding force of the judgment in terms of Article 141 of the Constitution of India. We, therefore, approve the ultimate conclusion drawn by the authorities in rejecting the claim of the exemption to this extent.

11. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 19th January, 2023.

Sd/-	Sd/-
(S.S. VISWANETHRA RAVI)	**(R.S.SYAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 19th January, 2023
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The CIT(A), Pune-10
4. The CIT (Exemptions), Pune
5. DR, ITAT, 'A' Bench, 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	18-01-2023	Sr.PS
2.	Draft placed before author	19-01-2023	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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