

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “B”, MUMBAI
BEFORE SHRI. PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND**

SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA NO. 3076/MUM/2024 (A.Y: 2011-12)

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ITA NO. 3077/MUM/2024 (A.Y: 2012-13)

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ITA NO. 3088/MUM/2024 (A.Y: 2018-19)

Deputy Commissioner of Income Tax Exemptions 2(1), Mumbai 603, 6 th Floor, MTNL Telephone Exchange Building, Dr. GD Deshmukh Marg, Peddar Road, Cumbala Hill, Mumbai – 400026.	Vs. Nehru Centre 13 th Floor, Discovery of India Building, DR Annie Besant Road, Worli, Mumbai – 400018.
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(Appellant)

(Respondent)

Assessee Represented by : Shri. Dilip J. Thakkar

**Department Represented by : Shri. Ashok Kumar
Ambastha – Sr. A.R.**

Date of conclusion of : 01.08.2024

Hearing

Date of Pronouncement : 23.10.2024



ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. By this order we propose to decide three appeals between the same parties for A.Y. 2011-12, 2012-13 and 2018-19. These appeals file taken up together for disposal as the grounds of appeal are same and similar for all the relevant years and for the sake of convenience and to avoid multiplicity of decisions being disposed off together.
2. The case pertaining to A.Y. 2011-12 is taken as lead case.
3. The facts in brief are that the assessee, Nehru Centre is a charitable trust registered under section 12A of the Act. The assessee filed its return of income on 11.11.2011 alongwith the income expenditure account, Balance Sheet and Audit Report in form no. 10B declaring total income at Rs. Nil. The case was selected for scrutiny. Notice u/s. 143(2) of the Act was issued on 22.09.2012 followed by notice u/s. 142(1) dated 16.08.2013. In response, the assessee filed details. On consideration of the submissions, the assessee was of the



opinion that the assessee was hit by the provision to Section 2(15) of the Act because the assessee is systematically exploiting its property in commercial way by rendering its services in relation to business of parties to whom it is allowing its space to be utilized commercially like exhibitions of commercial entities, professional artists, corporate meetings, functions etc. It was further held by the Ld. AO that the assessee has been using its space for other parties for various purposes which was not related to the objects of the trust and therefore not incidental to the attainment of the objects of the trust. Further, the assessee has not maintained separate books of accounts and separate balance sheet for these income receipts as required under proviso Section 11(4)A of the Act. Therefore, the benefit of Section 11 and 12 of the Act was declined and total addition of Rs. 4,05,96,202/- was made and penalty proceedings were also initiated u/s. 271(1)c of the Act. The assessee filed appeal before the Ld. CIT(A) who allowed the appeal directing the Ld. AO to allow the benefit of the Section 11 for



the relevant assessment years. The Ld. CIT(A) has relied the ITAT order for the A.Y. 2010-11 in the case of the assessee itself i.e., *ITA No. 7461/Mum/2018 for A.Y. 2010-11, B Bench, Mumbai, DCIT(E)-2(1) Vs. Nehru Centre, order dated 04.02.2022* and has reproduced the relevant portion in para no. 3.1 of the impugned order.

4. The revenue being not satisfied with the order of the Ld. CIT(A) and has filed the appeal for the assessment years mentioned above and has raised following grounds:

1. *“Whether on the facts and circumstances of the case and in law the Ld.CIT(A) is right in upholding the decision of the Hon’ble ITAT in assessee’s own case for A.Y. 2010-11 that the assessee is involved in the charitable activity and primary object of the assessee is education without appreciating the fact that the majority of the income of the assessee is coming from letting out of the property held by it and interest income and thus the object of the trust falls under the category of ‘advancement of any other object of general public utility’ and thus shall attract the provisions of the proviso to section 2(15) on income from the activities such as exhibitions of commercial entities, professional artists, space for corporate meetings and functions etc. which clearly are activities in the nature of commerce or business and therefore such income is not exempt in view of section 13(8) of the I.T Act, 1961?”*
2. *Whether on the facts and circumstances of the case and in law the Ld.CIT(A) is right in upholding the decision of the Hon’ble ITAT in assessee’s own case for A.Y. 2010-11 that the*



income from letting out the properties is not a business income but income from house property and thus the provisions of section 11(4A) and proviso to section 2(15) will not apply in the assessee's case despite the fact that the objects of the trust are only in the nature of "advancement of any other object of general public utility?"

3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in considering the activities of the trust as 'educational' when in light of the law laid down by Hon'ble Supreme Court in the case of New Noble Educational Society vs Chief Commissioner of Income Tax [2022] 143 taxmann.com 276 (SC), the term 'education' is meant to include only 'formal and scholastic education' and thus the activities of the assessee shall attract the provisions of the proviso to section 2(15) as "advancement of any other object of general public utility and hence the assessee is not entitled to exemption u/s. 11 of the Act?"*
5. On summarizing the grounds of appeal, it transpires that the grievance of the revenue is that the majority of the income of the assessee is coming from letting out of the property held by it and interest income and thus the object of the trust falls under the category of 'advancement of any other object of general public utility' and shall attract the provisions of the proviso to section 2(15) of the Act on income from the activities such as exhibitions of commercial entities, professional artists, space for corporate meetings and functions etc. as activities in the nature of commerce or



business and therefore such income is not exempt in view of section 13(8) of the Act.

6. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. The Ld. DR at the very outset submitted that the judgment of the Ld. CIT(A) was passed on the basis of finding by the Ld. ITAT, B Bench, Mumbai, in ITA No. 7461/Mum/2018 referred (supra). It is further submitted that the Hon'ble Supreme Court of India in case of *Assistant Commissioner of Income Tax (Exemptions) Vs. Ahmedabad Urban Development Authority*, order dated 19.10.2022, 2022 LiveLaw (SC) 865 has interpreted the provision of Section 2(15) of the Act relating to the assessee trust advancing general public utility and has held that the assessee advancing general public utility (as is the case of the assessee in this case) cannot engage itself in trade, commerce or business for providing service in relation therein for any consideration. It is further held that in the course of achieving the object of general



public utility, the concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that the activities of trade, commerce or business are connected to the achievement of its objects of general public utility; and the receipts do not exceed the quantified limit. The Ld. DR has relied the para no. 253 of this judgment wherein the Hon'ble Apex Court has held as under:

253. *“In view of the foregoing discussion and analysis, the following conclusions are recorded regarding the interpretation of the changed definition of “charitable purpose” (w.e.f. 01.04.2009), as well as the later amendments, and other related provisions of the IT Act.*

A. General test under Section 2(15)

A.1. It is clarified that an assessee advancing general public utility cannot engage itself in any trade, commerce or business, or provide service in relation thereto for any consideration (“cess, or fee, or any other consideration”);

A.2. However, in the course of achieving the object of general public utility, the concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided



that (i) the activities of trade, commerce or business are connected (“actual carrying out...” inserted w.e.f. 01.04.2016) to the achievement of its objects of GPU; and (ii) the receipt from such business or commercial activity or service in relation thereto, does not exceed the quantified limit, as amended over the years (Rs. 10 lakhs w.e.f. 01.04.2009; then Rs. 25 lakhs w.e.f. 01.04.2012; and now 20% of total receipts of the previous year, w.e.f. 01.04.2016);

A.3. Generally, the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost-basis or nominally above cost, cannot be considered to be “trade, commerce, or business” or any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of “cess, or fee, or any other consideration” towards “trade, commerce or business”. In this regard, the Court has clarified through illustrations what kind of services or goods provided on cost or nominal basis would normally be excluded from the mischief of trade, commerce, or business, in the body of the judgment.

A.4. Section 11(4A) must be interpreted harmoniously with Section 2(15), with which there is no conflict. Carrying out activity in the nature of trade, commerce or business, or service in relation to such activities, should be conducted in the course of achieving the GPU object, and the income, profit or surplus or gains must, therefore, be incidental. The requirement in Section 11(4A) of maintaining separate books of account is also in line with the necessity of demonstrating that the quantitative limit prescribed in the proviso to Section 2(15), has



not been breached. Similarly, the insertion of Section 13(8), seventeenth proviso to Section 10(23C) and third proviso to Section 143(3) (all w.e.f. 01.04.2009), reaffirm this interpretation and bring uniformity across the statutory provisions.

H. Application of interpretation

H. At the cost of repetition, it may be noted that the conclusions arrived at by way of this judgment, neither precludes any of the assesseees (whether statutory, or non-statutory) advancing objects of general public utility, from claiming exemption, nor the taxing authorities from denying exemption, in the future, if the receipts of the relevant year exceed the quantitative limit. The assessing authorities must on a yearly basis, scrutinize the record to discern whether the nature of the assessee's activities amount to "trade, commerce or business" based on its receipts and income (i.e., whether the amounts charged are on cost basis, or significantly higher). If it is found that they are in the nature of "trade, commerce or business", then it must be examined whether the quantified limit (as amended from time to time) in proviso to Section 2(15), has been breached, thus disentitling them to exemption."

7. While relying the above judgment, the Ld. DR submitted that the matter needs to be restored to the file of the Ld. AO after setting aside the impugned order and it is the Ld. AO who may decide it afresh on the basis of the observation of the Hon'ble Supreme Court as extracted above.



8. The Ld. AR on the other hand submitted that there is no illegality in the impugned order as it is based on the order of the Ld. Coordinate Bench in ITA No. 7461/Mum/2018 referred (supra) but the Ld. AR very fairly submitted that if the Tribunal thinks fit, the matter may be restored to the Ld. AO in order to examine the case of the assessee in the light of the judgment of the Hon'ble Supreme Court i.e., Assistant Commissioner of Income Tax (Exemptions) Vs. Ahmedabad Urban Development Authority, referred (supra).
9. We have considered the submissions and examined the record. From the above discussions, it becomes crystal clear that there is no dispute that the assessee trust falls within the category of an assessee engaged in advancement of any other object of general public utility and falls within the four corners of proviso to Section 2(15) of the Act. But whether the case of the assessee falls within the four corner of Section 11(4A) of the Act is a matter to be examined in order to ascertain whether the advancement of any other object of



general public utility is incidental to the attainment of the objectives of the trust or the requirement of separate books of account are fulfilled by the assessee trust or not?

10. Section 11(4A) reads as under:

11. *“Income from property held for charitable or religious purposes.*

(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.”

11. What is required on the part of the Ld. AO for examining the matter afresh, he may take guidance from para no. 171 and 172 of the order of the Hon'ble Supreme Court and the said para no. 171 and 172 are extracted hereinunder:

171. *“Therefore, pure charity in the sense that the performance of an activity without any consideration is not envisioned under the Act. If one keeps this in mind, what Section 2(15) emphasizes is that so long as a GPU's charity's object involves activities which also generates profits (incidental, or in other words, while actually carrying out the objectives of GPU, if some profit is generated), it can be granted exemption*



provided the quantitative limit (of not exceeding 20%) under second proviso to Section 2(15) for receipts from such profits, is adhered to.

172. *Yet another manner of looking at the definition together with Sections 10(23) and 11 is that for achieving a general public utility object, if the charity involves itself in activities, that entail charging amounts only at cost or marginal mark up over cost, and also derive some profit, the prohibition against carrying on business or service relating to business is not attracted - if the quantum of such profits do not exceed 20% of its overall receipts.”*

12. It is thus clear from the above observation of the Hon'ble Apex Court that while actually carrying out the objectives of the general public utility, if some profits are generated, it cannot be granted exemption provided the quantitative limit of 20% under 2nd proviso to Section 2(15) of the Act for the receipts from such profits is not exceeded?

13. Further, the prohibition against carrying on business or service relating to business is not attracted - if the quantum of such profits does not exceed 20% of its overall receipts. These facts and aspect of the case has not been adjudicated upon either by the Ld. AO or by the Ld. CIT(A). Hence, these facts need to be examined by the Ld. AO, therefore we agree



with the arguments advanced on behalf of the revenue by the Ld. DR that matter needs to be restored to the Ld. AO.

14. For the above discussions and the submissions made on behalf of parties, the impugned order is accordingly set aside and matter is restored to the file of the Ld. AO for deciding afresh keeping in mind the ratio of the judgment of the Hon'ble Supreme Court i.e., Assistant Commissioner of Income Tax (Exemptions) Vs. Ahmedabad Urban Development Authority (supra) as discussed by us.
15. In the result, appeal filed by the revenue is partly allowed for statistical purposes.

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&

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16. Since the facts and circumstances and the grounds in these cases are similar to the case of A.Y. 2011-12, therefore, the finding recorded by us in ITA No. 3076/Mum/2024 for A.Y. 2011-12 shall mutatis mutandis apply to these appeals also.



ITA No. 3076/Mum/2024; A.Y. 2011-12 &
ITA No. 3077/Mum/2024; A.Y. 2012-13 &
ITA No. 3088/Mum/2024; A.Y. 2018-19
Nehru Centre

The impugned order for the A.Y. 2012-13 and 2018-19 is also set aside and matter restored to the file of the Ld. AO to decide afresh as directed by us.

17. In the result, appeals filed by the revenue are partly allowed for statistical purposes.

Order pronounced on 23.10.2024

Sd/-
(**PRASHANT MAHARISHI**)
(ACCOUNTANT MEMBER)

Sd/-
(**RAJ KUMAR CHAUHAN**)
(JUDICIAL MEMBER)

Mumbai / Dated 23.10.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai