



\$~29

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision:- 19.11.2019

+ ITA 955/2019

COMMISSIONER OF INCOME TAX Appellant

Through: Mr. Ajit Sharma and Ms. Adeeba
Mujahid, Advocates.

versus

BHAGWAN SHREE LAXMI NARAIN Respondent

Through: Mr. Sachit Jolly and Ms. Disha Jham,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

SANJEEV NARULA, J (ORAL):

C.M. No. 49726/2019

1. Issue notice. Learned counsel for the respondent accepts notice. He fairly does not oppose the application seeking condonation of delay. Accordingly, the same is allowed. The delay is condoned.

ITA 955/2019

2. The present appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred as 'the Act') assails the order dated 08.03.2019 passed by the Income Tax Appellate Tribunal (hereinafter referred as 'ITAT') New Delhi, in ITA No. 6564/Del./2015 for Assessment Year (AY) 2011-12



(hereinafter referred as 'Impugned Order'). By way of the Impugned Order, ITAT has dismissed the appeal of the revenue, and confirmed the order of CIT (A) overturning the Assessing Officer's (AO) reasoning and findings to the effect that the assessee trust is carrying out 'religious activities', not enshrined in the objects of the trust. As a result, the disallowances and additions made by the AO and deletion made by the CIT (A), have been sustained.

3. Briefly stated, the factual matrix leading to filing of the present appeal is that the respondent-assessee was created vide Trust Deed dated 30.12.2002, by its founder Brhamrishi Shree Kumar Swamiji also called as 'Gurudevji'. It was granted registration under Section 12A of the Act vide certificate/order dated 20.05.2005.

4. The assessee filed return for AY 2011-12 on 29.09.2011 in the status of "Trust" declaring "NIL" income. The AO noted that in the year under consideration, the assessee was mainly involved in imparting spiritual education through lectures/samagams (congregation) and on TV channels; and had also established a temple of Hindu Gods/Goddesses for the general public. On that basis, he formed an opinion that the assessee was predominantly carrying out religious activities in accordance with Hindu religion. Further, after analysing the objects of the Trust as mentioned in the Trust Deed, the AO concluded that the assessee was not created for religious purposes and since its income was applied for purposes other than for which it was created, it was not entitled to seek exemption under Section 11 and 12 of the Act. A similar view was taken by the AO in AY 2009-10 and 2010-



11.

5. The AO held that Gurudevji is a person specified under Section 13(3) of the Act, and the assessee had applied its income and incurred an expenditure of Rs.3,10,01,535/- on telecast of samagams under the head "Aadhyatamik Pravachan Expenses", for his benefit in violation of Section 13(1)(c) of the Act and forfeited the exemption under Section 11 and 12 of the Act.

6. Besides, the AO held that the assessee had received donation of Rs.11,01,15,431/- out of which identity of donors in respect of donation of Rs. 94,66,053/- could not be proved and the same was treated as unexplained/anonymous donation in terms of section 115BBC of the Act. Further, since the assessee could not furnish the necessary details of Rs. 50 lacs, incurred as expenditure for arrangement of samagams, it was treated as unexplained/anonymous donation. Since, the anonymous donation of Rs. 1,47,69,053/- exceeded 5% of the total donation of Rs. 11,01,15,431/- received during the year, the excess donation of Rs. 92,63,281/- was taxed under Section 115BBC of the Act. The assessee was treated as an Association of Persons ("AOP") and an assessment under Section 143 (3) was framed vide order dated 24.03.2014 at a total income of Rs. 5,33,81,050/-, after making the additions/disallowances due to denial of exemption under Section 11 and 12 of the Act.

7. On the appeal filed by the assessee, CIT (A) vide order dated 23.09.2015 deleted all the additions. It relied upon the order of this Court in *ITA 269/2015* dated 07.09.2015 for AY 2009-10, and held that the AO erred in



invoking Section 13(1)(C)(ii) and that the assessee is entitled to claim exemption under Section 11(1) of the Act. With respect to the addition of anonymous donations, it was held that the same had been made on estimate basis which could not have been done under Section 115BBC of the Act, wherein all anonymous donations are taxed.

8. The appeal preferred by Revenue, against the order of CIT (A), was rejected by the Income Tax Appellate Tribunal (ITAT), relying upon the previous orders in the Assessee's own case for AY 2009-10 and the decision of this Court for the same year. The Tribunal upheld the findings of CIT (A) on disallowance of 1/3rd expenditure on telecast of Samagams, holding that such expenditure was for public at large and cannot be held to be benefiting Gurudevji. The ITAT also deleted the addition of Rs. 50 lacs observing that the AO had failed to bring out any specific details on record for such an addition and the same had been made on assumptions and surmises.

9. Revenue has assailed the aforesaid order of the ITAT in the present appeal. Mr. Ajit Sharma, learned senior standing counsel for the appellant, submits that the ITAT has largely relied upon its previous order in Assessee's own case for AY 2009-10 and the decision of this Court in ITA 269/2015 dated 07.09.2015 for AY 2009-10, without adverting to the merits of the present case. He further submitted that assessee's entire activities have been found to be largely for religious purposes and it is therefore not entitled to the benefits under Section 11(1) of the Act; as purely religious activities are beyond the objects mentioned in the Trust Deed. Mr. Sharma further submitted that the activities relating to T.V. telecast, benefited Gurudevji



who comes within the ambit of Section 13 (3) of the Act and since he has derived personal benefits, the disallowance of 1/3rd of the expenditure on account of Telecast of Samagams, is justified.

10. We have given due consideration to the submissions of Mr. Sharma, learned counsel for the revenue.

11. The Tribunal has confirmed that the findings of the CIT (A), *inter alia* observing as under:

*“11. The above findings and observations of the Hon’ble High Court, clearly clinches the issue in hand as, their Lordships have clearly held that **conducting of samagams and spiritual discourses are part of religious activities and religious activity in the context of the Hindu religion need not be confined to the activities incidental to a place of worship only, like a temple.** It is not in dispute that the activities of the trust have been held to be for imparting spiritual education to the persons of all the caste and religion by organising samagam, distribution of free medicines, etc. to needy and disabled people. Their Lordships have also quoted the judgment of Hon’ble Apex Court in the case of **CIT vs. Bhagwan Shree Laxmi Naraindham Trust** (supra), wherein the Hon’ble Apex Court has defined the concept of ‘religion’ and also in another judgment as quoted in para 14, wherein the religious activities under the Hindu faith has been defined to be mainly a way of life. After referring to these judgments their Lordships have held that **the religious institutions like assessee are also engaged in charitable activities which are very much part of religious activities and such activities alongwith organising spiritual lectures has been held to be religious and this they have examined in the context of objects of the assessee trust.** By such reasoning, the order of the Tribunal was affirmed. We do not find that the rationale and the principle laid down by the Hon’ble High Court in the earlier year, in any manner gets diluted in this year by the*



reasoning given by the AO and in fact the issue is squarely covered by this binding precedence.

12. Otherwise also, we find it very difficult to fathom the reasoning of the AO that, simply because the assessee's activities have been held to be religious by the AO then same is either not charitable or assessee has transgressed its activities from the objects. The so called religious activities here in this case is nothing but spiritual activities, because trust has been imparting spiritual and religious discourses in various samagams for providing spiritual healing to the public at large. In a country like India, the religion is mostly a way of life and for pursuing spiritual path. The goal for every human has been for spiritual upliftment by whatever beliefs and practices one follows. Such spiritual upliftment has been believed to give strength to overcome many problems arising from materialistic worries and related diseases. In the context of our country, especially in Hindu Dharma, religion and spirituality cannot be segregated and it cannot be understood by resorting to dictionary meaning as done by the AO. In fact both the concepts are overlapping and often distinction between the two gets blurred, as Hindu dharma has various set of beliefs, rituals and practices, but aim has always being for general well being and spiritual upliftment of the individuals and public at large. Hindu religion cannot be confined to the activities incidental to a place of worship like temple only which is too myopic view as it is much broader and even without temple/Mandir, religion can be practised, professed, followed and believed. Such kind of spiritual and religious discourses in our country has to be seen from a broader perspective and as quoted by the Hon'ble High Court, such discourses falls in the broad concepts of Hindu religious activities which is well within the permissible objects of the assessee trust which is giving spiritual lectures to the needy persons. Thus, the reasoning and the findings of the AO that it is purely carrying out religious activities not enshrined in the object of the trust cannot be sustained.

13. Coming to the other disallowances made by the Ld. AO, we do not find any substance in the reasoning given by the AO,



*which in fact is sans any material or evidence but based on wild conjectures. For instances, in so far disallowance of 1/3rd expenditure on telecast of samagam on TV, he has held that, there might be some kind of benefit to Gurudevji, who is one of the persons specified u/s 13(3), as such telecast will give personal benefit to the personality of Gurudevji. **Such reasoning is outlandish and farfetched, firstly, for the reason that any kind of benefit needs to be quantified; and secondly, there has to be some material to indicate that some personal benefit has gone. The Legislature has categorically given the specified nature of benefits for which section 13(2) can be invoked. No such benefits have been ascribed by the AO, albeit is based on hypothesis that TV telecast might give some benefit to the Gurudevji by enhancing his popularity as he has benefited by these TV programmes. In fact such kind of spiritual lecture telecast by various TV channels is meant for general public at large and not for the benefit of the person delivering the lectures. Hence such contention of the disallowance made by the AO is rejected.***

*14. Further on the issue of addition of the Rs. 50 lacs on account of anonymous donations that assessee must have incurred expenditure from anonymous donations by organising samagam, here also it has AO has not disputed the expenditure debited in the books of account or they are not verifiable, but he has held that expenditure incurred could be more and source of such expenditure must have come from the anonymous donations. **Without there being there being any material on record, how can he hold that assessee must have spent Rs. 50 lacs which in turn must have come through anonymous donations. Thus, such reasoning is rejected. Accordingly, the findings of the Ld. CIT (A) are affirmed. Consequently, we uphold the direction of the Ld. CIT (A) to allow exemption/benefit u/s 11(1).***

15. In the result appeal of the revenue is dismissed."

(emphasis supplied)

12. The tax authorities have relied upon the order of this Court in *ITA*



269/2015 (Supra) for AY 2009-10, to set aside the findings of the AO denying the assessee exemption under Section 11 of the Act. As regards the findings pertaining to withdrawal of exemption under Section 11 of the Act is concerned, it has been observed that the reasons assigned by the AO were based on presumption, and the basis of invoking Section 13(1)(c)(ii) was completely misplaced and contrary to the scheme of the Act relating to the taxation of charitable or religious organisations. The addition of Rs. 50 lacs as undisclosed income, being unexplained expenditure of samagams has been held to be contrary to the provisions of the Act as Section 68 has no application on taxation of religious and charitable organisation, because of a specific provision – Section 115BBC, which governs taxation of all anonymous donations.

13. On a perusal of the order of this Court in ITA 269/2015 dated 07.09.2015 for AY 2009-10, it emerges that after verifying the objects of the Trust and the activities carried out by the assessee, this Court held that the activities undertaken by the assessee can be included in the broad conspectus of religious activities and in the context of Hindu Religion, such activities cannot be confined to activities incidental to a place of worship like a temple. The findings of the Tribunal on this aspect, do not call for any interference. The observations of the Tribunal vis-a-vis disallowances of 1/3rd expenditure for telecast of samagams, are reasonable and they do not warrant any interference. There is no evidence on record to construe that the Gurudev Ji “*has derived any personal benefit*” which would justify the Revenue to invoke the provisions of Section 13(1)(c)(ii) of the Act to deny assessee the benefit of the expenditure.



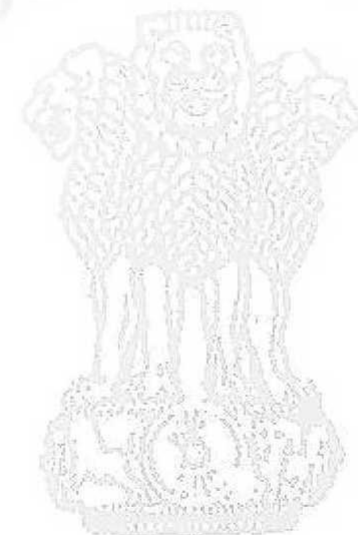
14. We also do not find anything perverse in the findings of the Tribunal. The concurrent findings of facts, do not give rise to any substantial question of law for our consideration. We do not find any ground or reason to entertain the present appeal and the same is dismissed.

SANJEEV NARULA, J

VIPIN SANGHI, J

NOVEMBER 19, 2019

Pallavi



भारतमेव जयते