REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 614 OF 2023
[@ SPECIAL LEAVE PETITION (CIVIL) NO(S). 11017 OF 2022]

PR. COMMISSIONER OF INCOME TAX (EXEMPTIONS) DELHI **…APPELLANT(S)**

VERSUS

SERVANTS OF PEOPLE SOCIETY **…RESPONDENT(S)**

J U D G M E N T

S. RAVINDRA BHAT, J.

1. Special leave granted. Mr. D. Mahesh Babu waives notice of appeal on behalf of the sole respondent [hereafter called "the assessee"]. The appeal is heard finally.

2. The Commissioner of Income Tax (hereafter referred to "revenue") is aggrieved by the impugned judgment and order of the Delhi High court[1]. The impugned judgment upheld the decision of the Income Tax Appellate Tribunal ("ITAT") which affirmed the views expressed by the Commissioner of Income Tax (Appeals) (hereafter called "Appellate Commissioner"). The Appellate Commissioner and the ITAT were of the opinion that the respondent organisation (a registered society, hereafter also called "the assessee") was a charitable trust entitled to the benefit of exemption

1 dated 16.11.2021 in ITA No. 161/2021

and that it is registered under Section 12AA and 80G of the Income Tax Act (hereafter called the "Act") were valid.

3. The facts are that the assessee society was founded in the year 1921 by the legendary freedom fighter Lala Lajpat Rai during the freedom struggle for the nation building, general awareness and welfare of the people. In 1928 the famous freedom fighter of Odhisha Shri Pt. Gopa Bandhu Dass made a Will of his property and his printing press which is managing the Oriya newspaper "Samaj"- for people's welfare. The assessee was enjoying exemption under Section 11 of the Act but the same was denied during the A.Y. 1973-74 and later allowed by the ITAT and affirmed by the High Court. The assessee was also earlier allowed exemption for three years i.e. 1990-91 to 1992-93 under Section 10(23C)(iv) of the Act. The assessee has established and is running schools in the name of Balwant Rai Mehta Vidya Bhawan in Lajpat Nagar and in Greater Kailash in New Delhi and one Medical Centre in Lajpat Nagar and old age home in Dwarka in Delhi. The assessee is also building a hospital in the name of Gopa Bandhu Medical Research Centre in Odisha. The assessee was also allowed exemption under Section 11(1) but the same has been denied during the A.Y. 2010-11 and 2011-12. The Assessee Officer denied the exemption invoking the proviso to Section 2(15) on the ground that the assessee is involved in trade, commerce or business as it manages and runs a printing press and a newspaper. The assessee argued that it was primarily a non-profit institution involved in charitable activities and did not engage in any trade, commerce or business or any such activity.

4. The assessee approached the Appellate Commissioner who allowed its plea and directed that the income earned by it ought to enjoy the benefit of exemption. The revenue carried the matter in appeal to the ITAT and the High Court, both unsuccessfully. As a consequence, it has approached this Court in appeal by the special leave.

5. It is urged on behalf of the revenue that the Appellate Commissioner and the Tribunal fell into error in granting the exemption to the assessee. The Learned Additional Solicitor General Mr. Balbir Singh, points out that the ITAT followed the decision of the Delhi High Court in *India Trade Promotion Organisation v. Director General of Income Tax (Exemption)*[2] and other decisions. It was urged that those decisions are no longer good law in view of the judgment of this Court in *CIT v. Ahmedabad Urban Development Authority*[3]**,** whereby the Court has held that activities which are in the nature of trade, and carry on by a trust established for general public utility, have to specify certain parameters.

6. Learned counsel highlighted that the assessee in this case is not merely earning revenue from sale of newspaper but also earned substantial advertisement revenue.

7. Learned counsel for the assessee urges that this court should not intervene given that the Appellate Commissioner as well as the ITAT and the High Court have concurrently upheld its claim for exemption on the ground that it is a charitable trust entitled to be treated as such thereby eligible for exemption. It was submitted that the activity of generating income through advertisement is only incidental and income from advertisement cannot be called part of the main object of the trust but rather necessary for it to attain its charitable objectives.

Analysis and Findings

8. During the relevant assessment year, the assessee society claimed exemption, *inter alia,* in respect of income from newspapers, which included advertisement revenue, to the extent of ₹ 9,52,57,869/- and surplus of ₹ 2,16,50,901 from its activities in Delhi.

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2 371 ITR (Del) 333

3 2022 SCC Online SC 1461

9. The judgment of this court, in *Ahmedabad Urban Development Authority* had examined various kinds of activities to determine whether they are charitable in nature, relatable to trusts or societies with general public utility objectives. The court then recorded its findings, regarding the true interpretation of "charitable objects" under Section 2 (15) and summarized the findings as follows:

> *"IV. Summation of conclusions*
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> *267. 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.*
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> *A. General test under Section 2(15)*
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> *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");*
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> *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);*
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> *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.*
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> *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.r.e.f. 01.04.2009), reaffirm this interpretation and bring uniformity across the statutory provisions.

10. This court had also considered the nature of income derived by a trust, which was managing a newspaper. The observations pertaining to that assessee, i.e. the Tribune Trust, are relevant:

"257. It is noticed from the impugned judgment that the High Court concedes to the fact that the trust's activities were held by the Privy Council to constitute financing of objects of 'general public utility'; further that merely because thousands of newspapers were being published made no difference. It still continues to be a GPU charity.

258. The question then is whether the nature of receipts and income garnered by the Trust, in the course of actually carrying out its activity of publishing newspaper, can be characterized as "in the nature of trade, commerce or business" or "service in relation to trade, commerce or business", for any consideration. During the course of submissions, it was urged that advertisement revenue should not be treated as business or commercial receipts since that virtually is the lifeblood which sustains the activity of publication of newspapers. It was highlighted that the object of maintaining the activity of publishing and distribution of newspaper remains the advancement of general public utility, as it has the effect of both notifying and educating the general public about the current affairs and developments. The inclusion of advertisements also serves as information to the general public, especially in areas of employment, availability of resources, etc. Therefore, publication of advertisement is intrinsically connected with the activity of printing and publishing of newspapers.

259. The publication of advertisements for consideration, in the opinion of the court, by the newspaper, cannot but be termed as an activity in the nature of carrying on business, trade or commerce for a fee or consideration. That the newspaper published by the trust ("the Tribune") in this case is funded mainly through advertisement is no basis for holding that publishing such advertisements by the Trust does not constitute business. The object of the trust to involve or engage in publication of newspapers. Publishing advertisements is obviously to garner receipts which are in the nature of profit. Now, by virtue of the amended definition of Section 2(15), GPU charities can engage themselves in business or commercial activity or profit, only if the receipts from such activities do not exceed the quantitative limit of the overall receipts earned in a given year. While the assessee's contention that publication of advertisement is intrinsically linked with newspaper activity (thereby fulfilling sub-clause (i) of the proviso to Section 2(15), i.e. an activity in the course of actual carrying on of the activity towards advancement of the object) is acceptable, nevertheless, the condition imposed by sub-clause (ii) of the proviso to Section 2(15) has to also be

fulfilled. In the present case, that percentage had been exceeded, as evident from the record."

11. In the present case, the Appellate Commissioner, the ITAT and the High Court merely followed the judgment of the Delhi High Court in *India Trade Promotion Organisation.* However, the law with regard to interpretation of Section 2 (15) has undergone a change, due to the decision in *Ahmedabad Urban Development Authority* (supra). As a result, this court is of the opinion, that matter should be remitted for fresh consideration of the nature of receipts in the hands of the assessee, in the present case. As a result, the matter requires to be re-examined, and the question as to whether the amounts received by the assessee qualify for exemption, under Section 2 (15) or Section 11 needs to be gone into afresh.

12. In view of the foregoing discussion, the revenue's appeal succeeds in part. The AO shall examine the documents and relevant papers and render fresh findings on the issue whether respondent is a charitable trust, entitled to exemption of its income. The AO shall complete the hearing and pass orders within four months. The appeal is allowed to the above extent.

.....J.
[S. RAVINDRA BHAT]

.....J.
[DIPANKAR DATTA]

NEW DELHI,
JANUARY 31, 2023