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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.443 OF 2013

Director of Income Tax ..Appellant.
V/s.
M/s. Women's India Trust ..Respondent.

Mr.A.R.Malhotra with Mr.N.A.Kazi and Ms.Padma Divakar for the appellant.
Mr.S.E.Dastur, Senior Advocate with Mr.Niraj Sheth and Mr.Atul K.Jasani for the respondent.

CORAM : S.C.DHARMADHIKARI AND A.K. MENON, JJ.

DATED : 23RD MARCH, 2015

P.C. :-

1. This is an appeal by the revenue challenging the order passed by the Tribunal dated 26th September, 2012 allowing the appeal of the trust-assessee.

2. Mr.Malhotra appearing on behalf of the revenue invites our attention to section 2(15) of the Income Tax Act, 1961 which defines the term "*charitable purpose*" and the proviso thereto and thus urges that this appeal raises substantial question of law. In his submission, the proviso emphasises 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. In other words, the proviso applies if the activity is in the nature of trade or business generating income. In such circumstances, the appeal be admitted.

3. On the other hand, Mr. Dastur, the learned senior counsel appearing on behalf of the assessee submits that the view taken by the Tribunal cannot be termed as perverse or vitiated by any error of law apparent on the face of the record. Sub-section (3) of section 12AA of the I.T. Act, 1961 could not have been invoked and assuming without admitting that the matter could have been decided by the Tribunal by taking into account the proviso and it indeed was decided since the requirement of the proviso is not satisfied in this case. The requirement is that the purpose has to be charitable and cannot be termed as such, if the same involves advancement of any other object of general public utility. Mr.Dastur

submits that it will not be treated as a charitable purpose if it involves advancement of any activity in the nature of trade, commerce or business, or any other activity of rendering any service in relation to the trade, commerce or business, for a cess or fee or any other consideration. Then and then alone, irrespective of the nature of use or application, or retention, of the income from such activities, that will come within the proviso and not otherwise. In this case, the Tribunal found that the activity undertaken by the assessee is not in the nature of trade, commerce or business. The Tribunal has found that the income and expenditure account discloses a sum of ₹47,15,249/- as surplus from trading account. The Director of Income Tax held that the assessee trust has shown sales to the tune of ₹69,72,052/-, besides the bank interest on fixed deposit and savings bank account is shown as ₹56,73,160/-. However, the trust's activity will not fall in the proviso as the sales are only of the items made by the ladies who are attached to the assessee trust. Hence the sales are not in the nature of trading activity of the assessee trust. The reasons assigned by the Tribunal, therefore, indicate that in the facts and circumstances of the present case, the provision will not be attracted. Therefore, the appeal does not raise any substantial questions of law and must be dismissed.

4. We have with the assistance of Mr.Malhotra and Mr.Dastur perused the order passed by the Director of the Income Tax. In his order, he has held that the proviso is applicable. That the proviso is applicable for the reasons that he has assigned at the internal page 4 of the order passed by him.

5. Firstly, we must understand that the assessment year in question is 2009-10. The definition of the word 'charitable purpose' in the proviso reads as under:-

> *“Section 2(15) 'Charitable Purposes' includes relief of the poor, education, medical relief [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places of objects of artistic interest) and the advancement of any other object of general public utility.*
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> *Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves carrying 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 any other consideration, irrespective of the nature of use or application, or retention of the income*

from such activity.

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year. "

6. A perusal of the same will indicate as to how if the advancement of any other object of general public utility shall not be charitable, if the assessee is involved in 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, fees or any other consideration. In the present case, the undisputed facts are that the assessee is a trust formed to carry out the object of education and development of natural talents of the people having special skills, more particularly the women in the society. The assessee trains them to earn while learning. It educates them in the field of catering, stitching, toy making, etc. While giving them training, the assessee uses related material which it buys from the open market. This is essential for carrying out the assessee's object. In the process, some finished product such as pickles, jam, etc. are produced and which the assessee sells through the shops, exhibitions and

personal contacts. The motive of the assessee is not the generation of profit but to provide training to the needy women in order to equip or train them in these fields and make them self confident and self reliant. There is nursing training, which is also being managed and administered by the assessee. The details of income and expenditure accounts shows that the assessee had received donation of ₹36,88,634/- and nursing school fees of ₹4,46,088/-. The assessee pointed out that this nursing training provided at the centre of the assessee at Panvel is free of costs. The charge is levied for the mess but the accommodation and other facilities are free of costs and apart from the community development programmes, which are undertaken to educate the rural women, teach them various skills and make them, aware of how to live honourably. Thus, on these undisputed facts, the Tribunal found that this is not an activity which would fall within the proviso. The Tribunal has rightly referred to the two letters which have been addressed by the trustees of the assessee trust. They clarify that in the past, such activities have been found to be incidental to the object of the trust. Secondly, the donation received during the year has been utilised in the year under consideration for achieving the object of the trust. However, the bank interest received is continued and, then, there is a deficit. It is in these circumstances that the argument was canvassed that the fees collected for training women are only to meet the cost of expenses for providing them food items. Their accommodation and other facilities are free of costs. Once the essential nature of the activities carried on by trust is considered, then, the larger question need not be decided. The Tribunal found that the trust may be set up for advancement of any other object of general public utility, but that will not cease to be charitable purposes in this case, because, the activities in which the trust is involved cannot be termed as carrying on of trade, commerce or business. This is to impress upon the women the need to be self reliant and self supporting and to instill in them the confidence that they can make a livelihood for themselves if they rely on the skills as afore-noted, that the activity has been undertaken. It does not partake the character of trade, commerce or business nor of rendering of any service in relation thereto. It is only to teach or impart skills and to instill confidence that the produced goods or articles are sold. To that extent also deficit has occurred. In the circumstances, the Tribunal took a view that occasional sales or the trust's own fund generation are for furthering the objects but not indicative of trade, commerce or business. In the circumstances, the proviso does not apply.

7. We are of the view that considering the fact that the trust has been set up and is functional for the past several decades and it has not deviated or departed from any of its state object and purpose, utilisation of the income, if at all generated, does not indicate carrying on of any trade, commerce or business. The Tribunal's view deserves to be upheld. It is a possible view and cannot be termed as perverse. The view is taken on an overall consideration and bearing in mind the functions and activities of the trust. In such circumstances, it is not vitiated by any error of law apparent on the face of the record. As a result of this discussion, the appeal does not raise any substantial question of law and, therefore, it must be dismissed. It is accordingly dismissed. However, there will be no order as to costs.

(A.K. MENON, J.) **(S.C.DHARMADHIKARI, J.)**