IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1565 OF 2014

Director of Income Tax (Exemption),
Mumbai .. Appellant
v/s.

Shree Nashik Panchvati Panjrapole ..Respondent

Mr. A.R. Malhotra a/w Ms. Padma Divakar, Mr. N.A. Kazi for the appellant
Mr. N.S. Joshi a/w Ms. Chhaya Asher, Ms. Namrata Shah i/b K. Ashar & Co. for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.
DATED : 20th MARCH, 2017.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 26th March, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2009-10.

2. The Revenue urges the only following question of law :-

(i) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in allowing the claim of exemption u/s 11 of the I.T. Act, 1961 without appreciating the fact that in view of the amendment to section 2(15) of the I.T. Act, the activities carried by the assessee were commercial in

nature and therefore, cannot be considered as for a "charitable purpose" under section 2(15) of the I.T. Act, 1961?

3. The impugned order dated 26th March, 2014 of the Tribunal allowed the respondent assessee's appeal which emanated from the order dated 26th December, 2011 under Section 143(3) of the Act denying the benefit of Section 11 of the Act for subject assessment year. The basis of the denial is that respondent is hit by the proviso to Section 2(15) of the Act, defining "charitable purpose". It is an agreed position between the parties that the order we have passed today in Income Tax Appeal No.1695 of 2014 (Director of Income Tax (Exemption) Vs. Shree Nashik Panchavati Panjrapole) would equally apply to the present appeal. The Income Tax Appeal No.1695 of 2014 (supra) dealt with cancellation / withdrawal by the Director of Income Tax (Exemption) under Section 12A of the Act of the respondent assessee's registration. This on the ground that in terms of proviso to Section 2(15) of the Act, the respondent assessee would not be an institution for charitable purpose.

4. However, Mr. Malhotra, on behalf of the Revenue urges that one additional feature he would like to emphasis is the finding of CIT(A) in these proceedings that the milk valued at Rs.1.57 crores has been sold

at market price. We find that the order of the CIT(A) merely records the above fact without giving any evidence to support the conclusion. Be that as it may, this would not make any difference to the applicability of the order passed today in Income Tax Appeal No.1695 of 2014 (supra) as in that case reliance was placed upon the decision of the Gujarat High Court in Director of Income Tax (Exemption) Vs. Sabarmati Ashram Gaushala Trust (Tax Appeal No.1162 of 2013) decided on 15th July, 2014. In the above case, the Gujarat High court has held that "the law does not expect the Trust to dispose of its produce at any consideration less than the market value". This has not been shown to be incorrect.

5. Therefore, for the reasons indicated in our order passed today in Income Tax Appeal No.1695 of 2014 (supra), the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

6. Accordingly, the appeal is dismissed. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**