

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'A', BANGALORE

BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

AND

SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No818/Bang/2015
(Assessment Year : NA)

Sri Maramma Temple Seva Trust,
No.11, Maramma Temple Street,
1st Main Road, Vyalikaval, Bengaluru 560 003 .. Appellant
PAN : AANTS4131R

v.

Commissioner of Income-tax (E),
Bengaluru .. Respondent

Assessee by : None
Revenue by : Shri. Sudhakar Rao, CIT – DR-I

Heard on : 21.10.2015
Pronounced on : 30.10.2015

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by assessee, its grievance is that CIT (Exemptions), Bengaluru vide his order dt.27.03.2015 denied the registration sought by it u/s.12AA of the Income-tax Act, 1961 ('the Act' in short).

02. Nobody appeared for the assessee at the time of hearing. Though a vakalathnama in favour of Y. K. Raghavendra Rao & Raghavan M, Advocates, Bangalore, is available on record, no authorised person from the said office was there when the case was called up for hearing.

03. Ld. DR strongly supporting the order of the CIT stated that the Act did not contemplate grant of registration to a trust having mixed objects, some of which are charitable and some of which are religious.

04. We have perused the order and heard the contentions of the Ld. DR. Main objects of the trust as it appears at para 3 of the trust deed dated 8th November 2004, is reproduced here under :

3. OBJECTS OF THE TRUST: -

The objects for which the trust is established are:

- a. To construct & renovation of Sree Maramma Temple, Countries, Orphanages and allied buildings for the deities which are worshiped by large number of devotees and disciples to provide temporary shelter of the needs etc, by raising funds by way of subscriptions, donations, grants, etc, and accept the article/ornaments (Gold, Silver, etc) donated to the temples.*
- b. To promote better social understanding and amity among different communities.*
- c. To make a comparative study of philosophical preaching and religious principles of "Hindu Dharma" and bring together persons who have faith in Hinduism and Hindu Philosophy.*
- d. To take more effective steps to implement the teaching of great noble and learned to social upliftment and community and community understanding.*
- e. To encourage and organize the study course, seminars, publish, journals, magazines libraries for expanding teaching on Hinduism and to invite leading religious heads and to honor them.*

f. To maintain right of delegate ship in other philosophical organizations and societies.

g. To look after the general administration of the temple. to perform the daily pooja to the deities and to arrange special poojas on festival days.

h. To conduct classes for Yoga, Music, Sanskrit, Drama and Vedas, etc., for the benefit of trust members, their families and the general public of the area.

i. To establish and to run a baby Sitting, Nursery, Primary, High Schools, CBSC, ICSE schools, College, Technical institutions, Adult education, Commerce training college, Computer education, Self employment, Evening College, Vocational training center, etc.

j. To conduct health awareness programmes camp, organize camps blood donations camps, etc.

k. To help the poor, orphans, physically and mentally handicapped people, widows and other disabled persons, by providing monetary or any other kind of assistance either by payment in cash or in kind supply or cloth, food, shelter, medical facilities and the like free of cost.

l. To provide for encourage and promote welfare of the society and to undertake various forms of social welfare measures such as medical, welfare of women, running and maintenance of Home for the aged, orphanages, shelters for the home-less street children etc., looking after and uplifting the social and economic status of the mentally retarded and handicapped persons and such other measures.

m. Education, awareness creation and organization building of the poor both urban as well as rural with special emphasis to women and children.

n. Creating consciousness on the importance of literacy and providing functional literacy to the people especially to the marginalized section of the society.

o. Alternative technology to the urban, rural poor artisans and peasants to improve their skills and promote self help developments.

05. No doubt some of the objects are charitable in nature, whereas some others are religious in nature. However the class of beneficiaries are undoubtedly public or a wide section of public. We find that a similar issue had come up before the Cochin Bench of this Tribunal in the case of Calicut Islamic Cultural Society v. ACIT [(2009) 88 SOT 148]. Observations of the Tribunal on this issue as it appear at paras 16 to 30 of the order is reproduced hereunder :

15. We have heard the rival submissions of the parties. We have also carefully considered all the facts as well as precedents relied on by both the parties. From the arguments advanced by both the parties, the controversy in both these cases is common, i.e., the allowability of the exemption to both these assesseees as claimed by them under s. 11(1)(a) of the Act. To make the summary of the controversy, we can give the reasons in both these cases for denying the claim of the assesseees under s. 11(1)(a) of the Act.

16. Now we take up the reasons given by the AO in the case of Calicut Islamic Cultural Society (ITA No. 729/Coch/2006) :

(i) The activity of the society is partly religious and partly charitable.

(ii) The object of the assessee is partly charitable and partly religious because on the verification of books of account it was noted by the AO that assessee spent amount on conducting the mosque and also assessee was conducting charitable institutions like Calicut Orphanage and Calicut Higher Secondary School for the handicapped.

(iii) There were many charitable institutions run by the assessee trust.

(iv) If the assessee is partly engaged in the activity which is a religious and partly charitable, then in view of the decision of the Hon'ble High Court of Jammu & Kashmir in the case of Ghulam Mohidin Trust (supra) assessee cannot be given the benefit of exemption under s. 11(1)(a) of the Act.

17. Now we refer to in a summary way the reasons for denying the exemption to another assessee, i.e., Markazu Ssaquafathi Ssunniya (ITA No. 641/Coch/2006). The assessee is doing both religious and charitable activities as per the Rules and Regulations of the assessee society. As per the object of the assessee trust it is to establish, develop and manage Madrassa, mosque, Pallidarz, Arabic College, centre for the orphans and destitute, job training institute, schools, hospitals, nurseries, etc. If the assessee is engaged into partly charitable and partly religious activities, then in view of the decision of the Hon'ble Jammu & Kashmir High Court in the case of Ghulam Mohidin Trust (supra), assessee cannot claim the exemption under s. 11(1)(a) of the Act.

18. In short, it is not the case of the AO or the CIT(A) that both the assesseees are either not fully or partly engaged in the non-religious or the non-charitable activities. In fact, from the assessment order, we find that the AO has undisputedly accepted the fact that, more particularly in the case of Calicut Islamic Cultural Society (supra), the assessee is not constituted only for the benefits of the backward community alone but for the benefit of the entire public as such. Moreover, in the institutions run by the assessee, more particularly the educational institutions, the

members of the other community are also admitted. The assessee is also giving support to the poor. In the same way, in the case of another assessee, it is not the case of the AO that the activities of the assessee are not otherwise than religious and charitable activities. It is interpreted that as per the words used in s. 11(1)(a) of the Act, for any institution or trust it must have either wholly charitable or wholly religious activities. The entire controversy is revolving around the interpretation of s. 11(1)(a) of the Act.

19. *We may refer here s. 11(1)(a) of the Act, which has undergone the interpretation by both the authorities, which reads as under :*

"11. (1) Income from property held for charitable or religious purposes.—Subject to the provisions of ss. 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income :

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;"

20. *We may refer here the observations of Lord Denning LJ (quote) :*

"The English language is not an instrument of mathematical precision. Our literature would be much poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the Judges trouble if the Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it

when a defect appears, a Judge cannot simply fold his hands and blame the draftsmen. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which give rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life', to the intention of legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out. He must then do so as they would have done. A Judge must not alter the material of which the Act is woven but he can and should iron out the creases." (unquote)

*21. The above observations are quoted in N.S. Bindra's Interpretation of Statutes (Ninth Edition, page No. 15). In short, the English language cannot be treated as instrument of mathematics precision. Now the question is can it be said that it is the intention of the legislature as per the language used in cl. (a) to s. 11(1) of the Act that save the provisions of ss. 60 to 63 of the Act for claiming the income exempt which is derived from the property held under the trust which must wholly for the charitable or wholly religious purposes. If the institution or trust are engaged into the **mixed** object which are partly religious and partly charitable or as per the case of the AO as well as the CIT(A) the institution or trust is having the **mixed** activities of charity as well as religion then the exemption cannot be claimed. The argument of the learned senior counsel is that there is a very thin line of demarcation between the charity and religion. Every religion is having the principles of the charity and many charitable purposes may not have the principles of religion, though the religion is the question of faith. It is to be mentioned here that "charitable purpose" in s. 2(15) of the Act making the inclusive definition and trying to make the charitable purpose more elaborate but there is no definition of the "religious purpose" under the Act. No doubt the law recognises no purpose as charitable unless it is of the public character. In short, it should be for the benefit of the community or the section of the community as held in the case of Ahmedabad Rana Caste*

*Association (supra) by the Hon'ble Supreme Court. As far as religious purpose is concerned means religious purpose within the meaning of personal law applicable to the assessee as held by the Hon'ble High Court of Bombay in the case of Bai Hirbai Rahim Aloo Paroo & Kesarbai Dharamsey Kakoo Charitable & Religious Trust vs. CIT (1968) 68 ITR 821 (Bom). There are innumerable examples where there will be very thin line of demarcation between the purposes to identify which are the charitable purposes or which are the religious purposes. In both these appeals, it is not the case of the Department either that any of the bars provided under s. 13 of the Act are applicable to both these assessees as per the interpretation given by the AO as well by the CIT(A). As per the provisions of s. 11(1)(a) of the Act, it requires that there should be nexus between the property held under the trust wholly for charitable or religious purposes and the income under consideration. The interpretation given by the AO as well as by the CIT(A) is that the purpose should be wholly charitable or wholly religious. We are afraid, whether such interpretation can be accepted. In our opinion, said interpretation given by both the authorities is only academic. When the legislature has categorically defined the purposes like religious and charitable and if the assessee is engaged as per their **objects** in **mixed** activities, which are partly charitable and partly religious, it cannot be said that s. 11(1)(a) of the Act does not contemplate such situation.*

22. Another aspect to be considered here in both these cases is that both these assessees have been granted registration under s. 12A of the Act. The argument of the learned Departmental Representative is that prior to insertion of s. 12AA of the Act, no much more investigation was done by the CIT and it was just an empty formality to grant registration in the old s. 12A of the Act. We are unable to accept the said argument for the reason that in s. 12A of the Act also the application of the mind by the CIT was involved. During the course of argument it was brought to our notice that though the exemption is refused to both the assessees, registration granted under s. 12A stand as it is.

23. In our opinion, once the registration is granted to the assessee by the CIT, AO cannot go into probing the **objects** and the purposes of the trust or institution and that is within the exclusive domain and jurisdiction of the CIT. What AO can do that he can at the most investigate the matter within the four corners of s. 13 of the Act. In this case the AO has gone with investigating and probing the basic **objects** of the trust by entering into shoes of the CIT and such exercise is not permissible.

24. Both the senior counsels relied on the plethora of decisions to emphasize that the concept of charitable purpose is very much wide. In the case of H.H. Sir Shahaji The Chhatrapati Maharajasaheb of Kolhapur (supra), which is a case under the GT Act, while interpreting the phrase "charitable purposes" occurring in s. 5(1)(vi) of the GT Act, the Hon'ble High Court of Bombay held that the charitable purposes includes the public religious purposes also. The other precedent relied by the learned senior counsels, more particularly, Andhra Chamber of Commerce's case (supra), Social Service Centre's case (supra), is on the proposition that even the expenditure made on the mosque or on the church constitute expenditure on the charitable purpose for the general public utility. The main thrust of the arguments of the learned senior counsels is that the concept of the charity is so wide, it also includes even the religious purpose, which are for the benefit of the society or general public. In both the cases, it is not the case of the AO that these two institutions are the private religious trusts. In the case of Yogiraj Charity Trust (supra), the Hon'ble Supreme Court has held that primary or dominant purpose of the trust or institution is to be seen. The identical view has been taken in the case of Andhra Chamber of Commerce (supra) by the Hon'ble Supreme Court that if the primary purpose is advancement of **objects** of general public utility, it will remain charitable even if an incidental entry into the political domain. In sum and substance, the dominant and primary **objects** are decisive to decide the nature or character of the institution.

25. In the case of Ghulam Mohidin Trust (*supra*), by reference two questions of law were referred for the esteemed opinion of the Hon'ble High Court. Both the questions are as under :

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right that the trust was not entitled to claim exemption from tax under s. 11 of the IT Act for the income derived from the property held under the trust ?

2. Whether, on the facts and in the circumstances of the case, the **objects** of the trust providing for promotion of science and technology and Muslim theology among Muslim intelligentsia, was hit by the provisions contained in cls. (a) and (b) of sub-s. (1) of s. 13 ?"

25.1 The facts of the said case can be stated as under :

The assessee claimed the exemption of its entire income under s. 11 of the Act. AO rejected the claim of the assessee on the ground that the trust was not charitable trust and it was hit by the provision contained in s. 13(1)(b) of the Act. The reason for rejection of the assessee's claim was that income was not applied for charitable purposes but only for construction of building for commercial purposes, which was not one of the **objects** of the trust. The AAC held that trust was partly charitable and partly religious. When the matter reached before the Tribunal, after examining cls. 13 and 14 of the instrument of trust, Tribunal held that the trust was partly charitable and partly religious and there was no apportionment of income between the two **objects** of the trust and it was left to the exclusive discretion of the trustee to spend whatever they like on any **objects** and hence the assessee was not entitled to claim exemption under s. 11 of the Act. The matter was carried to the Hon'ble High Court by way of reference. The operative part of the observation of the Hon'ble High Court is as under :

"The ratio of the above decision squarely applies to the facts of the present case. In this case also the **objects** of the assessee trust contained in cls. 13 and 14 of the instrument of trust clearly show

that the dominant purpose of the trust is promotion of Muslim theology among the Muslim intelligentsia. Another object is promotion of science and technology but that too among the Muslim intelligentsia. Similarly, in cl. 14 of the instrument of trust which confers powers on the trustees to give financial assistance by way of ex gratia grants or loans on easy terms to scholars of educational institutions to enable them to prosecute their further studies and research in science and technology, it is specifically provided that the selection for such grants has to be confined to Muslims only. The trustees, however, have been given a discretion to extend this benefit to such other communities as in their opinion, are backward in this regard. It is obvious that the author of the trust felt, as indicated in cl. 14 of the instrument of trust that the Muslims of the State and some other sections of the population had lagged behind in this particular branch of learning and it was to improve that situation that power was conferred on the trustees to grant financial assistance by way of ex gratia grants, etc., to scholars to enable them to prosecute their further studies. This assistance too, as indicated above, is intended to promote science and technology and Muslim theology among the Muslim intelligentsia, which is the main and dominant object of the trust. In such a situation, s. 13(1)(b) of the Act is attracted and the assessee trust is not entitled to exemption in respect of its income under s. 11 of the Act. Clause (a) of s. 13(1) of the Act will also be attracted in this case because the income has been derived by the assessee from property held under trust, which does not enure for the benefit of the public.

*Moreover, even if we hold that the object is not only promotion of Muslim theology amongst the Muslim intelligentsia, but also promotion of science and technology among them, the income of the trust would not be exempt under s. 11 of the Act because the law is well-settled that if there are several **objects** of the trust, some of which are charitable and some non-charitable, and the trustees in their discretion are to apply the income to any of the **objects**, the whole trust would fail and no part of its income would be exempt from tax. The reason is that in such a case no definite part of the property or its income is allocated for charitable purposes and it would be open to the trustees to apply*

*its income to any of the non-charitable **objects** or religious purposes. In the instant case, the trustees are at liberty to apply the whole of the income for the promotion of Muslim theology among the Muslim intelligentsia."*

*26. In our opinion, both the authorities have misinterpreted the judgment in the case of Ghulam Mohidin Trust (supra). In that case it was held that as per the **objects** of the trust it was partly charitable and partly religious but as far as the present these two cases are concerned, nowhere it is the case of the AO that in both these cases the **objects** of the assessee are partly non-charitable or partly non-religious. Further, in that case there was no proper apportionment of the income between the two **objects** of the trust as it was left to the exclusive discretion of the trustees to spend whatever they like. In short, it was an arbitrary discretion given to the trustees to apply the income for the non-charitable and non-religious purposes. Moreover, in that case it was held that s. 13(1)(b) of the Act is attracted as the trust was intended to promote science and technology and Muslim theology among Muslim intelligentsia, which was the main and dominant object of the trust. In the present two cases it is not the case of the AO. In our opinion, the principles laid down by the Hon'ble High Court of Jammu & Kashmir has no application as far as the facts of the present these two cases are concerned.*

27. We may mention here that the AO himself has accepted that as per the bye laws and regulations of the assessee, even the persons having faiths of other religions were given benefits. Nowhere, it is the case of the AO that the income is applied for private religious purposes not for the benefit of the public or trust is created for the benefit of only Muslim communities.

28. It is well-settled principle of the binding force of the precedent that it is applicable as far as the facts of that particular case are concerned. Even if there are general observations then the same are to be interpreted in the context in which they are made.

*29. The learned Departmental Representative tried to argue that prior to introduction of s. 12AA of the Act, i.e., prior to 1st April, 1997 s. 12A was a mere formality under which the CIT has granted the registration to both these assesseees. If we examine the scheme of s. 12A of the Act, which was applicable prior to introduction of s. 12AA, it cannot be said that it was a mere formality. Getting a registration is one of the conditions for claiming the benefits of ss. 11 and 12 of the Act. From the language used by the legislature and scheme of the s. 12A, it will not be wrong to say that proceedings contemplated under s. 12A of the Act are in the nature of quasi judicial proceedings and CIT has to decide whether the applicant trust or institution are eligible to get the benefits of s. 11 or 12 and for deciding the eligibility CIT has to examine the bye laws and **objects** of the trust. In our opinion, even under s. 12A of the Act, granting registration was not merely empty formality and our view is supported by the decision of the Hon'ble High Court of Gujarat in *Hiralal Bhagwati vs. CIT* (2000) 161 CTR (Guj) 401 : (2000) 246 ITR 188 (Guj), which is approved by the Hon'ble Supreme Court in *Asstt. CIT vs. Surat City Gymkhana* (2008) 216 CTR (SC) 23 : (2008) 170 Taxman 612 (SC).*

30. For the reasons stated above, we are of the opinion that both these assesseees are eligible to claim the exemption under s. 11 of the Act. We therefore cancel the order of the CIT(A) and direct the AO to give benefits of s. 11 to both these assesseees by treating their income as exempt

06. The above view is fortified by the judgment of the Hon'ble Gujarat High Court in the case of *CIT v. Barkate Saifiyah Society* [(1995) 213 ITR 0492]. Para 6 to 21 of the judgment squarely deals with the issue as to whether there can be mixed objects of religious and charitable nature, which is reproduced hereunder :

6. For determining the controversy, first we would refer to the relevant part of the provision of s. 11 which reads as under :

"Income from property held for charitable or religious purposes.—(1) Subject to the provisions of ss. 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India ; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent. of the income from such property ;

(b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India ; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of twenty-five per cent. of the income from such property."

7. The phrase "religious purpose" includes relief of the poor, education, medical relief, and the advancement (sic).

However, the phrase charitable purpose is defined under s. 2(15) of the Act which reads as under :

"(15) 'charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit ;"

8. It is to be noted that definition of the phrase "charitable purpose" is inclusive and it covers a wider field than the field covered by the words "religious purpose". Further, in some cases, even a religious activity by a particular sect would be a

charitable activity ; for some, supply of fodder to animals and cattle is a religious object, while to others it may be a charitable purpose, according to Hindu religious activity. Similarly, Khairat under the Mohamedan law would be considered to be a religious activity. The said activities may be for a charitable purpose to some. Hence, in many cases, both the purposes may be overlapping. The purposes may have both the elements, charity as well as religious.

9. *While dealing with what is "religious" or "charitable purpose" it is observed by the Supreme Court in the case of Ramchandra Shukla vs. Shree Mahadeoji, AIR 1970 SC 458, that there is no line of demarcation in the Hindu system between religion and charity. Indeed, charity is regarded as part of religion. While discussing this aspect, the Supreme Court has further observed as under (at page 464) :*

"Hindu piety found expression in gifts to idols to religious institutions and for all purposes considered meritorious in the Hindu social and religious system. Therefore, although Courts in India have for a long time adopted the technical meaning of charitable trusts and charitable purposes which the Courts in England have placed upon the term `charity' in the Statute of Elizabeth, and, therefore, all purposes which according to English law are charitable will be charitable under Hindu law, the Hindu concept of charity is so comprehensive that there are other purposes in addition which are recognised as charitable purposes. Hence, what are purely religious purposes and what religious purposes will be charitable purposes must be decided according to Hindu notions and Hindu law.

10. *As observed by Mukherjea in Hindu Law and Religious and Charitable Trusts, Second edn., page 11, there is no line of demarcation in the Hindu system between religion and charity. Indeed, charity is regarded as part of religion, for, gifts both for religious and charitable purposes are impelled by the desire to acquire religious merit. According to Pandit Prannath Saraswati, these fell under two heads, Isthā and Purta. The former meant sacrifices, and sacrificial gifts and the latter meant charities.*

Among the Isthā acts are Vedic sacrifices, gifts to the priests at the time of such sacrifices, preservations of vedas, religious austerity, rectitude, vaisvadev sacrifices and hospitality. Among the Purta acts are construction and maintenance of temples, tanks, wells, planting of groves, gifts of food, dharamshalas, places for drinking water, relief of the sick, and promotion of education and learning. (cf. Pandit Prannath Saraswati's Hindu Law of Endowments, 1897, pages 26- 27). Isthā and Purta are in fact regarded as the common duties of the twice born class. (cf. Pandit Saraswati, page 27)."

11. In view of the aforesaid discussion, it can be said that a trust can be either for religious purposes or for charitable purposes or it can be for both charitable and religious purposes.

12. An identical definition of the phrase "charitable purpose" was considered by the Supreme Court in the case of Fazlul Rabbi Pradhan vs. State of West Bengal, AIR 1965 SC 1722, in the context of the West Bengal Estates Acquisition Act, 1953. Under s. 2(c) of the Act, "charitable purpose" was defined to mean as including the relief of poor, medical relief or the advancement of education or of any other object of general public utility. The definition of "religious purpose" under s. 2(n) is as under :

"2(n) `religious purpose' means a purpose connected with religious worship, teaching or service or any performance of religious rites ;" (page 1724).

13. Under s. 6 of the said Act, exemption is given to corporations and institutions established exclusively for a religious or a charitable purpose or both. The Court observed that the word "exclusively" limits the exemption to trusts, endowments or other legal obligations which come solely within charitable or religious purposes. With regard to the definition of "charitable purposes", the Court observed that it follows, though not quite, the well-known definition of charity given by Lord Macnaghten in Commissioners for Special Purposes of the Income-tax vs. John Frederick Pemsel [1891] AC 531 (HL) who held as under :

"No doubt the popular meaning of the words `charity' and `charitable' does not coincide with their legal meaning ; and no doubt it is easy enough to collect from the books a few decisions which seem to push the doctrine of the Court to the extreme, and to present a contrast between the two meanings in an aspect almost ludicrous. But still it is difficult to fix the point of divergence, and no one as yet has succeeded in defining the popular meaning of the word `charity'. The learned counsel for the Crown did not attempt the task. Even the paraphrase of the Master of the Rolls is not quite satisfactory" (page 583)

14. *It is further held as under (at page 583) :*

"I think they would be surprised to learn that the substantial cause of their missionary zeal was an intention to assist the poverty of heathen tribes. How far then, it may be asked, does the popular meaning of the word `charity' correspond with its legal meaning ? `Charity' in its legal sense comprises four principal divisions ; trusts for the relief of poverty ; trusts for the advancement of education ; trusts for the advancement of religion ; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads."

15. *Thereafter, the Court held that for satisfying the test for charitable purpose, there must always be some element of public benefit.*

16. *Hence the words "trust for charitable purpose" would include even trust for advancement of religion. At this stage, we would note that the definition of charitable purpose under the IT Act goes much further than the definition of charity to be derived from the English cases because it specifically includes medical relief and embraces all **objects** of general public utility subject only to the condition imposed by the restrictive words "not involving the carrying on of any activity for profit". While dealing with s. 11, a Division Bench of this Court in the case of Addl. CIT vs. A. A. Bibijiwala Trust [1975] 100 ITR 516 (Guj), has observed as under (at page 523) :*

*"Similarly, in the case before us also, the property is settled upon wakf, that is, for purposes which are considered to be religious, pious or charitable according to the notions of members of the Dawoodi Bohra community and further the income in the corpus of these properties settled upon trust must be used for Dawat purposes, that is, for the benefit of the Dawoodi Bohra community. Though the words of cls. 6, 7 and 8 are very wide in terms, in fact, that apparently wide discretion of the Mullaji Saheb is bound down by the two factors, namely, that this is a wakf, a dedication by a Mussalman of property for purposes which, according to the notion of Mussalmans, are pious, religious or charitable, and, secondly, it must be used for Dawat purposes, that is, for purposes which go to benefit the Dawoodi Bohra community. With these two limitations operating on him, even the apparently wide discretion conferred upon the Mullaji Saheb as Dai-ul-Mutlak for the time being is confined within the four corners of these two overriding factors and in view of these two overriding factors it must be held that the properties in question settled by the two deeds of 12th Jan., 1937, were settled upon trust for charitable or religious **objects** and were, therefore, entitled to exemption under s. 11(1)(a) of the Act of 1961. We must make it clear that the real controversy between the parties is regarding exemption under s. 11(1)(a) of the Act of 1961 and not whether the trusts are wholly religious or wholly charitable. Even if the trusts are partly religious and partly charitable, so long as no part of the income or corpus can be utilised for a purpose which is not either charitable or religious, there is no doubt that the exemption under s. 11(1)(a) will be available to the assessee. In the instant case, we find that, in spite of the apparently wide language of the clauses of the deed of trust, in fact reading the trust deed as a whole, it transpires, particularly in the light of the decision of the Bombay High Court in Advocate-General of Bombay vs. Yusuf Ali, AIR 1921 Bom 338, that the apparently wide discretion has to be exercised within the four corners of the wakf and for Dawat purposes. What are Dawat purposes, have been described by Marten J., at page 1102, in Advocate-General of Bombay vs. Yusuf Ali, AIR 1921 Bom 338, and, in our opinion, it is only within the four corners of Dawat purposes as recognised*

by the Dawoodi Bohra community that the Mullaji Saheb can use the corpus or the income of this fund".

17. From the aforesaid decision it can be held that if the trusts are partly religious and partly charitable, so long as no part of the income or corpus can be utilised for a purpose which is not either charitable or religious, exemption under s. 11(1)(a) will be applicable to the assessee.

18. Keeping in mind the aforesaid discussion, now we will refer to the relevant portion of s. 13 which carves out an exception to the aforesaid provisions. It reads as under :

"Sec. 11 not to apply in certain cases.—(1) Nothing contained in s. 11 or s. 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof :—

(a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public ;

(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste ;

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust or institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in sub-s. (3) ; . . .

(d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year—

(i) any funds of the trust or institution are invested or deposited after the 28th day of February, 1983, otherwise than in any one or more of the forms or modes specified in sub-s. (5) of s. 11 ; or

(ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983, otherwise than in any one or more of the forms or modes specified in sub-s. (5) of s. 11 continue to remain so invested or deposited after the 30th day of November, 1983 ; or

(iii) any shares in a company (not being a Government company as defined in s. 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act) are held by the trust or institution after the 30th day of November, 1983."

19. *By reading the aforesaid section, it is clear that it carves out an exception to s. 11 or 12 by providing that in those cases which are covered by cls. (a), (b), (c) and (d), the provisions of s. 11 or 12 shall not operate. Broadly speaking, it is divided into three categories and exception is carved out in the case of private religious trusts, charitable trusts and charitable or religious trusts if the conditions mentioned in cls. (a), (b), (c) and (d) are satisfied. Firstly, any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public is not to be excluded as provided under s. 11. That means the benefit of s. 11 would not be given to a trust which is a private religious trust which does not enure for the benefit of the public (as per cl. (5)). Secondly, any income of a trust for charitable institution is created or established after the commencement of IT Act (sic). In each case the authority is required to find out whether the trust for charitable purposes is*

established for the benefit of a particular religious community or caste. If it is so established, then the provisions of s. 11 would not be applicable. Thirdly, cls. (c) and (d) carve out an exception in the case of a trust for charitable or religious purposes or a charitable or religious institution. It provides for certain cases in which any income thereof enures, or is used or applied, directly or indirectly, for the benefit of any person referred to in sub-s. (3). In cls. (c) and (d) the Legislature wanted to include trusts for charitable and religious purposes, and this is specifically provided by using the phrase "trust for charitable or religious purposes." In cls. (c) and (d), the Legislature has used the phrase trust for charitable purposes or charitable institution. It does not deal with a trust for religious purposes. It only deals with a trust for charitable purposes or charitable institutions which are established for giving relief to the poor or medical relief or for education of any particular religious community or caste. Clauses (c) and (d) would be applicable to a trust which is either for charitable purposes or religious purposes or partly charitable purposes and partly religious. Hence it can be stated that if a charitable trust is established only for the benefit of any particular religious community or caste, then the provisions of s. 11 would not be applicable. But in the case of a trust or an institution for religious purposes wherein certain activities can be termed as charitable activities for the benefit of any particular religious community or caste, cl. (b) would not be applicable.

20. *Mr. Shelat, learned counsel for the Revenue, vehemently submitted that by giving this interpretation to cl. (b) of s. 13(1), the said cl. (b) can be made nugatory by merely using the words in trust deeds that the trust was established for religious and charitable purposes. He, therefore, submitted that the authority is required to determine the predominant purpose of the trust and if the predominant purpose is a charitable purpose it is difficult to accept the said contention mainly because it is nowhere provided in the section that in each case the authority shall find out the predominant purpose of the trust. Further, as stated earlier, in the three different clauses, namely, (a), (b) and (c) of sub-s. (1) of s. 13, the Legislature has used different phrases. Clause (a) as, stated earlier, deals with a trust for private religious purposes.*

Clause (b) deals with a trust for charitable purposes or a charitable institution, clauses (c) and (d) deal with a trust for charitable or religious purposes or a charitable or religious institution. From this different phraseology used by the Legislature in cls. (a), (b) and (c), it can be inferred that the Legislature intended to cover only trusts for charitable purposes under cl. (b). That means, if a trust is composite, that is, for religious and charitable purposes, then it would not be covered. It is also apparent that if the trust is only for religious purposes, cl. (b) would not be applicable.

21. In view of the aforesaid discussion, in our view, the Tribunal has rightly held that s. 13(1)(b) applies only to trusts which were purely for charitable purposes and the assessee-trust was charitable as well as religious in nature and the assessee was entitled to exemption under s. 11. Hence, question No. 1 is answered in the affirmative in favour of the assessee and against the Revenue.

07. In view of the above legal position, we are of the opinion that assessee could not have been denied registration sought by it u/s.12AA of the Act. Order of the Ld. CIT is set aside. CIT is directed to grant the registration sought by the assessee u/s.12AA of the Act.

08. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 30th day of October, 2015.

Sd/-

(SMT. ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

Assistant Registrar