2023:BHC-OS:14841-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2685 OF 2015
WITH
WRIT PETITION NO.2689 OF 2015

Sri Shanmukhananda Fine Arts and Sangeetha Sabha ...**Petitioner**

Versus

The Dy. Director of Income Tax (Exemptions) I-2 and 4 Ors. ...**Respondents**

Mr. Madhur Agrawal, i/b. Balasaheb Yewale, for Petitioner.
Mr. Suresh Kumar, for Respondents-Revenue.

CORAM: K. R. SHRIRAM &
DR.NEELA GOKHALE, JJ.
DATED: 15th December 2023

PC:-

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1. Petitioner is a Society engaged in the promotion of arts and culture. Petitioner is a charitable institution registered under the Bombay Public Trust Act, 1950. Petitioner is also registered under Section 12AA of the Income Tax Act, 1961 ("**Act**") and enjoys exemptions under Section 11 of the Act.

2. For Assessment Year ("**AY**") 2007-08, Petitioner filed its return of income. The assessment under Section 143(3) of the Act was completed on 11th December 2009 assessing Petitioner's income at

Rs.63,51,467/-.

3. Petitioner thereafter received a notice dated 29th March 2014 issued under Section 148 of the Act stating that the Assessing Officer ("**AO**") has reason to believe that Petitioner's income for AY 2007-08 has escaped assessment within the meaning of Section 147 of the Act. Petitioner was also provided a copy of the reasons for re-opening. Reasons read as under:

> *"Reasons for reopening the assessment u/s 147 of the I.T. Act, 1961 M/s Sri Shanmukhanand fine Arts & Sangeet Sabha Assessment Year 2007-08*
>
> *In this case assessment u/s. 143(3) was completed on 11.12.2009 assessing the Income at Rs.63,51,407/-.*
>
> *It is noticed the return of income filed for the A.Y. 2007-08 that that assessee trust is engaged in commercial activity and is in receipt of income from the said commercial activities as enumerated under:*

(I)	*Hall charges*	*Rs. 2,29,49,250/-*
(ii)	*Other charges received from Auditorium users*	*Rs. 8,17,216/-*
(iii)	*Compensation received from use of premises*	*Rs. 46,52,573/-*

> *It is noticed that the above receipts are commercial in nature and cannot be considered under the head charitable activities of the trust. In view of the decision of Hon'ble Delhi High Court in the case of M/s Yogiraj Charity Trust Vs. Commissioner of Income Tax New Delhi (103 (AIR 777)) wherein it has been held that the assessee trust is engaged in the commercial, activity and therefore not eligible for exemption u/s 11 of the I.T. Act, 1961. Therefore the income of the assessee assessed treating the status of the assessee as ACF.*
>
> *The facts of the case in the case of M/s Yogiraj Charity Trust are similar in the case of the assessee, and are squarely applicable in the assessee's case. Considering the facts and circumstances of the case, the claim of the assessee in respect of exemption u/s. 11 amounting to Rs.2,84,19,039/- has to be rejected and income to that extent to be assessed accordingly.*

> *In view of the above it is clear that the assessee has failed to disclose fully and truly material facts for the assessment as far as the aforesaid issue is concerned, which has entitled into escapement of income to that extent.*
>
> *In view of the above facts and circumstances of the case, I have reasons to believe that income to the tune of Rs.2,84,19,039/- has escaped within the meaning of Section 147 of the I.T. Act, 1961 in this case and accordingly the case needs to be reopened u/s 147 of the I.T. Act, 1961."*

4. Petitioner filed objections and the objections came to be disposed by an order dated 4th January 2015.

5. Mr. Agrawal for Petitioner submitted that re-opening notice having been issued four years after expiry of the relevant Assessment Year, proviso to Section 147 of the Act shall be applicable particularly in view of the fact that assessment under Section 143(3) of the Act has been completed. Mr. Agrawal submitted that there is a bar to re-open after the expiry of four years unless there has been failure on the part of Assessee to truly and fully disclose material facts for completion of assessment. Mr. Agrawal submitted that the reason for re-opening itself indicates that there has been no failure to disclose even though a bald statement has been made that Assessee has failed to truly and fully disclose material facts. Mr. Agrawal submitted reasons provide "*it is noticed from the return of income filed...........*". Therefore, material, i.e., hall charges, other charges received from the auditorium users and compensation received from use of premises have been picked up from the return of income filed

and, therefore, there cannot be any failure to disclose. Mr. Agrawal submitted reasons mention about rejection of exemption under Section 11 of the Act. Even assuming that the Department wished to withdraw the exemption granted under Section 11 of the Act, certainly that cannot be done under the provisions of Section 147 of the Act and those are independent provisions under which the AO may take such steps as advised.

6. Mr. Suresh Kumar submitted that from the hall charges, other charges and compensation indicated in the return of income, it was obvious that assessee was engaged in commercial activities in-as-much as it was earning income regularly and without any break and these were not brought to the notice during the assessment proceedings. The fact that assessee was carrying on commercial activity came to light later and hence, the AO was justified in invoking provisions of Section 147 of the Act. These submissions have to be rejected.

7. We would agree with Mr. Agrawal on the aspect of commercial activities alleged by the AO that AO has presupposed that assessee is indulged in commercial activity. Just because assessee has been earning a regular income from letting out its auditorium does not mean Petitioner was indulging in commercial activities. Mr. Agrawal submitted that the Income Tax Department initiated proceedings under Section 12AA(3) of the Act to withdraw the exemption granted

to Petitioner under Section 11 of the Act which proceedings have been quashed and set aside.

8. Be that as it may, in view of the proviso to Section 147 of the Act, which squarely applies to the case at hand, re-opening of the assessment is permissible only if there was failure to disclose fully and truly material facts. Reason to believe itself indicates that amount of Rs.2,84,19,039/- which the AO claims to have escaped assessment has been obtained from the return of income filed by Petitioner. Return of income, copy whereof is annexed to the Petition, itself indicates that income from hall charges is Rs.2,29,49,250/-, other charges recovered from auditorium users is Rs.8,17,216/- and compensation received for use of premises Rs.46,52,573/-. Therefore, by no stretch of imagination being a failure to truly and fully disclose. When Petitioner's case is they are not carrying out any commercial activity, Petitioner cannot be accused of not disclosing that they were carrying out commercial activity.

9. In the circumstances, in our view, relief as prayed for in the Petition has to be granted. Rule issued on 27th March 2015 is made absolute.

10. Petition disposed.

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11. At the request of Mr. Suresh Kumar, stand over to 5th January 2024.

(DR.NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**

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