

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

17.

+

ITA 269/2015

COMMISSIONER OF INCOME TAX (EXEMPTION) Appellant
Through: Mr. Kamal Sawhney, Senior
Standing counsel with Mr. Raghvendra K.
Singh and Mr. Shikhar Garg, Advocates.

versus

BHAGWAN SHREE LAXMI NARAINDHAM
TRUST Respondent
Through: Mr. Mohan Parasaran, Senior
Advocate with Mr. Sanjay Katyal, Mr.
Ruchir Mishra, Mr. Puneet Khurana and Ms.
Vibha, Advocates.

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
07.09.2015

%

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') is directed against the order dated 20th August 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 5812/Del/2012 for the Assessment Year ('AY') 2009-10.

2. The Assessee, Bhagwan Shree Laxmi Narain Dham Trust ('Trust'), was accorded registration under Section 12A of the Act on 20th May 2005. The

Assessee-Trust was set up on 30th December 2002 to carry out various charitable, spiritual and religious objects as set out in the trust deed. Some of the objects of the Trust as set out in the Trust Deed are as under:

(i) To establish, promote, set-up, run, maintain assist finance, support and/or help in setting up and/or maintaining and/or running schools, and other institutions orphanages, widow home, poor houses or other establishments of relief and/or help to the poor, old and infirm people.

....

(vii) To arrange, establish, manage and supervise orphanages, old age homes, night shelters, hospitals, dharmshala, nariniketan and mahila ashram etc.

(viii) To give spiritual lectures to mental disturbed person and spiritual lecture to all kinds of human beings.

....

(xi) To do all other activities for the interest of the human beings to help in physical, mentally and financially.

(xii) To give provide and/or render food, medicine and other help and/or assistance in any shape or form to the poor deserving and needy person. To give provide and/or render monetary and/or other help and assistance for the relief of persons and animals affected by natural and other calamities such as food, fire, famine, cyclone, earthquake, storm, accident,

pestilence drought, cyclone, epidemic and the likes to give donations, subscriptions or contributions to institutions, establishments centres of persons doing relief work on such occasions.

....

(xiv) To open found, establish, manage, promote, set-up, run, maintain, assist, finance, support and/or help in the setting up and/or maintaining and/or running schools, colleges, arts and science medical, para medical and technical, lecture halls and other establishments or institutions etc. for advancement of education and knowledge in arts, science, literature, humanities and all other useful subjects in all their manifestation.

....

(xvii) To promote, organize, administer, establish support maintain and/or grant and to person institution or society or organization is ever having for the objects of charitable purpose and to incur expenditure in connection therewith.”

3. For the AY in question, the Assessee filed its return of income accompanied by an audit report, balance sheet, income and expenditure account etc. The case of the Assessee was picked up for scrutiny. It was found by the Assessing Officer (AO) that for the AY in question, the Assessee had received Rs.5,28,84,204 by way of donations. While the details of the names and addresses of the donors to the extent of

Rs.5,01,588,98 was furnished, the details of donors to the extent of Rs.27,25,306 were not explained. The Assessee explained that during the AY in question it was mainly involved in imparting of spiritual education through the lectures/samagam delivered by Brahmashri Shree Kumar Swami Ji and in distribution of medicines and clothes to the needy and destitute." The AO, therefore, proceeded to invoke Section 115BBC of the Act and add the aforementioned sum to the income of the Assessee. It was held by the AO in the order dated 26th December 2011 that although the legislature had exempted wholly public religious trusts from the provision of Section 115 BBC of the Act, "the case of the Assessee is not of public religious trust but a case of spiritual organization. Therefore, the case of the Assessee is clearly hit by the provision of Section 115BBC." A sum of Rs.27,25,306 was, therefore, treated as anonymous donations and brought to tax as per the provisions of Section 115BBC of the Act. Penalty proceedings under Section 271 (1) (c) were directed to be initiated separately.

4. The Commissioner of Income Tax (Appeals) ['CIT (A)'] by an order dated 3rd September 2012 confirmed the action of the AO. THE CIT (A) analysed *inter alia* Circular No. 14 issued by the Central Board of Direct Taxes (CBDT) explaining the scope of Section 115 BBC as well Section 2

(24) (ia) of the Act which defined 'voluntary contribution' and held:

"After analyzing the Circular No. 14 and definition of voluntary contribution as per Section 2(24)(ia) of the IT Act, it is apparent that organization spreading the spirituality cannot claim that it is exempt as per Section 115BBC of the IT Act as statute is very clear in this regard. have gone through the relevant section and I have found that trust of institutions created or established wholly for religious purpose are exempt. The instant case has been found to be established for the purpose of spirituality as per its Trust Deed dated 30-12-2002, wherein, at object No. viii it has been written as under:-

"To give spiritual lecture to mentally disturbed persons and spiritual lecture to all kinds of human being."

From the object itself it is evident that appellant society's object is in the nature of spreading spirituality in the Society. So, it cannot be held as 'religious society'."

5. In the impugned order dated 20th August 2014 the ITAT while allowing the Assessee's appeal concluded, after discussing the relevant clauses of the Trust Deed as well as the decision of the Supreme Court in ***Commissioner of Income-Tax v. Dawoodi Bohra Jamat (2014) 364 ITR 31 (SC)***, that the AO and CIT had proceeded "on a very narrow and incorrect understanding in holding that the Assessee Trust was engaged in spreading spirituality and since Section 115BBC only exempts religious trust, a trust allegedly

imparting spiritual knowledge was consequently not contemplated as an exception by the Legislature as much as it consequently is barred to claim exemption vis-a-vis the anonymous donation." The ITAT held that the "said aim has to be understood in the context of and read along with the other objects of the trust whose target groups are widows, orphans, old and infirm people, destitutes, illiterate, handicapped, mentally retarded, providing food and shelter to poor and needy, night shelter, nari-niketan, mahila ashram, weaker sections and all other groups who can be included in the phrase 'in need of physical, mental and financial help.'" Further the ITAT held that the "objects of the Trust and the context in which spiritual lectures espousing the philosophy, i.e, the spirituality of the major and predominant religious of the country needs to be considered in the light of the well-accepted and well-known fact that all the major religious of the world with one voice eulogise the importance of taking care of the old, infirm, disabled" Accordingly, it was held that the Revenue had incorrectly applied Section 115BBC to the facts of the Assessee's case.

6. This Court has heard the submissions of Mr. Kamal Sawhney, learned Senior Standing counsel appearing for the Revenue and Mr. Mohan Parasaran, learned Senior counsel for the Assessee.

7. The central question to be considered is whether the ITAT erred in holding that the Revenue had wrongly applied Section 115 BBC of the Act to the case of the Assessee and erred in accepting that the Assessee-Trust was carrying out various religious activities?

8. It was submitted by Mr. Kamal Sawhney that none of the activities stated in Clause 5 of the Trust Deed can be said to be a purely religious activity. In other words charitable activities enumerated therein could not be said to be 'religious activities'. According to Mr. Sawhney, even giving of spiritual lectures would not strictly qualify as a religious activity.

9. The question posed arises in the context of the anonymous donations received by the Assessee Trust and the view of the AO that such donations would not be exempt within the scope of Section 115 BBC of the Act since the activity of the Trust was 'spiritual' and not 'religious'.

10. It is useful in this context to recapitulate the CBDT Circular No. 14 has explained the scope of Section 115 BBC, introduced with effect from 1st April 2007, as under:

"25.2. With a view to prevent channelisation of unaccounted money to

these institutions by way of anonymous donations, a new Section 115BBC has been inserted to provide that any income of a wholly charitable trust or institution by way of anonymous donation shall be included in its total income and taxed at the rate 0 30 per cent. Anonymous donation made to wholly charitable and religious trusts of institutions, i.e. mixed purpose trusts of institutions shall be taxed only if it is for any university or other educational institution or any hospital or other medical institution run by them. Anonymous donation to wholly religious trusts or institutions will not be taxed."

11. Therefore, it becomes necessary to examine whether the ITAT was on the facts of the present case justified in coming to the conclusion that the Assessee would be entitled to the benefit of Section 115 BBC as far as the anonymous donations received by it were concerned. As rightly pointed out by the ITAT itself, the above question cannot be addressed within the narrow scope of the specific wording of some of the clauses of the Trust Deed but in the overall context of the actual activities in which the Trust is involved in including imparting spiritual education to the persons of all castes and religions, organizing Samagams, distribution of free medicines and clothes to the needy and destitute, provision of free ambulance service for needy and destitute patients and so on.

12. In *Commissioner of Income-Tax v. Dawoodi Bohra Jamat* (*supra*), the Supreme Court, after analysing the objects of the Trust in that case held that they were “not indicative of a wholly religious purpose but were collective indicative of both charitable and religious purposes.” It was held in the context of that case that “the establishment of Madarasas or institutions to impart religious education to the masses would qualify as a charitable purpose qualifying under the head of education under the provisions of Section 2(15) of the Act.” Further, “the objects reflected the intent of the trust as observance of the tenets of Islam, but did not restrict the activities of the trust to religious obligations only and for the benefit of the members of the community.” It was emphasized that:

“in certain cases, the activities of the trust may contain elements of both: religious and charitable and thus, both the purposes may be overlapping. More so when the religious activity carried on by a particular section of people would be a charitable activity for or towards other members of the community and also public at large. For example, the practice of option charity in the form of Khairat or Sadaquah under the Mohammadan Law would be covered under both charitable as well as religious purpose. **Further, while providing food and fodder to animals especially cow is religious activity for Hindus, it would be charitable in respect to non-Hindus as well.**

Similarly, service of water to the thirsty would find mention as religious activity in sacred texts and at the same time would qualify as a charitable activity.” (emphasis supplied)

13. What can constitute religious activity in the context of the Hindu religion need not be confined the activities incidental to a place of worship like a temple. The Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar* 1954 AIR 282 SC held that “a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters.” It examined the scope of the protection under Article 25 and 26 of the Constitution and observed as follows:

“14. We now come to Article 25 which, as its language indicates, secures to every person, subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others.

17...What then are matters of religion? The word "religion" has not been defined in the Constitution and it is a term which is hardly

susceptible of any rigid definition. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine of belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.”

14. This position was reiterated by the Supreme Court in *Ratilal Panachand Gandhi v. The State of Bombay AIR 1954 SC 388*. In the case of *Sastri Yagnapurushadji v. Muldas Bhudardas Vaishya AIR 1966 SC 1119* the Supreme Court pointed out that what constitutes a religious activity under the Hindu faith is very broad in nature. It held:

“29. When we think of the Hindu religion, we find it difficult, if not impossible, to define Hindu religion or even adequately describe it.... It may broadly be described as a way of life and nothing more.”

15. It might well be that a Hindu religious institution like the Assessee is also engaged in charitable activities which are very much part of religious activity. In carrying on charitable activities along with organising of spiritual lectures, the Assessee by no means ceases to be a religious institution. The

activities described by the Assessee as having been undertaken by it during the AY in question can be included in the broad conspectus of Hindu religious activity when viewed in the context of the objects of the Trust and its activities in general.

16. For the aforementioned reasons, the Court finds no legal infirmity in the conclusion of the ITAT that for the purpose of Section 115 BBC (2) (a) anonymous donations received by the Assessee would qualify for deduction and it cannot be included in its assessable income.

17. No substantial question of law arises for determination in the facts and circumstances of the present case.

18. The appeal is dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

SEPTEMBER 07, 2015

Rk