United Way of Baroda R/Tax Appeal No. 95 of 2020 Gujarat High Court . In favour of Assessee

Issues discussed and addressed:

Proviso to Section 2(15)- Charitable Purpose - The purpose and the dominant object for which an institution carries on its activities is material to determine whether the same is business or not.

Facts of the Case:

Assessee, a charitable institution registered under section 12A of the Act, 1961, filed its return of income after claiming an exemption under section 11. The assessee had been supporting 120 non-government organizations. The assessee was into health and human services for the purpose of improving the quality of life in the society. The objectives of the Society included mobilizing resources from the local communities. It organized medical camps for thalassemia affected children. It also provided vocational training to the disabled orphans, undertook various program for empowering women including providing midday meal to the poor students.

However, the AO observed that the 79.85% of its total income as income received from organizing the event of Garba during the Navratri festival from sale of passes and rent of food stalls etc and thus held that the activities of the assessee as per the amended provision of section 2(15) of the Act could not be said to be advancement of any other object of general public utility and, therefore, the assessee was not liable to claim the benefit under sections 11 and 12 respectively of the Act, more particularly, in view of section 13(8) of the Act.

Held by the Court:

The activities like organizing the event of Garba including the sale of tickets and issue of passes etc. cannot be termed as business. The profit making was not the driving force or the objective of the assessee. This is indicative of the fact that any income generated by the assessee from events like Garba did not find its way into the pockets of any individual or entities. It was to be utilized fully for the purposes of the objects of the assessee.

The expression "trade", "commerce' and "business" as occurring in the first Proviso to section 2(15) of the Act must be read in the context of the intent and purport of section 2(15) of the Act and cannot be interpreted to mean any activity which is carried on in an organized manner. The purpose and the dominant object for which an institution carries on its activities is material to determine whether the same is business or not. The object of introducing the first proviso is to exclude the organizations which are carrying on regular business from the scope of "charitable purpose".

Shree Durga Mata Mandir ITA No. 153 of 2019 Punjab and Haryana High Court In favour of Assessee

Issues discussed and addressed:

Registration under section 12A /12AA –Religious Trust -Registration was applied for almost after 34 years for coming into existence and the assessee-society had huge corpus cannot be the ground for rejection in absence of any allegation that the Corpus fund or the surplus accumulated funds were being used for the purpose other than the aims and objects of the assessee society.

Facts of the Case:

The assessee society is a religious body and is engaged in the maintenance of Shree Durga Mata Mandir. It filed an application for registration under section 12A which was rejected by Commissioner of Income-tax (Exemptions) mainly on the ground that registration was applied for almost after 34 years for coming into existence; there was no dissolution clause in the Memorandum of Association and the assessee-society had huge corpus as compared to the amount used.

Held by the Court:

As the assessee society was engaged in maintenance of Mandir. There was no allegation that the Corpus fund or the surplus accumulated funds were being used for the purpose other than the aims and objects of the assessee society. The corpus as well as accumulated surplus as is claimed was being used for maintenance and development of Shree Durga Mata Mandir which was a religious place visited by the devotees and open to all. So far as the absence of dissolution clause, it was brought in the knowledge of the CIT(E) that the assessee society subsequently passed a resolution whereby a Dissolution clause have been added to the Memorandum of Association of the society. Moreover revenue had not been able to show that the findings recorded by the Tribunal quoted above are erroneous much less perverse.

Precot Meridian Ltd T.C.A.No.271 of 2020 Madras High Court Matter Remanded

Issues discussed and addressed:

Section 43(5) – Speculative Transactions – Loss incurred on foreign exchange derivative cannot be disallowed holding it to be a speculative loss. - Matter Remanded to examine as to whether the foreign exchange forward contract was undertaken in respect of capital items or revenue items.

Facts of the Case:

The assessee company which was engaged in the business of manufacture and sale of cotton yarn, fabrics, garments and generation and sale of electricity had filed its return of income claiming loss on derivative

transactions as business loss which was disallowed by the AO and treated the same as Speculative Loss on following grounds;

a. the assessee had taken the derivative on USD/CHF combination when the assessee had no transaction in Swiss Franc;

b. the contract was for non deliverable derivative specifically cross country call option contract; and

c. though, under section 43(5) of the Act, commodities included stock, shares and non deliverable forex derivatives also, only when transacted through a recognized Stock Exchange, it could be counted for non speculative income as per section 43(5)(d) of the Act; and that the assessee had not actually delivered the currency to banks.

Held by the Court:

The Tribunal was right in its finding that the loss incurred on foreign exchange derivative cannot be disallowed holding it to be a speculative loss and that foreign exchange derivative transaction partook the character underlying the transaction of foreign exchange; and that if the transaction, in respect of which derivative transaction was undertaken, was capital in nature, even the derivative transaction would also be capital in nature. And thus has rightly remanded the matter to the Assessing Officer for a limited purpose of examining as to whether the foreign exchange forward contract was undertaken in respect of capital items or revenue items.

Judgments Relied Upon by the Court:

CIT v. Celebrity Fashion Ltd. [2020] 119 taxmann.com 426 (Mad.)

Vijayeshwari Textiles Ltd T.C.A.No.470 of 2017 Madras High Court. In favour of Assessee

Issues discussed and addressed:

Reopening u/s 147 – Validity of Reopening - Reopening based on change of opinion is not justified.

Facts of the Case:

The assessee company had incurred product development expenditure to the tune of Rs. 3,39,27,315/- out which, a sum of Rs. 1,33,49,000/- was amortized towards the product development expenditure and the balance of Rs. 2,65,78,000/- was claimed as deferred revenue expenditure in the financial statements. However in the return of income, the assessee had claimed entire amount of product development expenditure as allowable expenditure which had been allowed during the original assessment by AO after perusing copy of product development expenses account, bills and vouchers, thereof and the nature of the

product developed along with the note on product development expenditure submitted by the assessee. Subsequently, the assessment was reopened by issuing a notice u/s 148 on the ground that any expenditure not included in the Profit and Loss Account being not allowable.

Held by the Court:

The assessment was reopened after expiry of four years from the end of the relevant assessment year. The assessee admittedly filed the Profit and Loss account and other details which are required for completing the assessment. Therefore, it cannot be said that there was any negligence on the part of the assessee Therefore, reopening of assessment beyond the period of four years from the end of the relevant assessment year on a mere of change of opinion is outside the scope of Section 147 of the Act. The re-assessment on a mere of change of opinion amounts to review of the order of the assessment, which is not permissible under law.

Judgments Relied Upon by the Court:

CIT v. Kelvinator of India Ltd. [2010] 187 Taxman 312/320 ITR 561 (SC).