

## ITAT: Shree Sai Baba Sansthan 'charitable & religious', anonymous donations not taxable

Nov 02, 2023

Shree Sai Baba Sansthan Trust (Shridi) [TS-645-ITAT-2023(Mum)]

### Conclusion

Mumbai ITAT upholds CIT(A) order deleting addition of Rs.147.71 Cr received by Shree Sai Baba Sansthan Trust (Assessee) towards anonymous donation holding that the Assessee exists both for charitable and religious purposes, thus, eligible for exclusion under Section 115BBC(2)(b); Observes *"activities of the trust may contain elements of both religious and charitable and thus, both the purposes may be overlapping. The religious activity carried on by a particular section of people could be a charitable activity for or towards other members of the community or public at large"*; Relies on SC ruling in [Dawoodi Bohra Jamat](#), Delhi HC ruling in [Bhagwan Shree Laxmi Naraindham](#) and Bombay HC ruling in [Bombay Panjrapole Trust](#), wherein it was held that religious and charitable purposes may overlap as charitable activities arise out of compassion, while religion treats compassion as a religious attribute; ITAT concurs with Assessee's submission that, in the absence of the definition of 'religious purpose' under Section 115BBC, any trust, which is existing wholly for religious purposes or for both charitable & religious purposes, *"has to be understood in the popular sense and with the intent of making the provisions of Section 115BBC(2) workable"*; Remarks, *"If any trust / institution operates and maintains any temple / mosque / church etc., which constitutes a place of worship, where a deity to whom prayers are offered, devotees who visit, pray and also make offerings, celebrations are held in form of pujas / ceremonies to honour the deity etc., then such trust / institution will be held to be existing for religious purposes, irrespective whether the devotees belong to different religions, caste or race"*; Assessee, a public trust, was registered under Section 12A and Section 80G, was also granted approval under Section 10(23C)(v); For AY 2015-16, Revenue observed that the Assessee received aggregate donations of Rs.228.25 Cr, out of which Rs.159.12 Cr was by way of hundi collections (anonymous donations); Revenue held that the Assessee was a charitable trust and since the anonymous donations exceeded 5% of the total donations, the same was taxable under Section 115BBC(1); ITAT rejected Revenue's argument that the Assessee is only a charitable institution having no religious purpose, as it is registered under Section 80G, by observing that the provisions of Section 115BBC(2)(b) are independent of the provisions of Section 80G and merely because an Assessee is registered under Section 80G will not automatically mean that such trust cannot have any religious purpose and therefore cannot avail benefit of Section 115BBC(2)(b); Opines that Assessee's approval under Section 10(23C)(v) carries significant evidentiary value as it shows that the affairs of the Assessee had been verified by a superior authority and the Assessee was found to exist for both religious and charitable purpose; Underscores that provisions of Section 80G lays down quantum test i.e., the amount spent for religious purposes to ascertain whether the charitable trust is eligible for registration or not, whereas for the purposes of Section 115BBC(2)(b) what is relevant is the object and nature of the trust; Thus, holds the Assessee eligible for benefit of Section 115BBC(2)(b).:ITAT Mum

### Decision Summary

The ruling was delivered by the Division Bench of ITAT Mumbai comprising Shri Aby T. Varkey, Judicial Member and Shri Om Prakash Kant, Accountant Member.

Senior Advocate S. Ganesh, Advocate Ashwin Shete along with CAs Deepak Tikekar and Pravesh Advani appeared for the Assessee while the Revenue was represented by Dr. Kishor Dhule and Mr. Prakash D. Choughule (CIT-DRs).

### Factual Background

Assessee, a public trust, was registered as 'Shirdi Sansthan of Shri Sai Baba' under the Bombay Public Trust Act. The Bombay HC, considering the enormous increase in asset base, number of devotees visiting

the shrine of saint Sai Baba, in order to necessitate the channelization of funds of the trust and for betterment and upliftment of devotees and society, vested the management of the trust in board of management, constituted by the Charity Commissioner, Government of Maharashtra. Thereafter the Shri Sai Baba Sansthan Trust (Shirdi) Act of 2004 (Sai Baba Trust Act) was promulgated whereby the public trust of 'Shirdi Sansthan of Shri Sai Baba' was reconstituted as 'Shri Sai Baba Sansthan Trust (Shirdi)' i.e. the Assessee. Assessee was registered under Section 12A and Section 80G and was also granted approval under Section 10(23C)(v). For AY 2015-16, Assessee filed a return declaring Nil income. Revenue, in the scrutiny assessment, held Assessee to be a charitable institution and since the anonymous donations i.e. Rs.159.12 Cr exceeded 5% of the total donations i.e. Rs.228.25 Cr, the same was held taxable under Section 115BBC(1). Assessee relied upon the registration granted under Section 10(23C)(v) and contended that it was both a religious and a charitable trust, thus eligible for exception under Section 115BBC(2)(b). Revenue observed that the Assessee is registered under Section 80G, and as per Section 80G(5), eligible trust cannot be for the benefit of any particular religious community other than charitable purposes and thus, concluded that the Assessee is a charitable trust only having no religious purpose, thus, not entitled to benefit under Section 115BBC(2)(b). Accordingly, Revenue made an addition of Rs. 147.71 under Section 115BBC(1) after allowing 5% of the anonymous donations of Rs.159.12 Cr. Revenue also made the disallowance under Section 11(2) of Rs. 230.68 Cr, under Section 11(1)(a), under Section 11(1)(d) of Rs. 25.50 Cr. CIT(A) deleted the said addition, holding that the Assessee existed for both charitable and religious purposes, thus it was entitled to claim benefit of Section 115BBC(2)(b). CIT(A) confirmed the disallowances under Section 11(2), 11(1)(a) and 11(1)(d). Aggrieved, Revenue preferred the present appeal.

### Key observations:

1. ITAT analysed Section 115BBC along with CBDT Circular No. 14/2006 dt. Dec 28, 2006 and observed that the anonymous donations received in hundis/ donation boxes etc. at the trusts/ institutions existing for religious or both religious & charitable, from their devotees is not to be taxed under Section 115BBC.
2. ITAT explained that it is not possible to maintain the name, details and records of donors/devotees making their donation/offering at religious places, without any direction/ instruction or where the devotees do not want to register their name, thus such anonymous donations received in hundis/ donation boxes of the trusts existing for religious or both religious & charitable purpose, are kept out of the ambit of Section 115BBC.
3. ITAT noted the Bombay High Court order, which mentioned that, the Assessee-trust shall be essentially a public religious institution with a charitable bias enabling the sansthan to set apart funds for different charitable purposes as provided for.
4. ITAT noted that the objects of the Assessee includes activities associated with worshipping Shri Sai Baba, spreading spirituality, his teachings, offering prayers, celebrating religious festivals and ceremonies taking care of devotees etc.. Also noted that Section 21 of Sai Baba Trust Act provides for maintenance of temple, conduct and performance of rituals & ceremonies therein and providing facilities for darshan of deity, offering of prayers and performing any religious service.
5. Observed that Section 19 of the Sai Baba Trust Act provides that there shall be a Bhakta Mandal which shall recommend about ceremonies, festivals and poojas etc. to be performed and Section 14(2) of the Sai Baba Trust Act lays down that the executive officer shall be responsible for making proper arrangements for collection and deposit of offerings made at the Temple. Further observed that Section 17 of the said Act specifies duties of the committee to maintain and manage the Temple, make proper arrangements for the conduct and performance of rituals, worship ceremonies, and festivals in the Temple, also ensure proper facilities and amenities to the devotees and disseminate teachings of Shri Sai Baba and promote unity, faith and brotherhood amongst his devotees.
6. ITAT noted that Assessee's website also mentions the details of the temples located within the shrine at Shirdi and gives details of the rituals, poojas, ceremonies etc., which are being performed throughout the day along with timings etc. for the convenience of the devotees. Also underscored that the Assessee trust is regarded as a must visit religious place in Maharashtra for tourists and public at large.
7. Rejected Revenue's interpretation of the term 'religion' being narrow and restrictive and its argument

that Hinduism is not a religion but a way of life and therefore any activities associated with worshipping Hindu Gods, maintaining temples etc. cannot be regarded as 'religious purposes' and that the Assessee is devoted to the teachings of Shri Sai Baba who treated all religions equally and did not promote any particular religion, it cannot be held to be existing for 'religious purposes'.

8. Opined that if the trust/institution operates and maintains any temple/mosque/church etc., constituting a place of worship, where prayers are offered, devotees visit, pray and make offerings, celebrations are held in form of pujas / ceremonies to honour the deity etc., then such trust/institution will be held to be existing for religious purposes, irrespective whether the devotees belong to different religions, caste or race.

9. Observed that the legislative intent behind Section 115BBC(2)(a) & (b) is to exclude such trusts/institutions which exist for religious purposes and not to tax the anonymous donations received by them.

10. Further remarked that the Revenue erred in singling out Shri Sai Baba or Hindu Gods in an ultra-philosophical manner to say that their worship cannot be said to be religious purpose, as neither Sai Baba nor Hinduism is a religion, but a way of life or spirituality.

11. Pointed out that if Revenue's arguments be accepted, then it would mean that since Hinduism is not a religion, worshipping Hindu deities and maintaining temples cannot be regarded as religious purpose for the purposes of Section 115BBC, which would result in the hundi collections/anonymous donations received by almost all the revered temples of India, being liable to be taxed under Section 115BBC.

12. Relied on SC ruling in [Dawoodi Bohra Jamat](#), Delhi HC ruling in [Bhagwan Shree Laxmi Naraindham](#) and Bombay HC ruling in [Bombay Panjrapole Trust](#), wherein it was held that religious and charitable purposes may overlap as charitable activities arise out of compassion, while religion treat compassion as a religious attribute. Observed that the religious activity carried on by a particular section of people could be a charitable activity for other members of the community or public at large.

13. Relied on Bangalore ITAT ruling in Sri Shirdi Sai Samaj, wherein the ITAT deleted the addition on account of hundi collection holding that the assessee trust was existing both for charitable and religious purposes and therefore the anonymous donations received by them was not liable to tax in terms of the exclusion set out in Section 115BBC(2)(b).

14. Rejected Revenue's argument that the Assessee is only a charitable institution having no religious purpose, as it is registered under Section 80G, which is issued to charitable trusts only, by finding it completely irrelevant as the issue pertains to taxability under Section 115BBC and not the eligibility of the Assessee to obtain registration under Section 80G.

15. Remarked that if the objects of any trust is not solely charitable but is mixed purpose and the Revenue is of the view that such trust cannot be registered under 80G then it is up to Revenue to take appropriate action in accordance to law regarding the certificate issued under Section 80G and it cannot be the other way round.

16. Rejected Revenue's reliance on Nagpur ITAT ruling in [Shiv Mandir Devsttan Panch Committee Sanstan](#) and Tarehati Charitable Trust by observing that the said judgements are not relevant to the present case as they were rendered in the context of registration under Section 80G and not regarding taxability under Section 115BBC.

17. ITAT noted that the Assessee was accorded approval of CCIT under Section 10(23C)(v) and observed that the said approval is accorded to those trusts which exist wholly for public religious purposes and charitable purposes.

18. Concurred with CIT(A)'s observation that the approval under Section 10(23C)(v) carries significant evidentiary value as it shows that the affairs of the Assessee had been verified by a superior authority and the Assessee was found to exist for both religious and charitable purpose. Pointed out that the Revenue could not show that the approval under Section 10(23C)(v) has been withdrawn or rescinded.

19. Also noted that the approval under Section 10(23C)(v) was available on record, when the CIT(E)

accorded registration under Section 80G to the Assessee, which demonstrates that at that time even the Revenue did not consider holding of certificate under Section 80G to be contradictory or inconsistent with certificate held under Section 10(23C)(v).

20. Observed that the provisions of Section 115BBC(2)(b) are independent of the provisions of Section 80G and merely because an Assessee is registered under Section 80G will not automatically mean that such trust cannot have any religious purpose and therefore cannot avail benefit of Section 115BBC(2)(b).

21. Further observed that the provisions of Section 80G lays down quantum test i.e., the amount spent for religious purposes to ascertain whether the charitable trust is eligible for registration or not, whereas for the purposes of Section 115BBC(2)(b) what is relevant is the object and nature of the trust.

22. ITAT held that the non-obstante clause of Section 80G(5B) override Explanation (3) to Section 80G and the same has to be read harmoniously to make the provision workable, by relying on Rajasthan HC ruling on [Shri Marudhar Kesari Sthanakwasi Jain Yadgar Samiti Trust](#).

23. ITAT observed that there may be instances where a trust which is existing both for charitable and religious purpose, has incurred religious expenditure which is less than 5% of the total expenses of the Trust and in such a case, the trust may be eligible for certificate under Section 80G and at the same time would not be liable to be taxed for the anonymous donations received by virtue of Section 115BBC(2)(b).

24. Opined that the exclusion set out in Section 115BBC(2)(b) can co-exist with Section 80G. Rejected Revenue's argument that Section 80G registration ipso facto denies the exclusion set out in Section 115BBC(2)(b).

25. Thus, upheld CIT(A) order deleting the addition of Rs.147.71 Cr made under Section 115BBC and upheld the same.

### **Disallowance of exemption of accumulation of income under Section 11(2)**

1. ITAT noted Revenue's contention that the Assessee did not file the prescribed Form 10 in relation to accumulation under Section 11(2) before the expiry of time allowed under Section 139(1), thus accordingly denied the benefit of accumulation of income claimed under Section 11(2).

2. Further noted that the Assessee furnished the CIT(E) order under Section 119(2)(b) condoning the delay in filing of Form 10, for the relevant AY.

3. Thus, directed the Revenue to allow the admissible exemption under Section 11(2) as the delay in filing of Form 10 has since been condoned by the CIT(E).

### **Disallowance of exemption of accumulation of income under Section 11(1)(a)**

1. ITAT noted that the Revenue dismissed Assessee's claim that the exemption under section 11(1)(a) is allowable on Gross Receipts and allowed 15% accumulation of income under Section 11(1)(a) on net receipts, and the said issue was disposed of by the CIT(A) holding it to be consequential in nature.

2. Relied on Mumbai ITAT Special Bench ruling in [Bai Sonabai Hirji Agiary Trust](#) and Bangalore ITAT ruling in [Bhagwan Mahaveer Memorial Jain Educational & Cultural Trust](#) wherein it was held that any expenditure which is in the shape of application of income is not to be taken into account for the purpose of exemption under Section 11(1)(a).

3. ITAT held that the accumulation under Section 11(1)(a) should be allowed on gross receipts and directed the Revenue to allow the same without reducing expenditure amounting to Rs.83.42 Cr.

### **Disallowance of exemption under Section 11(1)(d)**

1. ITAT noted that the Revenue disallowed interest of Rs.25.50 Cr earned on corpus funds which was claimed exempt under Section 11(1)(d) and was also invested under Section 11(5).

2. Observed that the interest earned on corpus funds did not constitute voluntary donation received under the instructions of the donor to be earmarked for specific purpose viz., towards the corpus of the trust. Noted that the proximate source of interest was that it was earned from fixed deposits made by the Assessee.
3. Noted that the Assessee was unable to adduce any evidence or letter or directions from the corpus donors that the interest derived from investment of the corpus funds would also be towards the corpus.
4. Thus upheld CIT(A) order holding that the interest earned on corpus funds not qualify for exemption under Section 11(1)(d).
5. Considered Assessee's alternate claim for deduction of the expenses incurred out of such interest income by way of application of income and observed that the Assessee, out of the corpus funds including interest, has spent amounts which were in excess of the interest income in question.
6. Opined that the amount spent out of such interest income from corpus funds which are towards the objects of the Trust has to be allowed by way of application of income, while computing the assessable income of the Assessee.
7. Remands the issue back to the Revenue with the direction to examine the details of the amount spent out of the interest from corpus funds and allow the deduction in relation thereto.

## Case Law Information

### Taxpayer Name

- Shree Sai Baba Sansthan Trust (Shridi)

### Judicial Level & Location

- Income tax Appellate Tribunal Mumbai

### Appeal Number

- I.T.A. No.3049/Mum/2022

### Date of Ruling

- 2023-10-25

### Ruling in favour of

- Assessee

### Section Reference Number

- [12A](#)
- [115BBC](#)
- 115BBC(1)
- 10(23C)(v)
- 115BBC(2)(b)
- [80G](#)
- 11(2)
- 11(1)(a)
- 11(1)(d)

### **Nature of Issue**

- Exemption u/s 11
- trusts
- Trust - Benefits and Exemptions

### **Judges**

- Aby T. Varkey, Judicial Member
- Om Prakash Kant, Accountant Member

### **Counsel for Tax Payer**

- Mr. S. Ganesh
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- Ashwin Shete
- S. P. Lanke

### **Counsel for Department**

- Kishor Dhule
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