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**Case :- INCOME TAX APPEAL No. - 103 of 2017**

**Appellant :- Daya Nand Pushpa Devi Charitable Trust Ghaziabad**

**Respondent :- Additional Commissioner Of Income Tax Ghaziabad**

**Counsel for Appellant :- Abhinav Mehrotra, Vivek Pratap Singh**

**Counsel for Respondent :- Praveen Kumar, SC**

**Hon'ble Mrs. Sunita Agarwal, J.**

**Hon'ble Deepak Verma, J.**

Heard Sri Abhinav Mehrotra learned counsel for the appellant and Sri Praveen Kumar learned Advocate for the revenue.

This is an Income Tax Appeal arising out of the order dated 21.09.2016 passed by the Income Tax Tribunal, Delhi Bench, Delhi in I.T.A No.4238/DEL/2015 whereby the appellate order of CIT(A) and the assessment order dated 12.03.2013 passed by the Additional Commissioner of Income Tax, Range-1, Ghaziabad had been affirmed. The appellant Daya Nand Pushpa Devi Charitable Trust, Ghaziabad, U.P. (hereinafter referred as "Assessee") is a registered trust created by the trust deed dated 05.09.1988. As per the objects of the trust, it was created for carrying out the cause of public charity within India; few of the objects stated in the trust deed are as under:-

(ii) *"To promote education in commerce, Science, Art, Engineering, Technical subjects, Management Studies, Vocational or Professional subjects and to Establish and Maintain or give aid to Institution or Institutions:-*

(a) *For giving training in commerce, Trade and Industry and vocational lines and other professions of General Importance.*

(b) *For imparting education to children boys, Girls and to Men*

*and Women.”*

*(ix) To form, assist, support, establish and maintain libraries and reading Room and to establish and maintain Boarding Houses and Hostels and assist such institutions.”*

The trust is running a Dental College in the name & style of Harsharan Dass Dental College at Ghaziabad. The hostel for residence of the students admitted in the said college is also being run and managed by the trust. The trust claimed that all its activities are covered under Section 2 (15) of the Income Tax Act' 1961(In short referred to as the “Act”); and had applied for the registration under Section 12-A of the Income Tax Act, which had been duly granted by the Commissioner, Income Tax, Meerut vide order C No. 40(40)/Registration/GZB/9902000/CIB/1960 dated 02.05.2000.

It has been brought on the record that under the directives of the Dental Council of India by the Gazette notification dated 25.07.2007, it is mandatory for the institutions admitting students in the dental education course (BDS) to provide hostel accommodation, based on the number of admissions, to all the boys and girls in the dental college campus itself. A copy of the said notification is appended with the memo of appeal and the same had also been filed before the Tribunal along with other papers. The issue herein is with regard to the return of income filed by the trust for the assessment year 2010-11 wherein the assessee had declared its net income as 'NIL'. The case was selected under compulsory scrutiny and notices were issued to the assessee. The assessment order records that the books of account, bills and vouchers etc. maintained by the assessee had been produced in reply to the notice and the questionnaire issued by the department/revenue. After providing due opportunity to the assessee, the Assessing Officer concluded that the hostel activities of the trust is separable from its

educational activities and the way the hostel and mess activities are being carried on they would fall within the meaning of “business” under section 2(13) and can not be treated as ‘Charitable purposes’ under Section 2(15) of the Income Tax Act. The benefit of Section 11 of the Act cannot be given to the assessee, in as much as, it has not maintained separate books of accounts which is one of the pre-conditions mentioned in Section 11(4A) for grant of such benefits. It was concluded in the assessment order that the total hostel receipt of the trust was excessively high and the receipt and payment details furnished by the assessee showing net deficit of 68,198/- was nothing but a cooked up story. It was concluded that the expenditures towards generator, electricity and security were also excessively high. As per the covered area of the hostel building as compared to the whole campus only 10% of total expenses could be allowed. The assessing officer, thus, held that all the figures in the ledger filed by the assessee were presumptive, without any justification and unsupported by evidence. As regards the expenses towards salary, the Assessing Officer did not accept the figures shown in the ledger observing that the work of a Hostel Warden is only a part time job. While concluding that only special allowance is to be given to a warden, the amount shown as expenditure for salary of four wardens of the hostel was disallowed.

Similarly, the expenditures shown towards the payment of salary to the caretaker, driver were also disallowed. Income from the hostel activity in view of the section 11(4A) of the Income Tax Act was, thus, computed as under:-

<i>“Total Hostel Fees received during the year</i>	<i>Rs.66,20,000/-</i>
<i>Expenditure claimed</i>	<i>Rs.66,88,198/-</i>
<i>Less: Expenditure disallowed</i>	
<i>as discussed above</i>	<i>Rs.34,88,089/-</i>

<i>Allowable Expenditure</i>	<i>Rs.32,00,109/-</i>	<i>Rs.32,00,109/-</i>
<i>Net surplus as calculated u/s 11 (4A)</i>		<i>Rs. 34,19,891”</i>

The net surplus income arrived at by the Assessing Officer after deduction of allowable expenditure was subjected to tax at the appropriate rate under Section 11 (4A) of the Act. With regard to the other income of the trust, it was observed that it will continue to enjoy exemption under Section 11 of the Act. The assessment order had been affirmed in the appeals both by the CIT(A) and the Tribunal.

The appeal had been admitted on the substantial questions of law. During the course of hearing, the substantial question of law has been re-framed as under:-

“(A) Whether under the provisions of Section 11(4A), the Hostel activity of a charitable institution engaged in imparting education in a residential institution such as the assessee will be included in the expression “business” in the said subsection; and the income generated from such Hostel activity can be said to be business income so as to attract the pre-conditions of the said sub- section in a claim of exemption under Section 11 (1) of the Act?

Learned counsel for the appellant/assessee argued that the assessee being under statutory obligation to maintain a hostel for the students admitted in the institution, its activity of maintaining the hostel by charging hostel fees is an integral part of the objects of the trust, which is essentially charitable in nature being education. Even if the collected hostel fees has created some surplus as per the analysis of the Assessing Officer but that surplus by itself cannot be said to be profit and gains of a business within the meaning of Section 11(4A) of the Act, as the hostel activity is not independent to the main object of imparting education (Dental education). The benefit of Section 11 of

the Act, therefore, has to be granted to the assessee for exemption of the income from liability of the Income Tax under the Act. The Assessing Officer on irrelevant considerations had rejected the details of receipt and payment account furnished by the assessee in the form of a ledger. The findings returned by the Assessing Officer of the hostel fees charged by the assessee being excessive is based on the comparison of the expenditures claimed by some other society namely Laksh Educational Society located in Ghaziabad. The Assessing Officer had erred in holding that the hostel fee charged by the assessee is more than the market rate or the fee charged by other institutions, private or government. The submission is that such a comparison was not permissible while dealing with the claim of exemption under Section 11 of the Income Tax Act. The contention is that the assessee is giving hostel facility to only those students who are admitted in the dental college. The provision of hostel facility is for advancement of education and also in order to meet the statutory requirement and as such it cannot be said to be an activity having limbs of business such as carrying on in an organised manner with the motive of earning profit so as to fall within the meaning of “business” under the Act.

It is vehemently argued that in the facts and circumstances of the case, sub-section (4A) of Section 11 of the Act has no application and, therefore, the requirement of the said provision to maintain separate books of accounts would be wholly inapplicable. The incidental activity of the trust in providing hostel facility to its students could not be construed as a business unless intention to do independent business or any element of business such as continuous activity with profit motive are present in the same. Since the hostel facility cannot be constituted as an activity independent to the main object of imparting dental education treating the same as business within the meaning of Section 11 (4A) was erroneous.

Reliance is placed on the decision of this Court in **Indian Institute of Technology Vs. State of U.P.**<sup>1</sup> to submit that the division bench of this Court taking note of the principal activity of the petitioner therein had held that running of visitor's hostel to provide temporary accommodation to research scholars, research fellows students and teachers cannot be said to be the activity which can be said to be business in a commercial way. Rather the principal activity of the petitioner institute being academic or charitable, the sale of food stuff in the visitors' hostel run by it was minor, subsidiary and incidental to the principal activity and being an integral part of its academic activity, the petitioner's institute cannot be dubbed as a dealer within the meaning of Section 2(c) of the U.P. Sales Tax Act. It was, thus, held that the Sales Tax Officer had no jurisdiction to initiate proceeding for levy of sales tax with regard to the said activity.

Learned counsel for the appellant had further invited the attention of the Court to a decision of this Court in **Swadeshi Cotton Mills Vs. Sales Tax Officer**<sup>2</sup> to urge that in the similar situation, sale of food and refreshments in the dining hall of the Aligarh Muslim University which was subjected to sales tax, was held to be a non-commercial activity. It was held therein that the supply of food to students in the dining hall was incidental to the main academic activity of the University as the dining hall service was an integral part of the hostel facility while imparting education to the students.

He further placed the Division Bench judgement of this Court in **Mahatma Gandhi Kashi Vidyapeeth Vs. State of U.P. & others**<sup>3</sup> wherein question was as to whether the petitioner therein was a dealer within the meaning of U.P. Vat Act' 2008 and was carrying on

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1.1976 (38) STC 428

2. AIR 1965 All 86

3.2013 (5) ADJ 85

business. The term business in the context of Section 2(h) of the U.P. Vat Act' 2008 was examined by the Division Bench and taking note of the decisions of the Apex Court in the **University of Delhi and another Vs. Ram Nath and others**<sup>4</sup>, **Commissioner of Sales Tax Vs. Sai Publication Fund**<sup>5</sup>, it was held that if the main activity of the assessee concerned was not business, any business activity incidental or ancillary thereto which is infinitesimal or small part of the main activity cannot bring it within the scope of the term 'dealer'. It was, thus, held that if the main activity is not commercial then any other activity which forms integral part of the non-commercial activity would also not be the business so as to include the person carrying on such activity in the definition of dealer. In the facts and circumstances of the said case, it was held that the main activity of the petitioner therein was education and the activity of printing admission form and realising price for the same will not bring it into the ambit of the term 'dealer' as defined under the Act.

The decision of the Apex Court in **Commissioner of Sales Tax**<sup>5</sup> was placed before the Court to assert that the test is that when the transactions which are related to the main activity are only a infinitesimal or small part of the main activity and if the main activity is not business, then the connected, incidental or ancillary activity of sale would not normally amount to business unless an independent intention to conduct "business" in these connected incidental or ancillary activity is established by the revenue. It was clarified therein that in case where the connected incidental transactions are so high so as to render the main activity infinitesimal or very small, then of-course the case would fall under the category of 'business' within the meaning of the Act. The decision of this Court in **Swadeshi Cotton**

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4. AIR 1963 SC 1873

5. 2002 (4) SCC 57

5. 2002 (4) SCC 57

**Mills<sup>2</sup>, Indian Institute of Technology<sup>1</sup>** and of Apex Court in the **University of Delhi<sup>4</sup>** were taken note of by the Apex Court while taking the aforesaid view.

With the help of these decisions, it was vehemently argued by the learned counsel for the appellant that in the instant case looking to the objects of the trust and the statutory mandate for establishment of boarding houses for the residence of the student admitted in the institute, the hostel activity of the trust cannot be said to be business activity so as to bring the case of the assessee within the scope of Section 11 (4A) of the Act. As the said provision is not applicable, the computation made by the Assessing Officer in arriving net surplus taxable income from the hostel fee receipt is erroneous. The exemption under Section 11 of the Act was available to the assessee in view of the Section 2(15) of the Act which include “education” within the meaning of “charitable purposes”.

Sri Praveen Kumar learned counsel for the revenue, on the other hand, argued that the word “business” in Section 11(4A) of the Act has been used in the context of any activity which is undertaken by a trust or an institution, such activity is covered under the definition of the word “business” in Section 2(13) of the Act as the definition being inclusive, the expression business has to be interpreted in its widest amplitude. The Webster Encyclopedic Unabridged Dictionary of the English Language defines “business” as an occupation, profession or trade and, thus, any kind of occupation which may or may not be profitable in nature is a “business”. The Apex Court in the case of **T.M.A. Pai Foundation & others Vs. State of Karnataka & others<sup>6</sup>** has held that education falls within the expression

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2.AIR 1965 All 86  
1.1976 (38) STC 428  
4.AIR 1963 SC 1873  
6.AIR 2003 SC 355



“occupation” employed under Article 19(1)(g). The private educational institutions’ right to establish and administer its institutions has thus been recognised as a fundamental right guaranteed under Article 19 (1) (g) of the Constitution of India. It is, thus, argued that even running of an educational institution is business though under the provision of the Income Tax Act its income has been exempted treating it to be part of charitable purposes. It was, therefore, incumbent on the assessee to maintain separate books of accounts and produce it before the Assessing Authority for the purpose of computation of benefits under Section 11 of the Act. Reliance is placed on the decisions of **Commissioner of Income Tax Vs. Tamil Nadu Dairy Development Corporation Ltd.**<sup>7</sup> and **Additional Commissioner of Income Tax Vs. Ram Kirpal Tripathi**<sup>8</sup> to submit that the profit motive of the assessee is not a pre-condition for treating its as activity as business. The opinion of the revenue that the income of the trust derived from the hostel run by is from a commercial activity is supported by the material on record. It is, thus, argued that even if the hostel activity is incidental to the objects of the trust, compliance of the second condition of maintaining separate books of accounts for claiming exemption under Section 11 of the Act was mandatory.

Having heard learned counsels for the parties and perused the record. The undisputed facts of the case are that the assessee which is a trust has been registered as charitable trust by the Sub-Registrar, Ghaziabad. The trust has also been recognised and registered under the Income Tax Act as an institution whose objects are charitable in nature. The registration certificate has been issued by the competent Commissioner under Section 12 (A) of the Act and the same is operative till date. The trust runs the above named dental college which

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7.1995 (213) ITR 535

8.1980 (125) ITR 408

is a residential institution. As per the statutory scheme, all the students of the institutions have to necessarily reside in the halls of residence or hostel built by the institute within its campus.

In pursuance of this statutory obligation imposed by the Dental Council of India, the assessee is running hostel for residence of the students (both boys and girls) admitted in the institute. The hostel fees is charged from the students which includes mess fee. Section 2(15) of the Act defines “Charitable Purposes” as :-

*“2(15)Charitable purpose” includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:*

*Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless*

*(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and*

*(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent. of the total receipts, of the trust or institution undertaking such*

*activity or activities, of that previous year;”*

Section 2(13) defines that *“business” includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture;*

Section 11 of the Act relates to the income from property held for charitable or religious purposes which provides that :-

*'11. Income from property held for charitable or religious purposes. (1) Subject to the provisions of sections 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;*

*(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 4 fifteen per cent. of the income from such property;*

*(c) Income derived from property held under trust*

*(i) created on or after the 1st day of April, 1952, for a*

*charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and*

*(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:*

*Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;*

*(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.*

*Explanation 1. For the purposes of clauses (a) and (b), (1) in computing the fifteen per cent. of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income;*

Sub-section (4) of Section 11 says that:-

*“For the purposes of this section property held under trust includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to*

*purposes other than charitable or religious purposes.”*

Sub-section (4-A) provides as under:-

*“(4-A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.”*

A careful reading of the above provisions shows that under the Act the “business” means to include any adventure or concern in the nature of trade, commerce or manufacture whereas the words “charitable purposes” include “education”. The word “education” in Section 2(15) of the Act is not qualified by any restrictions. It has been used in its widest amplitude so as to include education of all level to all classes of the society or category. Clearly, it can not been confined to any section or class of the society or any particular type or level of Education. Meaning thereby any activity which includes or relates to education would be for charitable purposes within the meaning of Section 2(15) of the Act. Section 11(1)(a) provides that the income derived from property held the trust, wholly for charitable or religious purposes shall be exempted from the total income to the extent to which such income is applied for such purposes and where any such income is accumulated or set apart for application to such purposes, to the extent to which the income so accumulated or set apart is not in excess of 15% of the income from such property. The assessee herein is seeking benefit of Section 11(1)(a) of the Act with the assertion that the income derived from the hostel facility, a property held under the trust, had been wholly utilised for charitable purposes for imparting

education and hence the same has to be excluded from the total income and the Assessing Officer cannot treat the surplus, if any, on account of the hostel receipt as taxable income by applying the conditions of Section 11(4A) of the Act.

It is argued that the hostel income being subservient to the main object of the education, the Assessing Officer has gravely erred in treating the same as business income for disallowing the exemptions under Section 11(1) of the Act.

Sub-section (4A) of Section 11 is the bone of contention between the parties. A careful reading of the said provision indicates that it talks of any income of the trust or an institution which is in the nature of “profit and gains of business” and states that sub-section (1) of Section 11 would not apply unless two conditions mentioned therein are fulfilled, i.e (i) such business is incidental to the attainment of the objectives of the trust;(ii) and separate books of accounts are maintained by such trust or institutions in respect of such business.

Sub-section (4) of Section 11 states that for the purpose of Section 11 “property held under the trust” includes “business undertaking so held”.

The crucial word in sub-section (4A) is “business” which has to be understood as per the meaning provided under Section 2(13) of the Act. The “business” in sub-section (4A) can mean any activity including any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce, or manufacture. A business undertaking of the trust may also be included as property held under the trust in view of the sub-section (4) of Section 11. But for getting the benefit of sub-section (1) of Section 11, the income derived from

property held under the trust whether wholly or in part, must be used for charitable or religious purposes. Under sub-section (4A) of Section 11, income of any business of the trust in the nature of profit and gains of such business can be exempted under sub-section (1) of Section 11 only if two pre-conditions mentioned in the said sub-section are fulfilled. The first condition is that the business must be incidental to the attainment of objectives of the trust.

While considering the scope of sub-section (4A) of Section 11 which came into effect by the Finance (No.2) Act 1991 w.e.f. 01.04.1992, in **Assistant Commissioner of Income Tax Vs. Thanthi Trust**<sup>9</sup>, the Apex Court had noted that the substituted sub-section (4A) gave trust and institution a wider latitude than the earlier sub-section (4A). In the wide language of sub-section (4A), a trust is entitled to the benefit of Section 11, if it utilises the income of its business for the purpose of achieving its charitable objects. In this way, the trust is allowed to create a corpus by indulging in business activity to feed the charity. As the provision stands, all that is required for the business income of the trust or institutions to be exempted from the tax is that the business should be incidental to the attainment of the objectives of the trust or institution. A business whose income is utilised by the trust or the institution for the purpose of achieving the objectives of the trust or the institutions, is, surely, a business which is incidental to the attainment of the objectives of the trust. It was, thus, held that the substituted sub-section (4A) is more beneficial to a trust or institution than the original provision.

It can, thus, be seen that sub-section (4A) of Section 11 presupposes a business venture of the trust or institution which is though independent to its main activity but incidental to the attainment

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9.2001 (247) ITR 785

of the objectives of the trust. The “business” as mentioned in the said sub-section can be an adventure or concern in the nature of trade, commerce or manufacture.

Having held that the applicability of the sub-section (4A) of Section 11 presupposes income from a business, being profit and gains of the business, the test applied is whether the activity which is pursued is integral or subservient to the dominant object or is independent/ancillary/incidental to the main object or forms a separate activity in itself. The issue whether the institution is hit by sub-section (4A) of Section 11 of the Act will essentially depend upon the individual facts of the case of the institutions where considering the nature of the individual activity, it will have to be tested whether the same forms incidental, ancillary, connected activity (ies) and whether the same was carried out pre-dominantly with the profit motive in the nature of trade, commerce etc.

The question, therefore, would be whether the hostel activity of the trust which is imparting dental education in the institution established by it is a business activity incidental to the attainment of its objectives or it is an activity which is an integral and inseparable part of the main activity(education) carried on by the assessee. The determinative test shall be the theory of dominant purpose which has all through the years, been upheld to be the determining factor laying down whether the Institution is Charitable in nature or not.

In the instant case, however, there is no dispute about the nature of the institution/trust being charitable in nature. The main activity of the trust being education is covered within the meaning of 'Charitable purposes' defined under Section 2(15) and it has been registered under Section 12-A of the Income Tax Act. In our considered opinion,



running of hostel constitutes an integral and inseparable part of the academic activities carried on by the assessee and it is not possible to isolate or insulate it from the main activity and treat as business within the meaning of Section 11(4A).

It has to be noticed that the hostel is being run in discharge of a statutory obligation as institution in question cannot impart dental education without providing for the hostel. There is no dispute about the fact that the assessee has provided hostel and mess facilities only to those students who are attached with the educational institution. It is not the case of the revenue that the income generated out of the hostel fees is not used for the educational purposes. Only reason given by the Assessing Officer to deny exemption under sub-section (11)(1) of the Income Tax Act is that the income from the hostel fee is excessive and disproportionate to the income derived by other educational institutions which indulge in similar activity i.e. maintaining hostel for the students admitted in the institution, whether government or private. According to us, such a comparison was not open, in as much as, whether a venture or activity of the assessee is a business venture separable from its main activity and whether such activity constitutes an integral and inseparable part of the main activity, are matters to be decided on the facts and circumstances of the individual case, i.e. looking to the nature of establishment and its activities. The issues as to whether the fee charged is excessive or what should be the reasonable amount of hostel fee are wholly extraneous to the dominant purpose test. The hostel fee charged would obviously depend upon the facility provided to the students.

Having regard to the object and purpose for which the institution in question has been established by the trust and the mandate of the Dental Council of India in the gazette notification of the year 2007, we

find that it is one of the primary duties and objects of the trust to establish, maintain and managed halls and hostel for the residence of the students studying in the institutions established by it. The institution in question being a residential institution, its activity in maintaining the hostel by charging hostel fee (for its maintenance and providing mess facility) is an integral part of the main activity “education” of the assessee. The hostel and mess facility subserves the main object and purpose of the trust and are inseparable part of its academic activity. It would be unrealistic to segregate the said activity and treat the same as business. A clear distinction is to be made between the activity which is though ancillary or incidental to the main activity but a distinct activity and the one which is an integral or incidental part of the main activity as one single activity.

Such a distinction has been drawn by the Division bench of this Court in **Swadeshi Cotton Mills**<sup>2</sup> wherein this Court was dealing with the batch of cases where different bodies were running canteens. One of the cases was concerned with the Aligarh Muslim University which was maintaining dining halls where it was serving food and refreshments to its resident students. Referring to the observations of the Apex Court in **University of Delhi**<sup>4</sup> It was held therein that it was incongruous to call educational activities of the University same as “carrying on business”. The activity of serving food in the dining hall was a minor part of the overall activity of the University. The dining hall service was held to be an integral part of the university while imparting education to the students. It was observed that the dining hall service is indissolubly blended with, and is an inseparable component of educational activity of the university. On the said reason, it was held that the activity of the Aligarh Muslim University of providing food to its residential students is such a minor, subordinate and insignificant

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2.AIR 1965 All 86

4..AIR 1963 SC 1873

part that it would be unreasonable to allow this work to lend a business colour to the university so as to make it an institution carrying on the business of sale of food, for holding it liable to be taxed.

Similarly in the **Indian Institute of Technology**<sup>1</sup>, the Division Bench of this Court considering the two above noted decisions has held that:-

*“19. The distinction laid down in the aforesaid decisions between a case, on the one hand, where the principal activity of an institution is doing business in a commercial way, and, on the other hand, a case where its principal activity is predominantly academic or charitable and an activity which may appear to have some incidents of business is only minor, subsidiary and incidental to the principal activity and is an integral part of it, is apposite and affords valuable guidance.”*

In the said case, the sale of foods stuff to the residents of the visitor’s hostel maintained by the Institution (IIT) was subjected to tax under the U.P. Sales Tax. It was observed that it could not be said that the principal activity of the assessee was doing business in a commercial way of buying and selling food stuff. It was, thus, held that the principal activity of the assessee being predominantly academic and the supply of food stuff in its hostel was minor, subsidiary and incidental to the principal activity, it was an integral part of its academic activity.

The Apex Court in **Commissioner and Sales Tax**<sup>5</sup> has held that the question of profit motive or non- profit motive would be relevant only where a person carries on trade, commerce, manufacture or adventure in the nature of trade, commerce etc. It was held that the

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1.1976 (38) STC 428  
5.2002 (4) SCC 57

sole object of the assessee trust therein was to spread the message of Saibaba of Shirdi. The books and literature etc. containing the message of Saibaba were distributed by the trust to the devotees of Saibaba at the cost price. There was no dispute that the primary and dominant activity of the trust was to spread the message of Saibaba. This main activity does not amount to "business". The activity of publishing and selling literature, books and other literature obviously, could not be business as such even without profit motive and it was in a way a means to achieve the object of the trust through which message of Saibaba was spread.

In **Mahatma Gandhi Kashi Vidyapeeth**<sup>3</sup>, the Division Bench of this Court had considered the question as to whether the activity of the assessee therein amounted to business as defined under the U.P. Vat Tax Act' 2003. While interpreting the term "business" which includes any trade, commerce, or manufacture etc.in the definition under the said Act, the Court had held therein that if the main activity was not business then any transaction incidental or ancillary would not normally amount to business unless an independent intention to carry on the business activity, incidental or ancillary, was established. It was held that emphasis has to be laid on the main activity of the person to fall within the definition of business. The inclusion of incidental or ancillary activity in the definition of business presupposes the existence of trade, commerce etc.

In the light of the above discussion, considering the definition of "business" under Section 2(13) of the Act ; "Charitable purposes" under Section 2(15) as also the provisions of Section 11, 11(4A) and 12-AA of the Act, in the fact and circumstances of the case, it is apparent that the principal activity of the petitioner is pre-dominantly

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academic and charging of fees for the accommodation provided to the students admitted in the dental education course, is minor, subsidiary and subservient to the principal activity and is an integral part of its academic activity. It cannot be said that the assessee's principal activity is doing business in a commercial way of letting out the accommodation.

Consequently, the petitioner cannot be said to be doing "business" in terms of sub-section (4A) of Section 11 and its activity of maintaining hostel and charging fees does not fall within the meaning of "business" under Section 2(13) of the Act. The hostel fee cannot be said to be income derived from the "business" of the trust. The said integral activity being directly linked to the attainment of the main objectives of the trust, the requirement of maintaining separate books of accounts with regard to such activity for seeking benefit of exemption under Section 11 (1) of the Act, therefore, not attracted.

The element of trade and commerce in the hostel activity cannot be found so as to bring the same within the meaning of "business". The grounds taken by the revenue that the assessee was carrying on the commercial activity which is not incidental to the objects of the trust and that the assessee has not complied with the provisions under Section 11 (4A) of the Act by not maintaining separate books of accounts of the income of the said business even if said business is said to be incidental to the objectives of the trust, are found faulty. The revenue has committed wrong in holding that the business carried on by the assessee having no direct relationship with the objectives of the trust, the mandate of Section 11(4A) of the Act had to be complied with. There was no material on record with the revenue to hold that the hostel activity is a separate business. From any angle, it could not be proved by the revenue that the income from the hostel fee can be

treated as profit and gains of the separate business or commercial activity and that it is not an integral part and parcel of education, which is the main objective of the trust.

Applying the theory of dominant purpose in the facts of the present case it can be safely concluded that the surplus, if any, generated out of the activity of maintaining halls and residents for the students being an integral part of the main object of education, was liable to be treated as income from the property held by the trust wholly for charitable purposes and was, therefore, deductible from the total income of the trust (person in receipt of the income) by granting exemption under Section 11 of the Act.

The argument of the assessee further is that the balance as shown in the ledger of income and expenditure account of the hostel fees was in negative. There was no surplus over receipt. The assessee had not gained any profit out of the hostel activity. To prove the said point, the assessee had filed the balance sheet showing loss in the said activity.

As regards, the contention of Sri Praveen Kumar learned Advocate for the revenue that the profit motive or profit earning is not an element of any activity to be termed as business. He contends that in the literal parlance, business means any “occupation” and education being an industry or occupation as held in **T.M.A Pai Foundation & others**<sup>6</sup>, even an activity relating to or incidental to education has to be treated as business.

This contention of learned counsel for the revenue does not impress the Court, in as much as, it is settled that the taxing statute cannot be interpreted on any presumption or assumption. The Court must look squarely at the words of the statute and interpret them. It

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6.AIR 2003 SC 355

must interpret a taxing statute in the light of what it clearly expressed; it cannot imply anything which is not expressed; it cannot import provision in the statute so as to supply any assumed deficiency. [Reference **Commissioner of Sales Tax, U.P. Vs. Modi Sugar Mills Ltd.**<sup>10</sup>] (para 11).

The rule of construction of a taxing statute as discussed in **Commissioner of Income Tax, Patiala Vs. M/s Shahzada Nand & sons & others**<sup>11</sup> is relevant:-

*“In a Taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.”*

We may also note the statement of Hon'ble S.P. Bharucha, J. ( as the Hon'ble Judge then was) speaking for the bench in **V.V.S. Sugars Vs. Govt. Of A.P. & others**<sup>12</sup> as a guiding principle. Relevant paragraph No.4 is quoted as under:-

*“4. The said Act is a taxing statute and a taxing statute must be interpreted as it reads, with no additions and no subtractions, on the ground of legislative intendment or otherwise.”*

In view of the above noted legal position, any interpretation or meaning given to the word “business” in the literal parlance cannot be read into the Income Tax Act as the word “business” has been defined in the Act itself. The Court has to read the statute namely the Income Tax Act to find out as to whether the activity of the assessee in maintaining the hostel would be exempted under Section 11(1) of the Act and whether the provisions of Section 11(4A) would be attracted in the facts and circumstances of the case.

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10.AIR 1961 SC 1047

11.AIR 1966 SC 1342

12.1999 (4) SCC 192

Having held that the activity of running the hostel is not a separate business activity and surplus income from the hostel fee cannot be treated as profit and gains of a separate business or commercial activity of the trust, it is held that the exemption under Section 11(1) of the Act cannot be disallowed to the assessee.

In the result, the substantial question of law is answered in favour of the assessee.

The assessment order dated 12.03.2013 passed by the Additional Commissioner, Income Tax Range-1 Ghaziabad and the orders of affirmation of the same in the appeals dismissed by CIT(A) and Income Tax Appellate Tribunal are, therefore, liable to be set aside. The matter is remitted back to the Assessing Officer with the direction to examine the same afresh in the light of the observations made above, treating the hostel fee income, subservient to the main object of the education and not as a business income but income derived from the charitable activity of education.

The appeal is **allowed**, accordingly.

**Order date:-23.06.2021**

Himanshu

( Deepak Verma,J) (Sunita Agarwal,J.)