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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 23.10.2017

\+ ITA 886/2017

THE COMMISSIONER OF INCOME TAX- EXEMPTION
..... Appellant
Through: Mr. Ruchir Bhatia, Sr. Standing Counsel for IT Dept. with Mr. Gaurav Khetarpal, Advocate

versus

PATANJALI YOGPEETH (NYAS) ..... Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

MR. JUSTICE S. RAVINDRA BHAT (ORAL)

1. This appeal pertains to A.Y. 2009-10. The Revenue urges several questions of law. The main contention is that the activities of the respondent/assessee, registered as a charitable trust, can be only brought within the fold of an organization covered by Section 2(15) of the Income Tax Act, 1961 (hereafter referred to as 'the Act'), to the extent that its activities extend to providing services of general public utility. The assessee's contention that it provides medical aid because it teaches through various camps and other modes, the benefits of yoga and disseminates it, was rejected by the AO – as well as the CIT.

Both these authorities were of the opinion that yoga education, howsoever disseminated i.e. by camps, specific schools or courses, etc. would address only a section of the population, which may be of benefit for specific ailments. The Revenue had also relied upon subsequent amendment to Section 2(15) of the Act which came into effect from 01.04.2016 to the effect that "charitable purpose" includes relief of the poor, **education, medical relief,** preservation of environment (including watershed 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).

(emphasis supplied)

2. The ITAT's findings in this regard are contained in the following extracts of the impugned order:

> *"9.3 Besides above we want to add further that there are several pathies and and methods by which the medical relief is achieved. These pathies are allopathy, homeopathy, naturopathy, Ayurvedic, Unani, Yoga etc. and a person suffering from any disease including chronic diseases approaches these pathologies and method for the relief and for such person the pathy or method from which he gets relief is the medical relief from the method or pathy followed by him. In other words, the ultimate goal of all these pathies and methods is to achieve relief and certainly Yog is the one of such method or pathy. There is no dispute that in case of certain diseases certain pathy or method is more helpful*

and other pathy or other method is helpful for the relief in the other type of sufferings. Now it is well established fact that the practice of yoga gives positive reliefs in the cases of asthma, migraine, hypertension, stress etc. Other examples are also there wherein following of Yoga has become very helpful. Now the very insertion of "Yoga" in the definition of "charitable purpose" under section 2(15) of the Act by the Finance Act, 2015 with effect from 1.04.2016 has removed all the doubts that propagation of yoga itself is a charitable purpose to make the assessee eligible for claiming exemption under sections 11/12 of the Act.

9.4 We thus following the above decision in the case of Divya Yog Mandir Trust (supra) hold that Yoga also gives 'medical relief and thus also falls under the definition of charitable purpose. The authorities below were thus not right in denying claimed exemption under section 11/12 of the Act on the basis that propagation of yoga does not give medical relief and thus not fall under "charitable purpose" defined under section 2(15) of the Act and it falls in the residuary category of "advancement of any other object of general public utility" within the proviso to section 2 (15) of the Act.

9.5 Now the question before us is as to whether propagation of yoga also falls under "imparting of education" to bring it eligible for the exemption under the definition of "charitable purpose" under section 2(15) of the Act. The coordinate bench of the Tribunal has also dealt with this issue in detail in the case of Divya Yog Mandir Trust Vs. JCIT (supra) the relevant para Nos. 6.5 and 6.5.1 are reproduced hereunder:

'Imparting Education'

6.5. The question now is as to whether the appellant trust falls within the purview of providing "imparting education". The grievance of the appellant is that the authorities below have failed to appreciate that the propagation of yoga by way of conducting yoga classes on a regular basis and in a systemized manner also falls under the category of 'imparting of education' as provided u/s 2(15) of the Act. Reliance has been placed on several decisions which we will discuss hereunder. The contention of the Ld. AR remained that the predominant object of the appellant trust are to provide practical and theoretical training in the field of yoga, which would ultimately provide medical relief to the society at large. It was submitted that in pursuance of the said objective the appellant trust has made intertrust donations to Patanjali Yog Peeth to support their endeavors of imparting yoga education by means of organizing yog shivirs/camps across the country on daily / weekly / monthly basis in a systemized/organized manner in order to provide medical relief to people who cannot afford modern medical method or have been subjected to ill effects of modern medicine. It was submitted that imparting of yoga training through well structured yoga shiviirs / camps also falls under the category of imparting 'education' one of the charitable objects defined u/s 2(15) of the Act and accordingly the appellant's activities are not hit by the proviso inserted in the definition of charitable purpose as contained in the said

section. During the course of hearing the appellant was directed to provide complete details of the Patanjali Bhartiya Ayurvigyan Avam Anusandhan Sansthan at Haridwar for imparting education in the field of ayurveda which started operations w.e.f. 20.7.2009. In compliance the Ld. AR submitted that during the year the appellant had applied substantial amount on construction of the ayurveda medical college which is affiliated to the Uttarakhand Technical University. It was submitted that ayurveda medical college set up by the appellant was approved and duly recognized by the Department of Ayurveda, yoga & naturopathy, unani, siddha and homoeopathy (AYUSH) vide notification dated 20.7.2009, a copy thereof has been made available at page No. 805 and 806 of the supplementary paper book -11. Department of Ayush is a body set up by the Ministry of Health & Family Welfare, Govt. of India with the primary objective of regulating and upgrading the educational standards, quality control and standardization of drugs, improving the availability of medicinal plant material, research and development and awareness generation about the efficacy of ayurveda, yoga and naturopathy, unani, siddha and homoeopathy systems of medicines. For the purpose of recognizing and granting permission for establishment of medical colleges, the department of AYUSH mandates fulfillment of certain minimum standard and requirements as prescribed under the Indian Medical Central Council Act 1970 (IMCC Act). One of the primary conditions

laid down in the IMCC Act for the grant of recognition is the existence of a medical hospital attached to the ayurvedic college with the prescribed bed strength alongwith outdoor patient department (OPD) and Indoor patient department (IPD) facilities. Ld. CIT(DR) on the other hand has placed reliance on the orders of the authorities below, as discussed above.

6.5.1. The expression 'education' has not been defined under the provisions of Income Tax Act. The Hon'ble Supreme Court in the case of Lok Shikshana Trust (supra), relied upon by the Ld. AR, has been pleased to explain the meaning of the word 'education' in the context of section 2(15) of the Act. As per this decision the education is the process of training and developing the knowledge, skill, mind and character of students by schooling by way of systematic instruction, schooling or training. The Hon'ble Delhi High Court in the case of Delhi Music Society vs. DGIT (supra) has been pleased to hold that since the assessee society was teaching and promoting all forms of music and dance, western, Indian or any other and was run like any school or educational institution in a systematic manner with regular classes, the same therefore meet the requirement of an educational institution within the meaning of section 10(23C)(vi) of the Act. In the case of ITO vs. SRM Foundation of India (supra) the Delhi Bench of the Tribunal, where the assessee was engaged in spreading the system of transcendental meditation (TM) has held that irrespective of the fact that the

assessee has its own prescribed syllabus, trained teachers, branches all over India to spread system of transcendental deep meditation among people in all walks of life, the same constituted imparting of education and the assessee was entitled to exemption u/s 10(22) of the Act. We thus come to the conclusion that any form of educational activity involving imparting of systematic training in order to develop the knowledge, skill, mind and character of students, is to be regarded as 'education' covered u/s 2(15) of the Act. In view of these decisions we hold that imparting of yoga training through well structured yoga shivir / camps also falls under the category of imparting education which is one of the charitable objects defined u/s 2(15) of the Act. The appellant's activities are thus not hit by the proviso inserted in the definition of charitable purpose in section 2(15) of the Act."

9.6 We thus following the above decision hold that propagation of yoga as pre-dominant objective in the case of present assessee very much falls within the definition of "charitable purpose" provided under section 2(15) of the Act as it is also "imparting of education". There is no dispute that the assessee has been continuously undertaking the following activities:

(a) Providing medical relief to various sections of the society, including but not limited to providing free medicines and treatment by organizing various shivirs / camps on a regular basis under the leadership of yoga guru, other trained teachers and teams of doctors.

(b) Conducting programmes and shivirs on a regular basis for propagating yoga and Ayurvedic methods of treatment and also to promote good health;

(c) Conducting yoga classes on a regular basis and in systemized manner so as to provide medical relief and also to impart education in yoga through systematic instructions and training programmes.

9.7 Though we have discussed about the other submission of the Id. CIT [DR] on the issues raised specifically in the other grounds, which we will deal with in the succeeding paragraphs, but as per un-rebutted submission of the assessee, it is also pertinent to mention over here that the issuance of donation coupons in the domination of Rs.NIL (i.e. free), Rs.100/-, Rs.500/-, Rs.1,100/- and Rs.2,100/- to various voluntary donors who attend the yoga camps, which is nothing but small donations given by the voluntary donors, who attend the Shivir/camp. The Id. CIT (Appeals) has referred to donation coupons without appreciating that Yoga Shivir/camp is open to all and not merely restricted to persons who volunteer to donate to the charitable cause of the assessee. It may also be pointed out that the assessee has applied substantial amount in setting up of "Patanjali University", a Deemed University set up under the University of Patanjali Act, inter-alia, for having courses in M.A. {Yoga Science), M.Sc. (Yoga Science), B.A. (Yoga Science) Post Graduate Diploma in Panchkarma, Post Graduate Diploma in Yoga Science and Post Graduate Diploma in Yoga Health and Cultural Tourism. It has also been informed that the university has become operational on September, 2009.

> *The finding of the authorities below that propagation of Yoga by the assessee does not qualify as medical relief or imparting of education is thus held as not justified."*

3. As is evident from the above extract, the Tribunal had relied upon its ruling in *Divya Yog Mandir Trust v. Joint Commissioner of Income Tax;* ITA No.387/Del./2013. In that decision, the judgments in *Kasyap Ved Research Foundation v. CIT* 131 ITD 370 and *CIT v. Rajneesh Foundation* 280 ITR 533 (Bom) were relied upon. It was held that yoga was one of the six systems of Vedic philosophy developed by Maharishi Patanjali, who was characterized as "The Father of Yoga" and who had compiled and refined various aspects of the science/practice systematically in "Yoga Sutras". The Tribunal concluded upon analysis of the practice of yoga that it confers positive relief to certain ailments such as asthma, migraine, hypertension, stress, etc. and promotes wellness and well being generally. Having regard to the observations, the Court is of the opinion that the mere inclusion of yoga specifically w.e.f. 01.04.2016 did not *per se* imply that it came to be included as a specific charitable category on the same lines as education, medical relief, relief to the poor, etc but that dissemination of yoga or vedic philosophy or the practice of yoga or education with respect to yoga was well within the larger term "medical relief". This Court is of the opinion that no substantial question of law arises on this aspect.

4. The Revenue has urged that the findings of the ITAT with respect to violation of Section 13 of the Act, do raise questions of law. It is also urged that the sum of ₹88,73,002/- received for construction of cottages at Vanprastha Ashram, cannot be treated as amounts towards donation but for a specific purpose, which was tied with the end use. Besides, other questions of law with respect to findings have been urged.

5. The Court notices that some of the other questions with respect to the amount of ₹38,35,00,000/- received from Divya Yog Mandir Trust; the amount of ₹4,36,23,766/- received for the disaster relief fund and ₹14,76,01,036/- as membership, have to be treated as income.

6. As far as the sum of ₹38,35,00,000/- is concerned, the AO and the CIT went by the impression that the Divya Yog Mandir Trust, which had utilized the amounts for construction, went by the fact that the amount was received from the Divya Yog Mandir Trust but the construction was to be made upon the lands owned by the assessee's trustee, one Swami Muktanandji. In this regard, the Court notices that the AO completely ignored the Divya Yog Mandir Trust's resolution and the further use of the land by Swami Muktanandji, who had categorically stated that they were not enjoying or benefiting from the assessee trust or were losing any possible income from the land and that in fact it furnished an undertaking stating that use was for an indefinite period without any consideration. In these circumstances, the treatment of ₹38,35,00,000/- as revenue, cannot be sustained. The

ITAT's findings are therefore justified and based upon the facts established from the record.

7. So far as the sum of ₹14,76,01,036/- is concerned, the Court notices that the disaster relief fund had been created and a sum of ₹8,00,00,000/- had been received. So far as this amount is concerned, the Court notices that the amount had been received towards disaster relief. The AO went by two factors i.e. that the donation reported in the magazine was less than the said sum and secondly, that the amounts spent did not square up to the amount received. On this aspect, it was held that the benefit of Sections 11 and 12 could not be enjoyed as the Trust had violated Section 13. The Tribunal's finding was that the amount was by way of a corpus donation under Section 2(24)(iia) and therefore excluded from total income. The finding here is factual; the Court is of the opinion that no question of law arises.

8. As far as the sum of ₹14,76,01,036/- received by the assessee as membership is concerned, the Revenue had objected to the character of the funding. It pointed out that different facilities were sought to be provided to the donors depending on the quantum of contributions i.e. those contributing higher amounts and seeking certain facilities were provided such facilities whereas those contributing smaller amounts were given basic facilities. The Court is of the opinion that this objection stems from the Revenue's understanding that the assessee was providing facilities itself in an activity of general public utility and not towards medical relief. In the case of medical relief – as well as for education, provision of such financial assistance *per se* is not

regarded as outside the scope of the main charitable activity. Thus, for instance, that a hospital may choose to provide modern facilities and receive amounts, quantify them differently, does not take away the character of its being a charitable activity providing medical relief. If this is kept in mind, that in the yoga camps higher amounts were received from certain subscribers/donors who were provided corresponding benefits as opposed to others, itself cannot be the basis for saying that the membership was not a donation and had to be treated as a revenue source before taxed. On this aspect, the findings of the Tribunal, being factual cannot be interfered with.

9. The Revenue urges that the sum of ₹13,68,99,745/- received as anonymous donation by the assessee was hit by provisions of Section 115BBC of the Act. The ITAT reasoned as follows in its impugned order:

> *"18.1 We find that the only allegation of the Revenue on the issue is that assessee had not maintained the details of the donors to make it verifiable. Hereinabove we have noted the break-up of donations of Rs.13,68,99,745/-. There is no dispute on organizing Yoga shivirs/camps by the assessee nor is there any dispute that the assessee had noted names and addresses of the donors. The Assessing Officer held these details maintained by the assessee are not verifiable. There is no doubt that these Yoga camps are attended by the persons in thousands still the assessee has maintained names and address communicated by the donors, but without verifying the same the Assessing Officer has summarily concluded that the said donations were in the nature of anonymous donations as defined under section*

115BBC of the Act. The assessee had also furnished affidavits of organisors of ad-hoc committees through whom the assessee had organized Yoga camps made available at page Nos.503 to 569 of the paper book, but the Assessing Officer did not bother himself to verify the same even on test-check basis. In absence of such efforts by the Assessing Officer, we are of the view that the authorities below were not justified in making and sustaining the treatment of receipt of Rs.13.68 crores as anonymous donation. Undisputedly, in almost all donations name and address of the donors have been maintained and thus bonafide of the assessee cannot be doubted where such detail has remained to be maintained in some cases. Such donations worth Rs.1,07,73,438/- has also not been alleged to spent on other than the objects of the assessee trust. We, thus, while setting aside orders of the authorities below in this regard, direct the Assessing Officer to accept the claimed receipt as donation. The ground No.11 is thus allowed."

10. It is therefore apparent that the assessee had produced materials in the form of names of the donors, in the 22 camps which were held; furthermore, apparently the assessee had also provided a DVD to back up its claim that the donors were not anonymous. The donations were split into two i.e. ₹6.61 crores through sale of coupons from 22 yoga camps and approximately about ₹6,00,00,000/- through small donations. The affidavits of Presidents of various yoga camps, organizing committees as well as other documentary evidence, supported the assessee's position on this. The ITAT's finding on this aspect is based upon the appreciation of facts; no question of law arises.

11. The last question urged is with respect to the sum of ₹55,34,557/- which the AO added back as under Section 40(a)(ia) of the Act. This was on the understanding that the sums treated as revenue on various other heads, had to suffer TDS. Since on the substantive portions of the amounts so received, this Court has upheld the findings of the ITAT, this question does not arise.

12. So far as the other issues are concerned, the following questions of law arise:

> *"I) Whether ld. ITAT erred in law in holding that assessee is entitled to exemption u/s 11 & 12 of the Income Tax Act, 1961?*
>
> *II) Whether ld. ITAT has erred in law in allowing capital expenditure though the assessee has no legal right on the land on which capital expenditure has been incurred?*
>
> *III) Whether ld. ITAT has erred in law and on the facts of the case in holding that the corpus donations received by the assessee in the form of immovable properties will not be liable to tax?"*

13. The appeal is admitted, restricted to the above questions of law.

14. Issue notice to the respondent/assessee, returnable on 09.01.2018.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

OCTOBER 23, 2017/kks