

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCH 'B', JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
Before : Shri Vijay Pal Rao, JM & Shri Vikram Singh Yadav, AM

आयकर अपील सं./ITA No. 748/JP/2015  
निर्धारण वर्ष/Assessment Year : 2009-10 (u/s 254/12AA(1)(b)of I.T. Act 1961)

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|--|---------------------------|-------------------------------|
| M/s. Rajasthan Gau Seva Sangh<br>Durgapura, Tonk Road,Jaipur | बनाम<br>Vs.               | The CIT(Exemptions)<br>Jaipur |
| स्थायी लेखा सं./जीआईआर सं./                                  | PAN/GIR No.: AAATR 0809 E |                               |
| अपीलार्थी/ Appellant   |                           | प्रत्यर्थी/ Respondent        |

आयकर अपील सं./ITA No. 113/JP/2014  
निर्धारण वर्ष/Assessment Year : 2009-10

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|---|---------------------------|------------------------------|
| M/s. Rajasthan Gau Seva Sangh<br>Durgapura, Tonk Road, Jaipur | बनाम<br>Vs.               | The ITO<br>Ward- 6(2),Jaipur |
| स्थायी लेखा सं./जीआईआर सं./                                   | PAN/GIR No.: AAATR 0809 E |                              |
| अपीलार्थी/ Appellant  |                           | प्रत्यर्थी/ Respondent       |

निर्धारिती की ओर से/ Assessee by : Shri Manish Agarwal, CA and  
Shri O.P. Agarwal, CA  
राजस्व की ओर से/ Revenue by : Shri B.K. Gupta, CIT-DR

सुनवाई की तारीख/ Date of Hearing : 10/12/2019  
घोषणा की तारीख/ Date of Pronouncement : 07 /02/2020

आदेश/ ORDER

PER VIJAY PAL RAO, JM

These two appeals by the assessee are directed against the order dated 11-09-2015 of Id. CIT(Exemptions), Jaipur passed u/s 12AA(1)(b) of the Act as well as order dated 17-12-2013 of Id. CIT(A)-II, Jaipur

arising from assessment order passed u/s 143(3) of the Act for the Assessment Year 2009-10 respectively.

2.1 Since the issue of cancellation/ withdrawal of registration u/s 12A(1)(a) of the Act goes to the root of the matter and shall have bearing on the assessment order and consequential impugned order of the Id. CIT(A), therefore, we first take up the appeal of the assessee challenging the order of the Id. CIT(E) passed u/s 12A(1)(b) of the Act. The assessee in ITA No. 748/JP/2015 for the A.Y. 2009-10 assessee has raised the following grounds.

“1. On the facts and in the circumstances of the case the Id. CIT(E),Jaipur has grossly erred in withdrawing registration u/s 12AA(3) of the I.T. Act, 1961 for A.Y. 2009-10 and onwards, without appreciating that he was not empowered under the said section to withdraw the registration granted to appellant u/s 12A(1)(a) in the year 1974, as the empowering provision i.e. section 12AA(3) was made operative w.e.f. 01-06-2010 i.e. A.Y. 2011-12 onwards only with retrospective effect as held by CBDT as well as various Courts. Thus the order of the Id. CIT(E), Jaipur cancelling the registration w.e.f. 2009-10 onwards deserves to be held bad in law.

2. On the facts and in the circumstances of the case the Id. CIT(E),Jaipur has grossly erred in withdrawing registration u/s 12AA(3) of the I.T. Act, 1961 vide his impugned order passed u/s 12AA(3) of the I.T. Act, 1961 arbitrarily by holding that the case of the assessee is hit by proviso to Section 2(15) without interpreting the proviso to section 2(15) in its true perspective. Thus, the order of the Id. CIT(E) deserves to be held bad in law and be quashed.

2.1 On the facts and in the circumstances of the case the Id. CIT(E),Jaipur has grossly erred in observing that the assessee is carrying on activities in the nature of trade, commerce or business whereas the assessee is not carrying on activity in the nature of trade, commerce or business and the assessee trust is not running on commercial lines and the activities of the assessee are charitable and is carrying on its activities for a charitable purpose within the meaning of section 2(15) of the I.T. Act, 1961.

2.2 That the Id. CIT has further erred in not properly considering the case laws squarely applicable to the case of assessee and has failed to distinguish them, therefore, the order of the Id. CIT deserves to be held bad in law''

2.2 The assessee is a society registered under the Societies Registration Act, 1860 vide registration certificate dated 14-10-1954. The assessee was granted registration u/s 12AA(1) of the Act on 06-12-1974. Thereafter the assessee has been availing the benefit of Section 11 and 12 of the I.T. Act, 1961 till 29-12-2011 when the registration was withdrawn by the CIT-II, Jaipur as well as the AO denied the benefit u/s 11 and 12 of the Act to the assessee while passing the assessment order on the same date i.e. 29-12-2011. The assessee challenged the order of the Id. CIT withdrawing the registration granted to the assessee u/s 12AA(1)(b) of the Act before this Tribunal and vide order dated 28-11-2014 in ITA No.85/JP/2012 this Tribunal set aside the order of the Id. CIT withdrawing the registration u/s 12AA(3) of the Act and remanded the

matter to the record of the Id. CIT (Admn.) to decide the same afresh. In pursuance to the said order of the Tribunal dated 28-11-2014, the Id. CIT (Exemptions) has again passed the impugned order dated 11-09-2015 whereby registration granted u/s 12AA was withdrawn by invoking the provisions of Section 12AA(3) of the Act. The Id. CIT (Exemptions) concluded that the assessee society carried out the activities which are not in accordance with the objects of the society and turnover from the commercial activities exceeds the prescribed limit provided under proviso to Section 2(15) of the I.T. Act, 1961.

2.3 Before us, the Id.AR of the assessee submitted that the order passed by the Id. CIT (Exemptions) withdrawing the exemptions is not in accordance with law and procedure laid down u/s 12AA(3) of the Act. Therefore, the impugned order is bad in the eyes of law and is liable to be struck down. The Id.AR of the assessee further submitted that Section 12AA(3) of the Act empowers the Commissioner to cancel the registration granted u/s 12AA/12A of the Act in specified circumstances where the Commissioner is satisfied that the activities of the trust/institution are not genuine or are not being carried out in accordance with the objects of the trust/intuition.

2.4 The Id.AR of the assessee has referred to the objects of the assessee society/ trust and submitted that the objects of the assessee trust includes the preservation of environment, Medical relief to ailing persons, Relief to the Poor, Imparting the education. Thus the dominant functions of the assessee trust are to provide (i) an asylum to old, maimed, sick and stray cows and further to provide relief to cows in famine affects areas, (ii) to educate and to hold camps to impart training for preparation of medicines produced from cow products and (iii) to educate milkmen in order to improve the quality of milk and thereby working for their upliftment which are very well covered within the ambit of relief to poor and education. The Id.AR of the assessee then submitted that apart from providing relief to the poor and imparting education, the assessee is also engaged in plantation activities and spreading awareness about bio-fuel in order to preserve / protect the environment. Thus the assessee trust has set up a Bio Gas Plant at all the centers which are specifically covered under the head charitable activities in the nature of 'Environment Protection'. The Id. CIT (Exemptions) has passed the impugned order on the ground that the purchase and sale of milk, milk product, cattle feed etc. does not come under the object of the assessee trust. Further, Id. CIT (Exemptions) has failed to appreciate the purpose of attainment of main objects of the

assessee trust which is authorized by memorandum of association to carryout various functions which inter alia includes purchase and sale. When the assessee is doing shelter/asylum to stray cows then purchase and sale of milk is closely related to the main objects of the society and it becomes the ancillary activity for upliftment of the main objects of the assessee trust. The Id.AR of the assessee further contended that purchase and sale of milk, ghee, cattle feed etc. has not been done on commercial lines or to earn the profit but it is a part of providing financial support to milkmen who belongs weaker and poor sections of the society. Thus the milkmen in the absence of much knowledge and net work are forced to sell their products at low prices. The assessee trust provides better quality of cattle feed so as to enable the cow owners/ milkmen to get better quality of milk products. The Id.AR of the assessee submitted that the assessee is maintaining 11 Gaushalas and 14 Famine Relief Centres and they are run at various places in the State of Rajasthan whereas the milk and ghee are being sold only from 03 counters / centres i.e. Jaipur, Bikaner and Jodhpur. The assessee trust is procuring the milk and ghee from “Jaipur Gau Samverdhan Samiti” which is formed for upliftment of milkmen. Thus the activity of purchase and sale of milk is not to earn the profit or to carry out the activities on commercial lines but to support the

milkmen through 'Jaipur Gau Samverdhan Samiti''. The activity of selling the cattle feed is to provide the good quality of cattle feed to the milkmen/ cow owners at a reasonable price. Thus the assessee trust is providing the balanced and nutritious fodder for the cows so that the milkmen can have good quality of milk & milk products. Similarly, the milk and ghee is purchased through 'Jaipur Gau Samverdhan Samiti'' which procures the same from local milkmen at a better price and sell it through its three counters/ centres. Thus all these activities are being carried out by the assessee trust with the main object to protect the cows as well as environment. In support of his contentions, the Id.AR of the assessee relied on the following decisions.

- (i) DIT(Exemptions) vs Sabarmati Ashram Gaushala Trust (2014) 362 ITR 538 (Guj).
- (ii) DIT (Exemptions), Mumbai vs Shree Nashik Panchvati Panjrapole (2017) 81 Taxmann.com 375 (Bom)
- (iii) Bhartiya Govansh Rakashan Samvardhan Parishad vs CIT, (2015) 58 Taxmann.com 37 (Gauhati Trib)
- (iv) Shree Nashik Panchvati Panjrapole (2014) 45 Taxmann.com 220 (Mumbai – Trib)
- (v) CIT vs Swastik Textile Trading Company (P) Ltd, (1978), 113 ITR 853 (Guj)

Alternatively the Id.AR of the assessee submitted that impugned order was originally passed on 29-12-2011 making it effective from 01-04-2009

whereas the amendment brought to the provisions of Section 12AA(3) was w.e.f. Assessment Year 2011-12. Hence, the Id. CIT (E) has withdrawn / cancelled the registration with retrospective effect which is not permissible. Therefore, the impugned order passed by the Id. CIT (E) withdrawing the registration was unlawful, deserves to be quashed and registration of the assessee trust granted u/s 12AA deserves to be restored.

2.5 On the other hand, the Id. DR has submitted that activities of the assessee trust are not for attainment of its objects. The primary object of the assessee trust is to provide shelter to the cows and therefore, the said object is for social cause and would fall in the last leg of charitable activities as provided u/s 2(15) of the I.T. Act, 1961 and consequently when the activities of the assessee are found to be trade and commerce then proviso to section 2(15) is attracted. In the object clause, nowhere it is provided that the assessee will purchase and sell ghee, milk, cattle feed etc. The said activity is nothing but a pure trading in the nature of trade and commerce. The total turnover from the activities of sale and purchase is Rs. 13.15 crores which is beyond the threshold limit provided in the proviso to Section 2(15) of the Act. The decisions relied on by the Id.AR of the assessee are distinguishable on facts and cannot be applied in the



facts of the present case. The Id. DR relied on the decision of ITAT Bangalore Bench in the case of Sri Vidyaranya Seva Sangha vs CIT (2016) 71 Taxmann.com 152 (Bangalore Trib). The Id. DR also relied on the impugned order of the Id. CIT(A).

2.6 We have considered the rival submissions as well as relevant materials available on record. There is no dispute that the assessee trust was granted registration u/s 12A(1)(a) of the Act on 6-12-1974. We further note that there is no change since the assessee trust was formed and registered under Societies Registration Act, 1860 vide Registration Certificate dated 14-10-1954 as a public charitable society, either in the object of the assessee trust or in the memorandum of association of the society. Therefore, the object of the assessee trust cannot be questioned being charitable in nature when the same objects were considered by the competent authority while granting registration u/s 12A(1) of the Act. The Id. CIT(Admn) initially had withdrawn the registration vide order dated 29<sup>th</sup> Dec. 2011 on the ground that the activity of the assessee trust and particularly the activity of purchase and sale of milk, ghee, cattle feed etc. is in the nature of trade, commerce or business as provided in the proviso to section 2(15) of the Act and consequently the activities are not carried out for achieving the object of the assessee trust. The said order

was challenged by the assessee trust before this Tribunal and vide order dated 28-11-2014 this Tribunal set aside the matter to the record of the ld.

CIT(Admm) in para 3.10 and 3.11 as under:-

“3.10 We have heard the rival contentions and perused the material available on record. The arguments of the ld counsel about the legislative scheme of provisions with regard to registration of trust u/s 12AA, wider meaning of Charitable Object; power of withdrawal of registration u/s 12AA(3) have some merit. The conclusion of order of ld. CIT in withdrawing the registration does not appear to conform to the specific conditions laid down in sec 12AA(3). An order withdrawing the registration of trust is a drastic action and the law provided a statutory mechanism of assessment, verification of trust activities, and apportionment of income and expenditure of various activities of the trust. Benefits of sec 11 and 12 can be extended on the basis of scrutiny and verification by the AO. Ld. CIT has not pointed out any specific instance of any activity, income or expenditure being nongenuine. Sec. 293C is not applicable to approvals which specifically provide manner of withdrawal of approval as held by this bench of ITAT in the case of Jaipur Development Authority vs. CIT in ITA No.182/JP/2012 vide order dated 30-09-2014 as under:-

*The learned CIT also erred in applying the provisions of Section 293(c) of the Act, in this case, which applied withdrawal of approval granted under any provision of this Act, notwithstanding that a provision to withdraw such approval has not been specifically provided for in such provision. For cancellation of registration, the specific provision U/s 12AA is provided.*

3.11 In view of entirety of facts, circumstances and case laws, we are of considered opinion that the impugned order of ld. CIT (Admn.) withdrawing the registration u/s 12AA(3) is not in conformity with the language of this section. We are of the view that ld. CIT(Admn) should revisit the issue of withdrawal of registration afresh after taking into consideration the legislative scheme of powers, incorporation of proviso, inclusive definition of the Charitable Object as interpreted by plethora of judicial decisions and decide the issue of registration after giving the assessee an opportunity of being heard. Since we have set aside the issue, the additional ground as admitted by us with other pleadings for proper disposal of the same shall be considered by ld. CIT.”

The Tribunal has observed in that set aside order that order dated 29-12-2011 passed by the Id. CIT (Admn.) withdrawing the registration does not appear in conformity with the specific conditions laid down u/s 12AA(3) of the Act. Accordingly, earlier order was set aside and the matter was remanded to the record of the Id. CIT(Admn) for reconsideration of the matter as per the scheme of the provisions of section 12AA(3) of the Act as well as in accordance with the judicial precedents on the issue after giving opportunity of hearing to the assessee. In the set aside proceedings, the Id. CIT(E) has again reiterated its stand and held that the activity of the assessee trust is not as per the object clause of the assessee trust and further the activities are in the nature of trade and commerce and turnover from these activities is more than the prescribed limit as per proviso to section 2(15) of the Act and consequently the same are not charitable in nature. The Id. CIT(E) has given more emphasis on the powers for cancellation/ withdrawal of the registration granted u/s 12A of the Act by virtue of the amendment brought in Section 12AA(3) w.e.f. 01-06-2010. For ready reference, we reproduce section 12AA(3) of the Act as under:-

**‘Sub-Section (3) of Section 12AA** :-[(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance (No.2) Act, 1996 (33 of 1996) and subsequently the [Principal Commissioner or ] Commissioner is satisfied that the activities

of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:

**Provided** that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.]’

Sub-Section 3 of Section 12AA confers the powers to competent authority being a Principal Commissioner/ Commissioner to cancel the registration of the trust or an institution granted u/s 12AA(1)(b) or 12A of the Act, on his satisfaction that the activity of such trust/institution are not genuine or being carried out in accordance with the objects of the trust or institution as the case may be. Thus there are two situations under which registration granted u/s 12AA/12A can be cancelled either the activities of the trust/ institutions are not genuine or the activities are not being carried out in accordance with the objects of the trust/institution. In the case in hand, there is no allegation that the activities of the assessee trust are not genuine but the Id. CIT(E) has observed that the activities of the assessee trust are not being carried out in accordance with the objects of the trust. It is pertinent to note that once the objects of the assessee trust are found to be charitable in nature then in order to hold that the activities are not being carried out in accordance with the object the same must not be in the nature of achieving or attainment of the purpose and

objects of the trust. There is no dispute that the main dominant functions of the assessee trust is to provide an asylum/shelter to old sick, maimed, and stray cows. The assessee is maintaining 11 Gaushalas and 14 Famine Relief Centres particularly for providing the shelter to the cows. It is also not in dispute that for last more than 45 years the assessee has been providing asylum/ shelter to the cows and maintaining these Gaushalas as well as Famine Relief Centres with the object to provide proper treatment and fodder to the needy stray cows. Apart from maintaining Gaushalas and Famine Relief Centres, the assessee trust is also carrying out various activities of providing research and training centres for development of medical treatment and use of cow products in the medicine. The assessee is also imparting education and other training necessary for animal husbandry and particular rearing the cows by milkmen. The department has not disputed the fact that entire receipt/ income earned by the assessee from various activities are applied in the attainment of its main and dominant objects of maintaining the Gaushalas and Famine Relief Centres. Even the activities of purchase and sale of milk, ghee and cattle feed is done through another society namely Jaipur Gau Samvardhan Samiti. The sole object & purpose of purchase and sell of the milk, milk products and cattle feed is to provide the financial help to the persons in

occupation of animal husbandry and particularly selling of milk. There is no allegation that the assessee is carrying out these activities with sole motive of earning profit rather the assessee has brought on record the details to show that the assessee is not earning any profit but only charging some commission to facilitate the better service, price and good products to the needy persons and particularly in the field of rearing the cows and production of milk. The income so earned by the assessee trust from these activities is applied for the main objects of the assessee trust and therefore, it cannot be said that all these activities are not being carried out in accordance with the object of the assessee trust rather these activities are being carried out to attain the main objects of the assessee trust. In the case of DIT (Exemptions), Mumbai vs Shree Nasik Panchvati Panjrapole (supra), the Hon'ble Mumbai High Court has upheld the order of the Tribunal whereby the order of DIT(E), withdrawing the registration u/s 12A of the Act was set aside. The observation of the Hon'ble Bombay High Court held in para 16 to 19 is as under:-

**‘16.** In fact, the decision relied upon by the impugned order of the Tribunal in the case of *Sabarmati Ashram Gaushala Trust (supra)* was appealed to before the Hon'ble Gujarat High Court being Tax Appeal No.1162 of 2013. The question posed for consideration was whether the proviso to Section 2(15) of the Act would be applicable in case of the *Sabarmati Ashram*

*Gaushala Trust (supra)* as it was selling milk which generated considerable revenue. This in the context of exemption under Section 11 of the Act. The Gujarat High Court disposed/dismissed on 15th January, 2014 after considering the statutory provisions, the speech of Finance Minister while introducing the proviso and the CBDT Circular issued in the context of newly added proviso to Section 2(15) of the Act, observing as under :—

'It is not aimed at excluding the genuine charitable trusts of general public utility but is aimed at excluding activities in the nature of trade, commerce or business which are marked as "charitable purpose".

Many activities of genuine charitable purposes which are not in the nature of trade, commerce or business may still generate marketable products. After setting off of the cost, for production of such marketable products from the sale consideration, the activity may leave a surplus. *The law does not expect the Trust to dispose of its produce at any consideration less than the market value. If there is any surplus generated at the end of the year, that by itself would not be the sole consideration for judging whether any activity is trade, commerce or business - particularly if generating 'surplus' is wholly incidental to the principal activities of the trust; which is otherwise for general public utility, and therefore, of charitable nature.*" .....

..... *"Merely because while carrying out the activities for the purpose of achieving the objects of the Trust, certain incidental surpluses were generated, would not render the activity in the nature of trade, commerce or business. As clarified by the CBDT in its Circular No.11/2008 dated 19th December, 2008 the proviso aims to attract those activities which are truly in the nature of trade, commerce or business but are carried out under the guise of activities in the nature of 'public utility'.*

Delhi High Court in case of Institute of Chartered Accountants of India & Anr. Vs. Director General of Income-Tax (Exemption) and Ors. reported in (2012) 347 ITR 99 (Delhi) considered these very provisions in the context of activities of the Institute of Chartered Accountants holding that the fundamental or dominant function of the Institute was to exercise overall control and regulate the activities of the members / enrolled chartered accountants and merely because the Institute was holding coaching classes which also generate income, the Court held that proviso to Section 2(15) of the Act would not be applicable. It thus held and observed as under :-

"Section 2(15) defines the term "Charitable purpose". Therefore, while construing the term "business" for the said section, the object and purpose of the section has to be kept in mind. We do not think that a very broad and extended definition of the term "business' is intended for the purpose of interpreting and applying the first proviso to Section 2(15)of the Act to include any transaction for a fee or money. An activity would be considered "business" if it is undertaken with a profit motive, but in some cases this may not be

determinative. Normally, the profit motive test should be satisfied but in a give case activity may be regarded as business even when profit motive cannot be established / proved. In such cases, there should be evidence and material to show that the activity has continued on sound and recognized business principles, and pursued with reasonable continuity. There should be facts and other circumstances which justify and show that the activity undertaken is in fact in the nature of business. The test as prescribed in Raipur Manufacturing Company (1967) 19 STC 1 (SC) and Sai Publication Fund [\(2002\) 258 ITR 70 \(SC\)](#); [\(2002\) 126 STC 288 \(SC\)](#) can be applied. The six indicia stipulated in Lord Fisher (1981) STC 238 (sic) are also relevant. Each case, therefore, has to be examined on its own facts.' (Emphasis supplied)

**17.** We find ourselves in complete agreement with the reasoning set out by the Gujarat High Court in its order dated 15th January, 2014 in *DIT (Exemption) v. Sabarmati Ashram Gaushala Trsut* [\[2011\] 362 ITR 539/223 Taxman 43/44 taxmann.com 141](#). Although the same was rendered in the context of exemption being denied under Section 11 of the Act and it was not a case of withdrawal of registration. Nevertheless, the reasoning therein would be equally applicable to the present facts as it considered the applicability of the proviso to Section 2(15) of the Act as arising in this case. One more fact that may be noted is that Mr. Malhotra sought to rely upon the order passed by the CIT(A) in Section 11 proceedings to establish that the milk is sold at market price. However, it would make no difference as there is no bar in law to a Trust selling its produce at market price as observed above by the Gujarat High Court. In fact, the above factor alone will not make it an activity of trade, commerce or business or even in its nature.

**18.** We may also refer to another decision of the Delhi High Court in *ICAI v. DGIT (Exemption)* [\[2013\] 358 ITR 91/217 Taxman 152/35 taxmann.com 140](#), where the Court observed at para 67 thereof as under :—

"The expressions "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 organised 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 purport of the first proviso to section 2(15) of the Act is not to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee. The object of introducing the first proviso is to exclude organizations which are carrying on regular business from the scope of "charitable purpose". The purpose of introducing the proviso to section 2(15) of the Act can be understood from the Budge Speech of the Finance Minister while introducing the Finance Bill, 2008. ...

.... *The expression "business", "trade" or "commerce" as used in the first proviso must, thus, be interpreted restrictively and where the dominant object*



*of an organisation is charitable any incidental activity for furtherance of the object would not fall within the expressions "business", "trade" or "commerce".'* (Emphasis supplied)

**19.** In fact the Revenue has not been able to show that the view taken by the Apex Court in *Surat Art Silk Cloth Mfg Association (supra)*, Gujarat High Court in *Sabarmati Ashram Gaushala Trust (supra)* and the Delhi High Court in ICAI 347 ITR 99 (supra) and ICAI 358 ITR 91 (supra) laying down the dominant activity test should not commend to us. Therefore, the view taken by the Tribunal in the present facts cannot be found fault with.’’

Thus the proviso inserted in Section 2(15) was considered by the Hon'ble Bombay High Court and held the expression Trade, Commerce and Business as provided in first proviso to Section 2(15) must be read in the context of 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, even as per intent of the legislature and as per Finance Bill, 2008 whereby the said proviso to section 2(15) was inserted, is found to be not to bring the incidental activity for furtherance of the object within the expression business, trade or commerce. It is pertinent to note that when the assessee is maintaining various Gaushalas then production of milk is bound to happen and dealing in purchase and sale of milk & milk products as well as cattle feed is nothing but the activity in furtherance of the objects of the assessee trust. The Id.DR of the assessee relied on the decision of ITAT Bangalore Bench in the case of Sri Vidyanarya Seva Samiti vs CIT (supra) wherein the Tribunal has specifically noted that

the assessee society is not carrying out any activity since 2001. Therefore, the genuineness of the activity itself was not even in existence. Hence, the said decision cannot be applied in the present case where there is no dispute about the activities being carried out by the assessee trust and it has maintained 11 Gaushalas and 14 Famine Relief Centres which is the main and pre-dominant object of the assessee trust. Hence, the impugned order passed by the Id. CIT(E) is based on the presumption of incorrect facts that the activities of the assessee trust are not in accordance with the object of the assessee trust. The Id. CIT(E) has even not taken into consideration the fact that the assessee is maintaining various Gaushalas and Famine Relief Centres and also carrying out various activities of imparting education and training. The assessee trust is also engaged in the activities of research and development of medicines by the use of cow products. Therefore, the findings of the Id. CIT(E) is contrary to the undisputed facts regarding the objects of the assessee trust and the activities of the trust are being carried out for attainment of main objects of the trust. Hence in view of the above facts and circumstances of the case, the impugned order of the Id. CIT(E) is set aside and grant of registration u/s 12A is restored. Thus the appeal of the assessee is allowed.

3.1 The assessee in ITA No.113/JP/2014 for the Assessment Year 2009-10 has raised the following grounds:-

“1. On the facts and in the circumstances of the case the Id. CIT(E),Jaipur has grossly erred in upholding the action of the AO in treating the income declared by the appellant as income from business, arbitrarily on mere assumptions and presumptions, thus the action of the AO deserves to be held bad in law.

2. On the facts and in the circumstances of the case the Id. CIT(E), Jaipur has grossly erred in sustaining the addition of Rs. 15,55,000/- made on account of surplus on sale of land on protective basis more particularly when the land under question was sold in F.Y. 2007-08 relevant to Assessment Year 2008-09. Hence, the addition of Rs. 15,55,000/- made on protective basis in the year under appeal deserves to be deleted.

3. On the facts and in the circumstances of the case the Id. CIT(E), Jaipur has grossly erred in sustaining addition of Rs. 1,05,000/- on account of contribution received from various organizations as revenue receipt when in fact said contribution is a capital receipt. Hence, the addition of Rs. 1,05,000/- so made deserves to be deleted.”

3.2 We have heard the Id.AR and Id. DR as well as considered the relevant materials available on record. The Id. CIT(A) while passing the impugned order has held in para 3.3 as under:-

“3.3 I have considered the facts of the case, assessment order and appellant’s written submission. Assessing Officer made addition on account of surplus on sale of land and contribution received from various organizations since appellant’s registration u/s 12A is withdrawn by CIT. Appellant argued that the withdrawal of registration is not sustainable however it is not in dispute that order of CIT withdrawing registration u/s 12A is appealable only before ITAT. Till such time, ITAT decide the issue, appellant is not a charitable trust registered u/s 12A and is not entitled for exemption u/s 11,12

and 13. Accordingly appellant's arguments against withdrawal of registration are not required to be discussed here.

Assessing Officer made the addition of surplus of land which was sold last year on protective basis. Appellant submitted that property was sold and registered last year and entire payment was also received in that year therefore, there is no question of taxing the surplus during the current year. However, it is not in dispute that appellant reflected surplus on sale of land only during the year and not in earlier year therefore, as far as AO is concerned, he has taxed the surplus on the basis of sale disclosed by the appellant. Appellant did not explain as to why sale of property which was complete last year, was not reflected in the accounts last year but the same is disclosed during the year. In absence of any reason for not disclosing the sale and surplus arising from therefrom last year, assessing officer is justified in taxing the surplus in the current year when such surplus is reflected in the accounts at least on protective basis. Accordingly, the addition of surplus on sale of land made on protective basis is confirmed.

Assessing Officer made another addition of Rs. 1,05,000/- on account of contributions received from other organizations as revenue. Since income of the appellant trust is to be computed under normal provisions, any receipt is to be treated as taxable unless it is exempt. Since appellant did not submit any information with regard to the nature of this receipt, assessing officer justified in taxing this receipt as revenue.

In the final result, appeal is dismissed.”

The Id. CIT(A) has confirmed the order of the AO on the ground that the registration was withdrawn by the Id. CIT(E) and consequently the assessee is not eligible for exemption u/s 11 and 12 of the Act. Since the said order of the Id. CIT(E) withdrawing the exemption has been reversed by us, therefore, the impugned order of the Id. CIT(A) is not sustainable and liable to be set aside in view of our findings on the appeal filed against withdrawal of the exemptions. Hence, the addition made by the AO is liable to be deleted and the assessee trust is entitled for the benefit

u/s 11 and 12 of the Act to the extent the income is applied for charitable purposes. The AO has nowhere alleged that the assessee has not applied the income for charitable purposes. Accordingly, the orders of the authorities below are set aside.

4.0 In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 07 /02/2020.

Sd/-  
( विक्रम सिंह यादव )  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 07/02/ 2020

\*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s. Rajasthan Gau Sewa Sangh, Jaipur
2. प्रत्यर्थी / The Respondent- The CIT(E), Jaipur
3. आयकर आयुक्त(अपील ) / CIT(A),
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.748/JP/2015)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar