



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 598 OF 2024  
WITH  
INCOME TAX APPEAL (L) NO. 14650 OF 2024  
WITH  
INCOME TAX APPEAL (L) NO. 14652 OF 2024

Commissioner of Income Tax (Exemptions), Mumbai ... Appellant

vs.

Shree Sai Baba Sansthan Trust – Shirdi ... Respondent

Mr. Dinesh Gulabani for the appellant.

Mr. S. Ganesh, Senior Advocate a/w. Mr. Ashwin Shete, Mr. Srivastav, Ms. Anvi Vasani i/b. Jayakar & Partners for the respondent.

CORAM: G. S. KULKARNI &  
SOMASEKHAR SUNDARESAN, JJ.

DATED: 8 OCTOBER 2024

**Judgment (Per G. S. Kulkarni, J.)**

1. These appeals by the Revenue under section 260A of the Income-tax Act, 1961 (for short “**the Act**”) assail a common order dated 25 October, 2023 passed by the Income-tax Appellate Tribunal (for short “**the Tribunal**”), whereby the Tribunal has rejected the Revenue’s appeals against the order passed by the Commissioner of Income-tax (Appeals) (for short “**CIT(A)**”).

2. The issue which falls for consideration in these appeals is whether the “anonymous donations” received in the “Hundi”, which are substantial amounts, are liable to be taxed under Section 115BBC(1) of the Act?
3. Relevant to these appeals, the assessment years in question are assessment years 2015-16, 2017-18 and 2018-19 respectively.
4. The substantial questions of law as raised in the present proceedings, revolves around the applicability of the provisions of Section 115BBC(1) of the Act in respect of “anonymous donations” received by the respondent/assessee. Such donations were sought to be taxed primarily on the ground that the respondent is a charitable institution falling within the purview of Section 80G of the Act. The decision of the Assessing Officer to tax the anonymous donations under Section 115BBC(1) on the premise of the assessee also being registered under the provisions of Section 80G of the Act, was negated by the CIT(A), which has been confirmed by the Tribunal, by the impugned order. Against such current findings of the appellate forums, the present appeal has been filed.
5. Before we refer to the questions of law as raised in the memo of appeal, the relevant facts can be noted:

6. The respondent/assessee is a public trust which was initially constituted in the year 1953 when it was registered as the “Shirdi Sansthan of Shri Sai Baba” trust under the Bombay Public Trusts Act, 1950. By an order dated 18 October, 1982 passed by this Court, the administration of the Trust was vested in the “Board of Management”, constituted by the Charity Commissioner, Government of Maharashtra. Thereafter in August, 2004, the State Legislature enacted Shri Sai Baba Sansthan Trust (Shirdi) Act, 2004 (for short “**Sai Baba Trust Act**”)<sup>1</sup> which reconstituted the public trust. Under such enactment, the assessee is designated/described as the “Shri Sai Baba Sansthan Trust (Shirdi)” (for short “**the assessee**”). The assessee is also registered under Section 12A and 80G of the Income-tax Act, as approved in terms of Section 10(23C)(v) of the Act, by the Chief Commissioner of Income Tax, Mumbai.

7. As the issues in all these appeals are common qua the income tax returns of the assessee, we refer to the facts relevant to the assessment year 2015-16.

8. For such assessment year, the assessee filed its return of income on 1 December, 2015 along with the Income Expenditure Account, Balance Sheet and Audit Report in Form 10B declaring “Nil” total taxable income.

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**1** Brought into effect from 17 August, 2004.

9. The case of the assessee was selected for regular scrutiny. Accordingly, notices under section 143(2) and 142(1) of the Act were issued by the Deputy Commissioner of Income Tax (Exemptions), Mumbai. The Assessing Officer noted that during the financial year, the assessee trust had received aggregate donations of Rs.228.25 crores, out of which, Rs.159.12 crores were by way of “hundi collections”, which were ‘anonymous donations’. The Assessing Officer, hence, called upon the assessee to explain as to why the provisions of Section 115BBC of the Act should not be applied. The Assessing Officer was of the opinion that the assessee being a charitable trust, and as the anonymous donations exceeded 5% of the total donations, the same were taxable under section 115BBC(1) of the Act. The Assessing Officer was also of the view that the status of the assessee as a trust, existed solely for charitable purposes, which, according to him, was evident from the certificate obtained under section 80G of the Act. In this context, the Assessing Officer observed that the registration under section 80G of the Act was granted only to those trusts, which were established in India solely for charitable purposes and which did not have any religious activities. This more particularly referring to Explanation 3 below Section 80G defining ‘charitable purpose’, to not include any purpose, the whole or substantially the whole of which, was religious in nature. The Assessing Officer also referring to sub-section (5) of Section 80G, stated that the

eligible institution or trust cannot be for the benefit of any particular religious community or exists for any purpose other than charitable purposes. The Assessing Officer was of the view that as the assessee was a charitable organisation, registered under section 80G of the Act, having no religious purpose, hence the assessee was not entitled to avail the benefit of exclusion as set out in Section 115BBC(2)(b) of the Act. Accordingly, the Assessing Officer taxed the anonymous donations of Rs.159.12 crores under the provisions of Section 115BBC of the Act.

10. It needs to be stated that the assessee in its several replies/explanations placed before the Assessing Officer, asserted that the assessee was both a religious as well as charitable trust, and hence it fell within the exception set out in Section 115BBC(2)(b) of the Act. In such context, the assessee relied upon its registration under Section 10(23C)(v) of the Act dated 17 March, 2008 granted by the Chief Commissioner of Income-tax, Mumbai. The assessee also referred to the objects set out in the Trust Deed and pointed out that there were several places of worship within its premises, which evidenced that the assessee was a trust with mixed objects i.e., both charitable and religious. Insofar as the certificate held by the assessee under Section 80G of the Act was concerned, the assessee contended that the term 'charitable purpose' as defined in Explanation 3 below Section 80G, excluded only those entities whose purpose wholly or substantially was

religious in nature. It was contended by the assessee that the entities having mixed charitable and religious purpose were not excluded. The assessee contended that however its objects and activities were predominantly charitable and it also served religious purposes, which overlapped the charitable purpose. The assessee also contended that the Assessing Officer's interpretation that the registration under Section 80G was available only to institutions existing solely for charitable purpose was misplaced. The assessee, referring to Section 80G(2)(b) of the Act, contended that under such provision any sum paid by the assessee, to be a place of a renowned public worship, such as Temple, Mosque, Gurudwara, Church etc., was notified by the legislature to qualify as donation eligible for deductions under Section 80G of the Act.

11. The assessee also contended that Section 80G(5B) of the Act prescribed limits on expenditure of religious nature to an amount not exceeding 5% of its total income. According to the assessee, such provisions negated the stand of the Assessing Officer that the provisions of Section 80G of the Act apply to only those trusts which exists solely for charitable purposes. The assessee, hence, asserted that where any trust or institution existed both for charitable and religious purposes and the expenditure for religious purpose was less than 5% of the total income, then such trust or institution was eligible to obtain certificate under Section 80G of the Act.

The assessee also furnished details of the expenses incurred for religious purposes which comprised of 0.49% of the total income. Hence, it was assessee's case that such factual material showed that the assessee did not exist wholly or substantially for religious purposes and that the assessee was in compliance with the conditions as set out in Section 80G (5B) of the Act. According to the assessee, holding of a certificate under Section 80G of the Act was valid and at the same time, since it was existing both for charitable and religious purposes, the assessee was entitled to avail benefits of exclusion, set out in Section 115BBC(2)(b) of the Act.

12. In the assessment proceedings held on the above backdrop, the Assessing Officer did not agree with the case of the assessee in passing an assessment order. He was of the view that a trust can be registered under Section 80G of the Act only if it is purely charitable in nature and that even after incorporation of sub-section (5B) in the said provision, Section 80G applied only to charitable organisations, although some expenditure incurred on religious activities, was allowed. In the assessment order the Assessing Officer observed that the exclusion as set out in Section 115BBC(2)(b) of the Act, was meant for the trust established for both charitable and religious purposes, which would suggest that at least one of the objects of the trust was wholly or substantially religious in nature. According to Assessing Officer, the bar set out in Explanation 3 to Section

80G of the Act would hit, such mixed trusts. The Assessing Officer observed that the contention of the assessee that it was both a charitable and religious trust was not acceptable, as according to him, the objects of the trust revealed that it was wholly or substantially a charitable trust. He concluded that the benefit of exclusion set out in Section 115BBC(2)(b) was not available to the assessee. The Assessing Officer accordingly taxed the anonymous donations, for the said assessment year which were amounting to Rs.147,71,54,875/-. The amounts of such anonymous donation have differed for the subsequent assessment years, namely, A.Y. 2017-18 and A.Y. 2018-19.

13. The assessee being aggrieved by orders passed by the Assessing Officer filed an appeal before the CIT(A) reiterating its contentions as urged before the Assessing Officer. The assessee contended that the main object of its trust had always been to carry out the activities associated with prayers, maintenance of temple and providing facilities to the devotees who visited the temple, to offer prayers including providing food and propagation of the teachings of Shri Sai Baba. The CIT(A), upon examining the assessee's object as envisaged in the trust deed and discussing in detail the meaning of the term "religious purposes", in the context of the Act, observed that the same cannot be interpreted in a narrow sense to denote furtherance of only a particular religion, but the same has to be interpreted inclusively and in a broad sense. The CIT (A) also observed that the approval received by the



assessee under Section 10(23C)(v) of the Act from the CCIT Mumbai, was also not withdrawn. Accordingly, the CIT(A) after inquiring into the objects, constitution and affairs of the assessee, found that the assessee existed wholly for public, religious and charitable purposes. The CIT (A) accordingly deleted the impugned addition as made by the Assessing Officer and held that the assessee was entitled to the benefit under Section 115BBC (2)(b) of the Act.

14. The Revenue being aggrieved by the orders passed by the CIT (A) approached the tribunal, primarily canvassing that the view taken by the Assessing Officer in bringing to tax the anonymous donations and the deletion of such amounts by the CIT(A), was invalid and contrary to the provisions of Section 115BBC(1) read with Section 80G of the Act.

15. The Tribunal, *inter alia* considering the trust deed as also the Act of the State Legislature, the 'Sai Baba Trust Act', confirmed the findings of the CIT(A) that the assessee was a charitable and religious trust. It is against such orders passed by the Tribunal, the Revenue is in appeal in the present proceedings.

16. The Revenue has raised for consideration of the Court the following questions of law:-

“(a) Whether on the facts and circumstances of the case and in law, the Hon’ble ITAT has erred in holding that the assessee trust as an organization established for both charitable and religious purposes, when the facts of the case and the objects of the trust clearly show that the assessee is a charitable organization and therefore the anonymous donations received by it shall be taxed as per the provisions of section 115BBC of the Income-tax Act?

b) Whether on the facts and circumstances of the case and in law, the Hon’ble ITAT has erred in interpreting that the charitable activities are a part of religious activities and thus some of the objects of the trust qualify to be of both religious and charitable nature.

c) Whether on the facts and circumstances of the case and in law, the Hon’ble ITAT has erred in considering the assessee trust created or established wholly for religious and charitable purpose when the assessee has obtained certificate under section 80G(5B) of the Income-tax Act and whether the benefit of exclusion is available to the assessee trust under section 115BC(2) in light of the certificate under section 80G(5B) of the Income-tax Act so obtained?

d) Whether on the facts and circumstances of the case and in law, the Hon’ble ITAT has erred in relying upon the certificate under section 10(23C)(v) of the Act issued by the learned CCIT, Mumbai to hold that the assessee Trust existed both for charitable and religious purposes, ignoring the fact that nowhere did the Id. CCIT, Mumbai had explicitly mentioned in the certificate that the assessee existed both for charitable and religious purposes.

e) Whether on the facts and circumstances of the case and in law the Hon’ble ITAT has erred in holding that the impugned expenditure is incurred for religious purpose even if it is considered for academic discussion that such expenditure is incurred for religious purpose, whether it will alter the nature and character of the trust from charitable trust to mix purpose trust within the meaning of provisions of the Act, when the limit available is less than 5% of total expenditure as per section 80G of the Act ?”

17. Shri Dinesh Gulabani, learned counsel for the Revenue has made extensive submissions. The primary contention as urged on behalf of the Revenue is that the assessee’s case qua the anonymous donations, were

required to be considered by the forums below, on the conjoint applicability of Section 115BBC(1) and Section 80G. To buttress such submission, it is submitted that Assessing Officer was correct in his approach when he observed and concluded that the assessee is only a charitable trust. It is submitted by Mr. Gulabani that this would be an inevitable conclusion, considering the assessee's registration under Section 80G of the Act, which enabled the assessee to receive donations, as a charitable institution and thereby conferring an advantage of deduction to the donor. It is his contention that such position can be availed only by a charitable trust, registered under Section 80G, hence, once such registration under Section 80G subsisted, the provisions of Section 115 BBC (1) had become applicable and consequently anonymous donations were required to be brought to tax.

18. It is next submitted by Mr. Gulabani that the observations of the Assessing Officer insofar as the total expenses incurred by the assessee towards religious purposes were only 0.49% of the total receipts, itself was indicative of the fact that the assessee was not a religious trust and it was a charitable trust considering the ambit of Section 80G(5B) of the Act. It is next submitted that the Assessing Officer had correctly observed that these expenses were considered in view of the wide meaning, which was required to be attributed to "religion" as asserted by the assessee before the Assessing Officer. It is submitted that the expenses of the assessee on religious activities

would have been definitely more than 5% and there were meager expenses for religious purposes as shown in the books of account of the assessee. The assessee thus could not satisfy the test that it was both a charitable and religious trust. In fact, in this regard the assessee was taking contradictory stand. It is submitted that for such reasons as also for the reason that the assessee continued to hold a registration under Section 80G, as also, as the assessee asserted benefit under Section 10(23C)(v), necessarily the assessee was rightly held by the Assessing Officer to be a charitable trust and not a religious trust. It is submitted that such aspect of the matter was overlooked and / or misinterpreted by the CIT(A) and the Tribunal. It is hence submitted that the appeal deserves to be allowed on the aforesaid questions of law.

19. On the other hand, Mr. Ganesh, learned senior counsel for the assessee has submitted that the nature of the trust being essentially and predominantly a charitable and religious trust is purely a question of fact. Mr. Ganesh has drawn the Court's attention to the Trust Deed as also to the Sai Baba Trust Act to submit that the trust has a shrine (temple), and that there is traditional form of worship by the devotees, and all attributes of religious activities are performed on different festivals as per the established practice. It is, hence, his submission that when such are the findings of fact, which are concurrently recorded by the CIT(A) as also by the Tribunal, and

when such findings are not factually perverse, there can be no question of law which could be raised by the Revenue. In such context, Mr. Ganesh has drawn our attention to the observations of the Tribunal in paragraphs 21, 22 and 23 of the impugned order. It is submitted that even otherwise the Revenue has not urged any perversity on the part of the Tribunal in reaching to such conclusions as arrived by the Tribunal. In support of this submission, Mr. Ganesh has placed reliance on the decision of the Supreme Court in **K. Ravindranathan Nair vs. Commissioner Of Income Tax, Ernakulam**<sup>2</sup>.

20. Mr. Ganesh would next submit that in the facts and circumstances of the case, the certificate under Section 80G as held by the assessee was totally irrelevant. His submission is also that the 80G certificate would become necessary in view of the charitable character of the trust which was *de hors* the existing religious character of the Trust. It is his submission that merely for the reason that the assessee possessed Section 80G certificate, the Assessing Officer could not have reached to a conclusion, that the case of the assessee would fall within the provisions of Section 115BBC(1) of the Act, as there was no scope for the Assessing Officer to intermix the applicability of these provisions which were in fact required to be independently construed. Mr. Ganesh would next submit that considering the clear purport of sub-section (2)(b) of Section 115BBC, what has correctly weighed with the

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<sup>2</sup> 2000 SCC OnLine SC 1671

CIT(A) and the Tribunal is to the effect that an exception to sub-section (1) is clearly carved out, to any trust or institution “created or established” wholly for religious and charitable purposes, which would take within its ambit anonymous donations, as it would not fall under the remaining part of sub-section (2)(b) of Section 115BBC. It is hence his submission that there is no error of law, whatsoever, in the Tribunal reaching to a conclusion that the case of the assessee fell under sub-section (2)(b) of Section 115BBC and the anonymous donation cannot be taxed under sub-section (1) of the said provision. It is submitted that the provisions of Section 115BBC is required to be considered as an object oriented provision and not expenditure oriented provision. It is next submitted that Section 2(m) of the Sai Baba Trust Act, postulates that any words or expression, not expressly defined in such Act, shall have the meaning assigned to them in the Bombay Public Trusts, Act, 1950. It is submitted that the word “temple” is not defined under the Sai Baba Trust Act, but the same has been defined under Section 2(17) of the Bombay Public Trusts Act, 1950. It is hence his submission that this coupled with the rituals, poojas, ceremonies which are being performed throughout the day for the devotees, was completely overlooked by the Assessing Officer, which was corrected by the Appellate Authority as also by the Tribunal. It is also his submission that the Sai Baba Trust is also regarded as a most visited religious place in the State of Maharashtra by

tourists and the public at large, to submit that such religious attributes were overlooked by the Revenue in asserting its case in the present appeal.

21. Mr. Ganesh would lastly submit that the 80G certificate as issued to the assessee would not be determinative of the applicability of the provisions of Section 115BBC of the Act, and necessarily it was a factual aspect which determined the issue of receipt of the anonymous donations and which has been rightly appreciated and concluded by both the forums below. Mr. Ganesh has accordingly prayed for dismissal of the appeal.

### **Analysis and Conclusion**

22. We have heard learned counsel for the parties. With their assistance, we have perused the record. As seen from the questions of law as raised by the Revenue, the primary question which has arisen for consideration in the present appeal, is as to whether the assessee is a charitable and religious trust, so as to fall within the exceptions to Section 115BBC carved out under sub-section (2)(b) of the said provisions notwithstanding the assessee being registered under Section 80G of the Act.

23. Considering the conspectus of the case, at the outset we are required to note the relevant provisions of the Income Tax Act, as also the provisions of the other Acts as noted by us hereinabove:-

INCOME TAX ACT, 1961**“Section 80G. Deduction in respect of donations to certain funds, charitable institutions, etc.—**

(1) In computing the total income of an assessee, there shall be deducted, in accordance with and subject to the provisions of this section,—

(i) in a case where the aggregate of the sums specified in sub-section (2) includes any sum or sums of the nature specified in sub-clause (i) or in sub-clause (iiia) or in sub-clause (iiiaa) or in sub-clause (iiiab) or in sub-clause (iiib) or in sub-clause (iiie) or in sub-clause (iiif) or in sub-clause (iiig) or in sub-clause (iiiga) or sub-clause (iiih) or sub-clause (iiha) or sub-clause (iihb) or sub-clause (iihc) or sub-clause (iihd) or sub-clause (iihe) or sub-clause (iihf) or sub-clause (iihg) or sub-clause (iihh) or sub-clause (iihi) or sub-clause (iihj) or sub-clause (iihk) or sub-clause (iihl) or sub-clause (iihm) or in sub-clause (vii) of clause (a) or in clause (c) or in clause (d) thereof, an amount equal to the whole of the sum or, as the case may be, sums of such nature plus fifty per cent of the balance of such aggregate; and

(ii) in any other case, an amount equal to fifty per cent of the aggregate of the sums specified in sub-section (2).

(2) The sums referred to in sub-section (1) shall be the following, namely:—

(a) any sums paid by the assessee in the previous year as donations to—

(i) the National Defence Fund set up by the Central Government; or

(ii) the Jawaharlal Nehru Memorial Fund referred to in the Deed of Declaration of Trust adopted by the National Committee at its meeting held on the 17th day of August, 1964; or

... ..

**(5B) Notwithstanding anything contained in clause (ii) of sub-section (5) and Explanation 3, an institution or fund which incurs expenditure, during any previous year, which is**



of a religious nature for an amount not exceeding five per cent of its total income in that previous year shall be deemed to be an institution or fund to which the provisions of this section apply.

(5C) This section applies in relation to amounts referred to in clause (d) of sub-section (2) only if the trust or institution or fund is established in India for a charitable purpose and it fulfills the following conditions, namely :—

- (i) it is approved in terms of clause (vi) of sub-section (5);
- (ii) it maintains separate accounts of income and expenditure for providing relief to the victims of earthquake in Gujarat;
- (iii) the donations made to the trust or institution or fund are applied only for providing relief to the earthquake victims of Gujarat on or before the 31st day of March, 2004;
- (iv) the amount of donation remaining unutilised on the 31st day of March, 2004 is transferred to the Prime Minister’s National Relief Fund on or before the 31st day of March, 2004
- (v) it renders accounts of income and expenditure to such authority and in such manner as may be prescribed, 3 [on or before the 30th day of June, 2004.

.....

**Explanation 3.**—In this section, “charitable purpose” does not include any purpose the whole or substantially the whole of which is of a religious nature.

.....

**Section 115BBC. Anonymous donations to be taxed in certain cases.—**

(1) Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iiiie) or sub-clause (via) or any fund or institution referred to in sub-clause (iv) or any trust or

institution referred to in sub-clause (v) of clause (23C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated at the rate of thirty per cent. on the aggregate of anonymous donations received in excess of the higher of the following, namely:—

(A) five per cent of the total donations received by the assessee; or

(B) one lakh rupees, and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received in excess of the amount referred to in sub-clause (A) or sub-clause (B) of clause (i), as the case may be.

(2) The provisions of sub-section (1) shall not apply to any anonymous donation received by—

(a) any trust or institution created or established wholly for religious purposes;

**(b) any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.**

(3) For the purposes of this section, “anonymous donation” means any voluntary contribution referred to in sub-clause (iia) of clause (24) of section 2, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.”  
(emphasis supplied)

**THE SHREE SAI BABA SANSTHAN TRUST (SHIRDI) ACT, 2004.**

**An Act to re-constitute a public trust of Shri Shirdi Sai Baba Sansthan registered under the Bombay Public Trusts Act, 1950 under the name "Shirdi Sansthan of Shri Sai Baba" at Shirdi, District Ahmednagar, and to provide for better management, administration, governance and control of the Trust to enable it to undertake wider welfare activities for the public.**

WHEREAS the administration of the public trust of Shri Shirdi Sai Baba Sansthan registered under the Bombay Public Trusts Act, 1950, under the name "Shirdi Sansthan of Shri Sai Baba" at Shirdi, District Ahmednagar, popularly known as "Shree Shirdi Sai Baba Sansthan Trust of Shirdi", vests in the Board of Management, under a scheme framed by the City Civil Court, Bombay, in Charity Suit No. 3457 of 1960 under its order dated the 18th October 1982, confirmed by the High Court of Judicature at Bombay in First Appeal No. 320 of 1983, decided on the 23<sup>rd</sup> July 1984 ;

AND WHEREAS on expiration of the term of five years of the previous Board of Management of Shirdi Sansthan of Shri Sai Baba Trust, the Charity Commissioner has, under his order dated the 31st August 1999, re-constituted the Board of Management of the said Trust ;

AND WHEREAS being aggrieved by the said order dated the 31st August 1999 of the Charity Commissioner in the matter of appointment of Trustees, two Writ Petitions No. 2866 and 2867 of 1999 were filed in the High Court of Judicature at Bombay, and the appointment of one of the Trustees has been quashed and set aside by the Hon'ble High Court ;

AND WHEREAS the said Trust has large properties and is very popular and is highly revered and has very large number of devotees all over India ;

AND WHEREAS the Government of Maharashtra considers it expedient that the development and management of this important and popular Trust should not be hampered or in way suffer by avoidable litigation, and that there should be a separate law to re-constitute the said Trust and to provide for the efficient management of the same by a Committee directly under the supervision and control of the State Government to enable the Trust to carry out its charitable activities more effectively and efficiently and to be able to give more facilities for its devotees and to undertake wider welfare activities from its surplus funds for the general public ; it is hereby enacted in the Fifty-fifth Year of the Republic of India as follows :—

1. ....
2. ....
  - (a) ....
  - (b) ....
  - (c) "Bhakta Mandal" means the Shree Sai Baba Bhakta Mandal referred and recognised under section 19 ;
- .....
- (j) "Sansthan" means Shree Shirdi Sai Baba Sansthan

belonging to the **Shirdi Sai Baba Temple Trust and popularly known as the Shree Shirdi Sai Baba Sansthan Trust of Shirdi** ;

(k) "Sansthan Trust" or "Trust" means the Shri Sai Baba Sansthan Trust (Shirdi) constituted under section 3 ;

(m) words or expressions used in this Act, but not defined, shall have the meanings, respectively assigned to them in the "Bombay Public Trusts Act, 1950".

#### **Section 17. Duties and powers of Committee.**

(1) Subject to any general or special orders of the State Government, it shall be the duty of the Committee to manage the properties and affairs of the Sansthan Trust, **efficiently, to make proper arrangement for the conduct and performance of rituals, worship ceremonies and festivals in the Temple according to the custom and usages, to provide necessary facilities and amenities to the devotees and to apply the income of the Trust to the objects and purposes for which the Trust is to be administered under this Act.**

(2) In particular and without prejudice to the generally of the provisions contained in sub-section (1), the Committee shall,—

(a) prepare the annual budget estimating the income and expenditure of the Trust and send a copy of it to the State Government and the Charity Commissioner ;

(b) maintain proper accounts and records of the properties and the income and expenditure of the Trust ;

(c) cause the accounts of the Trust to be audited annually by such person and by such date in the next succeeding year as the State Government may direct ;

(d) make regular payment of salaries, honorarium, fees and allowances and other sums payable to the members, Executive Officer and other officers and employees of the Committee from the Management Fund ;

(e) take measures for the recovery of lost property or any sums due to the Trust ;

(f) institute and defend suits, prosecutions and other legal proceedings relating to the Trust in a Court or before a Tribunal or other authority ;

(g) inspect or cause an inspection to be made of the properties of the Trust, from time to time, and to take prompt steps to remove any encroachments made on such properties ;

(h) supply such returns, statistics, accounts and other information with respect to the Trust as the State Government may, from time to time, require;

(i) generally do all such acts as may be necessary for the purposes of proper management, maintenance and administration of the properties and affairs of the Trust ;

(j) if deemed necessary, form a sub-committee from amongst its members or outsiders, to advise itself on the matters pertaining to the administration and management of the Sansthan Trust, and also lay down its composition and procedure for conduct of meetings and for the matters connected therewith including provisions for payment of sitting fees, and travelling and daily allowances to the members of such sub-committee who are other than the Committee members, and may also appoint a Chartered Accountant as recommended by the Scrutiny Committee to assist it in its functions ; and may also appoint a sub-committee of not less than five of its members from the field of specialized or professional knowledge to monitor and report to the Committee the proper, full and timely utilization of the financial assistance granted by the Sansthan Trust to any Trust under sub-section (2) of section 21, and report any misutilisation of financial assistance by such trust to the Charity Commissioner, for necessary disciplinary or penal action under the \*Bombay Public Trusts Act, 1950 ;

(k) acquire or purchases lands or buildings required for the purpose of development and carrying out schemes of the Trust and to carry out the objectives or purposes of the Trust ;

(l) disseminate and propagate useful knowledge about the life, activities, Leelas and teachings of Shri Sai Baba, and maintain and expand the library of Shri Sai literature ;

(m) organise or undertake activities or programmes aimed at promoting the feelings of brotherhood, unity, faith and equality among the devotees of Shri Sai Baba ;

(n) promote or help secular education of all types and establish educational institutions at Shirdi, or other places ;

(o) promote any other noble cause aimed at achieving human well being or, to help human beings in calamities.

(3) No immovable property vested in the Trust shall be leased for more than a year, or mortgaged, sold or otherwise alienated, by the Committee, except with the previous sanction in writing of the State Government.

(4) No jewelleris, ornaments and other valuable movable property vested in the Trust, the value of which is more than fifty thousand rupees, shall be sold, pledged or otherwise alienated by the Committee, except with the previous sanction in writing of the State Government.

(5) The Committes shall have no power to borrow money from any person or party, except with the previous sanction in writing of the State Government.

(6) Subject to the provisions of this Act, the Committee shall have all the power necessary for performing its duties and functions under this Act.”

#### **Section 21. Inquiry into working of the Board.**

(1) The Trust Fund shall, subject to the provisions of the Income Tax Act, 1961, be utilised or expended by the Committee for all or any of the following purposes, namely :—

**(a) the maintenance, management and administration of the Temple and the properties of the Trust ;**

**(b) the conduct and performance of the rituals, worship ceremonies and festivals in the Temple according to the customs and usages ;**

**(c) providing facilities and amenities to the devotees for darshan of the deity and for offering prayers or performing any religious service or ceremony in the Temple ;**

(d) to provide meals to the devotees and to run Annachhatra ;

(e) for propogating the teaching of Shree Sai Baba ;

(f) repayment of any sums borrowed by the Committee, with the sanction of the State Government ;

(g) any sums required to satisfy any judgment, decree or award of any court or tribunal or any authority ;

(h) the payment of any taxes, rent, compensation, charges and other sums payable by the Trust under any law for the time being in force ;

(i) development of the properties of the Trust and acquisition of movable or immovable properties for the purposes of the Trust ;

(j) construction and maintenance of rest houses for the accommodation and use of the devotees ; and

(k) for fulfilling the duties specified in sub-section (2) of section 17.

(1A) Subject to the provisions of sub-section (1), the Trust may, with the previous sanction of the State Government, and subject to such maximum limit and such terms and conditions, as may be specified by the State Government by an order published in the Official Gazette, give grant-in-aid to the Government Departments, Government Corporations, Government Companies or Government undertakings for providing or augmenting infrastructural facilities such as bus terminals, railway station, airport and similar infrastructural facilities, for the convenience of the devotees.

(2) After making adequate provisions for the purposes referred to in sub-sections (1) and (1A), if there is a surplus in the Trust Fund, a portion of the surplus being not more than thirty per cent. of the distributable income of the trust, may be utilised and expended by the committee, from time to time for all or any of the following purposes, namely :—

(i) with the previous sanction of the State Government for the establishment and maintenance, by a registered public trust or registered society, of any educational institution, sports academy or institute, public library, hospital, dispensary, home for destitutes or physically disabled persons or other charitable or religious institution, or any other non-commercial cultural organisation set up by a registered public trust or registered society involved in the field of art or literature ; or

(ii) to Shirdi Nagar Panchayat for the improvement and augmentation of local civic services and amenities resulting in improvement of the facilities to the Sansthan :

Provided that, there shall be a Security Committee constituted by the State Government for the purposes of this sub-section, comprising of three members under the Chairmanship of a retired Judge of the Bombay High Court, appointed with the prior approval of the Bombay High Court, and two other members selected by the members of the Committee from amongst themselves ; and the term of the Scrutiny Committee shall be co-terminus with the term of the Committee :

Provided further that, the Scrutiny Committee shall frame regulations

for holding and conducting of its meetings and also discharging its functions under this Act, and shall also frame and publish guidelines in consonance with the directions and guidelines issued by the Bombay High Court in Writ Petition No. 2764 of 2003, in the matter of Kewal R. Semlani, laying down the norms for recommendation of the applications received by the Committee from various registered public charitable trusts under the Act, for financial assistance from the Sansthan Trust.”

(emphasis supplied)

### THE BOMBAY PUBLIC TRUSTS ACT, 1950

#### **Section 2. Definitions:**

(13) “Public Trust” means an express or constructive trust for either a public religious or charitable purpose or both and includes a temple, a math, a Waqf, church synagogue, agiary or other place of public religious worship, a dharmada or any other religious or charitable endowment and a society formed either for a religious or charitable purpose or for both and registered under the Societies Registration Act, 1860.

(17) “Temple” means a place by whatever designation known and used as a place of public religious worship and dedicated to or for the benefit of or used as of right by the Hindu Community or any section thereof as a place of public religious worship.

(emphasis supplied)

24. At the outset, it needs to be observed that the basis, on which the Assessing Officer proceeded to tax the anonymous donations received by the assessee, is by applying the provisions of Section 80G of the Act which pertains to deduction in respect of donations to certain funds, charitable institutions, etc. It is not in dispute that the assessee is registered for the donors to be benefited under Section 80G qua the donations which would be made to the assessee. Section 80G confers a benefit of deduction being allowed in respect of donations *inter alia* to charitable institutions. Thus, the



assessee by virtue of its establishment/registration as a public trust, which also provides for charitable objects, has obtained registration under Section 80G of the Act. The object of Section 80G is not only to provide a benefit to tax payers in availing deduction of the charity they would make, by offering donations to charitable institutions, but also to enable the charitable trust/entity to implement/carry out their objects of welfare and well being of the society at large. A charitable institution may achieve several objects which are intended for collective benefit of the society, and it is with such purpose charitable institutions receive donations to advance charitable and philanthropic purposes. This has been legislatively recognized in terms of Section 80G of the Act.

25. In the context of the present proceedings, sub-section (5B) of Section 80G is relevant which provides that notwithstanding anything contained in clause (ii) of sub-section (5) and Explanation 3, an institution or fund which incurs expenditure, during any previous year, which is of a “religious nature” for an amount not exceeding five per cent of its total income, in the previous year shall be deemed to be an institution or fund to which the provisions of Section 80G apply. Thus, implicit in Section 80G is the recognition of a trust which has religious activities. This to the effect that insofar as the religious activities of such trust are concerned, if such trust incurs expenditure during any previous year, of an amount not exceeding five

percent of its total income, such institution would be regarded as an institution to which the provisions of Section 80G apply. Sub-section (5B) was inserted by the Finance Act, 1999 with effect from 01 April 2000, since then it has held the field. It is for such reason, it would not be acceptable that Revenue takes a position that Section 80G would exclude religious trust and/or Section 80G applies only to charitable institutions. In any event, in our opinion, such reading of Section 80G that it would exclude religious and charitable entities, would not be the correct reading of the said provision. As fairly stated on behalf of the Revenue, there is no bar for a charitable trust also to be a religious trust. In fact, a trust being both religious or charitable or vice-versa is well-accepted phenomena. There can be many examples of such combination. For such reason, a myopic reading of Section 80G would be wholly impermissible.

26. Moreover, it would not require any discussion or elaboration that the objects and purposes of a trust are necessarily required to be gathered from its memorandum, deed of association or the bye-laws which not only recognize its constitution but also the objects and purpose of existence of such trusts. Any pedantic approach *de hors* such basic considerations would be destructive of the object and purpose of such trust formed for such dual purposes. Such approach would also be against the basic canons of interpretation of such documents. In this view of the matter, when the

Assessing Officer proceeded purely on the premise on the assessee being purely a charitable trust, it was certainly not an appropriate view.

27. Now coming to the next provision namely Section 115BBC of the Income Tax Act providing for anonymous donations to be taxed in certain cases, such provision is applied by the Revenue to tax the anonymous donations received by the assessee. It is seen that sub-section (1) of Section 115BBC ordains that where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iii-ad) or sub-clause (vi) or any hospital or other institution referred to in sub clause (iii-ae) or sub clause (via) or any fund or institution referred to in sub clause (iv) or any trust or institution referred to in sub- section (v) of clause (23-C) of Section 10 or any trust or institution referred to in Section 11, includes any income by way of any 'anonymous donation', the income tax payable shall be the aggregate of the amount of income tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of 5% of the total donations received by the assessee or Rs. 1,00,000/-. It further provides that the amount of income tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received in excess of the amount referred to in sub-clause (A) of sub-clause (B) of clause (i), as the case may be. Further sub-

section (2) of Section 115BBC is an exception to sub-section (1) which provides that sub-section (1) shall not apply to any anonymous donation received by any trust or institution created or established wholly for religious purposes. Firstly, in clause (a) by any trust or institution and secondly, in clause (b) any trust or institution created or established wholly for religious and charitable purposes, other than any anonymous donation, made with a specific direction that such donation is for any university or educational institution or any hospital or other medical institution run by such trust or institution. Sub-section (3) defines anonymous donation for the purposes of Section 115BBC to mean any voluntary contribution referred to in sub-clause (ii-a) of clause (24) of Section 2, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.

28. A trust whether is charitable or religious can only be determined from the ingredients of the trust deed, bye-laws, etc., and by examining these documents and recording a findings on such documents, necessarily is an exercise to record a finding of fact. We thus find substance in the contention as urged on behalf of the assessee that to draw a conclusion on the nature and activities of the trust, would purely be a question of fact. Insofar as the assessee / trust is concerned, it claimed an exemption under sub-section (2)

(b) of Section 115BBC on the ground that it is a trust established for religious and charitable purposes. In this context, the Tribunal has examined the relevant documents namely, the trust deed as also the Sai Baba Trust Act. The Tribunal has recorded that initially the Shirdi Sansthan of Shri Sai Baba Trust was registered under the Bombay Public Trust Act in the year 1950. Further having regard to the enormous increase in the assets base and number of devotees visiting the assessee's shrine and considering the magnitude of the religious and charitable activities so as to necessitate the channelization of funds and for betterment and upliftment of devotees and society, this Court vested the management of the trust in the board of management constituted by the Charity Commissioner, Government of Maharashtra. The scheme for management and administration of the assessee / trust was framed in Suit No. 3457 of 1960 which mentions that the trust shall be essentially a public religious institution, with charitable basis enabling the trust to set apart funds for different charitable purposes. The Tribunal has also recorded that state legislature Sai Baba Trust Act was promulgated on 17 August 2004 and a public trust of Shirdi Sansthan of "Shri Sai Baba" was reconstituted as "Shri Sai Baba Sansthan Trust" (Shirdi), namely, the assessee. The aims and objects of the assessee trust, reads thus:

"a. To ensure the perpetuation of the traditional forms of worship of Shri, Sai Baba at Samadhi Mandir, Dwakamai, Guru Padukas, Chavadi and Lendi Baugh at Shirdi.

b. To celebrate the conventional festivals and fairs of Shri Ram navmi, Guru Pournima, Gokul Ashtami and Punyatihi of Sai Baba at Shirdi in accordance with the established practice.

c. To disseminate useful knowledge about life, activities, leelas and teaching of Shri Sai Baba.

d. To maintain and expand a library of Shri Sai Literature and other religious and philosophical books.

e. To organize and promote the feelings of brotherhood, unity, faith, service and equality among the devotees of Shri Sai Baba and with that in view:

i) to hold conference, seminars, lectures, competitions among the devotees and members.

ii) to feed the poor from the fund established for the purpose.

iii) to perform such other functions and festivals as may be decided by the Board of Management.

iv) to give aids to the poor and deserving at Shirdi provided donations are received” Specifically in that behalf (and for no other purpose) and also to give necessary assistance inclusive of financial help to the poor and deserving institute at Shirdi Elsewhere.”

29. The Tribunal observed that amongst the several objects of the assessee, one of the object has been associated with the activities of worship of Shri Sai Baba, spreading spirituality, teachings, offering prayers, celebrating religious festivals and ceremonies, taking care of devotee’s, etc. The Tribunal noted that section 21 of the Sai Baba Trust Act also provided for maintenance of temple, conduct and performance of rituals and ceremonies therein and providing facilities for darshan of devotee, offering of prayers and performing the religious festivals.

30. In regard to the applicability of the statutory provisions as discussed hereinabove, in the facts of the present case, it is the assertion of the Revenue that Section 115BBC(1) read with Section 80G of the Act is applicable, and a contrary assertion on the part of the assessee is to the effect that sub-section (2)(b) of Section 115BBC is applicable whereby the provisions of sub-section (1) of Section 115BBC would not apply to the anonymous donations received by the assessee. We are required to note the applicability of these provisions in the context of the object and purpose of the trust along with the statutory recognition of such objects in the legislation namely Sai Baba Trust Act as promulgated by the State Legislature as noted hereinabove.

31. We may observe that the Tribunal on appreciation of the materials has recorded a finding that the assessee-trust is regarded as a religious place in Maharashtra for tourist and public at large. It is observed that the assessee is a religious and charitable trust. The findings as recorded in paragraph 36 of the orders passed by the Tribunal is required to be noted which reads thus:

“36. In view of the above, the position which emerges it that, there may be instances where a trust which is existing both for charitable and religious purpose, has incurred religious expenditure which is less than 5% of the total expenses of the Trust. In such a case, the trust may be eligible for certificate u/s 80G of the Act and at the same time would not be liable to be taxed for the anonymous donations received by virtue of Section 115BBC(2)(b) of the Act. We thus find merit in the submission of the Ld.Sr.Counsel for assessee that, the exclusion set out in Section 115BBC(2)(b) of the Act can co-exist with Section 80G of the Act. Hence, the proposition put forth by the Revenue placing reliance on 80G registration to ipso facto deny the exclusion set out in Section 115BBC(2)(b) of the Act is held to be untenable.”

32. It may be observed that the Revenue is not in a position to dislodge the factual position as concurrently recorded by the CIT(A) as also by the Tribunal that the assessee is a religious and charitable trust.

33. The entire thrust of the submissions on behalf of the Revenue is referring to the provisions of Section 80G, as applied by the Assessing Officer to contend that once the respondent / assessee is registered under Section 80G, it would only be a charitable institution and would fall outside the provision of sub-section 2 (b) of Section 115BBC of the Act. We are afraid to accept such contentions in as much as, the provisions of Section 80G cannot be intermixed, from what is provided by Section 115BBC(2)(b) of the Act. Both the provisions stand compartmentalized and are independent of each other. It would be too far-fetch to reach to a conclusion that merely the assessee being registered under Section 80G of the Act, it cannot be a religious trust, so as to fall outside the purview of Section 115BBC (2)(b) of the Act. Such an approach would amount to an inappropriate reading of the provisions of Section 80G as also Section 115BBC(2)(b). The very foundation of the operation and effect of Section 115BBC(2)(b) is a conclusive ascertainment, and a factual determination of a trust being religious and charitable as ascertained from the contents of the trust deed. Once such requirement is satisfied, any anonymous donation



received by such trust would be eligible / entitled to the benefit of an exemption from tax, by the applicability of sub-section 2(b) of Section 115BBC. On the other hand, Section 80G certainly lays down quantum test that is the amounts spent for its purposes to ascertain whether the charitable trust is eligible for registration or not, which is clear from the provisions of Section 80G (5B) of the Act as noted hereinabove.

34. We are in agreement with Mr. Ganesh when he relies on the decision of the Supreme Court in **K. Ravindranathan Nair Vs. Commissioner of Income Tax, Ernakulam**<sup>3</sup> wherein the Supreme Court held that the High Court overlooked the cardinal principle, that it is, the Tribunal which is the final fact finding authority and a decision on facts which fell for consideration of the Tribunal, cannot be gone into by the High Court, except when a question has been referred to it that the finding of the Tribunal on facts is perverse, in the sense that it is such, which could not reasonably have been arrived at on the material placed before the Tribunal. The following observations of the Supreme Court are required to be noted which read thus:-

“7. The High Court overlooked the cardinal principle that it is the Tribunal which is the final fact finding authority. A decision on fact of the Tribunal can be gone into by the High Court only if a question has been referred to it which says that the finding of the Tribunal on facts is perverse, in the sense that it is such as could not reasonably have been arrived at on the material placed before the Tribunal. In this case, there was no such question before the

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**3** (2001) 1 SCC 135

High Court. Unless and until a finding of fact reached by the Tribunal is canvassed before the High Court in the manner set out above, the High Court is obliged to proceed upon the findings of fact reached by the Tribunal and to give an answer in law to the question of law that is before it.

8. The only jurisdiction of the High Court in a reference application is to answer the questions of law that are placed before it. It is only when a finding of the Tribunal on fact is challenged as being perverse, in the sense set out above, that a question of law can be said to arise.”

35. From a cumulative reading of the objects of the assessee, read with the provisions of the Sai Baba Trust Act which is a special legislation promulgated by the State Legislature reflecting the objects and activities of the assessee, as also, considering the provisions of the Bombay Public Trusts Act, we are of the clear opinion that the assessee certainly is a religious and charitable trust, hence, the assessee rightly and legitimately claimed an entitlement under sub-section 2(b) of Section 115BBC of the Act. Such entitlement of the assessee is rightly recognized by the CIT (A) and the Tribunal.

36. In the light of the above discussion, we find that the view taken by the CIT (A) and as confirmed by the Tribunal, is correct in law and facts. Thus, no substantial question of law arises for consideration in these appeals. We find no merit in these appeals. They are rejected. No costs.

**(SOMASEKHAR SUNDARESAN, J.)**

**(G. S. KULKARNI, J.)**