

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 2492 OF 2014
(Arising out of S.L.P.(C)No.9004 of 2010)

COMMISSIONER OF INCOME TAX, UJJAIN

APPELLANT

VERSUS

M/S.DAWOODI BOHARA JAMAT

RESPONDENT

WITH	C.A.NO.	2493/2014	@	S.L.P.(C)NO.9039/2010
WITH	C.A.NO.	2494/2014	@	S.L.P.(C)NO.9042/2010
WITH	C.A.NO.	2495/2014	@	S.L.P.(C)NO.9040/2010
WITH	C.A.NO.	2496/2014	@	S.L.P.(C)NO.9043/2010
WITH	C.A.NO.	2497/2014	@	S.L.P.(C)NO.9045/2010
WITH	C.A.NO.	2498/2014	@	S.L.P.(C)NO.9046/2010
WITH	C.A.NO.	2499/2014	@	S.L.P.(C)NO.9048/2010
WITH	C.A.NO.	2500/2014	@	S.L.P.(C)NO.9049/2010
WITH	C.A.NO.	2501/2014	@	S.L.P.(C)NO.9056/2010
WITH	C.A.NO.	2502/2014	@	S.L.P.(C)NO.9055/2010
WITH	C.A.NO.	2503/2014	@	S.L.P.(C)NO.9053/2010
WITH	C.A.NO.	2504/2014	@	S.L.P.(C)NO.9052/2010
WITH	C.A.NO.	2505/2014	@	S.L.P.(C)NO.9051/2010
WITH	C.A.NO.	2506/2014	@	S.L.P.(C)NO.9065/2010
WITH	C.A.NO.	2507/2014	@	S.L.P.(C)NO.9066/2010
WITH	C.A.NO.	2508/2014	@	S.L.P.(C)NO.10386/2010
WITH	C.A.NO.	2509/2014	@	S.L.P.(C)NO.10387/2010
WITH	C.A.NO.	2510/2014	@	S.L.P.(C)NO.10388/2010
WITH	C.A.NO.	2511/2014	@	S.L.P.(C)NO.10389/2010
WITH	C.A.NO.	2512/2014	@	S.L.P.(C)NO.10391/2010
WITH	C.A.NO.	2513/2014	@	S.L.P.(C)NO.10393/2010
WITH	C.A.NO.	2514/2014	@	S.L.P.(C)NO.10394/2010
WITH	C.A.NO.	2515/2014	@	S.L.P.(C)NO.10395/2010
WITH	C.A.NO.	2516/2014	@	S.L.P.(C)NO.10397/2010
WITH	C.A.NO.	2517/2014	@	S.L.P.(C)NO.10398/2010
WITH	C.A.NO.	2518/2014	@	S.L.P.(C)NO.10399/2010
WITH	C.A.NO.	2519/2014	@	S.L.P.(C)NO.11794/2010
WITH	C.A.NO.	2520/2014	@	S.L.P.(C)NO.11815/2010
WITH	C.A.NO.	2521/2014	@	S.L.P.(C)NO.11817/2010

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WITH	C.A.NO.	2522/2014	@	S.L.P.(C)NO.11819/2010
WITH	C.A.NO.	2523/2014	@	S.L.P.(C)NO.11821/2010
WITH	C.A.NO.	2524/2014	@	S.L.P.(C)NO.14859/2010
WITH	C.A.NO.	2525/2014	@	S.L.P.(C)NO.14861/2010
WITH	C.A.NO.	2526/2014	@	S.L.P.(C)NO.14863/2010
WITH	C.A.NO.	2527/2014	@	S.L.P.(C)NO.14864/2010
WITH	C.A.NO.	2528/2014	@	S.L.P.(C)NO.17863/2010
WITH	C.A.NO.	2529/2014	@	S.L.P.(C)NO.18501/2010
WITH	C.A.NO.	2530/2014	@	S.L.P.(C)NO.18502/2010
WITH	C.A.NO.	2531/2014	@	S.L.P.(C)NO.18503/2010
WITH	C.A.NO.	2532/2014	@	S.L.P.(C)NO.25131/2010
WITH	C.A.NO.	2533/2014	@	S.L.P.(C)NO.25550/2010
WITH	C.A.NO.	2534/2014	@	S.L.P.(C)NO.29327/2010
WITH	C.A.NO.	2535/2014	@	S.L.P.(C)NO.30008/2010
WITH	C.A.NO.	2536/2014	@	S.L.P.(C)NO.32054/2010
WITH	C.A.NO.	2537/2014	@	S.L.P.(C)NO.32055/2010
WITH	C.A.NO.	2538/2014	@	S.L.P.(C)NO.32058/2010
WITH	C.A.NO.	2539/2014	@	S.L.P.(C)NO.33074/2010
WITH	C.A.NO.	2540/2014	@	S.L.P.(C)NO.34048/2010
WITH	C.A.NO.	2541/2014	@	S.L.P.(C)NO.34645/2010
WITH	C.A.NO.	2542/2014	@	S.L.P.(C)NO.34550/2010
WITH	C.A.NO.	2543/2014	@	S.L.P.(C)NO.34543/2010
WITH	C.A.NO.	2544/2014	@	S.L.P.(C)NO.35124/2010
WITH	C.A.NO.	2545/2014	@	S.L.P.(C)NO.59/2011
WITH	C.A.NO.	2546/2014	@	S.L.P.(C)NO.240/2011

WITH	C.A.NO.	2547/2014	@	S.L.P.(C)NO.229/2011
WITH	C.A.NO.	2548/2014	@	S.L.P.(C)NO.230/2011
WITH	C.A.NO.	2549/2014	@	S.L.P.(C)NO.366/2011
WITH	C.A.NO.	2550/2014	@	S.L.P.(C)NO.375/2011
WITH	C.A.NO.	2551/2014	@	S.L.P.(C)NO.2021/2011
WITH	C.A.NO.	2552/2014	@	S.L.P.(C)NO.2035/2011
WITH	C.A.NO.	2553/2014	@	S.L.P.(C)NO.2065/2011
WITH	C.A.NO.	2554/2014	@	S.L.P.(C)NO.2419/2011
WITH	C.A.NO.	2555/2014	@	S.L.P.(C)NO.2434/2011
WITH	C.A.NO.	2556/2014	@	S.L.P.(C)NO.2420/2011
WITH	C.A.NO.	2557/2014	@	S.L.P.(C)NO.2608/2011
WITH	C.A.NO.	2558/2014	@	S.L.P.(C)NO.3079/2011
WITH	C.A.NO.	2559/2014	@	S.L.P.(C)NO.4769/2011
WITH	C.A.NO.	2560/2014	@	S.L.P.(C)NO.8943/2011
WITH	C.A.NO.	2561/2014	@	S.L.P.(C)NO.10279/2011
WITH	C.A.NO.	2562/2014	@	S.L.P.(C)NO.10955/2011

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WITH	C.A.NO.	2563/2014	@	S.L.P.(C)NO.11615/2011
WITH	C.A.NO.	2564/2014	@	S.L.P.(C)NO.11566/2011
WITH	C.A.NO.	2565/2014	@	S.L.P.(C)NO.17035/2011
WITH	C.A.NO.	2566/2014	@	S.L.P.(C)NO.24656/2011
WITH	C.A.NO.	2567/2014	@	S.L.P.(C)NO.24657/2011
WITH	C.A.NO.	2568/2014	@	S.L.P.(C)NO.24997/2011
WITH	C.A.NO.	2569/2014	@	S.L.P.(C)NO.25990/2011
WITH	C.A.NO.	2570/2014	@	S.L.P.(C)NO.26559/2011
WITH	C.A.NO.	2571/2014	@	S.L.P.(C)NO.27678/2011

O R D E R

1. Leave granted.

2. These appeals arise out of the common judgment and order

passed by the High Court of Madhya Pradesh at Indore in
Income Tax Appeal No.112 of 2008 and other appeals dated
22.06.2009.

By the impugned judgment and order, the High

Court has concluded, firstly, that since the Income Tax

Appellate Tribunal (for short 'the Tribunal') has recorded

a finding of fact that the respondent herein is a public

religious trust, in exercise of its

powers under Section 260-A of the Income Tax

Act, 1961 (for short 'the Act') it would not be interfering

with such a finding of fact and secondly, that the

respondent being a public religious trust, the provisions

of Section 13(1)(b) would not be applicable to it and

therefore, dismissed the appeal filed by the Revenue

confirming the orders passed by the Tribunal, dated

28.03.2008.

3. Propter commoditatem, we would refer to the conspectus of facts in the lead case for the disposal of the instant batch of appeals. The respondent is a registered Public Trust under the M.P. Public Trusts Act, 1951. The respondent had filed an application for registration before the Commissioner of Income Tax (for short "the Commissioner") as envisaged under Section 12A read with Section 12AA of the Act for availing the exemption under Section 11 of the Act. The Commissioner, after affording an opportunity of hearing to the applicants, had come to the conclusion that the respondent is a charitable trust and since the object and purpose of the trust is confined only to a particular religious community the same would attract the provisions of Section 13(1)(b) of the Act and therefore, declined the prayer made for registration of the trust by his order dated 14.09.2007.

4. Aggrieved by the order so passed, the respondent had carried the matter by way of an appeal before the Tribunal. The Tribunal after going through the objects of the respondent-trust has come to the conclusion that the respondent is a public religious trust as the objects of the trust are wholly religious in nature and thus, the provisions of Section 13(1)(b) which are otherwise applicable in case of charitable trust would not be applicable and therefore, held that the respondent-trust is entitled to claim registration under Sections 12A and 12AA and accordingly, allowed the appeal and set aside the order passed by the Commissioner and further directed the Commissioner of Income Tax to grant registration under Section 12A read with Section 12AA of the Act to all the applicant- trusts.

5. Aggrieved by the aforesaid decision passed by the Tribunal, the Revenue approached the High Court under Section 260-A of the Act. The court primarily, is of the view that the decision of the Tribunal is rendered purely on the factual matrix of the case and therefore, it would be improper to disturb the finding of fact so arrived by the Tribunal. Secondly, the court has observed that the provisions of Section 13(1)(b) would not be applicable to the respondent-trust as the trust is not created or established for the benefit of any particular religious community or caste. Consequently the court has dismissed the appeal filed by the Revenue by judgment and order dated 22.06.2009.

6. Disturbed by the aforesaid, the Revenue is before us in these appeals.

7. We have heard the parties to the lis and carefully perused the judgment and order passed by the court. We have also
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looked into the objects and purposes of the trust which was the subject matter before the Commissioner as well as the Tribunal.

8. The lis herein relates to the entitlement of the respondent-trust for registration under the provisions of Section 12A read with Section 12AA of the Act for claiming the benefit of exemption under Section 11 and 12 read with Section 13 of the Act.

9. The Revenue would submit, that, the objects of the respondent-trust are not wholly religious in nature but are charitable and confined to the benefit of a particular religious community- the Dawoodi Bohra community and thus, the provisions of Section 13(1)(b) of the Act would be

attracted ousting the respondent-trust from the ambit of exemption available under Section 11 and 12 of the Act and therefore, the findings and conclusion of the Tribunal as confirmed by the High Court in the impugned judgment and order require to be annulled.

10. Au contraire, the respondent-trust would adopt the stand, that, since it is a Public Religious Trust with the objects solely religious in nature, Section 13(1)(b) would not be attracted and therefore, the finding and conclusion reached by the High Court in its judgment and order does not suffer

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with any debility and the instant appeals require to be dismissed.

11. At the outset, a brief reference to the relevant provisions of the Act would be apposite. The income of a charitable or religious trust is exempt from taxation under the correlated provisions of Sections 11, 12, 12A, 12AA and 13. Section 11 deals with income from trusts for charitable and religious purposes and sets out which income shall be exigible to taxation. Section 11(1) relates to application of income towards the objects of the trust and exempts income of trusts with objects wholly charitable or religious or parts of income which relate to such objects. Section 11(1A) provides for exemption of capital gains derived by trusts. Section 11(1B), speaks of failure to apply income as per option under Explanation (2) to section 11(1). Section 11(2) relates to setting apart or accumulation of income. Section 11(3) deals with consequences of misapplication of income or improper investment. While Section 11(3A) relates to modification of purposes specified in Form No. 10 under section 11(2), Sections 11(4) & 11(4A) relate to business income of charitable trusts. Lastly, Section 11 (5) provides for the

prescribed modes of investment in regard to the said trusts.

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12. Section 12 provides that the income of trusts which are created wholly for charitable or religious purpose from voluntary contributions would be deemed as income from the property held under trust wholly for charitable or religious purpose for the purposes of Section 11 and 13 of the Act.

13. Section 12A provides for the conditions for applicability of Sections 11 and 12 of the Act. It prescribes two essential conditions which must be satisfied by a charitable/religious trust in order to claim exemption under the aforesaid Sections: firstly, that the person in receipt of the income has made an application for registration of the trust on or after 01.06.2007 in the prescribed form and manner to the Commissioner and such trust is registered under Section 12AA and secondly, where the total income of the trust exceeds the maximum amount which is not chargeable to income tax in any previous year, the accounts of the trust must be audited by a chartered accountant and the person in receipt of the income should furnish such audit report in the prescribed form along with the return of income.

14. Section 12AA lays down the procedure to be followed by the Commissioner for grant or refusal of application for registration made under Section 12A. According to procedure

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so laid down, the Commissioner shall call for documents and information and conduct an enquiry to satisfy himself of the genuineness of the trust and upon reaching satisfaction of the charitable or religious nature of the objects and the authenticity of the activities of the trust, he would grant the registration. If he is not satisfied of the

aforesaid, the request made in the application may be declined.

15. Section 13 enacts a complete bar to the availability of exemption under Section 11 in respect of various incomes enumerated therein. Section 11 does not apply when the provisions of Section 13 are attracted. Section 13(1)(b) is relevant for the purpose of this case. The same is noticed:

"13. Section 11 not to apply in certain cases.

(1) Nothing contained in Section 11 or Section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof --

(a)

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(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste;"

(emphasis supplied)

The provision conceptualizes that income of a charitable

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trust created or established for the benefit of any

particular religious community or caste would not be entitled

for the benefit of Section 11 or 12 of the Act. Thus, when

read in conjunction, while under Section 11 a trust which is

established for charitable purposes to benefit a particular

religious community may be a valid charitable trust, under

Section 13(1)(b) such trust would not be entitled to

exemption and consequently, the said income would be exigible

to tax under the Act.

16. Therefore, under the scheme of the Act, Sections 11 and 12

are substantive provisions which provide for exemptions

available to a religious or charitable trust. Income

derived from property held by such public trust as well as

voluntary contributions received by the said trust are the

subject-matter of exemptions from the taxation under the

Act. Sections 12A and 12AA detail the procedural requirements for making an application to claim exemption under Sections 11 or 12 by the assessee and the grant or rejection of such application by the Commissioner. A conjoint reading of Sections 11, 12, 12A and 12AA makes it clear that registration under Sections 12A and 12AA is a condition precedent for availing benefit under Sections 11 and 12. Unless an institution is registered under the aforesaid provisions, it cannot claim the benefit of Sections 11 and 12. Section 13 enlists the circumstances

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wherein the exemption would not be available to a religious or charitable trust otherwise falling under Section 11 or 12 and therefore, requires to be read in conjunction with the provisions of Sections 11 and 12 towards determination of eligibility of a trust to claim exemption under the aforesaid provisions.

17. Keeping the aforesaid in view, we would now revert back to

the facts of the present case. The objects of the respondent-trust as mentioned under the trust deed are as follows:

- "a. To arrange for nyaz and majlis (lunch and dinner) on religious occasion of the birth anniversary and Urs Mubarak of Awliya-e-Quiram (SA) and Saints of the Dawoodji Bohra community.
- b. To arrange for lunch and dinner on religious occasions and auspicious days of the Dawoodi Bohra community.
- c. For the betterment of the Dawoodi Bohra community to give and take Qardan Hasana according to Farma of Qurane Majid.
- d. To arrange for religious education and to establish Madarsa and such organization.
- e. To assist/help to the needy people for religious activities.
- f. To carry out all religious activities according to Shariat and direction of Shariat-e-Mohammediyah for the prosperity of the Dawoodi Bohra community."

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18. The Tribunal in the light of the aforementioned objects and on the basis of the evidence led by both the parties

has recorded a finding that the respondent is a public religious trust. The High Court has framed two issues for consideration, the first of the two being, that, "whether in the facts and circumstances of the case the Tribunal's conclusion that all the objects of the trust are religious in nature is justified or not." The court is of the view that the question whether the respondent-trust is a religious or charitable trust is a question of fact and since it has been positively answered by the last fact finding authority- the Tribunal, it cannot be interfered in an appeal under Section 260-A of the Act. In our view, the High Court ought not to have declined to answer the aforesaid question on grounds that the observations of the Tribunal in respect of the objects of trust are pure finding of fact and that the same having been answered, no question of law would arise for consideration.

19. Normally a finding of fact as decided by the last fact finding authority is final and ought not to be lightly interfered by the High Court in an appeal. The exceptions to the said rule have been well delineated by this Court and for the present case do not require to be noticed. The appellate Courts however ought to be cautious while weeding out such questions and should the question in examination

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involve examination of finding of fact, ex cautela abundanti the appellate Courts would require to examine that whether the question involves merely the finding of fact or the legal effect of such proven facts or documents in appeal. While the former would be a question of fact which may or may not be interfered with, the latter is necessarily the question of law which would require consideration.

20. It is often that the questions of law and fact are

intricately entwined, sometimes to the extent of blurring the domains in which they ought to be considered and therefore, require cautious consideration. The question where the legal effect of proven facts is intrinsically in appeal has to be differentiated from the question where a finding of fact is only assailed. This principle has been considered by the Privy Council in *Wali Mohammad v. Mohammad Baksh*, 57 IA 86, *Secretary of State for India in Council v. Rameswaram Devasthanam*, 61 I A 163 and *Lakshmidhar Misra v. Rangalal*, 76 IA 271 and this Court in *Sree Meenakshi Mills Ltd. v. CIT*, 1956 SCR 691.

21. In *Wali Mohammad (supra)*, Sir Benod Mitter has referred to the earlier decision of Privy Council in *Nafar Chandra Pal v. Shukur*, (1917-18) 45 IA 183 and observed that no doubt questions of law and fact are often difficult to disentangle, but the proposition that proper legal effect of a proved fact is essentially a question of law is clearly established. However, the question whether a fact has been proved when evidence for and against has been properly admitted is necessarily a pure question of fact and thus cannot be looked into by the appellate court.

22. A reference to the observation of Lord Buckmaster in *Nafar Chandra Pal (supra)* as reiterated by this Court in *Sree Meenakshi Mills (supra)* at paragraph 19 is apposite:

"Questions of law and of fact are sometimes difficult to disentangle. The proper legal effect of a proved fact is essentially a question of law, so also is the question of admissibility of evidence and the question of whether any evidence has been offered by one side or the other; but the question whether the fact has been proved, when evidence for and against has been properly admitted, is necessarily a pure question of fact."

23. In *Sree Meenakshi Mills Ltd. (supra)* explaining the aforesaid observations, this Court observed that the

expression "the proper legal effect of a proved fact" is itself indicative that "inferences from facts are not all of them questions of law open to consideration in second appeal but only those which involve the application of some legal principle". Thus, it is only the inferences from proven facts or documents which would require examination in light of a legal principle or application of such legal

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principle which would be questions of law. To further clarify the above proposition, this Court had referred to the factual position of Ram Gopal v. Shamskhaton, wherein the Privy Council has considered the question involving determination of legal effects of proven facts and observed thus:

"In Ram Gopal v. Shamskhaton, one Daud Rao was sought to be made liable on a mortgage to which he was not a party on the ground that he had knowledge of it and had accepted it. In holding that the facts found did not establish any ground of liability, Sir Richard Couch observed:

"A finding that the bond shewed that the mortgage deed was accepted by the defendant, as binding obligation upon him, would be an inference of law, an inference which, in their Lordships' opinion, is not a just one from the facts which the Commissioner held to be proved. The knowledge of the mortgage and saying that the money due upon it was repayable, do not amount to an agreement by him to be bound by it. As the mortgage did not purport to be made in any way on behalf of Daud Rao it was not a case for ratification. A new agreement was necessary to bind him".

24. In Dhanna Mal (supra) the tenancy was an admitted fact and the question for consideration was whether it was permanent or not. Therein, the determination of the issue rested on the legal inference to be drawn from proved facts, or in other words, the legal effect of proved facts, i.e., the tenancy.

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25. In Dnyaneshwar Ranganath Bhandare v. Sadhu Dadu Shettigar, (2011) 10 SCC 433, the second appeals challenging the judgment and decree of the first appellate court was

dismissed by the High Court holding that the finding of fact by the lower appellate court that the respondents were not gratuitous licensees did not call for interference and therefore, no substantial question of law arose for consideration. The appellants before the High Court were before this Court in appeals by special leave against the aforesaid judgment and order by the High Court. This Court opined that the rejection of appeals at the outset by the High Court on grounds that the case involved no substantial question of law was erroneous and what ought to have been looked into was whether it involved the question of fact or legal effect of proven facts or documents which in turn would be a question of law requiring adjudication by the High Court. This Court observed as follows:

"11. Normally this Court will not, in exercise of jurisdiction under Article 136 of the Constitution of India, interfere with the finding of facts recorded by the first appellate court, which were not disturbed by the High Court in second appeal. But what should happen if the first appellate court reverses the findings of fact recorded by the trial court by placing the burden of proof wrongly on the plaintiffs and then holding that the plaintiffs did not discharge such burden; or if its decision is based on evidence which is irrelevant or inadmissible; or if its decision discards material and

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relevant evidence, or is based on surmises and conjectures; or if it bases its decision on wrong inferences drawn about the legal effect of the documents exhibited; and if grave injustice occurs in such a case on account of the High Court missing the real substantial question of law arising in the appeal and erroneously proceeds on the basis that the matter does not involve any question of law and summarily dismisses the second appeal filed by the appellant?

12. In this context we may remember that the legal effect of proved facts and documents is a question of law. (See *Dhanna Mal v. Moti Sagar and Gujarat Ginning and Mfg. Co. Ltd. v. Motilal Hirabhai Spg. and Mfg. Co. Ltd*) In such cases, if the circumstances so warranted, this Court may interfere in an appeal by special leave under Article 136."

(emphasis supplied)

26. In our considered view, determination of nature of trust as wholly religious or wholly charitable or both charitable and religious under the Act is not a question of fact. It

is but a question which requires examination of legal

effects of the proven facts and documents, that is, the legal implication of the objects of the respondent-trust as contained in the trust deed. It is only the objects of a trust as declared in the trust deed which would govern its right of exemption under Section 11 or 12. It is the analysis of these objects in the backdrop of fiscal jurisprudence which would illuminate the purpose behind creation or establishment of the trust for either religious

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or charitable or both religious and charitable purpose.

Therefore, the High Court has erred in refusing to interfere with the observations of the Tribunal in respect of the character of the trust.

27. Having said so, we would now examine the question, whether

the Courts below were justified in coming to the conclusion

that the respondent-trust is a public religious trust and

therefore, outside the purview of Section 13(1)(b) and eligible for exemption under Section 11 of the Act.

28. The objects of the respondent-trust are not indicative of

a wholly religious purpose but are collectively indicative

of both charitable and religious purposes. It is expedient

to comprehend the objects of the respondent-trust with

reference to the construction of the expressions

"charitable purpose" and "religious purpose."

29. The phrase charitable purpose is expansive and inclusive.

The expression "charitable purpose" is defined in the dictionary clause of the Act under Section 2(15) as follows:

"charitable purpose" includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of

any other object of general public utility:

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

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakhs rupees or less in the previous year;"

30. According to Section 2(15), the expression "charitable purpose" has been defined by way of an inclusive definition so as to include relief to the poor, education, medical relief and advancement of any other object of general public utility. A catena of decisions of this Court which have interpreted the said provision and especially the expression "any other object of general public utility" have observed that the said expression is of the widest connotation. The word "general" in the said expression means pertaining to a whole class. (CIT v. Gujarat Maritime Board, (2007) 14 SCC 704). Therefore, advancement of any object of benefit to the public or a section of the public as distinguished from benefit to an individual or a group of individuals would be a charitable purpose. (CIT v.

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Ahmedabad Rana Caste Assn.) The said expression would prima facie include all objects which promote the wellbeing of the general public. It cannot be said that a purpose would cease to be charitable even when public welfare is intended to be served.

31. The Constitution Bench of this Court in CIT v. Surat Art

Silk Cloth Manufacturers' Assn. has held that if the

primary purpose and the predominant object of a trust are to promote the welfare of the general public the purpose would be charitable purpose. If the primary or predominant object of an institution is charitable, any other object which might not be charitable but which is ancillary or incidental to the dominant purpose, would not prevent the institution from being a valid charitable trust. (Thiagarajar Charities v. CIT, (1997) 4 SCC 724).

32. This Court in several decisions has reiterated the aforesaid test of predominant purpose and held that the purposes which would yield to profit or not in general public interest could be separated and the trust would only be exigible to tax to the extent of the charitable purposes under its objects. In CIT v. Kamla Town Trust, (1996) 7 SCC 349, the object of the trust included construction of houses for workmen in general and in particular for the workmen, staff and other employees of the settler company.

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It was held that while the provisions relating to workmen in general did constitute a charitable object, the words "in particular for workmen of the company" negative the charitable purpose and therefore, the entire trust could not be considered to have been established wholly for charitable purpose.

33. In Abdul Sathar Haji Moosa Sait Dharmastapanam v. Commr.

of Agri. Income Tax, (1974) 3 SCC 257, at page 259, this Court considered the question whether the appellant therein was a public charitable trust within the meaning of Section 4(b) of the Kerala Agricultural Income Tax Act, 1950. The 3/4th of the income of the bequest was primarily earmarked for the benefit of near relations of the testator only, it cannot be considered as a public charitable trust. While the rest one-fourth was concluded to form the valid

charitable trust. (Trustees of Gordhandas Govindram Family Trust v. CIT). In CIT v. Andhra Chamber of Commerce; Ahmedabad Rana Caste Assn. v. CIT; Sole Trustee, Loka Shikshana Trust v. CIT and Yogiraj Charity Trust v. CIT and CIT v. Andhra Chamber of Commerce, [1965] 55 ITR 722 (SC), it was observed that objects for service and benefit to the general masses would indicate that they are meant for public purpose and thus, would create a public charitable trust.

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34. Indubitably, the word 'charity' connotes altruism in thought and action and involves an idea of benefiting others rather than oneself. (Andhra Chamber of Commerce (supra)). It also cannot be lost sight of that the supreme goal of all religions is philanthropy which could be manifested in various forms. It is held that gifts for religious purposes are prima facie gifts for charitable purposes. (Schoales v. Schoales [1930] 2 Ch. 75 (CA); White v. White (1893) 2 Ch. 41 (CA))

35. Unlike the phrase "charitable purpose", "religious purpose" is not defined under the Act. According to lexicographers, the term religious would mean "of or relating to religion." (Merriam Webster Dictionary, Macmillan English Dictionary). The Shorter Oxford English Dictionary defines the term as follows:

"Devoted to religion; exhibiting the spiritual or practical effects of religion, following the requirements of religion; pious, godly, devout."

In Kanga, Palkhivala and Vyas, Law and Practice of Income Tax, Vol. 1, Ed. 9th (at p. 544) religious purposes are indicated to include the advancement, support or propagation of a religion and tenets. Thus, a religious purpose would be one relating to a particular religion and broadly would encompass objects relating to observance of rituals and ceremonies, propagation of tenets of the religion and other

allied activities of the religious community. An example of such would entail activities such as the dance performances (Garba) or distribution of food specifically for people on fast during the Hindu festivities of Navratri.

36. In certain cases, the activities of the trust may contain

elements of both: religious and charitable and thus, both the purposes may be overlapping. More so when the religious activity carried on by a particular section of people would be a charitable activity for or towards other members of the community and also public at large. For example, the practice of optional charity in the form of Khairat or Sadaquah under Mohammadan Law would be covered under both charitable as well as religious purpose. Further, while providing food and fodder to animals especially cow is religious activity for Hindus, it would be charitable in respect to non-Hindus as well. Similarly, service of water to the thirsty would find mention as religious activity in sacred texts and at the same time would qualify as a charitable activity.

37. The Tribunal has analysed the objects of the trust in the

light of the holy scriptures and Quran and recorded its satisfaction as follows:

"16...The objects of the assessee-trust reproduced above clearly refer to the religion and are supported by

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reference made to different pages of Holy Quran. The learned Counsel for the assessee referred to the true copies of several pages of Holy Quran written by two of the authors referred to above in which giving of food in days of hunger or orphan is considered as highly religious ceremony. Reference is also made that who will give to the people or poor then Allah will give them in return and, i.e., who will give loan then Allah will give double to them. Likewise, for helping the needy people for religious activities and to carry out religious activities or spend for good, spending wealth in the way of Allah, bestowing mercy, teaching were considered to be highly religious activities. On going through several true pages of Holy Quran written by the authors referred

to above, we are satisfied that the learned Counsel for the assessee was justified in contending that all the objects of the assessee-trust are solely religious in nature because each of them refers either to religious occasions, religious education or to religious activities. The learned Counsel for the assessee also explained that the words 'Shariat-e-Mohammadiyah' means the path shown by prophet Mohammed. Therefore, the objects of Shariat-e-Mohammadiyah are identical with those of 'Dawat-e-Hadiyah'. For Dawoodi Bohras, true path shown by the prophet is the one indicated and shown by their living guide Dai-al-Mutlaq of the time who is the living and visible guide for Dawoodi Bohras. It is an undisputed fact that for the people believing in Islam, writings in Quran are words of Allah for them. The directions given in the Holy Quran are considered by the people of Islamic faith as orders from Allah and the people of Islamic faith obey such orders as holy and religious. The learned Counsel for the assessee has been able to demonstrate that all the objects of the assessee-trust, as noted above, came out from the writings in

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Quran and as such these are the orders for them while observing Islamic faith."

(emphasis supplied)

38. Unquestionably, objects (c) and (f) which provide for the

activities completely religious in nature and restricted to

the specific community of the respondent-trust are objects

with religious purpose only. However, in respect to the

other objects, in our view the fact that the said objects

trace their source to the Holy Quran and resolve to abide

by the path of godliness shown by Allah would not be

sufficient to conclude that the entire purpose and

activities of the trust would be purely religious in color.

The objects reflect the intent of the trust as observance

of the tenets of Islam, but do not restrict the activities

of the trust to religious obligations only and for the

benefit of the members of the community. The Privy Council

in *Re The Tribune*, 7 ITR 415 has held that in judging

whether a certain purpose is of public benefit or not, the

Courts must in general apply the standards of customary law

and common opinion amongst the community to which the

parties interested belong to. Therefore, it is pertinent to

analyse whether the customary law would restrict the

charitable disposition of the intended activities in the

objects.

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39. The provision of food to the public on religious days of the community as per object (a) and (b), the establishment of Madarsa and organizations for dissemination of religious education under object (d) and rendering assistance to the needy and poor for religious activities under object (e) would reflect the essence of charity. The objects (a) and (b) provide for arrangement for nyaz and majlis (lunch and dinner) on the religious occasion of the birth anniversary and Urs Mubarak of Awliya-e-Quiram (SA) and the Saints of the Dawoodji Bohra community and for arrangement of lunch and dinner on religious occasions and auspicious days of the Dawoodi Bohra community, respectively. Nyaz refers to the food a person makes and offers to others on any particular occasion on the occasion of the death of a saint and Majhlis implies a place of gathering or meeting. The activity of providing for food on certain specific occasions and other religious and auspicious events of the Dawoodi Bohra community do not restrict the benefit to the members of the community. Neither the religious tenets nor the objects as expressed limit the service of food on the said occasions only to the members of the specific community. Thus, the activity of Nyaz performed by the respondent-trust does not delineate a separate class but extends the benefit of free service of food to public at large irrespective of their religion, caste or sect and thereby qualifies as a charitable purpose which would

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entail general public utility.

40. Further, establishment of Madarsa or institutions to impart religious education to the masses would qualify as a charitable purpose qualifying under the head of education under the provisions of Section 2(15) of the Act. The

institutions established to spread religious awareness by means of education though established to promote and further religious thought could not be restricted to religious purposes. The House of Lords in *Barralet v. IR*, 54 TC 446, has observed that "the study and dissemination of ethical principles and the cultivation of rational religious sentiment" would fall in the category of educational purposes. The Madarsa as a Mohommedan institution of teaching does not confine instruction to only dissipation of religious teachings but also contributes to the holistic education of an individual. Therefore, it cannot be said that the object (d) would embody a restrictive purpose of religious activities only. Similarly, assistance by the respondent-trust to the needy and poor for religious activities would not divest the trust of its altruist character.

41. Therefore, the objects of the trust exhibit the dual tenor of religious and charitable purposes and activities.

Section 11 of the Act shelters such trust with composite

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objects to claim exemption from tax as a religious and charitable trust subject to provisions of Section 13. The activities of the trust under such objects would therefore be entitled to exemption accordingly.

42. We would now proceed to examine the objects under the provisions of Section 13(1)(b) of the Act. It becomes amply clear from the language employed in the provisions that Section 13 is in the nature of an exemption from applicability of Sections 11 or 12 and the examination of its applicability would only arise at the stage of claim under Sections 11 or 12. Thus, where the income of a trust is eligible for exemption under section 11, the eligibility for claiming exemption ought to be tested on the touchstone

of the provisions of section 13. In the instant case, it being established that the respondent-trust is a public charitable and religious trust eligible for claiming exemption under Section 11, it becomes relevant to test it on the anvil of Section 13.

43. Thus, the second issue which arises for our consideration and decision is, whether the respondent-trust is a charitable and religious trust only for the purposes of a particular community and therefore, not eligible for exemption under Section 11 of the Act in view of provisions of Section 13(1)(b) of the Act.

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44. In the instant case, the Tribunal has found on facts after analysing the objects of the trust that the respondent-trust is a public religious trust and its objects are solely religious in nature and being of the opinion that Section 13(1)(b) is solely meant for charitable trust for particular community, negated the possibility of applicability of Section 13(1)(b) of the Act at the outset. The High Court has also confirmed the aforesaid view in appeal and observed that Section 13(1)(b) would only be applicable in case of income of the trust for charitable purpose established for benefit of a particular religious community. In our considered view, the said view may not be the correct interpretation of the provision.

45. From the phraseology in clause (b) of section 13(1), it could be inferred that the Legislature intended to include only the trusts established for charitable purposes. That however does not mean that if a trust is a composite one, that is one for both religious and charitable purposes, then it would not be covered by clause (b). What is intended to be excluded from being eligible for exemption

under Section 11 is a trust for charitable purpose which is established for the benefit of any particular religious community or caste.

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46. Such trusts with composite objects would not be expelled out of the purview of Section 13(1)(b) per se. The Section requires it to be established that such charitable purpose is not for the benefit of a particular religious community or caste. That is to say, it needs to be examined whether such religious-charitable activity carried on by the trust only benefits a certain particular religious community or class or serves across the communities and for society at large. (Sole Trustee, Loka Shikshana Trust v. CIT, (1975) 101 ITR 234 (SC)). The section of community sought to be benefited must be either sufficiently defined or identifiable by a common quality of a public or impersonal nature. (CIT v. Andhra Chamber of Commerce, 55 ITR 722).

47. This Court in CIT v. Palghat Shadi Mahal Trust, (2002) 9 SCC 685 the muslim residents of Kerala constituted a trust "for the purpose of constructing and establishing at Palghat-a-Shadi Mahal and other institutions for the educational, social and economic advancement of the Muslims and for religious and charitable objects recognised by Muslim law ..." and later clarified that the proceeds would be utilized for the benefit for public at large and upon this basis, the trust made a claim for exemption from tax under Section 11. This Court held that the resolution clarifying the object would not validly amend the object of the trust-deed and since the object confined the benefit to

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only muslim community, it would be covered by the restriction under Section 13(1)(b) of the Act even though it functioned for public benefit. Thus, therein the object sufficiently defined or expressly stated beneficiary class and restricted the activities of the trust to a specific

community.

48. Further, in State of Kerala v. M.P. Shanti Verma Jain,

(1998) 5 SCC 63 this Court has held that propagation of religion and restriction of benefits of activities of trust in its objects to the said community would render the trust

as ineligible for claiming exemption under similar provisions of Kerala Agricultural Income Tax Act, 1950. The

Court observed as follows:

"...The Deed of Trust and the rules run into more than thirty pages out of which six pages of the Trust Deed narrate the philosophy of Jain Dharma. The objects of the Trust clearly show that the Trust is meant for propagation of Jain religion and rendering help to the followers of Jain religion. Even medical aid and similar facilities are to be rendered to persons devoted to Jain religion and to non-Jains if suffering from ailments but the medical aid could be given to them only if any member of the families managing the Trust, shows sympathy and is interested in their treatment. The Tribunal, in our opinion, was right in its conclusion that the dominant purpose of the Trust in the present case was propagation of Jain religion and to serve its followers and any part of agricultural income of the Trust spent in the State of Kerala also could not be treated as allowable item of the expenses."

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49. In the present case, the objects of the respondent-trust

are based on religious tenets under Quran according to religious faith of Islam. We have already noticed that the perusal of the objects and purposes of the respondent-trust would clearly demonstrate that the activities of the trust though both charitable and religious are not exclusively meant for a particular religious community. The objects, as explained in the preceding paragraphs, do not channel the benefits to any community if not the Dawoodi Bohra Community and thus, would not fall under the provisions of Section 13(1)(b) of the Act.

50. In that view of the matter, we are of the considered

opinion that the respondent-trust is a charitable and religious trust which does not benefit any specific religious community and therefore, it cannot be held that

Section 13(1)(b) of the Act would be attracted to the respondent-trust and thereby, it would be eligible to claim exemption under Section 11 of the Act.

51. In the result, the appeals are dismissed with no order as to costs.

Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(A.K. SIKRI)

NEW DELHI;
FEBRUARY 20, 2014

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ITEM NO.4 COURT NO.3 SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).9004/2010

(From the judgement and order dated 22/06/2009 in ITA No.112/2008 of the HIGH COURT OF M.P. AT JABALPUR)

C.I.T,UJJAIN Petitioner(s)

VERSUS

DAWOODI BOHARA JAMAT Respondent(s)
(With prayer for interim relief and office report)

WITH SLP(C) NO. 10279 of 2011
(With office report)

SLP(C) NO. 10386 of 2010
(With office report)

SLP(C) NO. 10387 of 2010
(With office report)

SLP(C) NO. 10388 of 2010
(With office report)

SLP(C) NO. 10389 of 2010
(With office report)

SLP(C) NO. 10391 of 2010
(With office report)

SLP(C) NO. 10393 of 2010
(With office report)

SLP(C) NO. 10394 of 2010
(With office report)

SLP(C) NO. 10395 of 2010
(With office report)

SLP(C) NO. 10397 of 2010

(With office report)

SLP(C) NO. 10398 of 2010

(With office report)

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SLP(C) NO. 10399 of 2010

(With office report)

SLP(C) NO. 10955 of 2011

(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 11566 of 2011

(With appln.(s) for c/delay in filing and refiling SLP and office report)

SLP(C) NO. 11615 of 2011

(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 11794 of 2010

(With office report)

SLP(C) NO. 11815 of 2010

(With office report)

SLP(C) NO. 11817 of 2010

(With office report)

SLP(C) NO. 11819 of 2010

(With office report)

SLP(C) NO. 11821 of 2010

(With office report)

SLP(C) NO. 14859 of 2010

(With office report)

SLP(C) NO. 14861 of 2010

(With office report)

SLP(C) NO. 14863 of 2010

(With office report)

SLP(C) NO. 14864 of 2010

(With office report)

SLP(C) NO. 17035 of 2011

(With appln.(s) for c/delay in filing and refiling SLP and office report)

SLP(C) NO. 17863 of 2010

(With office report)

SLP(C) NO. 18501 of 2010

(With office report)

SLP(C) NO. 18502 of 2010

(With office report)

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SLP(C) NO. 18503 of 2010

(With office report)

SLP(C) NO. 2021 of 2011

(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 2035 of 2011

(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 2065 of 2011
(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 229 of 2011
(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 230 of 2011
(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 240 of 2011
(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 2419 of 2011
(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 2420 of 2011
(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 2434 of 2011
(With appln.(s) for c/delay in filing and refiling SLP and office report)

SLP(C) NO. 24656 of 2011
(With office report)

SLP(C) NO. 24657 of 2011
(With office report)

SLP(C) NO. 24997 of 2011
(With office report)

SLP(C) NO. 25131 of 2010
(With office report)

SLP(C) NO. 25550 of 2010
(With office report)

SLP(C) NO. 25990 of 2011
(With office report)

SLP(C) NO. 2608 of 2011
(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 26559 of 2011
(With office report)

SLP(C) NO. 27678 of 2011
(With office report)

SLP(C) NO. 29327 of 2010
(With office report)

SLP(C) NO. 30008 of 2010
(With office report)

SLP(C) NO. 3079 of 2011
(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 32054 of 2010
(With office report)

SLP(C) NO. 32055 of 2010
(With office report)

SLP(C) NO. 32058 of 2010
(With office report)

SLP(C) NO. 33074 of 2010
(With office report)

SLP(C) NO. 34048 of 2010
(With office report)

SLP(C) NO. 34543 of 2010
(With office report)

SLP(C) NO. 34550 of 2010
(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 34645 of 2010
(With office report)

SLP(C) NO. 35124 of 2010
(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 366 of 2011
(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 375 of 2011
(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 4769 of 2011
(With appln.(s) for c/delay in filing SLP and office report)

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SLP(C) NO. 59 of 2011
(With appln.(s) for c/delay in filing SLP and office report)

SLP(C) NO. 8943 of 2011
(With appln.(s) for c/delay in filing and refiling SLP and office report)

SLP(C) NO. 9039 of 2010
(With office report)

SLP(C) NO. 9040 of 2010
(With office report)

SLP(C) NO. 9042 of 2010
(With office report)

SLP(C) NO. 9043 of 2010
(With office report)

SLP(C) NO. 9045 of 2010
(With office report)

SLP(C) NO. 9046 of 2010
(With office report)

SLP(C) NO. 9048 of 2010
(With office report)

SLP(C) NO. 9049 of 2010
(With office report)

SLP(C) NO. 9051 of 2010
(With office report)

SLP(C) NO. 9052 of 2010
(With office report)

SLP(C) NO. 9053 of 2010
(With office report)

SLP(C) NO. 9055 of 2010
(With office report)

SLP(C) NO. 9056 of 2010
(With office report)

SLP(C) NO. 9065 of 2010
(With office report)

SLP(C) NO. 9066 of 2010
(With office report)

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Date: 20/02/2014 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU
HON'BLE MR. JUSTICE A.K. SIKRI

For Petitioner(s) Mr.Arijit Prasad, Adv.
 Mr.Rupesh Kumar, Adv.
 Ms.Tanushree Sinha, Adv.
 Ms.Gargi Khanna, Adv.
 Ms.Sriparna Chatterjee, Adv.
 For Mrs.Anil Katiyar, Adv.
 For Mr. B.V. Balaram Das, Adv.

For Respondent(s) Mr.Soli J.Sorabjee, Sr.Adv.
 Mr.R.P.Bhatt, Sr.Adv.
 Mr. Shiv Kumar Suri, Adv.
 Mr.Buddy Ranganadhan, Adv.
 Mr.Saswat Pattnaik, Adv.
 Mr.Shahil Suri, Adv.
 Ms.Mehar, Adv.
 Mr.Water Lewis, Adv.

UPON hearing counsel the Court made the following
O R D E R

Delay condoned.

Leave granted.

The appeals are dismissed, in terms of the signed order.

(G.V.Ramana)
Court Master

(Vinod Kulvi)
Asstt.Registrar
(Signed order is placed on the file)