

INCOME TAX DEPARTMENT	
Name of the Assessee	The Synthetic & Art Silk Mill's Research Association, Mumbai
Address	Sasmira, Sasmira Marg, Worli, Mumbai- 400 025
PAN	AAATT4271E
Ward/Circle/Range	ITO (E)- 2(4)
Status	Trust
Assessment Year	2010-11
Whether Resident/Resident but not ordinarily resident/ Non resident	Resident No. OE-II/133/P-34 2015-16
Method of Accounting	Mercantile
Previous Year	2009-10
Dates(s) of hearing	As per Order Sheet
Date of order	31/03/2016
Section and sub-section under which the assessment is made	143 (3) r.w.s. 147 of the I.T. Act

ASSESSMENT ORDER U/s 143(3) of the I.T Act

The Assessee filed its return of income for the relevant assessment year on 28.09.2010 declaring total income at Rs. Nil. The return processed u/s. 143(1) of the Income tax Act, 1961 and selected for scrutiny by issuing notice u/s. 143(2) of the I.T. Act, 1961. The trust is registered as a Charitable Organization with Charity Commissioner and registered with CIT(E), Mumbai u/s. 12A vide Registration No.INS/15276 dated 3.06.1982. The assessment order u/s. 143(3) of the I.T. Act, 1961 was completed on 14.12.2012 with an assessed income of Rs. NIL.

2. It is seen from the records that the objectives of the trust was to establish a Silk and Art Silk Mills Research Institute and to undertake, carry on research and other scientific work in connection with the silk and rayon weaving industry and other trades. the assessee is engaged in various commercial activities which prima-facie are in the nature of business. As such, it is clear that purpose of the assessee trust is not education, medical relief, relief to poor, preservation of environment and preservation of



monuments or places or objects of artistic or historic interest but at the most of the advancement of any other object of general public utility. Since the object or activity of the assessee falls under the category of "advancement of any other object of general public utility", the assessee is engaged in any commercial activity for a fees or cess either direct or indirect and also the receipts from such commercial activity is more than Rs.25 lakhs, the provisions of proviso to Section 2(15) of the Act are attracted.

3. Hence, the case was re-opened with the approval of CIT(E), Mumbai, who has granted his approval on the reasons recorded by the Assessing Officer for issuance of such notice vide its letter No. CIT(E)/Remedial action/43/2014-15 dated 27.03.2015.

4. Subsequently, a notice u/s. 148 of the I. T. Act, 1961, dated 31.03.2015, was issued to the assessee trust, for A.Y. 2010-11 and duly served upon the assessee. In terms of the said notice it was communicated that return of income, in response to the notice u/s. 148 for A.Y. 2010-11 be delivered to this office within 30 day of the service of the notice, since income in the assessee's case was proposed to be reassessed. In response to this notice, the assessee trust vide letter dated 09.04.2015 filed a photocopy of the income tax return filed for the A.Y. 2010-11 on 28.09.2010. Further, the assessee had also requested to furnish a copy of the reasons recorded for re-opening the assessment within the meaning of Section 147 of the Act. The reasons for reopening of the assessment u/s. 147 was issued to the assessee on 30.10.2015.

5. The assessment for A.Y. 2010-11 was re-opened on the basis of the following reasons.

"The trusts / institutions with objects of charitable activities as defined under section 2(15) of the Act viz " 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" were claiming and getting exemption under the Act.



2. In this case, the assessment was completed under section 143(3) of the Act on 14.12.2012. It is observed that the object of the trust was to establish a Silk & Art Silk Mills Research Institute and to undertake, carry on research and other scientific work in connection with the silk and Rayon weaving industry and other trades. The assessee was collecting subscription fees, testing fees, consultancy charges, technical service charges, training courses charges etc. for the service provided by it, besides Govt. grant of Rs.1,30,00,000/-. Thus, the activity of the assessee trust was of commercial nature. As the assessee has engaged purely in the research work in the area of silk and Rayons, the allowance of exemption under section 11 was not in order as the activities of the assessee were not for charitable purpose but purely a research work and separate provisions have been provided in the Act for the persons involved in research activities subject to fulfillment of conditions there under. During the year assessee earned a surplus of Rs.70,94,031/- before depreciation. This income should have been taxed under normal provision of the Act, without allowing the benefit of section 11. It has resulted in underassessment of income of Rs.70,94,031/- and short levy of tax of Rs.21,92,055/-.

3. Further, it is seen from the 'income and expenditure account' of the assessee trust for the year ended 31.03.2010, that the assessee has received grant from the Ministry of Textiles of Rs.1,30,000/-. However, the same was not considered in the computation of income while claiming exemption under section 11. This has resulted in under assessment of income of Rs.58,23,706/- and short levy of tax of Rs.17,99,525/-.

4. Further, it is seen that from the 'income and expenditure account' that total expenditure of the assessee was of Rs.4,91,19,190/- whereas in the computation of income, the assessee has shown expenses on the object of the trust at Rs.7,02,92,693. The details of which is not available on record.

5. Further, the assessee has debited 'loss on sale of motor car' of Rs.5,38,016/- and 'loss on obsolete building written off' of Rs.32,99,055/-. As the assessee trust has claimed the deduction for the acquisition of capital assets as application of money, claim of loss again in the year of sale amounts to double deduction."

2. The case was selected for scrutiny and statutory notices were issued and duly served on the assessee. In response to the said notices, Mr. Vipul Shah, CA and AR attended from time to time on behalf of the assessee and submitted the details called for. The details filed have been examined and discussed during the course of assessment proceedings.



3. Denial of Exemption u/s 11 of the I.T.Act on the ground of being a research organization and the activities being treated as commercial:

3.1 During the year under consideration, it is seen from the records that the assessee is engaged purely in the research work. The objects of the trust was to establish a Silk and Art Silk Mills Research Institute and to undertake, carry on research and other scientific work in connection with the Silk and Rayon weaving industry and other trades. The assessee is carrying out research work in the area of Silk and Rayons. The assessee has claimed the benefits of exemption u/s. 11 of the Act. Since the activities of the assessee were purely a research work, the assessee is required to be assessed to tax under the provisions of section 10(21) of the Act subject to the fulfillment of the conditions laid down therein and not under the provisions of Section 11, 12 and 13 of the Act.

3.2 In response to the re-opening of the assessment, the assessee has made the submissions vide its letter dated 28.12.2015 wherein it has stated that

"The Synthetic & Art Silk Mills Research Association-SASMIRA is a co-operative Venture set up by the Man-Made Textile Industry of India with the prime objective of rendering scientific and technical assistance to the Textile Industry in the year 1950, SASMIRA is also running an institute of Man-made Textiles imparting technical education to the technicians in the textile industry recognized by Directorate of Technical Education, Govt. of Maharashtra, SASMIRA also has set up two power loom service centers at Bhiwandi catering to the needs of small units of power loom located in and around Bhiwandi.

The objective of the Institute as per the Memorandum of Association and Rules & Regulations is as below:

1. To establish a silk & Art Silk Mills Research Institute and to Undertake, Carry on our helping on research and other scientific work in connection with the silk and Rayon, Weaving industry and other industries allied therewith or accessory thereto and which will among others include research in:
 - a) Investigation into Manufacture and Improvement of materials used in weaving etc.
 - b) The Products or the industry, including stores, processing, sizing, dyeing etc.
 - c) Investigation into improvement of various machinery and appliances used y the said industry.



The other objective are as per Clause (b) to (u) Memorandum of Association already submitted.

'Registration & Recognition':

1. SASMIRA is a trust registered under the Societies Registration Act 1860 and Bombay Public Trust Act 1950,
2. SASMIRA is also registered under Section 12-A(a) Under Income Tax Act, 1961,
3. SASMIRA has been approved perpetually by the Central Government for the purpose of Clause (ii) of sub-section (1) of section 35 of the Income Tax Act, 1961, read with Rules 5C and E of the Income Tax Rules 1962, with effect from 01.04.2000 in category of 'Other Institution', partly engaged in research activities,
4. Recognition of Scientific and Industrial Research organization by CSIR/ Ministry of Science & Technology.

Section 2(15) defines Charitable purpose as follows:

"Charitable Purpose includes relief of the poor, education, Medical Relief and the advancement of any other object of general public utility".

The following proviso is added by the Finance Act, 2008 w.e.f. Assessment Year 2009-2010.

" Provided that the advancement of any other object of General and public Utility shall not be a Charitable Purpose, if it involves the carrying on of any activity rendering any service in relation to any trade Commerce or business for a cess or any other Consideration, irrespective of the nature of use or application, or retention, of the Income from such activity

The said proviso applies only to trust for the advancement of any other object of General Public Utility, if it involves a commercial Activity.

The Activities of the trust are:

a) **Testing & Service Charges:**

SASMIRA carries out testing, evaluation and investigation of a variety of Textiles and related products like polymer, fiber, Yarn, Fabric, Garment, dyes and auxiliary Chemicals, these activities can not be considered to be commercial activities as the very object of the association, though it may be charging fees for the same to the members or even non-members.

b) **Education programme- Training Courses:**

SASMIRA is imparting technical education in the field of Man-Made Textiles, Garments, Merchandising, Fashion Designing, Textile Processing etc.

A this activity is for imparting Technical education, it does not fall under the Fourth object of General Public Utility and therefore, the proviso to section 2(15) does not apply.

c) **Subscription Fees:**

The said income is Exempt on the Principle of mutuality. Decision of Supreme Court in CIT v/s Bankipur club ltd 226ITR 97 and Chelmsford clubs v/s CIT 243 ITR 89. The said is also



supported by para 3.1 of CBDT circular no. 11/2008 dated 19th December, 2008.

d) *Consultancy Charges:*

SASMIRA carrying on of the research and development project both for industry and Ministry of Textiles are pursuant to the object of the association and of Educational nature and therefore, not falling under the Fourth object of General; Public Utility and therefore proviso to section 2(15) does not apply.

The Association is approved u/s 35(1)(ii) vide notification of the Govt. dt 28.02.2007. This approval is not affected by the enactment of proviso to section 2(15) where by the trust will cease to be for Charitable Purpose.

Further since all the above activities are not covered by the proviso to section 2(15), the non allowability of section 11 does not arise.

3.2. On perusal of the above submissions and Memorandum of Association of the assessee, it is crystal clear that the nature of activity carried out by the assessee is nothing but it is engaged in research and development activities in scientific field.

3.3. The claim of the assessee that it has been registered u/s 12AA of the Act and has been claiming exemption u/s 11 does not hold water. Attention to the note to the registration U/s 12AA is drawn wherein it is clearly mentioned that the registration by itself does not mean that on merits the benefits u/s 11 are available. Thus, it is very clear from this note that registration does not mean that the assessee should be allowed the benefits of section 11 of the Act. Further, in response to the claim of assessee that it has been claiming benefits of Section 11 in the earlier years, it is submitted that every assessment year is a different unit of assessment and therefore, the past or future has no impact on the relevant assessment. If at all, the assessee has been allowed relief / exemption U/s 11 in the past, not necessarily it was correct and perpetuating such error for ever is not at all expected.

3.4. In addition to the above, the assessee states that it is recognised by Ministry of Science and Technology, Dept. Of Scientific and Industrial Research, under the scheme of Scientific and Industrial Research



Organisations. This clearly shows the intention of the assessee that at one instance it wants to be recognised as an research institution and at the other instance wants to avail the benefits of exemptions U/s 11 by acting as a charitable institution. The assessee should have also applied to avail the benefits so provided for the research institutions u/s 10(21) of the Act.

3.5. As such on the basis of foregoing discussions, the provisions of Section 10(21) of the Act are attracted in the case of assessee. It is further submitted that as per the provisions of section 10(21) of the Act, the assessee was required to obtain approval from the Central Government. Once the assessee has necessary approvals in place, then the assessee shall enjoy the benefits of the provisions of Section 11 of the Act. From the records available, it is seen that the assessee has not opted for benefit u/s 10(21) of the Act. As such, the assessee cannot avail the benefits of the provisions of Section 11 of the Act. I therefore reject this claim of the assessee and hold that the assessee trust is not eligible for any exemption U/s.11 and accordingly tax entire income of the assessee trust denying the benefit of exemption U/s.11 in totality.

3.6. In the above context, it is now pertinent to refer to the section 2(15) of the I.T. Act, which reads as under:

"(15) ⁵³charitable purpose⁵⁴ includes relief of the poor, education⁵⁴, medical relief, and the advancement of any other ⁵⁴object of general public utility ⁵⁵[* *];"*

3.8. This clearly shows that for the purpose of availing the benefits of section 11 of the Act, the assessee is required to carry on the activity that shall be either relief to the poor, education, medical relief and advancement of any other object of general public utility. As discussed above, the objects and activities of the assessee are of that pertaining to purely of research work and with no stretch of imagination the assessee's activities are not charitable in nature and as such, the provisions of section 11 are not applicable to the assessee.



3.9. Thus, after allowing the claim of expenses incurred towards Establishment Expenses, the surplus as per consolidated income & expenditure accounts of Rs.62,56,011/- is being added back to the income of the assessee. This entire income of Rs. 62,56,011/- is held to be income of the assessee since it is not entitled to any deduction on account of application of income U/s 11 of the Act.

3.10. From the above discussion, it is very clear that the assessee has chosen to furnish inaccurate particulars of income, thereby concealing its income and is liable for penal proceedings. Penalty proceedings u/s 271(1)(c) read with Explanation 1 to the section are initiated separately for furnishing inaccurate particulars of income thereby concealing income.

(Addition of Rs. 62,56,011/-)

4. **Denial of exemption u/s.11 of the I.T. Act on account of being non-charitable in view of the amendment to section 2(15) of the I.T. Act w.e.f. 01.04.2009 r.w.s. 13(8) of the I. T. Act :**

It is seen from the return of income filed by the assessee that the assessee is engaged in various commercial activities which prima-facie are in the nature of business. As such, it is clear that purpose of the assessee trust is not education, medical relief, relief to poor, preservation of environment and preservation of monuments or places or objects of artistic or historic interest but at the most of the advancement of any other object of general public utility. Since the object or activity of the assessee falls under the category of "advancement of any other object of general public utility", the assessee is engaged in any commercial activity for a fees or cess either direct or indirect and also the receipts from such commercial activity is more than Rs.25 lakhs, the provisions of proviso to Section 2(15) of the Act are attracted.



4.1. Therefore, the assessee vide order sheet noting dated 28.12.2015 was asked to show cause as to why amended proviso to section 2(15) should not be invoked.

4.2. In response to the above show cause, the assessee's AR submitted explanation by letter dated. 14.1.2016 as under:

"The Association is approved u/s.35(1)(ii) vide notification of the Govt. Dt. 28.02.2007. This approval is not affected by the enactment of proviso to section 2(15) where by the trust will cease to be for Charitable Purpose."

4.3. The above reply of the assessee is considered. However, the same is not acceptable.

4.4. On perusal of the Memorandum of Association, it is seen that the objectives of the assessee are nothing but 'advancement of any other object of general public utility' and fall in the category commercial activity only. The relevant objects from Memorandum of Association of the assessee are reproduced as under:

- "1. To establish a silk & Art Silk Mills Research Institute and to Undertake, Carry on our helping on research and other scientific work in connection with the silk and Rayon, Weaving industry and other industries allied therewith or accessory thereto and which will among others include research in:*
- a) Investigation into Manufacture and Improvement of materials used in weaving etc.*
 - b) The Products or the industry, including stores, processing, sizing, dyeing etc.*
 - c) Investigation into improvement of various machinery and appliances used y the said industry.*

4.5. As can be concluded from the perusal of the above objectives of the assessee, that the assessee is engaged in 'advancement of any other object of general public utility' only.

4.6. Further, the assessee was collecting subscription fees, testing fees, consultancy charges, technical service charges, training courses charges,



etc. for the service provided by it besides the government grant of Rs.1,30,00,000/-. Thus the activity of the assessee is treated as commercial nature. In view of the proviso to section 2(15), this is nothing but obtaining fees for carrying on business activity. In this connection it is pertinent to refer to the provision of section 2(15) which reads as under:

"(15) "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 lakh rupees] or less in the previous year;]

4.7. On perusal of the provision, it is apparently clear that intention of the legislature that such entities, as the assessee's case should not be treated as charitable within the meaning of charitable purposes as provided u/s.2(15) of the I.T. Act w.e.f. 01.04.2009. Therefore, the provision of section 13(8) shall be applicable which reads as under:

"Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year."

4.8. Further, as per the provisions of section 13(8), if the assessee is covered by the proviso to clause (15) of section 2, then nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the assessee. Said sub-section was inserted by the Finance Act, 2012 w.r.e.f. 01.04.2009 i.e. applicable from A.Y. 2009 - 2010. As such, it can be safely concluded that the assessee is not eligible for exemption U/s.11 and 12 of the I.T. Act, 1961.



4.9. In view of the above, it is seen that all the conditions laid down above are fulfilled by the assessee. The object of the assessee falls under the category of "advancement of any other object of general public utility, assessee accepts fees for the services provided by the assessee and the total receipts of the assessee are more than Rs.25 Lakhs. Therefore, I hold that the case of the assessee being hit by the amendment to section 2(15) w.e.f. 01.04.2009, the assessee loses its charitable character within the meaning of section 2(15) for the assessment year in question and is therefore not entitled to exemption U/s.11 & 12 of I. T. Act, in view of the provision of section 13(8) of the I.T. Act. I therefore reject this claim of the assessee and hold that the assessee trust is not eligible for any exemption U/s.11 and accordingly tax entire income of the assessee trust denying the benefit of exemption U/s.11 in totality.

4.10. Thus, after allowing the claim of expenses incurred towards Establishment Expenses, the surplus as per consolidated income & expenditure accounts of Rs. 62,56,011 /- is being added back to the income of the assessee. This entire income of Rs. 62,56,011 /- is held to be income of the assessee since it is not entitled to any deduction on account of application of income U/s 11 of the Act.

4.11. From the above discussion, it is very clear that the assessee has chosen to furnish inaccurate particulars of income, thereby concealing its income and is liable for penal proceedings. Penalty proceedings u/s 271(1)(c) read with Explanation 1 to the section are initiated separately for furnishing inaccurate particulars of income thereby concealing income.

(Addition of Rs. 62,56,011 /-)

5. **OPERATION OF ALTERNATIVE GROUND**

At the cost of repetition, it may be clarified here that all the two grounds as discussed in paras 3 AND 4 operate alternatively to each other and in the event of failure of any of them, the other would apply independently.



5. On perusal of the expenditures claimed by the assessee in the Income and Expenditure account, it is seen that the assessee has claimed following expenses which are disallowed as the said expenditures are claimed on the assets which are capital in nature.

	Loss on sale of Motor car	538,016
	Loss on Obsolete Building written off	32,99,055
	Total	38,37,071

6. Subject to the above remark and discussion and after verification of details furnished, total income of the assessee is being worked as under :

	Particular	Rs.
	Gross total income as per Surplus in I & E for the year ended 31.03.2012	62,56,011
Add:	Disallowance of expenditure (as discussed above)	38,37,071
	TOTAL INCOME.....	1,00,93,082
	Rounded off.....	1,00,93,080

7. Assessed U/s 143(3) r.w.s. 147 of the Act at **Rs. 1,00,93,080/-** and taxed accordingly. Give credit for TDS as per 26AS and other taxes paid after due verification. Interest u/s. 234A, 234B, 234C and 234D of the Income Tax Act, 1961 levied as per the computation brought out in ITNS 150 which shall be deemed to be part of this order. Issue demand notice and challan. **Penalty proceedings u/s.271(1)(c) of the Act for concealment of income and furnishing of inaccurate particulars of income are initiated separately.** Issue notice U/s 274 r.w.s. 271(1)(c) of the I.T. Act, 1961.

sd/-
(SINDHU M. NAIR)
INCOME TAX OFFICER(E) 2(4)
MUMBAI

Copy to: The assessee.

sdh
ITO(E) 2(4), MUMBAI.

(SINDHU M. NAIR)
ITO (E)-2(4), Mumbai

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INRESOMD Cardata Processing									
Adjustments/Additions		Refund Details		Previous Periods		This Period		Communication Address	
Assessment Order		PAN / MAT/2271E		Asmt. Yr 2010-11		Name M/S THE SYNTHETIC & ART SILK MILLS RESEARCH ASSOCIATION			
Section 143(3)		r/w 147		Dt Order Passed 31/03/2016		Payments: TCS/IDS		1574880 Details	
Adjustments:		<input type="checkbox"/> Do not Exist <input type="checkbox"/> Exist				Oth Payments		-1574880 Details	
Assessed Inc		10090050 Agriculture Inc		0		Manual Refund		0	
Notional Return:		<input type="checkbox"/> Doesn't Exist <input type="checkbox"/> Exists				Total		0	
Gross Demand:		Covered u/s 119(2)(a)		Details					
Grs. Tax		3027924 Edu Cess		90838		Tax credit allowed u/s 115JAA			
Tax Credit u/s						Addnl Inc-Tax+Int payable on distributed profits		0	
Tax Pyl		3027924 Relief		0		Addnl Inc. Tax and Int. Paid		0	
Surcharge		0 Net Tax		2118762		Tax interest on distributed profit u/s 115-O/115P			
						Tax & interest payable		4287643	
Interest u/s 234A		Computed 0		Modified		Computed 0		Modified	
Interest u/s 234B		1111752				Int. u/s 244A		0	
Interest u/s 234C		57128				Payments of Int.u/s 244A		-267689	
Additional Tax						Balamount u/s 244A		267689	
Gross Demand		4287643		Details		Int u/s 234D		0	
Delay Attributable to Assessee u/s 244A:						Int.received u/s 234D		0	
Delay From Dt		Delay To Dt				Balamount u/s 234D		0	
Refund Status:						Interest u/s 220(2)		0	
						Payments of Int.u/s 220(2)		0	
						Balamount u/s 220(2)		0	
Dt. of Svc		10/04/2016		Mise. Prd. 30		Dt. Due 10/05/2016		Net Amount payable 4555340	

No. JE-II/133/Pg.34/2015-16

Sindh



सिंधू एम. नायर
SINDHU M. NAIR
 आयकर अधिकारी (छूट) - 2 (4), मुंबई
 INCOME TAX OFFICER (EXEMPTIONS) - 2(4), MUMBAI