

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER

ITA No.	A.Y.	Appellant	Respondent
3052/Mum/18	2011-12	Vajinath Bhavdarshan (Kodinar), Nirmal Niketan, 2, Dr. Bhajekar Street, MUMBAI [PAN: AAATV2852P]	Asst. Director of Income Tax, Exem-(II)(2), MUMBAI
3053/Mum/18	2011-12	Vajinath Bhavdarshan Trust (Ahmedabad), Nirmal Niketan, 2, Dr. Bhajekar Street, MUMBAI [PAN: AAATV2853N]	Asst. Director of Income Tax, Exem-(II)(2), MUMBAI
3054/Mum/18	2011-12	Vajinath Bhavdarshan (Burhanpur), Nirmal Niketan, 2, Dr. Bhajekar Street, MUMBAI [PAN: AAATV2855L]	Asst. Director of Income Tax, Exem-(II)(2), MUMBAI
3055/Mum/18	2011-12	Vajinath Bhavdarshan (Kheda), Nirmal Niketan, 2, Dr. Bhajekar Street, MUMBAI [PAN: AAATV6160G]	Asst. Director of Income Tax, Exem-(II)(2), MUMBAI
3056/Mum/18	2011-12	Vajinath Bhavdarshan (Valsad), Nirmal Niketan, 2, Dr. Bhajekar Street, MUMBAI [PAN: AAATV0188Q]	Asst. Director of Income Tax, Exem-(II)(2), MUMBAI
3057/Mum/18	2011-12	Vajinath Bhavdarshan (Bhavnagar), Nirmal Niketan, 2, Dr. Bhajekar Street, MUMBAI [PAN: AAATV2854M]	Asst. Director of Income Tax, Exem-(II)(2), MUMBAI
3058/Mum/18	2011-12	Vajinath Bhavdarshan (Veraval), Nirmal Niketan, 2, Dr. Bhajekar Street, MUMBAI [PAN: AAAAV0012A]	Asst. Director of Income Tax, Exem-(II)(2), MUMBAI

3059/Mum/18	2011-12	Attrey Bhav Darshan, Nirmal Niketan, 2, Dr. Bhajekar Street, MUMBAI [PAN: AAAAA0027A]	Asst. Director of Income Tax, Exem-(II)(2), MUMBAI
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Appellant By : Shri Rajesh P. Shah,
Respondent By : Shri Vijay Kumar Soni, DR

Date of Hearing : 29-01-2019	Date of Pronouncement : 01-02-2019
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ORDER

These are eight appeals by eight different assesseees and these are directed against separate orders of the Ld. Commissioner of Income Tax (Appeals)-1, Mumbai, for the AY. 2011-12 and all the orders of the CIT (A) are dated 08-02-2018. Since the facts and issues involved in all these appeals are common and identical, these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The identical grounds raised by the assessee in these appeals read as under:

*“1) On the facts and under the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in upholding the Assessing Officer's Action in denying benefit of Section 11 of IT Act to the Appellant Trust without appreciating the fact that primary object of the trust is relief to the poor, education and medical relief i.e. activity carried out by the trust and the amount is spent towards fulfillment of the object of the trust
Without Prejudice to the Ground 1*

2) On the facts and under the circumstances of the case and in law learned CIT (A) erred in denying exemption u/s 11 without rejecting the registration u/s 12A

3) On the facts and under the circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in upholding the Assessing Officer's Action in taxing the income determined by her, at the maximum marginal rate of tax envisaged in the Proviso to Section 164(2).

The appellant craves for leave to add, to alter, to delete the above ground of appeal if necessary”.

3. At the outset, it was submitted by the Ld. AR of the assessee that in respect of ten different but connected assessees' for the same assessment year, the Tribunal has already restored the matter back to the file of AO for fresh decision in ITA Nos. 2515/Mum/2018 to 2518/Mum/2018 & 2521/Mum/2018 to 2526/Mum/2018, dt. 26-12-2018. He submitted a copy of this Tribunal's order. He also submitted that on the same line, in the present eight appeals also, the matter may be restored back to the file of AO for fresh decision with similar directions. At this juncture, a query was raised by the Bench from the Ld. DR of the Revenue as to whether, facts are same or there is any difference in facts in the present cases. In reply, Ld. DR of the Revenue could not point out any difference in the facts.

4. In view of the above discussion, I deem it fit and proper to set aside the orders of the learned CIT (A) in all the present appeals and restore the matter back to the file of AO for fresh decision with similar directions. Hence, I reproduce Para Nos. 10 & 11 of this Tribunal's order cited supra, for ready reference:

"10. We have considered rival submissions and perused materials on record. It is evident, assessee's claim of exemption under section 11 of the Act has been denied by the Assessing Officer and the learned Commissioner (Appeals) primarily on the ground that the assessee has not applied income / fund towards the objects of the trust. The learned Commissioner (Appeals) has further observed that major expenditure incurred by the assessee was associated with agricultural activities. He has also observed that the assessee failed to explain how the pool-farmers have benefited from the activities of the trust. The Departmental Authorities have also observed that the expanses towards various activities constitute less than 12% of the receipt of the assessee during the year, hence, the provision of section 11(2) of the Act is not complied. As could be seen from the material on record, the assessee has been granted registration under section 12A of the Act on the basis of the objects mentioned in the trust deed. "Here is no allegation either by the Assessing Officer or by the learned Commissioner (Appeals) that there is any variance in the objects of the trust as mentioned in the original trust deed. There is also no dispute to the fact that the registration granted under section 12A of the Act to the assessee is still in vogue. Therefore, if as per the objects of the existing trust deed the assessee is required to undertake charitable activity by way of farming / agriculture in the agriculture land held by it then assessee's claim of exemption under section 11 of the Act cannot be denied. Therefore, before denying assessee's claim of exemption, the Assessing Officer on the basis of cogent material brought on record must demonstrate that the assessee has not applied its income / fund towards the objects of the trust. By merely alleging that the assessee is exploiting labour in

the name of God without bringing any material on record, is not enough to deny assessee's claim of exemption under section 11 of the Act. Further, assessee's claim that while applying the conditions of section 11(2) of the Act agricultural income should be kept out has not been considered by the Departmental Authorities. Therefore, on overall consideration of the facts and martial on record, we are of the view that the issues raised by the assessee in the present appeal have to be restored back to the file of the Assessing Officer for de novo adjudication after considering the submissions of the assessee and examining the materials brought on record and in accordance with the statutory provisions as well as relevant case laws. Accordingly, we do so. Needless to mention, the Assessing Officer must decide the issues after affording reasonable opportunity of being heard t to the assessee and must pass a speaking and well reasoned order dealing with all the submissions of the assessee- With the aforesaid observations, grounds raised are allowed for statistical purposes.

11. Facts and issues in all other appeals in this bunch being identical, our decision in ITA no. 2525/Mum./2018, will apply mutatis mutandis to all these appeals as well.”

5. In the result, all the present eight of various connected assessee's appeals are allowed for statistical purposes.

Order pronounced in the open court on 1st day of February, 2019

Sd/-
(A.K. GARODIA)
लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/Mumbai; दिनांक/Dated : 1st February, 2019

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai
4. आयकर आयुक्त / CIT, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asst. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai