

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'G' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)]
and Saktijit Dey (Judicial Member)]**

ITA No. 699/Mum/2019
Assessment Year: 2013-14

**Income Tax Officer-17(3)(3)
Mumbai.**

..... Appellant

Vs.

M/s. Shishir Bajaj Charitable Trust
*Bajaj Bhavan, 2nd Floor, Jamnalal Bajaj Marg,
226, Nariman Point, Mumbai 400001
[PAN: AAATS7880C]*

.....Respondent

Appearances:

T.S Khalsa for the appellant

Mahendra Gohel for the respondent

Date of concluding the hearing: : January 21, 2021

Date of pronouncement : April 15, 2021

O R D E R

Per Pramod Kumar, VP:

1. By way of this appeal, the Assessing Officer has challenged correctness of the order dated 15th November 2018, passed by the learned CIT(A) in the matter of assessment u/s. 143(3) of the Income Tax Act, 1961 for the assessment year 2013-14.

2. Grievances of the appellant, as set out in the memorandum of appeal, are as follows:

1. "On the facts and circumstances of the case and in law, the Ld CIT(A) erred in allowing exemption u/s. 10(34) of the Income tax Act on the dividend received on shares without appreciating the fact that the income derived by the assessee trust is from the properties held under the trust and claimed exemption u/s. 11 of the I T Act.

2. "On the facts and circumstances of the case and in law, the LdCIT(A) erred in allowing exemption u/s. 10(34) of the Income tax Act on the dividend received on shares without appreciating the fact that the income derived by the assessee trust is from the properties held under the trust and claimed exemption u/s.11 of the I T Act. Section 11 starts with the words "income derived from property held under Trust" which means that section which exclusively deals with income derived from property held under trust is section 11 and not any other section".

3. "On the facts and circumstances of the case and in law, the Ld CIT(A) erred in holding that the exemption u/s. 10 is admissible irrespective of whether the assessee is a person registered u/s.12A or not"

4. The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."

3. The short issue that we are required to adjudicate in this appeal is whether the assessee is entitled to exemption u/s. 10 (34) even if the assessee is registered charitable institution u/s. 12A and it does not fulfil the requirements of exemption of related income as a charitable institution. This question is no longer *res integra*, and learned representatives do not dispute that position. As learned representatives fairly agree, Hon'ble jurisdictional High Court in the case **DIT (E) vs. Jasubhai Foundation [(2015) 374 ITR 315 (Bom)]** has answered this question in favour of the assessee and observed as follows:-

"8. Upon the perusal of the order of the Assessing Officer and that of the Commissioner upholding it, we are of the view that the Tribunal was these concurrent orders. The language of the two sections are plain and clear. The provisions, namely, sections 10 and 11 fall under a Chapter which is "Income which do not form part of total income" (Chapter III). Section 10 deals with incomes not included in total income whereas section 11 deals with income from property held for charitable or religious purposes. They have not found anything in the language of the provisions nor was Mr Malhotra able to point out as to how when certain income is not to be included in computing the total income of a previous year of any person, then that which is excluded from section 10 would be included in the total income of the previous year of the person / assessee. That may be a person who receives order arrives income from property held under trust wholly for charitable or religious purposes. The income which is not to be included in computation of the total income is a matter dealt with by section 10 and by section 11 of the case of an assessee who has the right income derived from property under trust only for charitable or religious purposes to the extent to which such income is applied to such property in India and that in search income is accumulated or set apart for application for such purposes in India the extent of which the income so accumulated or set apart in computing 15% of the income of such property, is dealt with. Therefore, it is a particular assessee and is in the receipt of search income as is falling under clause (a) of subsection (1) of section 11 who would be claiming the exemption benefit.

That is a income derived by a person from property. It is that which is dealt with and if the property is held in trust for the specified purpose, the income derived

there from is exempt and then indicated in section 11(1)(a) of the Income-tax Act, 1961. There is nothing in the language of section 10 and/ or section 11 which what is provided by section 10 or there with is not to be taken into consideration or omitted from the purview of section 11. If the except the government of Mr Malhotra and the Revenue, the same would amount to reading into the provisions something which is expressly not there. In such circumstances, the tribunal was right in its conclusion that income in this case the assessee-trust is not included by virtue of section 10, then that not be considered under section 11.”

4. It is thus clear that so far as relevant assessment year is concerned whether or not an assessee is registered as charitable institution and whether or not the assessee in such situation fulfils the requirements for exemption of income u/s. 11, the exemption u/s. 10 (34) will nonetheless be available. When this proposition was put to the learned representatives, they fairly agreed with the above the legal position, even though learned Departmental Representative dutifully relied upon the order of the Assessing Officer.

5. Respectfully following the esteemed views of Hon’ble jurisdictional High Court in the case of M/s. Jasubhai Foundation (supra), we uphold the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter. We may only add that it is with effect from assessment year 1st April 2015, that sub section 7 has been added to section 11 which restricts the availability of exemption u/s. 10 (34) to the assessee registered as a charitable institution u/s. 12A. The assessment year before us however, is assessment year 2014-15 and therefore section 11 sub section 7 will have no application in the matter in this view of the matter and respectfully following the esteemed views of Hon’ble jurisdictional High Court on this issue, we uphold the conclusions of the learned CIT(A) and declined to interfere in the matter.

6. In the result, the appeal is dismissed. Pronounced in the open court today on the 15th day of April 2021.

Sd/-
Saktijit Dey
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 15th day of April 2021.

Copies to: (1) *The Applicant* (2) *The respondent*
 (3) *CIT* (4) *CIT(A)*
 (5) *DR* (6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai