

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

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

ITA No. 1759/Mum/2019  
Assessment Year: 2014-15

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

..... Appellant

**Vs.**

**M/s. Shekhar Bajaj Charitable Trust**  
*Bajaj Bhavan, 2<sup>nd</sup> Floor, Jamnalal,  
Bajaj Marg, 226, Nariman Point, Mumbai 400001  
[PAN: AACTS0331A]*

.....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 the correctness of the order passed by the learned CIT(A) the order dated 17<sup>th</sup> January, 2019 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 2014-15.

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 to the tune of Rs.3.02 Crore, when this income forms a part of the income from property held under trust and therefore can only be claimed to be exempt u/s 11, if applied for charity and not u/s 10 of the Act.**

2. "On the facts and circumstances of the case and in law, the Ld CIT(A) erred in allowing exemption u/s. 10 of the Income tax Act without appreciating the fact that the trust had violated the provisions of section 13(1)(d) of the Income Tax Act, 1961 and that, therefore, exemption could not be allowed on the dividend income of Rs.3,02,35,680/-.

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."

5. "The appellant craves leave to amend or to alter any ground or add a new ground which may be necessary."

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. M/s. Jasubhai Foundation 2015, 374 ITR 315 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 is 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.



*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai*