

THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 7099/Mum/2019 (Assessment Year 2013-14)

ITO-17(2)(3) Room No113, Kautilya Bhavan, Bandra Kurla Complex Mumbai-400 051 PAN : AAATM2595C	Vs.	M/s. Mahakalp Arogya Pratisthan Bajaj Bhawan, 2 nd Floor Jamanalal Bajaj Marg 226, Nariman Point Mumbai-400 021
(Appellant)		(Respondent)

Assessee by	Shri Mahendra Gohel
Department by	Ms. Usha Gaikwad
Date of Hearing	25.05.2021
Date of Pronouncement	20.07.2021

O R D E R

Per Shamim Yahya (AM) :-

This appeal by the Revenue is directed against the order of learned CIT(A)-6 dated 23.08.2019 and pertains to Assessment Year 2013-14.

2. The grounds of appeal read as under :

1. "Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A)-6, Mumbai, was justified in granting exemption u/s. 10(34) to the tune of Rs. 3,43,55,850/-, 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 Income Tax Act, 1961?"
2. "Whether on the facts and circumstances of the case, the Ld. CIT(A) was right in replying on the judgment of Hon'ble Bombay High Court ITAT in the case of DIT(E) Vs. Jasubhai Foundation 374 ITR 315 (Bom) which is distinguishable to the facts of the assessee's case as in the above case, exemption u/s. 11 is denied to the assessee due to the violation of section 13(1)(d) of the Income Tax Act, 1961, even through the Income Tax Department has not filed SLP before Hon'ble Supreme Court due to low tax effect."
3. "The appellant prays that the order of the Ld. CIT(A) on the grounds be set aside and that of the Assessing Officer be restored"
4. "The appellant craves leave to amend or alter any ground or add a new ground which may be necessary".

3. Brief facts of the case are that the assessee is a public company incorporated u/s 25 of Companies Act 1956 and is engaged in the field of Advancement of rural poor by way providing medical aid. The Trust was created in the year 1991. It is registered under Section 12A (a) of the Act. The Trust had / received certain shares of listed companies as donation towards its corpus. The Trust continued holding these shares and accrual thereto till date which amounted to violation of Section 11(5) read with Section 13(1)(d) of the Act. As a result, the Trust did not claim benefit of Section 11 & 12 of the Act. Accordingly, the Trust had filed the Return of Income for the above year declaring a total income at Rs. Nil claiming deduction for donations given to eligible institutions and trusts. During the course of assessment proceedings, the AO observed that the assessee had shown investment in quoted/unquoted shares as under:-

Name of the Company	TYPE & F.V	No. of Shares	As at 31/03/2013
Bajaj Holdings and Investment Ltd.	Equity Rs. 10 Each	2,94,900	2,43,21,600
Bajaj Auto Ltd.	Equity Rs. 10 Each	5,89,800	95,13,405
Bajaj Finserv Ltd.	Equity Rs. 5 Each	3,24,390	2,83,80,575
NRC Ltd.	Equity Rs. 10 Each	13,950	13,26,535
		Total	6,35,42,115

The AO contented that the assessee had invested in prohibited mode of investment and violated the provisions of Section 13(1)(d) r.w.s 11(5) of the Income Tax Act and section 13(2)(h) of the Income tax act, 1961. Further it was seen by the AO that assessee was in receipt of Dividend of Rs.3,43,55,850/- and same had been claimed as exempt u/s. 10(34) of the I.T.Act. The AO further discussed the issue on charging the income of the assessee's trust as per provisions of Section 164(2) of the Act. Since

no exemption u/s. 11 was allowed to the assessee on dividend on shares of Rs.3,43,55,850/- and income was taxed at maximum margin rate as per provisions of Section 164(2) r.w.s. 2(29C). The AO further discussed taxability as a trust observing that the status of the trust is not changed when the conditions u/s. 13 of the Act are violated by the assessee. The violation u/s.13 of the Act had only changed the eligibility for exemption of income derived from the property held by the trust u/s.11 of the Act and not u/s.10(34) of the Act. Accordingly, the AO completed the Assessment under Section 143(3) of the Act determining the total income at Rs.3,43,55,850/- being dividend income earned on the shares held by the Trust, levying tax on this Dividend Income at maximum marginal rate of tax.

4. Upon assessee's appeal Ld.CIT(A) decided the issue in favour of assessee by holding as under:-

8. I have considered the facts of the case, discussion of the AO in the assessment order, oral contention and written submissions of the appellant and material available on record. The AO has not allowed exemption u/s. 10(34) of the Act in respect of dividend income by holding that, the same is not available while computing income u/s. 11 of the Act. The appellant has relied in this regard on the judgement of Hon. ITAT Mumbai and Hon. Bombay High Court as above. During the course of appellate proceedings, it was submitted by the appellant that the dividend income can be claimed exempt u/s. 10 of the Act irrespective of the fact that the assessee is a charitable trust. The appellant, in this regard has relied on the judgement of Hon. ITAT, Mumbai dt. 26.03.2014 in the case of *Jamsetji Tata Trust vs. JOIT (E) Range - II 148 ITO 3SS* wherein the Hon. ITAT while dealing with the same issue have observed as under:-

"in our view the exemption u/s 11 is available on the income of the public charitable/ religious trust or institution which is otherwise taxable in the hands of other persons. Thus the income which is exempt u/s 10 cannot be brought to tax by virtue of sections 11 and 13 of the Act because no such pre condition is provided either u/s 10 or 11 to 13 of Income-tax Act. Therefore, section 11 to 13 would not operate as overriding affect to the section 10 of the Act. The language of these provisions does not suggest that either section 10 of the Act. The language of these provisions does not suggest that either section 10 is subjected to the provisions of sections 11 to 13 or sections 11 to 13 has any overriding affect over section 10. Therefore, the benefit of section 10 cannot be denied by invoking the provisions of sections 11 to 13 of the Act. Once the

conditions of section 10 are satisfied then no other condition can be fastened for denying the claim under section 10 of the act.

In view of the above discussion and following the various decisions (supra) we hold that the dividend income on shares and mutual funds and long term capital gain on sale of shares an exempt u/s 10(34) 10(35) and 10(38) respectively and cannot be brought to tax by applying sections 11 and 13 of the Act."

8.1 Further in support of its contention, the appellant has also relied on the Judgement of Hon. Bombay High Court dated 01.04.2015 in the case of *DIT (E) vs. Jasubhai Foundation* 374 ITR 215 wherein the Hon'ble jurisdictional High Court while deciding the same issue has observed as under. –

"Upon a perusal of the order of the Assessing Officer and that of the Commissioner upholding it, we are of the view that the Tribunal was correct in setting aside these concurrent orders. The language of the two sections is plain and clear. The provisions, namely, sections 10 and 11 fall under a Chapter which is titled "Incomes Which Do Not Form Part of Total Expenditure" (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. We have not found anything in the language of the two provisions nor was Mr. Malhotra able to point out as to how when certain income is not to be included in computing total income of a previous year of any person, then, that which is excluded from section 10 could be included in the total income of the previous year of the person/assessee. That may be a person who receives or derives income from property held under trust wholly for charitable or religious purposes. Thus, 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 the case of an assessee who has received income derived from property held under trust only for charitable or religious purposes to the extent to which such income is applied to such property in India and that any such income is accumulated or set apart for application for such purposes in India to 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 who is in receipt of such income as is falling under clause (a) of sub-section (1) of section 11 who would be claiming the exemption or 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 to the extent indicated in section 11(1)(a) of the Income Tax Act, 1961. There is nothing in the language of sections 10 or 11 which says that what is provided by section 10 or dealt with is not to be taken into consideration or omitted from the purview of section 11. If we accept the argument 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 the income which in this case the assessee

trust has not included by virtue of section 1a, then, that cannot be considered under section 11.

In the circumstances and when the income from property held for charitable or religious purpose is not a matter covered or dealt with by Section 10 that the Tribunal's view cannot be termed as perverse or clear language of these provisions enables us to uphold the order of the Tribunal. It is, accordingly, upheld. The Revenue's appeal does not raise any substantial question of law."

The AO has also sought to argue that in the case of Jasubhai Foundation (supra), the assessee therein was granted benefits of section 11 whereas in the case of the appellant, the benefits of section 11 have not been granted and hence the same is not applicable. In my opinion, the fact that benefits of section 11 have not been granted to the appellant further strengthens its claim for exemption of dividend income. It is noted that the exemption under Section 10(34) of the Act is in respect of the dividend income referred to in section 115-O of the Act. No other conditions have been prescribed. Such exemption is qua the dividend income and not qua the status of the assessee. The Hon'ble Bombay High Court has elaborately dealt with the exemption under Section 10 as well as the provisions of section 11 and has held that there is nothing in the language of section 11 that prevents assessee from claiming exemption under Section 10 of the Act or vice versa.

8.2 In view of the foregoing and respectfully following the aforesaid binding judgments of the Hon'ble Bombay High Court and the jurisdictional ITAT, Mumbai, the action of the AO in denying the exemption under Section 10(34) of the Act in respect of the dividend income earned by the appellant is not found to be sustainable. Consequently, the levy of tax on such dividend income at maximum marginal rate of tax is also unjustified. Accordingly, the ground of appeal is allowed:

9. In the result, the appeal is allowed.
5. Against the above order revenue is in appeal before us.
6. We have heard both the parties and perused the records. Ld. Counsel of the assessee submitted that the issue is duly covered in favour of the assessee by the jurisdictional High Court decision as referred in CIT(A) order.
7. Per contra Ld. Departmental Representative relied upon the AO's order

8. Upon careful consideration, we find ourself agreement with the submission of Ld. Counsel of the assessee and the view taken by the Ld.CIT(A) that the issue stands covered in favour of the assessee by the decision of Hon'ble jurisdictional High Court in the case of Jasubhai Foundation (supra). ITAT decision in the case of Jamsetji Tata Trust and associate trust of the assessee trust, Shekhar bajaj charitable trust also supports this view. Departments plea in grounds of appeal that Hon'ble jurisdictional High Court in decision in Jasubhai Foundation(supra) has not been appealed before Hon'ble Supreme Court due to low tax effect is not a reason for us to take a contrary view. Hence, we uphold the order of Ld.CIT(A).

9. In the result, revenue appeal is dismissed.

Pronounced in the open court on 20.07.2021

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 20/07/2021

Sr.PS. Thirumalesh

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai