

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**

**(DELHI BENCH 'H' : NEW DELHI)**

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.3187/Del/2019  
(Assessment Year : 2015-16)

The Indian Golf Union C1/52, 3 <sup>rd</sup> Floor, Hauz Khas Village Road, Safdurjang Development Area PAN No. AAATT3232B	Vs.	ITO (Exemption) Ward 2(3), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	None
Revenue by	Shri Tufail Tahir, Sr. DR

Date of hearing:	02.06.2022
Date of Pronouncement:	13 <sup>th</sup> .06.2022

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The assessee has come in appeal against order dated 15.02.2019 in appeal no. 40/10173/2017-18 for the assessment year 2015-16 passed by Commissioner of Income Tax (Appeals)-40, Delhi (hereinafter referred to as the 'First Appellate Authority' or in short 'Ld. F.A.A.') in appeal before it against order dated 29.12.2017 u/s 143(3) of the Income Tax Act, 1961

passed by Income Tax Officer (exemption), Ward 2(3) New Delhi ( herein after referred to as 'Ld. Assessing officer or in short Ld. AO').

2. The facts in brief are that return of income was filed on 31.10.2015. The case was selected for scrutiny through CASS and notice under section 143(2) was issued on 28.07.2016 which was duly served upon the assessee. The appellant society is registered under section 12A vide registration dated 31.08.1999 and is engaged in organizing golf tournaments in India and abroad for the promotion of game of golf in India. The main objective of the society, *inlet-alia*, include: -

- a) To promote the game of golf of India.
- b) To foster and maintain a high standard of amateur golf in India.
- c) To arrange for tire conduct Amateur Golf Championship in India and other golf championship in India.
- d) To promote and arrange golf matches and competitions and India and elsewhere.

2.1 On perusal of Income and expenditure account of the assessee, Ld AO observed that the assessee had made investment of Rs. 1 crores in Mahindra and Mahindra Finance. In response to a query in this regard, it was submitted that section 11(5) comes into effect where 85% of income is not spent for charitable or religious purpose. It was also submitted that since more than 85% of income had been spent for charitable purpose, provisions of section 11(5) were not applicable. The contention of the assessee was not accepted and in view of the provisions of section 13(l)(d) also, exemption under section 11 was denied. It was also noted that the assessee had shown

life membership subscription of Rs. 30,58,000/- directly in balance sheet. Since benefit of exemption under section 11 had been denied, life membership subscription Rs, 30,58,000/- was added to total income.

3. In appeal the Ld. CIT(A) has although upheld that the assessee is a charitable institution and the exemption is allowable u/s 11 and 12 in regard to investment of funds in Mahindra and Mahindra finance, it observed in para no. 4.1.6 to 4.1.9 as below :

*“4.1.6 However, it is noted that the assessee has invested an amount of Rs. 1 crore in Mahindra and Mahindra finance which is not a mode specified under section 11(5). In this regard the contention of the appellant that provisions of section 11(5) are applicable only if less than 85% receipts are applied for charitable purposes is not tenable in view of the provisions of section 13(l)(d) which provides for the circumstances where the exemption to the trust would be forfeited if the funds are invested or deposited after 28/02/1983 otherwise than in any mode as specified under section 11(5). The provisions of section 13(l)(d) read as under:*

*13, (1) Nothing contained in section 11 or section 22 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof-*

.....

*(d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year-*

*(i) any funds of the trust or institution are invested or deposited after the 28th day of February, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11: or*

*(ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983 otherwise than in any one or*

*more of the forms or modes specified in sub section (5) of section 11 continue remain so invested or deposited after the 30th day of November, 1983; or*

*(iii) any shares hi a company, other than -*

*(A) shares in a public sector company; ,*

*(B) shares prescribed as a form or mode of investment under clause (xii) of sub section (5) of section 11*

*are held by the trust or institution after the 30th day of November, 1983:*

**4.1.7** *From the above it is apparent that exemption is not available in cases where any income of the trust for charitable or religious purposes or a charitable or religious institution is invested or deposited in any of the modes other than those specified under section 11(5). It is also apparent that there is no limitation of applying 85% or less for the purpose of applicability of the said provision. Hence, he contention of the appellant is not tenable and it is held that exemption is not available under section 11 to the appellant in view of the provisions of section 13(10)(d).*

**4.1.8** *Since denial of exemption has been upheld in view of the provisions of section 13(1)(d), the addition of Rs. 30,58,000/- on account of life membership fee which was taken directly to the balance sheet is also upheld.*

**4.1.9** *In view of the discussion above it is held that even though exemption cannot be denied by invoking the proviso to section 2(15) in the case of the appellant as per the discussion in paragraphs to above, exemption under section 11 is denied because of violation in terms of section 13(1)(d). Addition of Rs. 30,58,000/- is also upheld. In view of the discussion above, ground of appeal no. 1 is dismissed.*

4. Now, the assessee has come before the Tribunal raising following grounds :-

*“1. The Hon’ble CIT(A) 40 erred in law by wrongly invoking section 13(1)(d) of Income Tax Act and disallowing exemption U/s 11 of the Income Tax Act.*

*2. The Hon’ble CIT (A) erred in law by disallowing the exemption on the basis of investment of 1 crore made by assessee in Mahindra and Mahindra Finance despite of the fact that, the Hon’ble CIT(A) duly admitted the assessee as a charitable institution and exemption is allowable under section 11 and 12 in her order.*

*3. For these grounds and any other ground or grounds that may be urged during the course of hearing of the appeal, the appellant humbly prays the Hon’ble Income-Tax Appellate Tribunal to allow the appeal or to give appropriate relief as the Hon’ble Tribunal may deem it fit , in the facts and circumstances of appellant’s case.*

5. As the case was called for hearing on 02.06.2022, non-appeared for the assessee. The notices issued on the address provided for sending notices in Form no. 36 have been received back with the endorsement of the postal authorities that the addressee has left. As, no other addresses is available on record. The assessee was proceeded *ex parte* and arguments on merits were heard and Ld. DR who supported the order of Id. Tax Authorities below.

6. It can be appreciated that primarily the controversy revolves around the interpretation of proviso of Section 13(1)(d) r.w.s. 11(5) of the Act. The case of assessee is that as the assessee has complied with the mandate of Section 11(1) of the Act by spending more than 85% of the receipts for charitable purposes so inspite of the deposits otherwise then modes specified u/s 11(5) of the Act or valid investments, the assessee will continue to get the benefit u/s 11 of the Act.

7. Revenue contended that there is no limitation of applying 85 % or less for the purpose of applicability of Section 11(5) of the Act.

8. Giving thoughtful consideration issues raised in the grounds it is relevant to reproduce certain provision of the Act. Section 13(1)(d) of the Act has been reproduced above in the findings of Ld. CIT(A) and for convenience Section 11(5) is reproduced as below :-

*“(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely:-*

8.1 Further Clause (b) of sub section 2 of Section 11 being relevant is also reproduced as below :-

*“2 Where eighty- five per cent of the income referred to in clause (a) or clause (b) of sub- section (1) read with the Explanation to that sub- section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated, or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:-*

*(a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;*

*(b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub- section (5);*

*(c) the statement referred to in clause (a) furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year.”*

9. Giving thoughtful consideration to the aforesaid provisions as applicable to the present facts and circumstances, the Bench is of considered opinion that the belief of assessee was erroneous that having spent 85% of the receipts for charitable purposes, the remaining could have been used in any manner whatsoever beyond the scope of Section 11(5) of the Act.

9.1 Instead, the Bench is of view that Section 11(5) provides for investing or depositing money referred to in clause (b) of sub-section 2 of Section 11, in the identified investments falling in clause (i) to (xii) of Section 11(5) of the Act. The money referred in Clause (b) (ii) is one accumulated or set apart. Meaning thereby that even if 85% of the income referred in clause (a) or sub-clause (b) of sub section 1 of Section 11 read with the explanation 2 to that sub section (1) is applied to charitable or religious purposes then to claim exemption on the whole of the income, the accumulated or set apart income has to be deposited or invested in the investments identified in sub section (5) of section 11 of the Act.

10 Aforesaid view of the Bench is fortified by the following findings of Mumbai Bench in **M/s. Navajbhai Ratan Tata Trust versus Addl. Director of Income Tax (Exemp.)** ITA No. 1301/Mum./2018 decided on 10/3/22 ;

*“6.6 We have considered the rival submissions and perused the material available on record. In the present case, the assessee had made investment in redeemable preferential shares of Tata Sons Ltd. which the AO, inter-alia, held to be in violation of provision of section 13(1)(d) of the*

*Act. The income that could be derived from such an investment would be dividend income or the capital gains on sale of such investment. However, due to violation of provisions of section 13, income derived from property held under trust is not exempted under section 11 of the Act. The issue which arises in the present case is whether the entire income of the trust shall become ineligible for exemption under section 11 of the Act or it is restricted to only the income derived from prohibited investments.*

*6.7 Similar issue arose for consideration before the Hon''ble Jurisdictional High Court in the case of Sheth Mafatlal Gagalbhai Foundation Trust(supra), wherein the Hon''ble Court observed as under:*

*M/s. Navajbhai Ratan Tata Trust Assessment Years: 2011-12, 2012-13, 2013-14 and 2014-15 ".....the Legislature has clearly indicated its mind in the proviso to section 164(2) when it categorically refers to forfeiture of exemption for breach of section 13(1)(d), resulting in levy of maximum marginal rate of tax only to that part of the income which has forfeited exemption. It does not refer to the entire income being subjected to maximum marginal rate of tax."*

Thus there is no error in the findings of Ld. AO or the Ld. CIT(A).  
The ground raised are not sustainable, **the appeal is dismissed ex parte.**

**Order pronounced in the open court on 13<sup>th</sup> June, 2022.**

**Sd/-**  
**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

*Date:- 13<sup>th</sup>.06.2022*

**\*Binita, SR.P.S\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI