

आयकर अपीलीय अधिकरण
मंबई पीठ " ई "

श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एम बालगणेश, लेखाकार सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आअसं. 2257/मुं/2021(नि.व. 2013-14)
ITA NO. 2257/MUM/2021(A.Y.2013-14)

Dy. Commissioner of Income Tax
(Exemption)-2(1), Mumbai,
Room No.6⁰⁸, 6th Floor, MTNL Building,
Cumballa Hill, Peddar Road,
Mumbai – 400 026.

..... अपीलार्थी /Appellant

बनाम Vs.

The J.K.Trust Bombay,
Ground Floor, New Hind House,
Narottam Morarjee Marg,
Bellard Estate, Mumbai 400 001
PAN: AAATT-0611-L

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Prakash R. Mane

प्रतिवादी द्वारा/Respondent by : Shri Madhur Agarwal

सुनवाई की तिथि/ Date of hearing : 11/07/2022

घोषणा की तिथि/ Date of pronouncement : 11/07/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 21/06/2021, for the Assessment Year 2013-14.

2. This appeal is time barred by 104 days. The Assessing Officer has filed an application explaining reasons for delay in filing of the appeal. The delay in filing of the appeal is attributed to COVID-19 Pandemic. Taking in to

consideration the hardship caused to the litigants in the extra ordinary circumstances the Hon'ble Supreme Court of India taking suo-motu Cognizance for Extension of Limitation reported as 132 taxmann.com 123 extended the period of limitation under General Laws of Limitation and Special Laws. The present appeal has been filed by the Revenue within the extended period of limitations, hence, no delay in filing of appeal.

3. Shri Madhur Agarwal appearing on behalf of the assessee submitted at the outset that Revenue in appeal has assailed the order of CIT(A) merely for the reasons that the order of Tribunal in assessee's own case in Assessment Year 2009-10, 2012-13 and 2014-15 has not been accepted by the Department and has filed appeal before the Hon'ble Bombay High Court. The Id.Counsel for the assessee submitted that the assessee is a Charitable Trust registered under section 12A of the Income Tax Act, 1961 [in short 'the Act']. The Assessing Officer in the assessment proceedings rejected assessee's claim on the ground that activities of assessee are commercial in nature and denied the benefit of section 11 r.w.s. 13D of the Act. Aggrieved by the assessment order dated 24/03/2018 passed under section 143(3) r.w.s. 147 of the Act, the assessee filed appeal before CIT(A). The CIT(A) after examining the facts of the case held that the facts are identical to the facts in Assessment Year 2009-10,2012-13 and 2014-15. The Tribunal has allowed the benefit of exemption to the assessee u/s. 11 to 13 of the Act holding the activities carried out by the assessee as purely charitable. The CIT(A) following the decision of Tribunal in assessee's own case reversed the findings of the Assessing Officer and allowed the benefit of section 11 to 13 of the Act. The Id.Counsel for the assessee furnished copy of Tribunal order in ITA No.3084/Mum/2019 dated 15/07/2020

for Assessment Year 2009-10 and order of Tribunal in ITA No.3085/Mum/2019 dated 04/11/2020 for Assessment Year 2014-15.

4. Per contra, Shri Prakash R. Mane representing the Department vehemently defended the assessment order and prayed for reversing the findings of CIT(A). However, the Id. Departmental Representative fairly admitted that the issue raised in present appeal by the Revenue was subject matter of consideration in assessee's own case for Assessment Year 2009-10, 2012-13 and 2014-15.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee is a Charitable Trust. The activities of the assessee inter-alia includes breeding of cattle through integrated Livestock Development Centers to upgrade indigenous low milk yielding cattle by cross breeding them by way of artificial insemination and cattle cross breeding. The Assessing Officer held the activities carried out by the assessee as commercial in nature and hence, denied the benefit of exemption u/s 11 of the Act. We find that in Assessment Year 2009-10 the Assessing Officer denied the benefit of exemption u/s. 11 of the Act to the assessee on the ground that the activities carried out by the assessee do not fall within the ambit of section 2(15) of the Act after amendment to the section by Finance Act,2008. The CIT(A) granted relief to the assessee. Against the findings of CIT(A) Revenue carried the matter in appeal before the Tribunal in ITA No.3084/Mum/2019(supra). The Co-ordinate Bench following the decision rendered by Hon'ble Gujarat High Court in the case of DIT(E) vs. Sabarmati Ashram Gaushala Trust reported as 44 taxmann.com 144 dismissed the appeal of Revenue. In the subsequent Assessment Year i.e. Assessment Year

2014-15 the Assessing Officer for similar reasons again disallowed assessee's claim of exemption u/s. 11 of the Act. The CIT(A) reversed the findings of Assessing Officer and allowed assessee's claim. The Revenue carried the issue in appeal before the Tribunal in ITA No.3085/Mum/2019(supra). The Tribunal following its earlier decision in ITA No.3084/Mum/2019 (supra) dismissed the appeal of Revenue. We find that in the impugned Assessment Year there has been no change in the facts. The Revenue has not placed on record any contrary decision or distinguished the facts to force us to take a different view. The only reason as we can see from the grounds of appeal for assailing the order of CIT(A) is that the Department has filed an appeal against the order of Tribunal in assessee's own case for Assessment Year 2009-10, 2012-13 and 2014-15. Both sides are unanimous in stating that the appeal by Revenue against the order of Co-ordinate Bench is pending before the Hon'ble Bombay High Court for admission and final disposal. Merely for the reason that the Revenue has not accepted the decision of Tribunal and has filed appeal before the Hon'ble Bombay High Court can be no reason to deny the benefit of section 11 to 13 of the Act in the impugned assessment year unless the order of Tribunal is reversed or stayed by the Hon'ble High Court. We find no merit in the appeal by Revenue, hence, the same is dismissed.

Order pronounced in the open court on Monday the 11th day of July, 2022.

Sd/-

(M. BALAGANESH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 11/07/2022

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai