

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI**

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

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND**

**SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 5589/Del/2018, A.Y. 2015-16

DCIT(E) Circle-1(1), E-2 Block, Pratyaksh Kar Bhawan, Dr. Shyama Prasad Mukherjee Civic Centre, New Delhi	Vs.	Indian Broadcasting Foundation B-304, 3 <sup>rd</sup> Floor Ansel Plaza Khel, Gaon Marg, New Delhi - 110049
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Shri Aafaq Bhatri, CA
Revenue by	Shri Anuj Garg, Sr. DR

Date of hearing:	06.09.2022
Date of Pronouncement:	08.09.2022

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal has been filed by the Revenue against order dated 05.06.2018 in appeal no. 133/17-18 passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by Commissioner of Income Tax (Appeals)-40, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 01.11.2017 u/s 143(3) of the Income Tax Act, 1961

passed by Assistant Commissioner of Income Tax (Exemption), Circle-1(1), Delhi (hereinafter referred to as the Ld. Assessing Officer or in short 'Ld. AO').

2. The facts in brief are that return of income declaring income of Rs. Nil was filed on 30.09.2015. The assessee company was incorporated on 27.09.1999 under section 25 of the Companies Act, 1956 as a 'not for profit company'. The assessee is also registered under section 12A vide order dated 10.01.2001. It is an association of broadcasters with the main aim and objectives of protecting the interest of various stakeholders and related entities in the field of television broadcasting, including the television viewing audiences. Its object includes spreading awareness about latest developments in the television industry and disseminating knowledge amongst its members.

2.1 In the course of assessment proceedings on perusal of records and additions made in the earlier years it was noticed from note No.9 of the balance sheet that assessee had made investment of Rs. 15,00,000/- in Equity Shares numbering Rs. 1,50,000/- of Rs. 10/- each in the entity named Broadcast Audience Research Council (BARC) which is a 100% subsidiary. Note No.13 of the Balance Sheet showed that investment of Rs. 2,85,00,000/- was made in Share Application Money. As these investments were not in accordance with the forms or modes prescribed by the provisions of section 11(5), the assessee was asked to explain why this be not treated as violation committed within the meaning of provisions of section 13(1)(d) and why benefit of section 11& 12 should not be withdrawn and entire surplus of Rs. 5,93,77,490/- be not treated as income for the year under consideration.

2.2 The Assessing Officer discussed the various documents relied upon by the assessee and held that the assessee had committed violation within the meaning of provisions of section 13(1)( d) by making investment of Rs. 15,00,000/- in equity shares numbering 1,50,000 of Rs. 10/- each and investment of Rs. 2,85,00,000/- in Share Application Money in BARC for

purchase of shares of BARC in contravention to the provisions of section 11(5) and, therefore, benefit of exemption of sections 11 and 12 were denied to it and it was assessed as per normal provisions of Income Tax Act as envisaged under Chapter IV of the Income Tax Act 1961.

2.3 Since the benefits of exemption of section 11 & 12 were been denied to the assessee and it was being assessed as per normal provisions of Income Tax Act, depreciation was allowed only on the assets acquired during the year consideration as cost of fixed assets acquired in earlier years had been treated and allowed as application of income in the year of purchase. For the same reason the capital expenditure incurred on account of purchase of fixed assets was not allowed as expense and depreciation thereon was only allowed to the assessee.

2.4 Since the assessee had considered 'Entrance Fee' of Rs.10,00,000/- for assessment year 2015-16 only in computation of income and did not book the same in its 'Income & Expenditure account', the same were added to the total income for the purpose of computation of income of the assessee.

2.5 Income was assessed at Rs.6,22,39,580/- and was taxed at the maximum marginal rate in accordance with the provisions of section 164(2). Aggrieved by the order, appeal was filed before Ld FAA and the same had allowed the appeal and the revenue has now come in appeal raising following grounds :-

*“1. Whether on the facts and in circumstances of the case and in law, Ld. CIT(A) has erred in holding that the transactions of purchasing shares worth Rs. 15 Lac and investment by way of Share. Application Money in Broadcast Audience Research Foundation permissible investment within the meaning of section 11 (5)(vii) of the Income Tax Act. 1961.*

*2. Whether on facts and in circumstances of the case and in law. Ld CIT(A) has erred in holding that the observation of Hon'ble Delhi High Court in its order in*

*WP(C) 2489/2017 and CM no. 35799/2016 in the matter of stay of demand in the case of the assessee is binding on her even though the Hon'ble Court had only made an observation that the amount deposited with Broadcast Audience Research council (BARG) was not by way of investment or choice but an account of Central Govt Policy and the matter was not decided on merits in the stay proceedings.*

*3. Whether on the facts and in circumstances of the case and in law. Ld CIT(A) has erred in not appreciating that modes of investment specified in section 11(5) of the Act do not exclude an investment made on account of government directions.*

*4. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

4. Heard and perused the record.

5. Ld. DR submitted that there was no error in the findings of ld Assessing officer and issue has not attained finality. While Ld. AR submitted that in assessee's own case, findings have been given by the Hon'ble Delhi High Court that amount deposited with BARC is not investment but on account of Government policy and permitted u/s 11(5) r.w.s. 13(1)(d) of the Act.

6. Giving thoughtful consideration to the matter on record, it can be observed that in assessee's own case for the **Assessment Year 2013-14 and 2014-15 vide ITA No. 4193 and 4194 (Delhi) of 2017 reported in (2020) 120 taxman.com 125**, coordinate bench has given relevant findings in para 9 to 13 and same are reproduced for convenience :-

*“9. There is no dispute that basing on the recommendations of TRAI and policy of Central Government, BARC was required to be established as an industry led body and promoted by the Assessee; that both assessee and BARC are 'not for profit' companies set up*

*for meeting wider objectives of public charitable nature, namely, promotion of Television industry and viewership in India. There is also no dispute in respect of the claim of the assessee that, being an Industry body, the assessee represents the interest of its member TV broadcasters including public sector broadcaster Doordarshan. BARC was set up to provide reliable and transparent information needed by the members and various stakeholders of assessee in taking various crucial business decisions relating to their businesses.*

*10. On a careful consideration of the objects of the BARC, we have no hesitation to hold that the BARC enables assessee to fulfil its 'objects incidental or ancillary to the attainment of the main objects, like to affiliate, admit to membership, aid and to receive aid from any other society, association, company, corporation firm, partnership or person promoting or formed or intending to promote any of the objects of Company and to subscribe to or aid any such society, association, company, corporation, firm, partnership or person with a view to obtain any advantage or benefit for the purpose of the Company and to subscribe to any fund or society as may be considered deserving from time to time and to subscribe to, become a member of, corporate or collaborate with any other association or agency whose objects are altogether or in part similar to those of the Company and to procure from or communicate with any such body or association any useful information as is likely to further the objects of the Company.*

*11. Further, BARC, being a not for profit Company under section 25 of the Companies act, 1956, is not permitted to distribute any dividends or profits to its shareholders. More so, on liquidation, its MOA provides that any surplus left shall be transferred to another Section 25 Company undertaking similar objectives and cannot distribute any such funds to its shareholders, which establishes that the deployment of funds in BARC is not for earning any income or profit, rather only to meet the objectives of the Assessee.*

*12. For want of any intention to earn profit by such deployment of funds, in the light of the decisions relied upon by the assessee reported in CIT vs. Uttar Pradesh cooperative Federation Ltd AIR 1989 SC 915, CIT v. Sir Sobha Singh Public Charitable Trust [2001] 250 ITR 475 (Delhi), Anand Charitable Trust v. Commissioner of Wealth-tax [2002] 123 Taxman 494 (Delhi), Director of Income tax v. Alarippu (2000) 111 TAXMAN 511 (Delhi), Director of Income tax v. Acme Educational society (2010) 326 ITR 146 (Delhi), CIT v. Aloo Investment Co. Pvt. Ltd. [1979] 1 Taxman 433 (Bom.), and Third Income-tax Officer v. Jhaverbhai Patel Ch. Trust [1992] 43 ITD 195 (Bom.) it cannot be said that the assessee invested the amounts and committed violation within the meaning of section 13 (1) (d) of the Act. Further, whatever may be stage, the observations of the Hon'ble Delhi High Court in assessee's own case, to the effect that the amounts in question were deposited with the BARC not by way of investment or choice, but on account of a Central government policy, can not be ignored.*

*13. For the reasons recorded in the preceding paragraphs, we are of the considered opinion that the findings of the Ld. CIT(A) do not suffer any illegality or irregularity so as to invite any interference by the Tribunal. Since we confirm the finding of the Ld. CIT(A) that there was no violation committed by the assessee within the meaning of the provisions under section 11 (5) of the Act read with section 13 (1) (d) of the Act we deem it not necessary to refer to the alternative pleas of the assessee. Consequently, we declined to interfere with the findings of the Ld. CIT(A).”*

7. This Bench is of the considered opinion that although the Ld. CIT(A) has referred to the determination of the issue in favour of the assessee by the Hon'ble Delhi High Court also but that appears to be not factually correct as Hon'ble Delhi High Court while hearing writ petition within the W.P.(C) 2489/2017 has decided vide order dated 17.03.2017, only on the issue raised

being aggrieved by AO's demand u/s 220 of the Act and in those circumstances the Hon'ble Delhi High Court had made observations :-

*“The Court notices that the AO applied the Board's office memorandum dated 29.02.2016 and has granted relief to the extent of 85% of the demand. However, having regard to the materials on record, it is quite clear that the amounts were deposited with the BARC not by way of investment or choice, but on account of a Central Government policy.*

*The Court is of the opinion that this peculiar circumstance warrants adoption of the policy, spelt out in para 4(D) of the memorandum dated 29.02.2016. The petitioner's appeal may, therefore, be decided by the concerned Appellate Commissioner within three months from today. Pending a final decision, no coercive steps shall be taken to enforce the demand. In the light of the above order, the petitioner shall ensure that the review application filed before the CIT(E) and the Chief Commissioner is withdrawn within a week.”*

8. However, the matter of fact remains that subsequently by judgment dated 14.09.2020 the Co-ordinate Bench has decided on merits in favour of the assessee and the Revenue has not been able to cite any distinction of fact or law justifying a different opinion, for the present assessment year. Accordingly, the grounds are not sustainable and **the appeal of revenue is dismissed.**

**Order pronounced in the open court on 8<sup>th</sup> September, 2022.**

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

*Date:- 8<sup>th</sup>.09.2022*

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

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI