

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER

AND

SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

ITA NO. 2085/MUM/2023 (A.Y: 2013-14)

Sir Dorabji Tata Trust Bombay House, 24 Homi Mody street, Fort Mumbai - 400001 PAN: AAATS0494G	v.	CIT(Appeals) National Faceless Appeal Centre, Delhi DCIT (Exemption) – Circle -2 Cumbala Hills Mumbai
(Appellant)		(Respondent)

ITA NO. 2116/MUM/2023 (A.Y: 2013-14)

DCIT (Exemption) –2(1) Room No. 608, 6 th Floor MTNL Building, Cumballa Hills Mumbai-400026	v.	Sir Dorabji Tata Trust Bombay House, 24 Homi Mody street, Fort Mumbai - 400001 PAN: AAATS0494G
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Percy Pardiwala, Shri Sukhsagar Syal, Shri T.P. Ostwal & Ms. Ritika Sachade
Department Represented by	:	Smt Sanyogita Nagpal
Date of conclusion of Hearing	:	22.04.2024
Date of Pronouncement	:	24.04.2024

ORDER

PER NARENDRA KUMAR BILLAIYA (AM)

1. These appeals are cross appeals by the assessee and the revenue preferred against the order of the National Faceless Appeal Centre, Delhi [hereinafter in short "Ld. CIT(A)"] dated 08.04.2023 pertaining to A.Y.2013-14.

2. Both the appeals were heard together and are disposed off by this common order for the sake of convenience and brevity.

3. The First challenge by the assessee relates to the reopening of the assessment. The assessee contends that the Ld. CIT(A) erred in holding that the Assessing Officer has lawfully assumed jurisdiction and passed order under section 147 r.w.s. 144B of Income-tax Act, 1961 (in short "Act"). The assessee strongly contends that the said order is bad in law and void ab-initio. Since this challenge goes to the root of the matter, we decided to adjudicate it first.

4. Representatives were heard together, case records carefully perused and the relevant documentary evidences duly considered in the light of Rule 18(6) of ITAT Rules.

5. Briefly stated the facts of the case are that the, assessee filed its original return of income on 28.09.2013 which was revised on 30.09.2013. The return was accompanied with the income and expenditure account, balance sheet and audited report in Form 10B declaring a total income at ₹.NIL. The assessee trust is registered as a Charitable Organization with DIT(Exemption), Mumbai under section 12A of the Act vide Registration No. TR/33/74-75 dated 10.07.1974 and with the Charity Commissioner, Mumbai vide registration No. E-304(Bom). The return was selected for scrutiny assessment and accordingly, statutory notices were issued and served upon the assessee. After thoroughly scrutinizing the return of income, the assessment was framed under section 143(3) of the Act vide order dated 31.03.2016.

6. Assuming jurisdiction conferred upon him, the ACIT(Exemption), Circle -2, Mumbai issued notice under section 148 of the Act dated 16.03.2020 stating that he has reasons to believe that income chargeable to tax for the year under consideration has escaped assessment within the meaning of section 147 of the Act. Since the impugned assessment year is A.Y. 2013-14 and the notice is issued on 16.03.2020 it can be seen that it has been issued beyond four years from the end of the relevant assessment year which means that the first

proviso to section 147 of the Act squarely apply wherein it has been provided that no action shall be taken after the expiry of the four years unless any income chargeable to tax has escaped assessment for such assessment year by reason of failure on the part of the assessee to make the return under section 139 of the Act or in response to the notice issued under section 142(1) or section 148 or to disclose fully and truly all material facts necessary for his assessment for that year. The Relevant part for us to consider is "to disclose fully and truly all material facts necessary for assessment".

7. The assessment proceedings start when the Assessing Officer raises queries after considering the return of income and the financial statements and if the return is selected for scrutiny assessment under CASS then the reasons for the scrutiny selection are known to the assessee. In our considered opinion there is no presumption that the officer proceeds on wrong facts. The nature of enquiry of the Assessing Officer depends upon the past history of the assessee. The reasons recorded for reopening the assessment read as under: -

"Dear Taxpayer,

*Thank you for filing your return of income for Assessment Year **2013-14** in response to notice under section 148 of the Act, vide Ack. no. **332250790080420** on **08/04/2020**.*

2. While acknowledging the care and diligence you have taken in preparing the return, there are certain issues as mentioned below which need further clarification:-

Issues as per reasons recorded for reopening

3. You are hereby required to produce or cause there to be produced at the said time any documents, accounts and any other evidence on which you may rely in support of the return filed by you.

4. Reason for re- opening.

The assessee has filed its return of income for the A.Y. 2013-14 on 30.09.2013 at NIL income . The assessment u/s. 143(3) of the IT. Act has been completed on 31.03.2016 determining total income of Rs. Nil /-.

In the part II of the audit report (Form No. 10B), it is reported that there was no 'application' or use of income or property for the benefit of persons referred to in section 13(3)'. During the assessment proceedings as well, the assessee was specifically asked vide question No. 16 of Questionnaire dated 24.08.2015 to submit

"Details of any amount paid during the previous year to any person referred to in sub-section (3) of section 13." The assessee replied this query vide letter dated 07.09.2015 as "Details of amount paid to persons referred in 13(3)- Not Applicable".

However, during assessment proceedings for AY 2016-17, it was found that the assessee has paid remuneration to its trustee, Shri A N Singh, Through reimbursement to Tata Services Ltd. The assessee has paid Rs. 83,26,299/- to Shri A. N. Singh who was the managing trustee of the assessee-trust. The trust deed available on record in its clause 9 mentions that the trustee shall be entitled to be paid a sum of Rs.1000/- only. Therefore, prima facie the payment to Shri A N Singh is in violation of the trust deed. Any benefit given to a Trustee beyond what is permitted in the Trust Deed itself is direct or indirect benefit which may attract the provisions of Section 13(1)(c), the application of which results into denial of

exemption u/s.11 of the I.T. Act. Otherwise also, prima facie it appears that this payment is not reasonable and therefore results into benefit to person covered u/s. 13(3) and therefore, provisions of section 13(1)(c) are attracted to prohibit claim of exemption u/s. 11 which the assessee has made in its ROI and allowed in the assessment resulting into escapement of income of over Rs. 1 lac from assessment. The assessee has not disclosed fully and truly all material facts in respect to payment to persons specified under section 13(3) for the year under consideration. It is also pertinent to mention that the Assessing Officer didn't ask for any justification/reasonableness of above payment. In fact because of the remarks in Form 10B & reply of assessee to Question no.16 of questionnaire dated 24.08.2015, submitted by letter dated 07.09.2015, he had no occasion to ask this question or forming any opinion on reasonableness of payment because according to above report & reply of assessee no payment to any specified person was made.

From the balance sheet and assessment records of AY 12-13, it is noticed that there is an investment of funds of assessee in shares of Tata Sons Ltd. The assessee has submitted the details of investments held in the ordinary shares of Tata Sons Ltd wide submission dated 09.02.2015. According to the submission, the acquisition and disposal of these shares so far is as follows:

- i) As on 31 March, 1973, the assessee held 7,875 ordinary shares of Tata Sons Ltd*
- ii) The assessee has received bonus shares on 6 occasions after 1973 till 31.03.2012.*
- iii) The assessee has purchased 40 shares in the year of 1974-75.*
- iv) The assessee was gifted 3246 shares by Jamshetji Tata Trust in the year 1984-85.*
- v) The assessee gifted 1625 shares each to Tata Education Trust and Tata Social Welfare Trust in the year 1989-90.*
- vi) The assessee was holding 1,13,067 shares as on 31.03.2012.*

From the above, it is seen that the shares received in gift after 1973 and the shares purchased after 1973 should have been converted into modes of investment prescribed u/s. 11(5).

The provisions of Section 13(1)(d) are applicable for denying exemption u/s.11, if during the previous year, the funds of assessee remain invested in shares in a company other than shares in a Public Sector Company or as prescribed u/s.11(5)(xii) are held after 31st March 1993, unless they are covered by exceptions. The provisions are reproduced hereunder:

Section 13(1)(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 to remain so invested or deposited after the 30th day of November, 1983; or

(iii) any shares in a company, other than-

- 1. Shares in a public sector company;*
- 2. 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:]*

Provided that nothing in this clause shall apply in relation to—

(i) any assets held by the trust or institution where such assets form part of the corpus

of the trust or institution as on the 1st day of June, 1973;

(ia) any accretion to the shares, forming part of the corpus mentioned in clause (i), by way of bonus shares allotted to the trust or institution;

(ii) any assets (being debentures issued by, or on behalf of, any company or corporation) acquired by the trust or institution before the 1st day of March, 1983;

(iia) any asset, not being an investment or deposit in any of the forms or modes specified in sub-section (5) of section 11, where such asset is not held by the trust or institution, otherwise than in any of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1993, whichever is later;

(iii) any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year commencing on the 1st day of April, 1984 or any subsequent assessment year.

Explanation,—Where the trust or institution has any other income in addition to profits and gains of business, the provisions of clause (iii) of this proviso shall not apply unless the trust or institution maintains separate books of account in respect of such business.

From plain reading of the above provisions it is clear that investments in shares made prior to 01.06.1973 would be allowed mode if the shares were held as corpus of the trust. No documentary evidence has been provided on record to prove

that the shares held as on 01.06.1973 were held as corpus of the trust.

Further, from data available on record it is seen that there are purchases/additions post 01.06.1973. No evidence has been provided to substantiate the claim of that purchases post 01.06.1973 along with their bonus accretions have been disposed off before 31.03.1993.

To sum up, the records show that the provisions of Section 13(1)(d) are applicable in assessee's case and therefore, the material on record leads me to believe that exemption u/s. 11 is not available as the funds of assessee remain invested in the shares of Tata Sons Ltd which is prohibited mode of investment prescribed in the section 11(5) r.w.s. 13(1)(d) of the I. T. Act.

In form 10B submitted during the course of assessment proceedings for AY 13-14, the assessee has claimed that there are no investments held at any time during the previous year in concerns in which persons referred to in section 13(3) have a substantial interest.

However, on perusal of records of A.Y.2014-15, it is also noticed that the assessee holds investment in shares of Tata Sons Ltd and its group of companies. In-fact, in Tata Sons Ltd., the assessee itself holds 27.98% shares of the company.

As per Article of Association of Tata Sons Ltd., trustees of the assessee trust and the trustees of other Tata Trust jointly also appoint non-executive directors on the board.

The clause (h) of sub-section (2) of section 13 provides that if any trust has invested in any concern in which any person referred to in sub-section (3) has substantial interest, it shall be deemed that the assessee trust has used or applied its income for the benefit of such person and thereby operation of section 11 or 12 would cease so as to exclude it from the total income.

It is important to note here that in one of Tata Group case, i.e. Jamshedji Tata Trust, it has been held by the Hon'ble ITAT, Mumbai, vide order dated 26.03.2014 in ITA No. 7006/Mum/2013 for AY 2010-11 that the provisions of section 13(2)(h) of the IT Act are applicable on the holdings of the

assessee in Tata Sons Ltd. This observation would clearly apply to the holdings of Sir Dorabji Tata Trust in Tata sons Ltd as well.

Further, during the course of assessment proceedings for AY 2014-15 the Assessing Officer had made enquiries u/s 133(6) of the IT Act calling for information from the M/s Tata Sons Ltd and its four directors. One of the directors, Shri Cyrus Mistry had submitted letter on 22.12.2016 along with certain documents stating that the directors appointed by Tata Trusts play very important role in controlling decision making process in M/s Tata Sons Ltd. After going through the documents submitted by Shri Cyrus Mistry, it prima facie, appears that the Trustees have control over the affairs of the company, M/s Tata Sons Ltd. This amounts to control/conduct of business by the trustees. It is not permitted to the trust to conduct business.

On perusal of the computation of income submitted by the assessee during the course of assessment proceedings for AY 13-14 it is seen that the assessee has claimed deduction of 15% u/s 11(1)(a) and considered application of income over and above 85% of the income of the trust as deficit. Assessee has shown income of Rs. 26,68,27,099, 15% accumulation u/s.11(1)(a) of Rs. 4,63,81,136 and application of income on objects of trust of Rs. 90,90,14,772 and claimed a deficit of ₹.64,21,87,673. From this it is clearly seen that assessee has claimed 15% accumulation u/s 11(1)(a) when in fact surplus was not available after application of income on objects of trust. Courts have held that carry forward of deficit would be allowed but it should be calculated on commercial basis.

In view of the above facts, I have reasons to believe that the income of more than Rs. 1 lakh, has escaped assessment for A.Y. 2013-14 within the meaning of section 147 of the IT. Act, 1961 and it is a fit case for issue of notice u/s. 148 of the IT.Act, 1961.

It is also evident from the above facts that the assessee had not truly and fully disclosed material facts necessary for its assessment for the year under consideration.

3. *In view of the above, you may submit your response with supporting documents (if any) on the above mentioned issues to undersigned electronically in 'E-proceedings' facility through*

your account in e-Filing website (www.incometaxindiaefiling.gov.in) at your convenience on or before 12/10/2020

4. In course of assessment proceedings, if required specific questionnaire(s) or requisition(s) for information/document may be issued subsequently

5. A brief note on E- Proceeding is enclosed for your kind reference. In case you require any assistance in filing your response, you may contact toll free Call Centre number 1800 103 4215"

8. It would be pertinent to mention here itself that each and every issue raised in the reasons recorded for reopening the assessment were also the reasons for the Ld. Pr.CIT to assume jurisdiction under section 263 of the Act in A.Y. 2014-15. The same can be gathered from the grievances raised by the assessee in A.Y. 2014-15.

"1. On the facts and under the circumstances of the case and in law, the learned Commissioner of Income-tax (Exemptions) [CIT(E)] erred in initiating proceedings under section 263 of the Act against the Appellant.

The Appellant prays that the order passed under section 263 of the Act be set aside.

2. On the facts and under the circumstances of the case and in law, the learned CIT(E) erred in holding that the assessment order passed by the Deputy Commissioner of Income-tax (Exemptions) — 2(1) ('the learned Assessing Officer') was erroneous as due verification was not undertaken by the learned Assessing Officer.

The Appellant prays that it be held that the assessment order passed was not erroneous since adequate verification had been undertaken by the learned Assessing Officer.

3. *On the facts and under the circumstances of the case and in law, even assuming the assessment order was erroneous, the learned CIT(E) erred in exercising jurisdiction under section 263 of the Act by holding the assessment order was prejudicial to the interest of the Revenue without appreciating that there is no tax effect of the proposed directions given by the CIT(E).*

The Appellant prays that it be held that assessment order was not prejudicial to the interest of the Revenue since there is no tax effect of the proposed directions / verifications.

4. *On the facts and under the circumstances of the case and in law, the learned CIT(E) has erred in directing the learned Assessing Officer to pass a de novo assessment since the learned Assessing Officer had allegedly failed to verify the applicability of section 13(1)(c), 13(1)(d) and 13(2)(h) of the Act.*

The Appellant prays that the aforesaid directions of the CIT(E) be held as bad in law and accordingly be quashed.

5. *On the facts and under the circumstances of the case and in law, the learned CIT(E) has erred in alleging that the learned Assessing Officer did not enquire whether the payment to Trustees was as per the Trust Deed and reasonable as required under the provisions of the Act.*

The Appellant prays that it can be held that adequate verification had been undertaken by the learned Assessing Officer."

9. In A.Y. 2014-15 also payment to Mr. A.N. Singh was under consideration. Mr. A.N. Singh joined the Board of Trustees of Sir Dorabji Tata Trust as a Managing Trustee in 2007. We have also the benefit of the order of the Coordinate Bench in assessee's own case for the A.Ys.2008-09, 2011-12 and 2012-13 in ITA No. 3163, 3164 and 3164/MUM/2018 wherein the only issue was in relation to the carry

forward of deficit which means that in A.Y. 2008-09, 2011-12 and 2012-13 there was no quarrel raised by the revenue in so far as the remuneration paid to Mr. A.N. Singh is concerned. A.Y. 2014-15 and 2015-16 were subject to revision under section 263 of the Act by the Ld.Pr.CIT which has been quashed by this Tribunal in ITA No. 3909/MUM/2019 and 1932/MUM/2020. So the past history of the assessee clearly show that the neither any disallowance / addition was made, since the induction of the Mr. A.N. Singh as a managing Trustee from A.Y. 2007 onwards and whenever the Ld. Pr.CIT invoked the provisions of section 263 of the Act holding that the provisions of 13(1)(c), 13(1)(d) and 13(2)(h) of the Act squarely apply, which Tribunal has quashed the order.

10. Basis the same reasoning, the assessment has been reopened for the year under consideration when the facts are pari materia the same. Therefore, we have no hesitation to hold that there were no new tangible material evidences in the hands of the Assessing Officer to issue notice under section 148 of the Act. Considering, the past history of the assessee on identical set of facts, we are of the considered view that remuneration paid to Mr. A.N. Singh does not violate the provisions of

section 13(1)(c) of the Act, nor provisions of section 13(1)(d) and 13(2)(h) apply.

11. In so far as the allegation for violation of section 13(1)(d) of the Act is concerned, fact on record show that investment in these shares are held since last forty years. In fact, in A.Y. 1991-92 this issue had arisen with respect to impermissible investment and the appeal was allowed by the Ld. CIT(A) and no further appeal by the department. In fact, in A.Y. 1993-94 findings of the A.Y. 1991-92 were followed. We further found that no shares held as on date are purchased after 1973 and the bonus shares are acquisition only on the group companies. As mentioned elsewhere A.Y. 2014-15 and 2015-16 this issue was taken by the Ld. Pr.CIT under section 263 of the Act and the orders were quashed by this Tribunal.

12. Coming to applicability of provisions of section 13(2)(h) of the Act we are of the considered view that the same are not applicable to the assessee, for the simple reason that person referred in section 13(3) are "Trustees" and not "Trust" itself. Hence what is relevant for the purpose of section 13(2)(h) of the Act is investment of Trustees and not the shareholding of the Trust. The Shareholding position has been disclosed

on a year on year basis for the past 40 years and none of the years it has been denied.

13. Without prejudice to the above, even where investments are considered as violative, income there from would be subjected to tax and the dividend is sought to be fully taxed, even though assessee claimed exemption under section 10(34) of the Act. As mentioned elsewhere, this Tribunal in A.Y. 2014-15 in ITA No. 3909/MUM/2019 and A.Y.2015-16 in ITA No. 1933/MUM/2020 had an occasion to consider the assumption of jurisdiction under section 263 of the Act by the Ld. Pr.CIT on identical facts considered for reopening and the order of the Ld.Pr.CIT were quashed by the Tribunal.

14. Basis, the issues already considered in earlier assessment years, the reopening done by the Assessing Officer is devoid of any new tangible material evidences brought on record. Therefore, in our humble opinion assumption of jurisdiction by issue of notice under section 148 is bad in law and the same is quashed. Accordingly, we quash the assessment order dated 28.09.2021 framed under section 147 r.w.s. 144B of the Act.

15. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case. Therefore, the appeal of the revenue is dismissed and that of the assessee is allowed Qu Ground No. 1 of its appeal.

16. In the result, appeal filed by the revenue is dismissed and cross appeal filed by the assessee is allowed.

Order pronounced in the open court on 24th April, 2024.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai / Dated 24.04.2024
Giridhar, Sr.PS

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum