

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI
BEFORE SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

ITA No.3703/MUM/2023
Assessment Year: 2013-14

Assistant Commissioner of Income Tax – 26(1), Mumbai	Vs.	R D Tata Trust 2 nd Floor, Bombay House, 24, Homi Mody Street, Fort, Mumbai – 400 001 (PAN : AAATR8173R)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Atui T. Suraiya, C.A and
Shri T.P. Ostwal, C.A
Revenue : Ms. Sanyogita Nagpal, CIT, DR

Date of Hearing : 07.05.2024
Date of Pronouncement : 21.05.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1055344260 (1), dated 23.08.2023 passed against the assessment order by Income Tax Officer (Exem.), Ward-2(4), Mumbai, u/s. 143(3) of the Income-tax Act(hereinafter referred to as the “Act”), dated 29.03.2016 for AY 2013-14.

2. Grounds taken by the Revenue are reproduced as under:

“1. Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in holding that the assessee had not violated the provisions of section 13(1)(d) of the Income tax Act, 1961.

2. *Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) was justified in not following the Co-ordinate Bench's decision in the case of M/s Jamshetji Tata Trust vs. ACIT (ITA No. 7006/Mum/2013) with respect to the issue on section 13(2)(h) of the Income tax Act, 1961."*

3. Brief facts of the case are that assessee is a public charitable trust registered with the Office of Charity Commissioner under the Bombay Public Trust Act, 1950. Assessee trust was set up on 29.03.1990 and had obtained registration u/s. 12A of the Act on 10.12.1990 vide registration No.TR/27968 registered with CIT(E), Mumbai. Assessee filed its return of income on 30.09.2013, reporting total income at deficit of Rs.6,02,54,750/-.

3.1. During the year under consideration, assessee had earned dividend income from shares of Rs.7,07,04,000/- and income from interest and other miscellaneous sources of Rs. 1,65,84,901/-It had claimed dividend income exempt under section 10(34) of the Act.Assessee applied Rs. 7,49,92,877/- (i.e., more than 85% of total income including dividend income) towards its objects in terms of section 11(1) of the Act out of its income earned during the year. It filed its revised return of income on 30.09.2013, claiming exemption under section 11 of the Act and reporting Nil income in the return.

3.2. Details of dividend received and investments are tabulated as under:

Investment	No. of shares/units	Amount of investment(Rs.)	Dividend received (Rs.)
Tata Sons Ltd.	88,38	85,51,550	7,07,04,000
TOTAL			7,07,04,000

3.3. In the assessment order, ld. Assessing Officer denied the exemption u/s 11 and 12 of the Act, by invoking provisions of Sections 13(1)(d) and 13(2)(h). He held that under section 13(1)(d), a trust cannot hold any funds as investment otherwise than in any one or more of the forms or modes specified in section 11(5) of the Act and

the investment by the assessee of Rs 21,96,667/- in shares of Tata Sons Ltd. is in violation of Section 13(1)(d).

3.4. In the course of assessment, assessee rebutted the AO's contention that there is violation of Section 13(1)(d) as funds of the trust continued to remain invested in the shares of Tata Sons Ltd. during the current year leading to violation of Section 13(1)(d)(ii). Assessee referred to the provisions of section 13(1)(d)(ii) and stated that the violation will only happen if any fund of the trust invested or deposited in non-permissible fund before 01.01.1983 continues to remain invested or deposited even after 30.11.1983. However, in the case of assessee, the trust was set up only in 1990 with a corpus donation, hence there is no question of any fund being invested or deposited in non-permissible fund before 01.01.1983.

3.5. Assessee also distinguished the facts of the case of Jamsetji Tata by Co-ordinate Bench of ITAT, Mumbai (ITA No.7006/Mum/2013) for Assessment Year 2010-11, relied upon by the Assessing Officer. It was submitted that in case of Jamsetji Tata Trust, the assessee trust sold one mode of impermissible investment and invested the sale proceeds into another impermissible mode of investment in contravention of section 11(5), due to which it was held that there is violation of section 13(1)(d). In the case of the assessee, it has received the shares as corpus donation and the assessee has not sold/converted them in any other mode of investment.

3.6. Ld. Assessing Officer denied the exemption u/s. 11 and 12 of the Act, by also holding that assessee had violated the provisions of Section 13(2)(h) by investing in the shares of Tata Sons Ltd., by observing u/s.13(2)(h), if any funds of the trust are invested or continue to remain in invested in any concern in which interested person {as mentioned in section 13(3)} of the trust has, substantial interest then the trust cannot avail the exemption u/s 11 and 12. He

further stated that Shri Ratan Tata who was one of the trustees was also the Chairman of the Tata Group from 1991 to 2012 (he stepped down as chairman of the Tata Group on 28.12.2012) and hence the founder trustee has invested funds in a concern where he was Chairman. Ld. Assessing Officer thus denied the exemption by invoking provisions of section 13(2)(h) r.w.s. 13(3)(b).

3.7. Assessee submitted before the ld. Assessing Officer that provisions of section 13(2)(h) are not applicable in its case as Sh. Ratan Tata one of the trustees during the year, held only 0.83% shares in the total shareholding of Tata Sons Ltd. which does not make him a person having substantial interest in Tata Sons Ltd. as per explanation 3 to Section 13(3). Assessee relied on the judgment of the Co-ordinate Bench of ITAT, Mumbai in the case of JRD Trust vs. ITO for A.Y. 2011-12 on similar facts where it was held that being a Chairman in a company would not amount to holding substantial interest therein as per explanation to section 13(3).

3.8. Ld. Assessing Officer thus, completed the assessment at assessed total income of Rs.8,72,22,000/- by including dividend, interest on bonds and other interest income. Aggrieved, assessee went in appeal before the ld. CIT(A).

4. Before the ld. CIT(A), assessee in support of its claim submitted that it had not invested in the shares of Tata Sons Ltd., rather these shares were received as corpus donation by the trust. The shares were not purchased and no funds of the trust were utilized to invest in these shares. The assessee has relied on the judgment of the Hon'ble Bombay High Court in the case of CIT vs. Trustees of Kasturbai Scindia Commission Trust [1994] 207 ITR 332 (Bom.) wherein it was held that it is only if the trust itself has invested then it would result in forfeiture of exemption available under section 11 of the Act. The assessee also cited the following judgments in its favor:

1. *CIT vs. Insanyiat Trust [1988] 173 ITR 248 (Guj.)*
2. *CIT vs. Birla Charity Trust [1988] 170 ITR 150 (Cal.)*

4.1. Assessee also challenged the addition made by the AO u/s 13(2)(h) by invoking the provisions of Section 13(3)(b). According to the assessee, ld. Assessing Officer had invoked section 13(2)(h) in the context of shares held in Tata Sons Ltd. by the trust and contribution of Tata Sons Ltd. in the trust in excess of Rs. 50,000/-. The assessee clarified that the provisions could have been invoked only if the funds of the trust had been invested in any concern in which Tata Sons Ltd. had substantial interest. However it is not the case but the AO has invoked 13(2)(h) based on the fact that Tata Sons Ltd. is a person, referred to in section 13(3)(b) and the trust holds investment in Tata Sons Ltd. According to assessee, it is not in agreement with the provisions of section 13(2)(h) r.w.s 13(3) of the Act as Tata Sons Ltd. cannot be considered having substantial interest in itself. Assessee further submitted that none of the trustees held more than 5% of the ordinary share capital of Tata Sons Ltd.

4.2 After considering the submissions made by the assessee, ld. CIT(A) allowed the grounds taken by the assessee holding that provisions of sections 13(1)(d) and section 13(2)(h) are not applicable in the case of the assessee. Aggrieved, assessee is in appeal before the Tribunal.

5. We have heard the rival contentions and perused the material on record. It is also worthwhile to note that the correct amount in respect of shares of Tata Sons Ltd. is Rs.8,51,550/- as against Rs.21,96,667/- taken by the ld. Assessing Officer. We note that assessee has not invested its money in the shares of Tata Sons Ltd. but has received the same as corpus donation. This fact has not been controverted by the ld. AO in the impugned assessment order. Hon'ble jurisdictional High Court of Bombay CIT Vs. Kasturibai Scindia Commission Trust (supra)

held that it is only if the trust itself has invested that it would result in forfeiture of exemption u/s. 11 of the Act. The act of receiving corpus donation does not tantamount to making investment and therefore provisions of Sections 13(1)(d) and 13(1)(d)(iii) cannot be invoked.

5.1 Further, the fact that Mr. Ratan Tata was the founding trustee and one of the trustees during the previous year is not disputed. It is also not disputed that he was the Chairman of Tata Sons Ltd. in the past. Mr. Ratan Tata held only 3368 equity shares in Tata Sons Ltd i.e., 0.83% in the total shareholding of Tata Sons Ltd during the previous year. By holding shares in a concern in which Mr. Ratan Tata was the Chairman does not bring him in the realm of provision of section 13(3) of the Act unless it is established that the trustee was holding substantial interest in Tata Sons Ltd. within the meaning of Explanation 3 of Section 13(3) of the Act. We note from the decision of co-ordinate bench of ITAT Mumbai in the case of JRD Trust (supra) that being a chairman in a company would not amount to holding substantial interest therein as per explanation to section 13(3).

5.2. It is not a case of the ld. AO that trustees are holding substantial interest in Tata Sons Ltd. During the year, following were the trustees of the trust and none of them held more than 5% of the ordinary share capitals of Tata Sons Ltd.:

- I. Mr. Ratan Tata
- II. Mr. N.A Soonawala
- III. Mr. R.K. Krishna Kumar
- IV. Mr. A.N. Singh

5.3. The assessee's trust was established in the year of 1990. Provisions of Section 13(1)(d)(ii) are not applicable in the present case as it is not a case where the funds of the trust were invested in impermissible modes before 01.03.1983 and continued to remain so even after 30.11.1983.

5.4. Also, the provisions of section 13(2)(h) r.w.s. 13(3)(b) are not applicable in the present case as none of the trustees have more than 5% share holding in ordinary shares of Tata Sons Ltd., fact of which has not been controverted by the AO as well as by ld. CIT, DR.

5.5. It was also submitted that in the subsequent assessment year, i.e., AY 2014-15, in assessee's own case on identical facts, claim of the assessee has been allowed by giving benefits of exemption under section 11 towards interest and other income earned from investment made as per section 11(5) to demonstrate that Revenue itself has taken a position in favour of the assessee on the issues being dealt in the present appeal.

6. The first issue in hand before us is in respect of violation of provision of section 13(2)(h) of the Act, which has already been dealt with by the Co-ordinate Bench of ITAT, Mumbai in assessee's own case in AY 2012-13 in ITA No.3081 and 3155/Mum/2018 wherein both the assessee and the Revenue were in cross appeals. The observations and findings arrived by the Co-ordinate Bench of ITAT, Mumbai AY 2012-13 while holding the ground in favour of the assessee are extracted as under:

"10. We have perused the material on record and given thoughtful consideration to the rival submission. As per the provisions of Section 11 of the Act, a trust registered under Section 12A of the Act is entitled to exemption under Section 11 of the Act in respect of income to the extent the same is applied for the charitable objects of the Trust. Section 13(1)(c) of the Act provides that benefit of Section 11 shall not be available in respect of income of the trust applied for the direct or indirect benefit of person specified in Section 13(3) of the Act. Section 13(2)(h) of the Act creates a deeming fiction by virtue of which the income of a trust is deemed to have been applied for the benefit of persons specified in Section 13(3) of the Act where any funds of the trust are invested, or continue to remain invested for any period during the previous year in any concern in which any person referred to in Section 13(3) has a 'substantial interest'. Explanation 3 to Section 13 creates another deeming fiction by virtue of which a person is deemed to have 'substantial interest' in a concern being a company if the shares carrying not less than 20% voting rights, in such company are beneficially owned by such person(s). Thus, in order to invoke the provisions of Section 13(2)(h) of the Act, it is necessary that the funds are invested in a concern in which person specified in Section 13(3) has 'substantial interest'.

11. We note that the CIT(A) has, while concluding in Para 5.3.1. of his order that Mr. Ratan N. Tata an interested party in terms of Section 13(3)(b) having substantial interest in Tata Sons Limited, completely ignored the submission of the Assessee (reproduced in paragraph 5.2. of the order). As rightly pointed out by the Ld. Counsel for the Assessee, there is no discussion on Explanation 3 to Section 13 either in the order passed by the Assessing Officer or CIT(A). Further, in the case of JRD Tata Trust Vs ITO: ITA 3082/Mum/2018, dated 13.09.2019, for the Assessment Year 2012-13, the Tribunal had given a clear finding that during the previous year relevant to the Assessment Year 2012-13 Mr. Ratan N. Tata held less than 5% shares in Tata Sons Limited. These findings stand approved by the decision of Co-ordinate Bench of the Tribunal in the case of Navajbhai Ratan Tata Trust (supra). Nothing has been placed before us by the Revenue to contradict or challenge the aforesaid finding of the Tribunal. Thus, in the facts and circumstances of the present case Mr. Ratan N Tata cannot be deemed to be having 'substantial interest' in Tata Sons Ltd. in terms of Explanation 3 to Section 13 of the Act. Further, per the Assessment Order two show cause notices dated 09.01.2015 and 26.02.2015 were issued to the Assessee-Trust and neither of the said notices sought for any explanation/information regarding contributions made by Tata Sons Limited to the Assessee-Trust, the shareholding of Tata Sons Limited or the status of Mr. Ratan N. Tata as a person specified in Section 13(3) of the Act having any substantial interest. We find merit in the contention advanced on behalf of the Assessee that the findings returned by the Assessing Officer are devoid of any factual basis. Further, in the case of JRD Tata Trust Vs ITO: ITA 3082/Mum/2018, dated 13.09.2019, for the Assessment Year 2012-13, the Tribunal has, in the identical facts and circumstances, held that being chairman of Tata Sons Limited does not amount to holding 'substantial interest' in Tata Sons Limited. Neither the Assessing Officer nor the CIT(A) has brought anything in record to establish that Mr. Ratan N. Tata had substantial interest in Tata Sons Limited before invoking provisions of Section 13(2)(h) of the Act.

12. Accordingly, in view of the aforesaid, we hold that the Mr. Ratan N. Tata did not hold 'substantial interest' in Tata Sons Limited in terms of deeming fiction created by Explanation 3 to Section 13 of the Act or otherwise, and therefore, the authorities below erred in concluding that the provisions of Section 13(2)(h) would be attracted in the facts of the present case. Further, in the case of CIT Vs. Trustees of Kasturbai Scindia Commission Trust: 207 ITR 332 (Bombay) relied upon by the Learned Counsel for the Assessee, the jurisdictional High Court has, in the identical facts and circumstances, held that provisions of Section 13(2)(h) of the Act are not attracted in the case of an assessee who has received donations in the form of shares in a company in which a person specified in Section 13(3) of the Act has substantial interest provided the trust's money is not utilized for the acquisition of such shares. For this reason as well the Assessee should succeed. Accordingly, Ground No. 1 raised by the Assessee is allowed and the Assessing Officer is directed not to deny exemption under Section 11 of the Act to the Assessee by invoking provisions of Section 13(2)(h) of the Act as the same are not attracted in the facts and circumstances of the present case."

6.1. There is no material change in facts and circumstances as well as applicable law in the present year under consideration vis-à-vis Assessment Year 2012-13 dealt with by the co-ordinate bench. Thus,

keeping the consistency, we also hold in favour of the assessee by following the decision of the co-ordinate bench (supra) in assessee's own case. Accordingly, ground taken by the Revenue in respect of issue relating to section 13(2)(h) is dismissed.

7. On the second issue relating to section 13(1)(d), ld. Counsel of the assessee submitted that this also has been dealt in assessee's own case by the Co-ordinate Bench of ITAT Mumbai in ITA No. 455/Mum/1998 for AY 1995-96 vide order dated 05.05.2005. The observations and findings arrived at by the co-ordinate bench of ITAT Mumbai in this case, holding in favour of the assessee are extracted as under:

"9. We heard both sides in detail. As rightly pointed out by the learned Chartered Accountant of the assessees, the very same issue was considered by the Tribunal in the case of Sarvajanik Seva Trust, cited above. The first ground raised in the said appeal and considered by the Tribunal reads as under-

"(1)On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting 3,77,000/- representing corpus donation in the form of shares of Tata Sons Ltd. without appreciating the fact that these shares are held by the trust as investment in contravention of the provisions of 13(1)(d) r.w.s. 11(5) of the I.T.Act."

After considering all the relevant contentions, the Tribunal has accepted all the alternative contentions raised by the assessee and has held that the corpus donation received by the assessee in the form of shares would not partake the character of income and the dividends arising out of those share alone would be in the nature of income.

11. The Bombay High Court in the case of Trustees of MangaldasN.Varma Charitable Trust V/s. CIT - 207 ITR 322(Bom) - has held that when the public trust receives corpus donations in the form of shares, there is neither an investment or divesting of the funds of the trust. The Tribunal in the case of Sarvajanik Seva Trust, found that even though this decision was in the context of S.13(2)(h) the wordings are the same as in S.13(1)(d), and, therefore, the ratio of the said decision applied to the case before it as well.

12. Following the above decision of the Tribunal, we have to hold that it cannot be said that by virtue of receipt of shares as donation, the assessee-trusts had not made any investment, and therefore, had not violated the provisions of S.13(1)(d) , so as to fall under S.11(5)."

7.1. There is no material change in facts and circumstances as well as applicable law in the present year under consideration vis-à-vis Ay

2012-13 dealt with by the co-ordinate bench. We thus, by following the aforesaid decision in assessee's own case, hold that provisions of section 13(2)(d) are not applicable in the present case. Accordingly, ground taken by the Revenue on this issue is dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Order is pronounced in the open court on 21 May, 2024.

Sd/-
(Sunil Kumar Singh)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 21 May, 2024

MP, Sr.P.S.

Copy to :

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

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai