

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 2188/MUM/2024
Assessment Year: 2012-13**

ITO(E)-1(4),
Room No. 611, MTNL Building,
Cumballa Hill, Peddar Road,
Mumbai-400026.

Vs.

J N Tata Endowment for Higher
Education of Indians,
2nd floor, Bombay House, 24
Homi Mody Street,
Maharashtra-400001.
PAN NO. AAATJ 0085 C
Respondent

Appellant

Assessee by : Mr. Sukhsagar Syal/Atul Suraiya
Revenue by : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 08/07/2024
Date of pronouncement : 24/07/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 13.03.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2012-13, raising following grounds:



1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to allow the benefit of exemption u/s 11 of the Income-tax Act without appreciating the fact that the application of fund utilized for grants/scholarships used for overseas education are governed u/s 11(1)(c) of the Act and hence cannot be treated as application for charitable purpose in India?"

2. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to allow the benefit of exemption u/s 11 of the Income-tax Act on the basis of the order of the Hon'ble ITAT in the case of *Jamsetji Tata Trust Case* without appreciating the fact that the Department has not accepted the said decision on merits and has filed an appeal u/s 260A to the Hon'ble High Court vide ITXA 1847/2014, which is pending adjudication before the Hon'ble High Court."

2. Briefly stated, facts of the case are that the assessee trust is registered with the office of Charity Commissioner under the Bombay Public Trusts Act, 1950 and also registered u/s 12A of the Income-tax Act, 1961 (in short 'the Act'). As per the objects of the trust stated in the trust deed, the assessee trust grants loan scholarship to Indian students in India for their higher education overseas. The trust filed its return of income on 27.09.2012 declaring Nil total income after claiming exemption u/s 11 of the Act. The return filed by the assessee was selected for scrutiny and statutory notices under the Act were issued and complied with. While computing the exemption u/s 11 of the Act, the Assessing Officer disallowed application of income towards loans given as scholarship to various students for higher education abroad aggregating to Rs.3,47,50,026/-.

3. On further appeal the Ld. CIT(A) following the decision of the Co-ordinate Bench of the Tribunal in the case of **Jamsetji Tata Trust v. Jt. DIT (Exemption) [2014] 44 taxmann.com 447**



(Mumbai-Trib.) deleted the disallowance and directed to grant exemption u/s 11 of the Act in respect of loan scholarships as application of income.

4. Aggrieved, the Revenue is in appeal before us by way of raising grounds as reproduced above.

5. We have heard rival submission of the parties and perused the relevant material on record. The assessee trust claimed loans granted to Indian students as scholarship for their overseas education as application of for the purpose of exemption u/s 11 of the Act. But according to the Assessing Officer income should have been applied for charitable purpose on education within Indian territories and not outside India. According to him, mere fact that persons to whom payments have been made for charitable purpose is Indian and payment has been made in Indian territory is not sufficient but the activity related to charitable purpose for which payment is made, should also happen within Indian territory. Before the Ld. CIT(A), the assessee relied on the decision of the Co-ordinate Bench of the Tribunal in the case of Jamsetji Tata Trust (supra). The Ld. CIT(A) after considering that facts of instant case being identical to facts of Jamsetji Tata Trust (supra), he deleted the disallowance observing as under:

“6.2.1 The appellant in its reply has reiterated the stand taken before the AO and has also relied on the judgment of the Hon'ble ITAT in the case of the Jamsetji Tata Trust vs. Joint Director of Income-tax (Exemption) Range-II, (2014) 44 taxmann.com 447 (Mum.-Trib.) wherein the Hon'ble ITAT has



held that the education grant given to the Indian Students in India for education/higher education abroad fulfills the conditions of application of money for such purpose in India. The appellant has also submitted that the Hon'ble ITAT while delivering this judgment has clearly held that the facts in the case of National Association of Software and Services Companies which was relied upon by the AO were distinguishable. The relevant part of the Judgment of the Hon'ble ITAT is as under:

10.5 We have considered the rival submissions and perused the relevant material. The assessee has given grant to 97 scholars studying in various institutions and universities outside India and the total amount of grant is Rs. 1,53,50,000/-. The assessee paid the grant in India and for the purpose of education of Indian students/persons, thus the charitable purpose of the grant is education of Indian persons. The application of income of the assessee completes at the point when the assessee released the grant which took place in India. The decision relied upon by the revenue is not applicable in the facts of the present case as the application of income took place in India and for the purpose of education of Indian students/persons. Therefore, for taking education by beneficiary from abroad would not amount to application of income of the assessee outside India. In the case of Bharata Kalanji (supra) the Chennai Bench of this Tribunal while deciding a question arising from the payment of Rs. 1.55 lakh made to a travel corporation of India for sending a troop on tour. The AO treated the expenditure as application of income of the trust for charitable purpose. However CIT revised the assessment and was of the opinion that this expenditure was prohibited and was not applied for purpose of trust in India and, therefore, not eligible for exemption u/s 11. The main object of the trust was to advance, propagate, increase and promotion of Indian classical and Folk arts and Indian music etc. The trust was invited by the Government of Nigeria to give certain dance performance abroad. Accordingly the trust sends a troop and paid a sum of Rs. 1.55 lakh being the passage money to the Travel Corporation of India. The Tribunal held in para 6 as under:—

"6. The crucial question is only whether the conditions in section 11 are complied with. That section states that the income derived from property held under trust wholly for charitable purposes shall not be included in the total income to the extent to which such income is applied to such purposes in India. The question is whether this section requires the application of money in India or the carrying out of the purposes in India or both. The contention of the revenue is that apart from the money being spent in India even the purpose must be carried out in India. The section itself contradicts this contention. **Section 11(1)(c) (ii) provides that income applied to such purposes outside India is exempt in the case of trust created before 1-4-1952 subject to the approval of the Board. This**



*underlines the principle that Governments do not forego their revenue in favour of charges paid outside their countries and hence the relevant consideration is whether the situs of the application of the money and not the place in which the objects of the trust may become effective. **It may be pertinent to refer to section 1 of 16 which exempts scholarships granted to meet the cost of education where also the CBDT itself does not consider scholarship granted for education abroad as money spent outside India.** Similarly in the present case of such a wide object of exemption u/s 11 of Rs. 3,47,50,026/- as income applied to charitable purpose in India. The grounds of appeal 1,2 and 3 are allowed.”*

(emphasis supplied externally)

5.1 In the above case relied upon by the ld CIT(A) , the coordinate bench held the disbursal of loan scholarship to students in India for study overseas as application of income for charitable purposes in India. As the facts and circumstances of the instant case are identical to the facts of decisions relied upon by the Ld. CIT(A) therefore, we uphold the order of the Ld. CIT(A) on the issue in dispute. The grounds of appeal of the Revenue are accordingly dismissed.

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

Order pronounced in the open Court on 24/07/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 24/07/2024
Rahul Sharma, Sr. P.S.



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,
(Assistant Registrar)
ITAT, Mumbai