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

BEFORE MS PADMAVATHY S, AM &
SHRI RAHUL CHAUDHARY, JM

I.T.A. No. 4154/Mum/2023
(Assessment Year: 2014-15)

Sir Ratan Tata Trust Bombay House, 24, Homi Mody Street, Fort, Mumbai-400001 **PAN : AAATS1013P**	Vs.	**DCIT(Exemption)-2(1),** MTNL Tele Building, Cumballa Hills, Peddar Road, Mumbai-400026.
Appellant)	:	**Respondent)**

I.T.A. No. 4156/Mum/2023
(Assessment Year: 2018-19)

Sir Ratan Tata Trust Bombay House, 24, Homi Mody Street, Fort, Mumbai-400001 **PAN : AAATS1013P**	Vs.	**Addl./Joint/Deputy/Asst. CIT, National Faceless Assessment Centre-2(1),** MTNL Tele Building, Cumballa Hills, Peddar Road, Mumbai-400026.
Appellant)	:	**Respondent)**

Appellant/Assessee by	:	Shri P. J. Pardiwala a/w Shri Sukhsagar Syal, AR
Revenue/Respondent by	:	Shri Sanyogita Nagpal, CIT-DR
Date of Hearing	:	22.07.2024
Date of Pronouncement	:	26.08.2024

O R D E R

Per Padmavathy S, AM:

1. These two appeals by the assessee are against the orders of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)'] both dated 29.09.2023 for Assessment Year (AY) 2014-15 & 2018-19. The issues contended in both the appeals are common and therefore these appeals were heard together and disposed of by this common order.

2. The common issues contended in both the appeals pertain to denial of exemption under section 11 by the AO which was confirmed by the CIT(A) on the ground that

(i) The assessee has violated the provisions of section 13(1)(d) – AY 2014-15 & AY 2018-19
(ii) The assessee has violated the provisions of section 13(2)(h) – AY 2014-15 & AY 2018-19
(iii) The assessee has violated the provisions of section 13(1)(c) – AY 2018-19
(iv) The assessee has violated the provisions of section 2(15) –
AY 2018-19

ITA No. 4154/Mum/2023 – AY 2014-15

3. The assessee is a Public Charitable Trust registered under Bombay Public Trust Act and under section 12A of the Income Tax Act, 1961 (the Act). The assessee was established in 1919. The assessee filed the return of income for AY 2014-15 on 29.09.2014 with the total income at a deficit of Rs. 55,36,69,321/- During the year under consideration, the assessee earned dividend income from shares amounting to Rs. 77,48,34,662/- and the same is claimed as exempt under section 10(34) of the Act. The assessee has applied Rs. 78,19,29,451/- which is

more than 85% of its income for charitable purposes as per the objects of the assessee and accordingly claimed exemption under section 11 of the Act. The assessee's case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer (AO) called on the assessee to furnish the details of assessee's holding in Tata Sons Ltd., against which the assessee has received the dividend income and as to why the dividend income earned by the assessee should not be brought to tax. The AO also called on the assessee to show cause as to why the provisions of section 13(1)(d) and section 13(2)(h) are not applicable in assessee's case.

4. The assessee made detailed submissions before the AO in this regard. However, the AO did not accept the submissions of the assessee and held that the assessee's holdings in Tata Sons Ltd is in violation of section 13(1)(d) and accordingly the exemption under section 11 cannot be claimed by the assessee. The AO further denied the exemption under section 10(34) of the Act to the assessee for the reason that the Trust is not entitled for the said exemption. The AO also held that the Mr.Ratan Rata being a Trustee of the assessee is holding shares in Tata Sons Limited and therefore there is a violation of section 13(2)(h) and for that reason also the assessee is not entitled to claim exemption under section 11 of the Act.Accordingly, the AO assessed the income of the assessee at Rs. 10,49,40,140/-. On further appeal, the CIT(A) confirmed the additions made by the AO. The assessee is in appeal before the Tribunal against the order of the CIT(A).

Violation of section 13(1)(d) of the Act

5. The AO held that any income of the arising out of the investments in shares other than Public Sector Company or in the modes specified in section

11(5) after 30.11.1983 is to be included in the taxable income of the assessee Trust. Accordingly the AO held that the exemption under section 11 is not available to the assessee for the reason that funds of the assessee trust remained invested in shares of Tata Sons Ltd during the current year which is in violation of section 13(1)(d).The AO placed reliance on the decision of the coordinate bench in the case of Jamsetji Tata Trust (ITA No. 7006/Mum/2013 for AY 2010-11 for AY 2010-11) in this regard.

6. The ld. AR submitted that the investments made in assessee's case is covered under the exceptions provided under the proviso to section 13(1)(d) of the Act according to which if any assets held by the trust where such assets form part of the corpus of the trust as on the 01.06.1973, then provisions of section 13(1)(d) are not applicable. The ld. AR further submitted that the equity shares held by the assessee as on 31.03.2014 consists of corpus donations which was received in the year 1919 along with the acquisition till 01.06.1973 and that the accretion to the corpus donations are all in the form of bonus shares to which section 13(1)(d) is not applicable. Accordingly, the ld. AR submitted that the equity holding of the assessee in Tata Trust is from the inception which it goes to prove that the holding is in the nature of corpus and therefore, covered by the exceptions carved out by the proviso to section 13(1)(d) of the Act. With regard to reliance placed by the AO in the decision of the Co-ordinate Bench in the case of Jamsetji Tata Trust (supra) the ld AR submitted that the facts in the said case are distinguishable from assessee's case for the reason that Jamsetji Tata Trust was formed only in the year 1974 and received shares after that and therefore the Tribunal held that exceptions under section 13(1)(d) are not applicable to the said Trust. The ld. AR submitted that the AO's observation that the assessee has invested a total sum of Rs. 21,96,667/- in the ordinary shares of Tata Sons (refer

para 4.3 pg. 5 of AO's order) is factually incorrect and that the details does not pertain to the assessee. The ld. AR brought to our attention that the coordinate bench in assessee's own case for AY 2014-15 ([2020] 122 taxmann.com 273 dated 28.12.2020) in the appeal against the revision order section 263, has considered the issue of applicability of section 13(1)(d) on merits and held that that the investment of the assessee Trust were held as corpus and the provisions of section 13(1)(d) were not applicable to the assessee. Accordingly, the ld. AR summarized that the investments made by the Trust in Tata Sons which is held as corpus is covered by the exceptions under the proviso to section 13(1)(d) of the Act and therefore the exemption under section 11/12 cannot be denied.

7. The ld. DR on the other hand submitted that the AO has denied the benefit of section 11 mainly for the reason that the assessee has not produced any documentary evidence that the said investment in Tata Sons is held as corpus on or before 01.06.1973 for the exceptions to apply. Accordingly, the ld. DR supported the orders of the lower authorities.

8. We heard the parties and perused the material on record. The assessee claimed the dividend income from its holdings in Tata Sons Ltd., as exempt under section 10(34) of the Act. The AO invoked the provisions of section 13(1)(d) to hold that the of the assessee trust has invested otherwise than in forms or modes specified under section 11(5) and continue to remain so invested after 30.11.1983. Accordingly the AO denied the benefit under section 11 to the assessee. The contention of the assessee is that in assessee's case the exceptions provided under section 13(1)(d) are applicable and therefore the income of the assessee cannot be brought to tax. Therefore before proceeding further we will look at the relevant provisions of section 13(1)(d) which reads as under –

***Section 11* not to apply in certain cases.**

13. *(1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—*

*(a) *****

*(b) *****

*(c) *****

(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—

(A) shares in a public sector company;

(B) 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.

(emphasis supplied)

9. The contention of the revenue is that funds of the assessee Trust that were invested before 01.03.1983 in Tata Sons Ltd which is not a modes specified in section 11(5) of the Act continue to remain so invested or deposited after the 30.11.1983. The assessee's argument is that shares of Tata Sons acquired till 01.06.1973 are held as Corpus and the accretions to the said shares were only out bonus which is also covered by the exceptions as highlighted above. In this regard it is relevant mention that the ld AR during the course of hearing drew our attention to order of the AO for AY 2018-19, where the details of shares of Tata Sons Ltd are tabulated as under –

Year of acquisition	Particulars	No.Of Shares	Cummulative no.of Shares
1919	Shares received as per Will of Sir Ratan Tata	690	690
1957	Purchase from Lady Sylla Petit Nusly D. Petit & Dina Petit	35	725
1962	Purchase from Darab R.T. Tata	9	734
1967	Bonus Shares 1:1	734	1,468
1967	Subdivision of shares	6,606	6,606
1969	**Less: Sold to Sterling Investment Company**	**(900)**	**5,706**
1973 (after 01.06.1973)	Bonus Shares received 1:2	2,854	8,560
1974	(+) Purchase of Shares	30	8590
1974	**(-) Shares Gifted to NavajbaiRatan Tata Trust**	**(625)**	**7,965**
1979	(+) Bonus Shares 1:3	2,654	10,619
1979	(+) Purchase of Shares	4	10,623
1989-90	**Shares Gifted to SarvajikSeva Trust**	**(44)**	**10,579**
1992-93	Bonus Shares received 1:1	10,579	21,158

1994-95	Bonus Shares received 1:1	21,158	42,316
1997-98	Bonus Shares received 1:2	21,158	63,474
1999-2000	Bonus Shares received 1:2	31,737	95,211
2000-2001 to 2018-19	No Variations	-	95,211
As on 31.03.2014	Total	-	**95,211**

10. From the above table it is clear that holding of the assessee Trust as of 31.03.2014 mainly consists of bonus shares and that the acquisitions prior to 01.03.1983 are not continued to be held (refer Sale & Gifts above). Therefore in our considered view there is merit in the submission that the provisions of section 13(1)(d)(ii) is not applicable to assessee's case and that the holdings in Tata Sons Ltd., are covered by the exception as provided in section 13(1)(d).

11. One more argument of the ld AR is that the shares of Tata Sons Ltd., are not acquired as "investments" using the fund of the assessee Trust but received as corpus donations and on that count also section 13(1)(d) is not applicable. The ld AR also argued that the shares were received at the time of formation of the Trust which goes to prove that it forms part of the corpus of the assessee Trust. The ld AR also made a without prejudice submission that even if the dividend income is held to be taxable for violation of section 11(5), it is otherwise exempt under section 10(34) which the AO has denied saying the Trust is not entitled to claim exemption under section 10(34). We notice that the coordinate bench has considered all these issues while adjudicating the appeal against the revision order under section 263 of the Act for AY 2014-15 in assessee's own case (supra) has given the following findings on merits –

> *30. The next issue raised by the learned Commissioner is with respect to the alleged failure of the Assessing Officer in not examining whether investments held by the assessee are in conformity with the provisions of Section 11(5) of the*

Act, and in not examining whether the assessee is covered by the exceptions carved out under proviso to Section 13(1)(d).

31. So far as this aspect of the matter is concerned, we have noted that the Assessing Officer has extensively examined the compliance with the requirements of Section 11(5) and Section13(1)(d) of the Act. Vide letter dated 2nd December 2016, the Assessing Officer specifically asked the assessee "whether any investment of the trust for last three years is in contravention of Section 11(5) of the Income Tax Act, 1961. Also, whether any investment of the trust in the last three years is covered by the provisions of Section 13(1)(d), please specify the same". In reply to this requisition, the assessee had duly furnished all the details of the investments held by the assessee. It was also categorically confirmed that these investments did not violate the provisions of Section 11(5) and 13(1)(d). In Annexure 1 to the letter dated 9th December 2016, the assessee filed complete details of all the scrips, the bifurcation of shares held as on 1 st June 1973 and subsequent bonus shares allotted in connection with the holdings as on 1st June 1973, and it was thus made clear that no investments were made after 1st June 1973. The complete specific details about holdings in each of these shares as on 1st June 1973, and accretion in these holdings on account of allotment of bonus shares thereafter, were in 9 pages- and copies of these details were also furnished before us at pages 216- 223 of the paper book filed before us. All these details were also furnished in the yearend financial statements, which were duly filed with the Assessing Officer. The Assessing Officer categorically notes this and observes that "the assessee has to follow the accumulation provisions of Section 11(2), specific modes of investment/ deposits under section 11(5) and other related provisions of Section 13". Satisfied with the details filed by the assessee, the Assessing Officer had no issues with respect to section 11 and 15, and he noted that the income derived from property held under trust, which included these investments, is covered by the exemption under section 11 and, accordingly, he disallowed exemption of dividend under section 10(34). Learned Commissioner does not dispute these facts but adds that the Assessing Officer did not examine the fundamental question as to whether these shareholdings, as on 1st June 1973, were part of the corpus or not. Unless, according to the learned Commissioner, these shareholdings were held to be part of the corpus of the trust, these investments can not be held to be permissible investments under section 13(1)(d), and it is Assessing Officer's not looking into this aspect of the matter that rendered the subject assessment order erroneous and prejudicial to the interests of the revenue.

32. There is no dispute with the proposition that in terms of the provisions of Section 11(1)(d)(iii) the assessee trust could not have invested in the shares of a company, other than in shares of a public sector company or shares prescribed

as a form or mode of investment under clause (xii) of Section 11 (5), after 30th November 1983. None of these conditions are satisfied in the present case. However, proviso to Section 13(1) (d) states that nothing in the clause, containing aforesaid provision, will apply to, inter alia, " (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; and (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". Therefore, as long as the shares are part of the corpus, as on 1st June 1973, or the shares are received as accretion to the shares being held to be part of the corpus, the provisions of Section 13(1)(c) will not come into play.

33. It is an admitted position that the shares becoming part of the investment, after 1 st June 1973, were accretion to the original shareholdings as on 1st June 1973 and these were allotted as bonus shares only. So far as the question of the shares being part of 'corpus' is concerned, the current financial period was over forty years after the cut-off date of 1st June 1973, and in none of those forty-plus years, the exemption was declined on the ground that these shares were not part of the corpus. There was no good reason to doubt these shares being part of the corpus. As we have noted earlier, an Assessing Officer can only be faulted for doing anything less than "what an Assessing Officer, in the course of his performance of his duties as an Assessing Officer should, as a prudent, judicious or reasonable public servant, reasonably do bonafide in a real-life situation". Viewed thus, we cannot fault the conduct of the Assessing Officer in not disturbing, or even not probing, something being constantly accepted for over four decades- particularly when there is no occasion or trigger to re-examine that aspect of the matter in this particular year and when there is no change in legal or factual position in this particular year. It may also be noted that, as pointed out to us by the learned counsel, the assessee trust was notified as an institution established for charitable purposes under section 10(23C)(iv), and this notification has been renewed from time to time. The conditions precedent for grant of notification under section 10(23C) were similar to section 13(1)(d) inasmuch as it was provided that if the funds were invested in modes other than those specified under section 11(5), the benefit of 10(23C) would not be available but an exception was made if such assets were to form part of the corpus as on 1st June 1973. On these facts, while granting the exemption under section 10(23C), Under Secretary in the Central Board of Direct Taxes, Govt of India, vide letter no 197/126/91-ITA-I dated 31st July 1992, had written a letter to the assessee trust seeking clarification whether all the shares form part of the corpus. The assessee trust, vide letter dated 21st August 1992, had clarified the said position, and it was only thereafter, on 10th May 1993, notification was issued by the Government of India notifying the assessee trust under section 10(23C). These facts, which are set out on page 17

of the second compilation filed before us, do show that the assessee trust was accepted to be holding these shares as part of the corpus by the CBDT itself. When an issue has been decided in a certain way by the CBDT, it cannot normally be open to the field officers to question the correctness of that position- particularly when it's a factual aspect, and this factual aspect has been found in a particular manner, and no interference in these settled facts is warranted on account of any particular reason.

*34. & 35. ****

"36. In any event, even if these investments were to be held to be contrary to the provisions of Section 11(5), all that could have been done by the Assessing Officer was to decline exemption under section 11 in respect of income from these investments, i.e., dividends, which, for the reasons we will set out now, is completely tax neutral for the assessee. In support of this consequence of investment being in violation of the provisions of Section 11(5), we may draw support from the following observations made by Hon'ble jurisdictional High Court, in the case of ***DIT Vs Sheth Mafatlal Gaganbhai Foundation Trust [(2001) 249 ITR 533 (Bom)]****:*

> ***In other words, only the non-exempt income portion would fall in the net of tax as if it was the income of an AOP. Section 11(5) lays down various modes or forms in which a trust is required to deploy its funds. Section 13(1) lays down cases in which section 11 shall not apply. Under section 13(1)(d)(iii), it has been laid down that any share in a company, not being a Government company, held by the trust after 30-11-1983 shall result in forfeiture of exemption. By virtue of the proviso (iia) it has been laid down that any asset which does not form part of permissible investment under section 11(5) shall be disposed of within one year from the end of the previous year in which such asset is acquired or by 31-3-1993, whichever is later. In the present case, the assessee was required to dispose of the shares under the said proviso by 31-3-1993 [See the judgment of this Court in IT Appeal No. 81 of 1999 dated 14-9-2000]. The shares have not been disposed of even during the assessment year in question. Now, under section 164(2), it is, inter alia, laid down that in the case of relevant income which is derived from property held under trust for charitable purposes, which is of the nature referred to in section 11(4A), tax shall be charged on so much of the relevant income as is not exempt under section 11. Section 164(2) was reintroduced by the Direct Tax Laws (Amendment) Act, 1989 with effect from 1-4-1989. Earlier it was omitted by the Direct Tax Laws (Amendment) Act, 1987. However, the Legislature inserted a proviso by the Finance Act, 1984 with effect from 1-4-1985. By the said***

proviso, it is, inter alia, laid down that where whole or part of the relevant income is not exempt by virtue of section 13(1)(d), tax shall be charged on the relevant income or part of the relevant income at the maximum marginal rate. The phrase 'relevant income or part of the relevant income' is required to be read in contradistinction to the phrase 'whole income' under section 161(1A). This is only by way of comparison. Under section 161(1A), which begins with a non obstante clause, it is provided that where any income in respect of which a person is liable as a representative assessee consists of profits of business, the tax shall be charged on the whole of the income in respect of which such person is so liable at the maximum marginal rate. Therefore, reading the above two phrases shows that the Legislature has clearly indicated its mind in the proviso to section 164(2) when it categorically refers to forfeiture of exemption for breach of section 13(1)(d), resulting in levy of maximum marginal rate of tax only to that part of the income which has forfeited exemption. It does not refer to the entire income being subjected to maximum marginal rate of tax

37. The insertion of subsection (6) and (7) to Section 11, it may be added, is effective from 1st April 2015, and, therefore, the tax exemption under section 10(34), so far as the present assessment year is concerned, cannot be disturbed. In any event, since the income from dividends was exempt under section 10(34), as the aforesaid amendments had not come into effect at that point of time, it was completely tax neutral, even if these amendments can be said to have any influence on the taxability of dividends, as to whether or not income from the dividends in these shares is eligible for exemption under section 11 or not. As a matter of fact, the Assessing Officer has declined the exemption under section 10(34) only on the ground that the assessee was eligible for exemption under section 11 on this income. Therefore, even if the assessee is to be declined exemption under section 11 in respect of dividend income on these shares, he will be eligible for exemption under section 10(34). In the case of ***DIT Vs Jasubhai Foundation [(2016) 374 ITR 315 (Bom)]****, Hon'ble jurisdictional High Court has also observed as follows:*

…….The provisions, namely, sections 10 and 11 fall under a Chapter which is titled "Incomes Which Do Not Form Part of Total Expenditure" (Chapter III). Section 10 deals with incomes not included in total income whereas section 11 deals with income from property held for charitable or religious purposes. We have not found anything in the language of the two provisions nor was Mr. Malhotra able to point out as to how when certain income is not to be included in computing total income of a previous year of any person, then, that

> ***which is excluded from section 10 could be included in the total income of the previous year of the person/assessee. That may be a person who receives or derives income from property held under trust wholly for charitable or religious purposes. Thus, the income which is not to be included in computation of the total income is a matter dealt with by section 10 and by section 11 the case of an assessee who has received income derived from property held under trust only for charitable or religious purposes to the extent to which such income is applied to such property in India and that any such income is accumulated or set apart for application for such purposes in India to the extent of which the income so accumulated or set apart in computing 15% of the income of such property, is dealt with. Therefore, it is a particular assessee and who is in receipt of such income as is falling under clause (a) of sub-section (1) of section 11 who would be claiming the exemption or benefit. That is a income derived by a person from property. It is that which is dealt with and if the property is held in trust for the specified purpose, the income derived therefrom is exempt and to the extent indicated in section 11(1)(a) of the Income Tax Act, 1961. There is nothing in the language of sections 10 or 11 which says that what is provided by section 10 or dealt with is not to be taken into consideration or omitted from the purview of section 11***

*38. *****

39. These reasons are, however, not the only reasons as to why the stand of the Commissioner, in invoking section 263, is wholly unsustainable in law. Even on merits, for the reasons we will set out now, it is clear that the investments in questions were held as the corpus, and, as such, the provisions of Section 13(1)(d) were not attracted.

40. Explaining the scope of expression "corpus," Hon'ble Karnataka High Court, in the case of ***DIT Vs Shri Ramakrishna Seva Ashram [(2013) 357 ITR 731 (Kar****)] has observed as follows:*

> ***11. The word 'corpus' is not defined under the Act. We do not find any judgment explaining the meaning of 'corpus'. In the Chambers 21st Century Dictionary, the meaning of the word 'corpus' has been given as under:***
>
> > ***(i) body of writings, eg: by a particular author, on a particular topic, etc.;***

(ii) a body of written and/or spoken material for language research;

(iii) anatomy any distinct mass of body tissue that may be distinguished from its surroundings.

Latin: meaning-'body'.

12. In the Law Lexicon of P. Ramanatha Aiyar, 2nd Edition reprint-208 the meaning of the word 'Corpus' is given as under:

> ***" A Body; human body; an artificial body created by law; as a corporation; a body or collection of laws; a material substance; something visible and tangible; as the subject of a right; something having legal position as distinguished from an incorporeal physical substance as distinguished from intellectual conception; the body of estate; or a capital of on estate."***

13. The word 'Corpus' is used in the context of Income Tax Act. We have to understand the same in the context of a capital, opposed to an expenditure. It is a capital of an assessee; a capital of an estate; capital of a trust; a capital of an institution. Therefore, if any voluntary contribution is made with a specific direction, then it shall be treated as the capital of the trust for carrying on its charitable or religious activities. Then such an income falls under Section 11(d) of the I.T. Act and is not liable to tax. Therefore, it is not necessary that a voluntary contribution should be made with a specific direction to treat it as 'corpus', If the intention of the donor is to give that money to a trust which they will keep it in trust account in deposit and the income from the same is utilised for carrying on a particular activity, it satisfies the definition part, of the corpus. The assessee would be entitled to the benefit of exemptions from payment of tax levied.

14. In fact the Bombay High Court in the case of Trustees of Kilachand Devchand Foundation v. CIT [1988] 172 ITR 382/[1987] 32 Taxman 393 dealing with the said voluntary contribution made for a charitable purpose, held that for being eligible for exemption, the donations must be voluntary and of a capital nature. That cannot be applied to charitable or religious purposes if the income thereof they must be so applied. The contribution made expressly to the capital or corpus of trust fall within the purview of sub-section (2) of Section 12. Therefore, such contributions cannot be be deemed to be the income derived from

the property for the purpose of Section 11 of the said Act and provisions of Section 11 will not apply.

15. The Rajasthan High Court in the case of Sukhdeo Charity Estate v. ITO [1991] 192 ITR 615 (Raj.) dealing with such contributions held that, the principles enunciated in various cases when applied to the present case, leave no room for debate that the intention of the donor-trust as well as donee-trust was to treat the money as capital to be spent for Ladnu Water Supply Scheme. It is of no consequence whether the amount had since been paid to the State Government or kept in the account of the above-referred scheme by the assessee-trust. From whatever angle it may be seen, the deposited amount cannot be said to be income in the hands of the recipient-trust. Therefore, what ultimately reveals that,-(i) the intention of the donor and (ii) how the recipient-assessee treat the said income. If the intention of the donor is that the amount/donation given is to be treated as capital and the income from that capital has to be utilised for the charitable purposes, then the said voluntary contribution is towards the part of the corpus of the trust. Similarly, the assessee after receiving the amount, keeps the amount in deposit and only utilise the income from the deposit to carry out the charitable activities, then also the said amount would be a contribution to the corpus of the trust and the nomenclature in which the amount is kept in deposit is of no relevance as long as the contribution received are kept in deposit as capital and only the income from the said capital which is to be utilised for carrying on charitable and religions activities of the institute/corpus of the trust, for which Section 11(i)(d) of the Act is attracted and the said income is not liable for tax tinder the Act.

[Emphasis, by underlining, supplied by us]

41. What essentially follows is that it's not the declaration of an investment being a corpus investment but the fact of its being treated as capital and rather than using the investment for the purposes of the trust, using the income from investment for the purposes of the trust, which is determinative of its being in the nature of corpus investment. How the trust is treating the investment, i.e., in the capital field or not, is thus truly determinative of the investment being part of the corpus. Viewed thus, the mere fact of these investments being held as capital for at least more than four decades-as conclusively established by the material before the Assessing Officer, and only income from these investments being applied for the purposes of the trust, clearly establishes the fact of these investments being part of the corpus of the trust.

> *42. In view of the foregoing discussions, as also bearing in mind the entirety of the case, learned Commissioner was clearly in error in invoking powers under section 263 on the ground that the Assessing Officer failed to examine the investments of the trust complying with the provisions of Section 11(5) and Section 13(1)(d) of the Act. We disapprove his action on this point as well.*

12. From the perusal of the above findings, we notice that the coordinate bench while quashing the revision order has given categorical findings with regard to the merits of the issue on the applicability of section 13(1)(d) of the Act to assessee Trust. Therefore considering the facts presented in the earlier part of this order and respectfully following the ratio of above decision of the coordinate bench, we hold that the AO is not correct in denying the benefit of section 11 to the assessee on the ground that section 13(1)(d) is applicable in assessee's case.

Violation of section 13(2)(h) of the Act

13. Another ground on which the exemption under section 11 was denied to the assessee is that the assessee has violated the provisions of section 13(2)(h) of the Act which reads as under –

> *(2) Without prejudice to the generality of the provisions of clause (c) and clause (d) of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—*
>
> *(a) to (g) *****
>
> *(h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971), in any concern in which any person referred to in sub-section (3) has a substantial interest.*

14. The AO has held that the assessee has violated the provisions of section 13(2)(h) for the following reasons:

(i) The AO concluded that Mr. Ratan Tata (referred by the AO as founder trust of the assessee) has invested in a concern in which he was the Chairman and that he is having substantial interest in Tata Sons Ltd.

(ii) Tata Sons Ltd. is an interested party in terms of section 13(3)(b) of the Act as it has contributed more than Rs. 50,000/- to the assessee.

(iii) The AO placed reliance in the case of Jamsetji Tata Trust for AY 2010-11.

15. The ld. AR with regard to the contention of the AO that Mr.Ratan Tata is the founder Trustee submitted that it is factually incorrect and that the Trust was founded by (i) Mr. Nabazbai Ratanji Tata, (ii) Mr. Dorabji Jamsetji Tata, (iii) Mr. Ratanji Dadabhai Tata, (iv) Mr. Phiroz Cursetji Setna and (v) Mr. Burjorji Jamasji Padshaw. The ld. AR therefore submitted that the AO has erroneously invoke the provisions of section 13(2)(h) by holding that the assessee continue to hold the investments in a concern in which the person referred to in section 13(3) has substantial interest. The ld. AR further submitted though Mr.Ratan Tata during the year under consideration was one of the Trustees and he holds only 3,368 equity shares of Tata Sons Ltd which only 0.83% of the total capital of Tata Sons Ltd. The ld. AR brought to our attention that as per explanation 3 to section 13(3) a person is deemed to have substantial interest in the company / concern if its shares carrying not less than 20% of the voting power are, at any time during the previous year, owned beneficially by such person. Since in the given case Mr.Ratan Tata is holding only 0.83% of the shares, the ld AR argued that he does not have substantial interest in Tata Sons Ltd., and accordingly there is no violation of section 13(2)(h). With regard to whether Mr.Ratan Tata holding the position of Chairman the ld. AR relied on the decision of the Co-

ordinate Bench in the case of JRD Tata Trust vs. ITO (ITA No. 3082/Mum/2018 for AY 2012-13) where under similar facts the Tribunal has held that being a Chairman in a company would not amount to holding substantial interest as per Explanation 3 to section 13. Therefore on that count also there would be no violation of section 13(2)(h) of the Act. Without prejudice to the above submissions, the ld. AR submitted that as per section 13(2)(h) the benefit of provisions of section 11 is not available, if the funds of the Trust are "invested" or remain invested in any previous year in any concern in which person referred to in section 13(3) of the Act has substantial interest. The ld. AR submitted that the assessee has received the equity shares in Tata Sons Ltd. as corpus donation and the assessee has not invested in the equity shares. Therefore, the ld. AR submitted that there is no violation of section 13(2)(h) on that count also.

16. The ld. DR on the other hand relied on the order of the lower authorities.

17. We heard the parties and perused the material on record. The AO has denied the benefit of section 11 for the reason that besides violating the provisions of section 13(1)(d), the assessee has also violated the provisions of section 13(2)(h). The reason for holding so is that the Mr.Ratan Tata, is considered as a person having substantial interest as per section 13(3) since he is a shareholder and a Chairman of Tata Sons Ltd the shares of which are held by the assessee. In this regard it is relevant consider the provisions of Explanation 3 to section 13 of the Act which reads as under –

> *Explanation 3.—For the purposes of this section, a person shall be deemed to have a substantial interest in a concern,—*
>
> *(i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits)* ***carrying not less than twenty per cent of the voting power*** *are, at any time during the previous year, owned beneficially by such person or*

partly by such person and partly by one or more of the other persons referred to in sub-section (3)

(ii) ***

18. With regard to the contention that Mr.Ratan Tata holds substantial interest by virtue of he being the chairman of Tata Sons Ltd., we notice that the coordinate bench in the case JRD Tata Trust (supra) has considered a similar issue and held that –

12. The AO alleged that the assessee's shareholding in the four companies is also in violation of section 13(2)(h) of the Act. The AO observed that Mr. Ratan N. Tata, who is one of the Trustees of the assessee was also the chairman of Tata Sons Ltd in the relevant financial year. With this background, the AO concluded that being a chairman in Tata Sons Ltd. amounted to his holding a substantial interest' in that company. Accordingly, it was held the assessee was in violation of section 13(2)(h) of the Act as its funds were invested in a concern (Tata Sons Ltd.), in which a person referred to in sub- section (3) (Mr. Ratan N. Tata) had a substantial interest (by virtue of his chairmanship therein). The CIT(A) confirmed the findings of the AO. I am of the view that that 'substantial interest' is not an expression of general import. Its meaning has been set out in section 13 itself. Explanation 3 to section 13 Provides:

"Explanation 3.--For the purposes of this section. a person shall he deemed to have a substantial interest in a concern, --

(i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-section (3);

(ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-section (3) are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent. of the profits of such concern."

13. Applying the aforesaid definition to the facts of the present case, the assessee's shareholding in the four companies even if held prior to 1st June, 1973

would have been violative of section 13(2)(h) if any of its trustees [or any other person referred to in sub- section (3)] held shares in the four companies carrying more than 20% voting power. In the course of the proceedings, the Annual Reports of all four companies for the F.Y. 2011-12 were submitted. Reference was made to the schedule containing disclosure of the shareholders holding more than 5% equity shares of the company and it was pointed out that neither Mr. Ratan N. Tata, nor any other persons referred to in sub-section (3) held more than 5% equity/voting power in any of the four companies. Therefore, the question of holding shares carrying more than 20% voting power in the companies does not arise. In light of the above, I am of the view that being a chairman in a company does not amount to holding a 'substantial interest' therein in terms of the clear mandate of Explanation 3 to section 13 of the Act. Hence, I am of the view that the assessee has not violated the provision of section 13(2)(h) of the Act and hence, on both grounds assessee succeeds.

19. We also notice that the coordinate bench in assessee's own case (supra) while adjudicating the appeal against the revision order under 263, has considered a similar issue and held that –

53. As noted by the learned Commissioner in para 9.4 of his order, "the assessee has submitted that none of the trustees as on 31-3-2014 hold substantial interest in Tata Sons Ltd and, therefore, the provisions of section 13(2)(h) of the Income-tax Act, 1961 are not applicable". His objection, however, is that "the submission of the assessee, however, requires verification because in section 13(3), there are different clauses the application of which needs to be examined to find out whether the investment is with any connected person" and that the assessee itself has more than 20% equity investment in Tata Sons Ltd. Learned Commissioner has also relied upon a decision of the Tribunal, in the case of Jamshedji Tata Trust v. JCIT [ITA No. 7006/Mum/2013; AY 2010-11], to justify the need for greater probe into the matter. These objections are, however, devoid of any legally sustainable merits. Once the assessee clarifies that none of the trustees have any substantial interest in Tata Sons Ltd, and Section 13(2)(h) is not applicable, that should be the end of the matter, unless, of course, there is anything on record, or in the knowledge of the Assessing Officer, which indicates to the contrary. The fact that the assessee trust itself had over 20% equity investments in Tata Sons Limited does not suggest or imply that the trustees must also be having 'substantial interest' in Tata Sons Limited. It is not even the case of the revenue, even today, nor is there any material even prima facie indicating that any of the persons specified under section 13(3) has substantial holdings in Tata Sons Ltd. It cannot, therefore, be open to the Commissioner to hold the order erroneous and prejudicial to the interests of the revenue that this aspect of the matter, regarding indirect or associated holding as emerging out of the

scheme of section 13(3), has not been thoroughly investigated. In any event, there was nothing to trigger or justify such a thorough probe. The decision of the coordinate bench in Jamshedji Tata Trust (supra) is in the case of some other assessee, not this assessee, and there is nothing to justify the application of section 13(2)(h) in this case. The relevant observation made in the said decision is anyway a sweeping observation based on conviction, rather than material on record, as it states that "As far as the violation of clause (h) of section 13(2) is concerned we find that the author of the assessee trust and its relative definitely have a substantial interest in the Tata Sons Ltd, therefore, the investment in the shares of Tata Sons Ltd is a clear violation of clause (h) of section 13(2)". No basis of this observation, or relevance of the same to the present fact situation, is evident from the material on record. We see no relevance of this observation in the present context. We are thus unable to find anything in support of the contention that any direct or indirect benefit under section 13(1)(c) read with section 13(2)(h) was obtained by the specified persons under section 13(3), or that lack of reasonable inquiries in this regard would render the subject assessment order erroneous and prejudicial to the interests of the revenue. When none of the specified persons under section 13(3) are stated to have any substantial interest in Tata Sons Ltd, and when there is nothing on record to even suggest incorrectness of this averment of the assessee, the question of direct or indirect benefit under section 13(1)(c) read with section 13(2)(h) does not arise, and, as is well settled, provisions under section 263 cannot put into service to make some roving and fishing inquiries.

20. The facts for the year under consideration is that none of Trustees including Mr.Ratan Tata is holding more than 20% of the voting powers in Tata Sons Ltd and therefore as per the provisions of explanation 3 to section 13, there is no violation of provisions of section 13(2)(h). Further 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). It is also relevant to note that the contention of the revenue that Tata Sons Ltd. has contributed more than Rs. 50,000/- is not supported by any evidence and the revenue did not bring anything on record to substantiate the same. In view of these discussions and considering the above decisions of the Tribunal we hold that the provisions of section

13(2)(h) cannot be applied in assessee's case and the benefit of section 11 cannot be denied for that reason.

21. The ld. AR during the course of hearing drew our attention to the findings of the CIT, stating that the AO vide order dated 17.07.2018 under section 154 has rectified the deduction given towards application of funds to the extent of 85% while computing the assessed income (refer page 57 of CIT order). The ld. AR in this regard submitted that the said finding is factually incorrect and there is no such order under section 154 of the Act. The ld. DR did not rebut the submissions of the AR.

22. We have already held that the benefit under section 11 cannot be denied to the assessee on the ground on violation of section 13(1)(d) & 13(2)(h). Therefore, the deduction allowed towards application of funds on the ground that assessee is not entitled for exemption under section 11 is not sustainable. Accordingly the AO is directed to allow the deduction claimed by the assessee towards application of funds. It is ordered accordingly.

ITA No. 4156/Mum/2023- AY 2018-19

23. For AY 2018-19 the assessee filed the return of income on 30.10.2018 admitting total income of Nil. The AO held that the assessee has violated the provisions of section 13(1)(c), 13(1)(d) and 13(2)(h) and accordingly assessed the income of the Trust at Rs. 254,60,58,091/-. On further appeal the CIT(A) upheld the order of the AO.

24. With regard to applicability of section 13(1)(d) and section 13(2)(h), we have while adjudicating the appeal for AY 2014-15 already held that these

sections are not applicable to assessee Trust and that the benefit of section 11 cannot be denied. The facts for AY 2018-19 are identical and the AO/CIT(A) for this year have given similar reasons for denying the benefit of section 11 to the assessee Trust. Therefore we are of the view that our decision in AY 2014-15 are mutatis mutandis applicable for AY 2018-19 also. Accordingly we hold that the assessee has not violated the provisions of section 13(1)(d) and 13(2)(h) and that benefit of section 11 cannot be denied to the assessee.

Violation of provisions of section 13(1)(c)

25. The AO during the course of hearing noticed that certain additions were made in the preceding AY towards payments made by Tata Sons Ltd. to the Trustees of the assessee. The AO accordingly issued a notice under section 133(6) to the Tata Sons to provide the details of payments made, services rendered and whether the payments made are commensurate with the services rendered by the Trustees for the year under consideration. In response Tata Sons Ltd. provided the following details towards payments have been made to the Trustees.

Sr. No.	Name of Ex-Director	Payment Rs. In Lakhs	Nature of Payment
1	Mr. R.N. Tata	510.47	Retirement pension including perquisites.*
2	Mr. N.A. Soonawalla	99.00	Retirement pension including perquisites.*
3	Mr.Amit Chandra	75.00	Non-executive director commission **

26. The AO held that the Trustees of the assessee excise influence over the decision making of Board of Tata Sons Ltd. through nominee directors and that this creates opportunities for the Trustees to take benefit from the company

which can constitute direct or indirect benefit as per provisions of section 13(1)(c) of the Act. The AO held that no proper justification is provided for payment of such huge sums to the Trustees which is in clear violation of section 13(1)(c). The assessee submitted before the AO that these payments were made as per the Board Resolution of Tata Sons Ltd. and that these were paid towards past services rendered by the Trustees. However, the AO did not accept the submissions of the assessee and held that the assessee is not entitled for exemption under section 11 since there is a violation of section 13(1)(c). The relevant observations of the AO in this regard are extracted below:

"5.7 It is evident from the facts regarding the payments made by TSL to the persons mentioned above that, there are variations and inconsistencies in the payments made to persons having similar profile. TSL has chosen to not provide any basis or justification for making said payments. It is hard to believe that a listed company like TSL would not be having a stated policy and procedure for making payments of remuneration and perquisites to the persons holding senior positions in the organisation. TSL was specifically asked to provide substantiation and the rationale for making the said payments. In absence of any explanation, the undersigned have no option but to draw conclusions on the basis of the bare facts before me. As per the facts of the payments, as enumerated earlier, there are inconsistencies and variations in the payments made to similarity positioned persons. It is also not known whether the payments were commensurate to the services provided. In such circumstances, the undersigned is compelled to conclude that the provisions of section 13(1)(c) are attracted in this case on account of inconsistent and unsubstantiated payments made by TSL to the persons specified u/s 13(3) of the act.

The provisions of section 13(1)(c) are as under:

> *13. (1) Nothing contained in section 11/or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof-*
> *(a)…….*
> *(b)[***]*
> *(c) in the case of a trust for charitable or religious purposes or a charitable or Religious institution, any income thereof-*

(i) if such trust or institution has been created or established after the Commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income ensures, or

(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in subsection (3):

5.8 The opening lines of clause (1) and the opening lines of sub-section (c), if read together, makes it clear that nothing contained in Section 11 or Section 12 shall operate so as to exclude from the total income of the previous year, any income of such charitable or business institution. In view of the above provisions and the factual findings discussed in earlier paragraphs the benefit of Section 11 or Section 12 cannot be given to the assessee trust in respect of its entire income. Accordingly, the exemption u/s. 11 claimed by assessee trust is, hereby, denied."

27. The ld. AR submitted that the provisions of section 13(1)(c) are applicable only in cases where the Trust making the payment out of the income of the Trust and not when the Trustees are receiving the payment. The ld. AR further submitted that these payments are made by Tata Sons Ltd. as per the Board Resolution for the past services rendered by the Trustees and the only reason for invoking section 13(1)(c) is that the payments could not be substantiated. The ld. AR further submitted that since the payments are made towards past services the details pertaining to whether the payments are commensurate with the services rendered could not be substantiated by the assessee and this cannot be basis for denying benefit of section 11. The ld. AR also brought to our attention to the fact that in the case of Tata Sons Ltd. the impugned payments have been allowed as a deduction. The ld. AR further brought to our attention that in assessee's own case against the order passed under section 263 the Tribunal has held that there is no violation of section 13(1)(c) of the Act.

28. The ld. DR on the other hand submitted that when payments received by the Trustees from Tata Sons Ltd. is not properly substantiated when the AO has correctly made the addition for the reason that the Trustees are taken benefit from Tata Sons Ltd. Accordingly, the ld. DR supported the order of the lower authorities.

29. We heard the parties and perused the material on record. The AO in the present case invoked the provisions of section 13(1)(c) for the reason that the Trustees of assessee Trust have received certain payments towards there past services from Tata Sons Ltd whose shares are held as corpus in assessee's Trust. The contention of the AO is that the Tata Sons Ltd, made the payment which is not commensurate with the services for the reason that the assessee Trust is holding the shares of Tata Sons Ltd and therefore section 13(1)(c). From the plain reading of the provisions of section13(1)(c), it is clear that the section gets attracted when the Trust applies / uses its income directly or indirectly for the benefit of persons as mention in sub-section 3 of section 13. In assessee's case we are unable to appreciate how the AO applied the said provisions for the reason certain payment received by the Trustee. The payments are received for the past services rendered by the Trustees from Tata Sons Ltd, and there is no application / use of the income of the assessee. Therefore on the plain facts itself we are of the view that the AO is not correct in invoking the provisions of section 13(1)(c) of the Act. We also notice that the coordinate bench in assessee's own case (supra) while adjudicating the appeal against the revision order under 263, has held the similar view and the relevant findings of the Tribunal are extracted below –

> *59. We have also taken note of the allegations about the trustee receiving certain benefits from Tata Sons Ltd, even though, as we will see a little later, whatever alleged benefits have been taken by the trustees from Tata Sons Ltd are as*

consideration of their services rendered in the past to Tata Sons Ltd, and have nothing to do with their role as trustees as such, it is important to bear in mind the fact that in order to invoke 13(1)(c), the "benefit" has to be out of the trust property. The assessee trust has made investments in Tata Sons Ltd, but that does not mean that Tata Sons Ltd is a property of the assessee trust- a proposition blatantly erroneous in law and in concept. What has been paid to the persons holding office as trustees, though in consideration for other roles played by them such as former directors and employees, has nothing to do with the determination of benefits to the trustees. The pension payments to Ratan N Tata and N A Soonawala, for example, have been held to be wholly and exclusively for the purposes of the business of Tata Sons Ltd. [ITA No. 4630/Mum/16], and, therefore, the stand that these payments amounted to benefit to the trustees is ex facie incorrect.

30. Considering the facts and the above decision of the Tribunal we hold that the AO is not correct in denying the benefit of section 11 for the reason that the assessee has violated the provisions of section 13(1)(c) of the Act.

Violation of section 2(15) of the Act

31. The AO held that the assessee has violated the provisions of section 2(15) of the Act for the reason that the assessee engaged in business by having control over the business of Tata Sons Ltd. The AO drew this conclusion from the fact that the assessee Trust is holding 23.56% of the shareholding in Tata Sons Ltd., and that one of the ex-Directors of Tata Sons Ltd., Mr.Cyrus Mistry had submitted certain documents in support of the allegation that the business of Tata Sons Ltd., is controlled by the Trustees of the assessee Trust. The AO relied on the documents and the email communications submitted by Mr.Cyrus Mistry before NCLT in this regard. The CIT(A) confirmed the order of AO.

32. The ld AR submitted that the assessee Trust has voting rights by virtue of the shareholding in Tata Sons Ltd., and there is no restriction to exercise the said

rights by the assessee. The ld AR further submitted that the assessee being a shareholder has the right to nominate directors as per the Articles of Association of Tata Sons Ltd., and as held by the Hon'ble Supreme Court in the case of Vodafone International Holdings BV v. Uol ((2012) 6 SCC @ 637- 638) control and management is a facet of holding of shares and cannot be dissected from the shares themselves. The ld AR also submitted that even assuming the assessee Trust has control over Tata Sons Ltd., it does not follow that the Trust is engaged in carrying on of any activity in the nature of trade, commerce or business that is in violation of section 2(15) of the Act. The ld AR argued that the rights of the assessee trust by being shareholder bring with it a degree of control, but the same does not mean the Trust ceases to be a charitable institution or loses its charitable objects or the company (Tata Sons) becomes the "property" of the Trust or the business of the company becomes the "business" of the Trust.

The ld AR further argued that dividend yielded from shareholding is taxed as 'income from other sources' and not as 'business income and therefore mere shareholding in a company cannot be termed as a commercial / business activity, unless such shareholding is byway of trading in stock and shares. The ld AR also relied on the findings of the coordinate bench in assessee's own case (supra) adjudicated against the revision order under section 263, where the Tribunal has considered the issue of whether the assessee Trust is engaged in business by exercising "control" over the business of Tata Sons Ltd.

33. The ld DR on the other hand supported the order of the lower authorities. The ld DR argued that the assessee Trust by virtue of shareholding in Tata Sons Ltd., and by having the right to nominate directors to the Board of Tata Sons Ltd., is indirectly running the business and therefore the lower authorities have

correctly held that the assessee has violated the provisions of section 2(15) of the Act.

34. We heard the parties and perused the material on record. Assessee Trust holds 23.56% of the shares of Tata Sons Ltd and the assessee Trust along with Sir Dorabji Tata Trust has the right to appoint / remove 1/3rd of the Board of Directors. The AO held that the assessee Trust has violated the provisions of section 2(15) for the said reason i.e. assessee is carrying on the activity in the nature of business. The AO had also relied on the fact that ex-Director of Tata Sons Ltd, Mr.Cyrus Mistry has submitted certain documents before the NCLT alleging that the business of Tata Sons Ltd by the Trustees. So the issue that needs to be considered here is whether the assessee being the shareholder of Tata Sons Ltd., is engaged an activity in the nature of business by exercising control the business of the said company and by having the right to appoint or remove 1/3rd of the board of directors. In this regard it is relevant to take note of the following observations of the coordinate bench is assessee's own case (supra) –

> *56 . A lot of emphasis is placed by the learned Commissioner on the stand that since the assessee trust controls Tata Sons Ltd, the assessee trust is not entitled to the benefit of sections 11 and 12.*
>
> *57. The concept of control over a company in which investment is made by the assessee trust is completely alien to the scheme of the Income-tax Act, 1961, so far as taxation of charitable institutions is concerned. Unless there is a specific disabling clause to that effect, merely because the assessee trust has control over the investee company, the benefits envisaged for the charitable institutions, which meet other statutory requirements, cannot be declined. Once it is found that the assessee trusts hold shares in a certain company, all that is required to be seen is whether these shares are held validly under section 11(5) read with Section 13(1)(d) of the Act- an aspect which has been found to be in order in the light of the detailed analysis earlier in this order. No legal embargo on the voting rights of the assessee trust or legal restrictions in the rights of the assessee trust to invest in the companies in which investments have been made have been shown to*

us. Quite clearly, therefore, the assessee trust validly holds these shares in Tata Sons Ltd, there is no legal embargo on the voting rights of the assessee trust or the manner in which these rights are exercised, and there are no legal restrictions to the rights that the assessee trust can have like any other shareholder in the company in which investments are made. There is no question of the assessee trust not exercising its rights as a shareholder in any manner less than an ordinary shareholder, as the position of the assessee trust, as a shareholder, is the same as that of any other shareholder. It is the duty of the assessee trust to protect the assets held by the assessee trust in a fair and reasonable and lawful manner.

58. As we have noted, the business model of ownership of Tata Sons Ltd, a holding company having investments in the group companies, is somewhat unique in the sense that majority shareholding in this holding company is collectively in the hands of various charitable institutions, including the assessee before us, and the articles of association of Tata Sons Ltd has, in recognition of this ownership model, granted certain rights to these charitable institutions on a collective basis- as long as these charitable institutions collectively hold not less than 40% of the shareholdings in Tata Sons. It is important to bear in mind the fact that these rights have been granted to these charitable trusts, and the assessee before us is only of these trusts, on a collective basis, and not to this assessee alone. Therefore, these rights, even if material, are not relevant in so far as control by this assessee is concerned. The assessee trust cannot, therefore, be said to be having control over the affairs of Tata Sons. In any case, as held by Hon'ble Supreme Court in the case of Arcelor Mittal India (P.) Ltd. v. Satisk Kumar Gupta & Ors. [2019] 2 SCC 1, the expression 'control' implies a 'positive and proactive' power and not 'merely a negative or reactive power'. Undoubtedly, by virtue of article 104 B of the articles of association, the Tata Trusts can collectively nominate one-third of the prevailing number of directors, but these directors on their own cannot pass the resolutions, they can at best stall the resolution in the exercise of their powers. Nothing much turns on these rights under the article of association, on which so much emphasis has been placed by the learned Commissioner because, given the fact that Tata Trusts collectively hold the majority, these provisions are really infructuous. These provisions would have been of practical relevance only when the collective shareholdings of Tata Trusts were to be less than the majority but more than 40% of shareholdings. Whatever rights Tata Trusts have with respect to Tata Sons is whatever any majority shareholders would have had in Tata Sons anyway. As long as the investments in Tata Sons meets the tests of what is permissible in law, an issue that we have decided in favour of the assessee for the detailed reasons set out earlier in this order, no objection can be taken to the powers that flow from such shareholdings or any powers within the limits of those powers.

35. Though the Tribunal has not directly held that the assessee has not violated the provisions of section 2(15) as argued by the ld DR, the Tribunal has clearly held that whatever rights the assessee Trusts is having with respect to Tata Sons Ltd., is whatever any majority shareholders would have had in Tata Sons Ltd., anyway and that section 11 benefits cannot be denied for that reason. Therefore the assessee Trust cannot be held to be engaged an activity in the nature business merely for the fact that it has certain rights conferred by virtue of being the shareholder in Tata Sons. The ld AR brought to our attention that the right to nominate 1/3rd of Board of Directors in Tata Sons Ltd., is to protect the shareholding interest of the assessee Trust and the Directors thus nominated constitute a minority (1/3rd) and cannot / do not conduct any business activity. In this regard it is relevant to take note that the Hon'ble Supreme Court in the case of Tata Consultancy Services Ltd vs Cyrus Investments Pvt Ltd (Civil Appeal No.440-441 of 2020 dated 26.03.2021) has observed that *"a person nominated by a charitable Trust to be a Director in a company in which the Trust holds shares also holds a fiduciary relationship with the Trust and fiduciary duty towards the nameless, faceless beneficiaries of those Trusts".* (Para 19.24 in page 334 of PB) Therefore in our considered view there is merit in the submission that the right to nominate persons to be a director of Tata Sons Ltd., is to protect the interest of assessee Trust and the numerous beneficiaries who are benefitted by the activities of the Trust by utilizing the Dividend earned from Tata Sons Ltd., which is a major source of income for the assessee Trust. The fact that the income of the Trust consists of Dividend and other donations and does not include any income from business proves that the assessee is not engaged in any activity in the nature of business. Further the income of Tata Sons Ltd is taxed in its own hand and not in the hands of the assessee also supports the contention that the assessee Trust is not engaged in any business activity. In view of these

discussions and judicial pronouncements above, we hold that the Trust is not hit by the proviso to section 2(15) of the Act and accordingly, exemption under section 11 of the Act cannot be denied to the assessee Trust. It is ordered accordingly.

36. The assessee raised ground in both AY 2014-15 and AY 2018-19 with regard to interest under section 234B & 234C and penalty under section 270A of the Act. These grounds are consequential and does not warrant separate adjudication.

37. In the result, both the appeals of the assessee in both AY 2014-15 and AY 2018-19 are allowed.

Order pronounced in the open court on 26-08-2024.

Sd/-	***Sd/-***
(RAHUL CHAUDHARY)	**(MS. PADMAVATHY S)**
Judicial Member	**Accountant Member**

**SK, Sr. PS*

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai