

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER
AND**

SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

**ITA No.4193 and 4194/Del/2017
Assessment Year: 2013-14 & 2014-15**

**ACIT (E),
Circle 1(1),
Delhi.**

vs

**Indian Broadcasting Foundation,
B-304 3rd floor, Ansel Plaza,
Khel Goan Marg,
New Delhi-110049
AAACI7146J**

**Revenue by Sh. Jagdeesh Singh Sr. DR
Assessee by Sh. S.K.Agarwal, CA
Sh.Anish Mehta, CA**

ORDER

**Date of Hearing 10/09/2020
Date of Pronouncement 14 /09/2020**

PER K. NARASIMHA CHARY, JM:

Aggrieved by the order dated 26/4/2017 in appeal numbers 321/15-16 and 165/16-17 passed by the learned Commissioner of Income Tax (Appeals)-40, Delhi ("Ld. CIT(A)"), for the assessment years 2013-14 and 2014-15, in the case of Indian Broadcasting Foundation ("the assessee"), Revenue preferred these two appeals on identical grounds, but for the change in the figures.

2. Brief facts of the case, as could be culled out from the record and the contentions of the parties, are that the assessee was incorporated on 27 September 1999 as a not - for -profit company u/s 25 of the Companies Act 1956, i.e., currently Section 8 company of Companies Act, 2013 and is also registered under Section 12AA of the Income Tax Act 1961 as a charitable institution; that it is an association of broadcasters established with the main object of protecting the interest of member broadcasters in the field of television broadcasting, including television viewing audiences; that being the industry body of television companies, assessee has a responsibility for ensuring availability of reliable, timely, and accurate data of viewership to its members, as per its objectives listed in its Memorandum of Association ('MOA'); that in accordance with Central Government policy of Ministry of Information and Broadcasting (MIB) and the recommendations of Telecom Regulation Authority of India (TRAI), assessee promoted and registered Broadcast Audience Research Council (BARC) under section 25 of the Companies Act 1956 as a not for profit Company in FY 2010-11 by deploying a total amount of Rs. 15,00,000 in FY 2010-11 and FY 2011-12 as share capital and in FY 2012-13 and FY 2013-14, an additional amount of Rs. 45,00,000 and Rs. 2,40,00,000 were respectively deployed as share application money in BARC, which were refunded to the Assessee in FY 2015-16. As per the Central Government policy, the main objective of BARC is to conduct

market research and studies using appropriate research methodologies with a view to provide accurate, up to date and relevant findings relating to audiences of television, in a completely transparent and objective manner, thereby creating an awareness among the television viewing audiences and stakeholders. Assessee shall at all times retain shareholding of 60% of BARC, while 20% shares would be held by Indian Society of Advertisers ('ISA') and balance 20% shares would be held by Advertising Agencies Association of India ('AAAI').

3. For the AY 2013-14 and 2014-15, the Assessee had filed its return of income declaring Nil income by claiming exemption under section 11 of the Income-tax Act, 1961 ('the Act') and the assessment was concluded under Section 143(3) of the Act while denying exemption under section 11 and 12 of the Act by invoking section 13(1)(d) of the Act, holding that neither TRAI nor MIB ever mandated the assessee to incorporate BARC as a section 25 Company i.e., as a not for profit organization, and assessee was not mandated to get registered under section 12A read with section 12AA of the Act; that the assessee in its own wisdom chose to be registered as such and be governed by section 11 and 12 of the Act and claim exemption; and that the decision in the case of Director of Income - tax vs. Alarippu (2000) 111 Taxmann 511 (Delhi) and Director of Income - tax vs. Acme Educational Society (2010) 326 ITR

146 (Delhi) are distinguishable on facts relied by the assessee have no application to the facts of the case. Ld. Assessing Officer further observed that the provisions of the Act, override the recommendations of TRAI and MIB which the assessee agitates that investment in BARC is not in violation of section 11(1)(5) read with section 13(1)(d) of the Act.

4. Ld. 'CIT(A)', however, in appeal reversed the findings of the Ld. AO, while accepting the contention of the Assessee that the amount deployed towards share capital of BARC pursuant to the policy of the Central Government and TRAI recommendations is not in the nature of investment, but is application of income to meet the objectives of the Assessee association. Ld. CIT(A) followed the findings of Hon'ble Delhi High Court in Assessee's own case W.P.(C) 2489/2017 to the effect that the amount deposited with BARC was not by way of investment or by choice, but on account of Government policy. Ld. CIT(A) accordingly held that the assessee can not be said to have committed any violation within the meaning of the provisions of Section 13(1)(d) by making an investment of Rs. 15,00,000 in equity shares and investment of Rs. 45,00,000 in share application money in BARC. Ld. CIT(A), therefore, directed the assessing officer to allow the benefit of exemption under sections 11 and 12 of the Act. Ld. CIT(A) also allowed the consequential prayers of the assessee in respect of various disallowances made by

the learned Assessing Officer pursuant to his disallowance of exemption under section 11 and 12 of the Act.

5. Aggrieved by such findings of the Ld. CIT(A), for the assessment years 2013-14 and 2014-15, Revenue preferred these appeals on identical grounds. It is the submission of the Ld. DR that the Ld. CIT(A) missed the point that WP (C) 2489/2017 filed by the assessee seeking stay of demand, the Hon'ble Court did not decide the matter finally but directed the Ld. CIT(A) to decide the matter. He further submitted that the transaction of purchasing shares of Rs. 15 lakhs of the Broadcasting Audience Research Council and Rs. 45 Lacs by way of a share application money in it is an investment and consequently the order of the learned Assessing Officer is justifiable.

6. Per contra, Ld. AR submitted that the question that arises in these appeals is whether or not the amount deployed in BARC by virtue of Central Government policy and TRAI recommendation and MIB is in the nature of investment in violation of Section 11(5) read with section 13(1)(d) of the Act. He submitted that the deposit in BARC is not in violation of Section 11(5) read with section 13(1)(d) of the Act, but an application of income and accordingly, provisions of section 13(1)(d) do not apply. Basing on the decisions reported in CIT vs. Uttar Pradesh cooperative Federation Ltd AIR 1989 SC 915, CIT v. Sir Sobha Singh Public Charitable Trust [2001] 250 ITR 475

(Delhi), Anand Charitable Trust v. Commissioner of Wealth-tax [2002] 123 Taxman 494 (Delhi), Director of Income tax v. Alarippu (2000) 111 TAXMAN 511 (Delhi), Director of Income tax v. Acme Educational society (2010) 326 ITR 146 (Delhi), CIT v. Aloo Investment Co. Pvt. Ltd. [1979] 1 Taxman 433 (Bom.), and Third Income-tax Officer v. Jhaverbhai Patel Ch. Trust [1992] 43 ITD 195 (Bom.) he argued that in order to conclude that the deposits made by the assessee in BARC is in the nature of investment, regard must be had to the element of intention to earn any profits without which such deposits cannot be held as investment, so as to attract the provisions under section 13 (1) (d) of the Act. He also brought our attention to relevant portions of TRAI recommendations, objectives of incorporating the BARC, the recommendations of the standing committee of Parliament on information technology, the recommendations of TRP committee appointed by the Ministry of Information and Broadcasting, guidelines for Television Rating Agencies recommended by the TRAI in his attempt to show that it is only pursuant to the recommendations of the TRAI and the policy of the Central government, BARC was established as an industry led body and promoted by the assessee, and as a matter of fact no intention to any profits was involved in deposit of the amounts in question.

7. We have gone through the record in the light of the

submissions made on either side. In his order Ld. CIT(A) considered the TRAI recommendations, objectives of incorporating the BARC, the recommendations of the standing committee of Parliament on information technology, the recommendations of TRP committee appointed by the Ministry of Information and Broadcasting, guidelines for Television Rating Agencies recommended by the TRAI extensively in the light of the decisions of the jurisdictional High Court in the case of Director of income tax vs. Alarippu (supra) and also Director of income tax Vs. Acme Educational Society to reach the conclusion that the assessee has not deployed its funds towards equity of BARC for seeking any income, but to fulfil some of its key objectives and in order to complying with the directions of TRAI and MIB; and that as a matter of fact, no income was earned on such deployment of funds towards the equity capital of BARC.

8. Ld. CIT(A) further held that even if it is assumed that provisions of section 13 (1) (d) of the Act are attracted, still the withdrawal of exemption will have to be restricted only to the income earned from the investment made in contravention of section 11 (5) of the Act, as borne out from paragraph No. 28.6 of CBDT circular No. 387, dated 6/7/1984. Having considered all these things, Ld. CIT(A) referred to the observations of the Hon'ble Delhi High Court in assessee's own case at the stage of stay of demand, to the effect that the amounts in question were deposited with the

BARC not by way of investment or choice, but on account of a Central government policy. As a result of consideration of all these aspects, Ld. CIT(A) returned a finding that the assessee cannot be said to have committed any violation within the meaning of the provisions of section 11 (5) read with section 13 (1) (d) of the Act by making the deposits in question and consequently Ld. CIT(A) directed the assessing officer to allow the benefit of assumption under section 11 and 12 of the Act.

9. There is no dispute that basing on the recommendations of TRAI and policy of Central Government, BARC was required to be established as an industry led body and promoted by the Assessee; that both assessee and BARC are 'not for profit' companies set up for meeting wider objectives of public charitable nature, namely, promotion of Television industry and viewership in India. There is also no dispute in respect of the claim of the assessee that, being an Industry body, the assessee represents the interest of its member TV broadcasters including public sector broadcaster Doordarshan. BARC was set up to provide reliable and transparent information needed by the members and various stakeholders of assessee in taking various crucial business decisions relating to their businesses.

10. On a careful consideration of the objects of the BARC, we have no hesitation to hold that the BARC enables assessee to fulfil

its 'objects incidental or ancillary to the attainment of the main objects, like to affiliate, admit to membership, aid and to receive aid from any other society, association, company, corporation firm, partnership or person promoting or formed or intending to promote any of the objects of Company and to subscribe to or aid any such society, association, company, corporation, firm, partnership or person with a view to obtain any advantage or benefit for the purpose of the Company and to subscribe to any fund or society as may be considered deserving from time to time and to subscribe to, become a member of, corporate or collaborate with any other association or agency whose objects are altogether or in part similar to those of the Company and to procure from or communicate with any such body or association any useful information as is likely to further the objects of the Company.

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

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

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

section 13 (1) (d) of the Act we deem it not necessary to refer to the alternative pleas of the assessee. Consequently, we declined to interfere with the findings of the Ld. CIT(A).

14. Insofar as the other grounds are concerned, undoubtedly, they are consequential in nature and in view of our finding on the substantial ground as to the applicability of 11 (5) read with section 13 (1) (d) of the Act, we find it just and necessary to confirm the findings of the Ld. CIT(A) on those grounds also.

15. In the result, appeals of the Revenue are dismissed.

Order pronounced in the Open Court on 14 .09.2020.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(K.NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 14.09.2020.