IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 764 OF 2016

The Commissioner of Income Tax
(Exemptions), Pune .. Appellant.
v/s.
Audyogik Shikshan Mandal, Pune .. Respondent.

Mr. Suresh Kumar, for the Appellant.

CORAM: AKIL KURESHI &
M.S.SANKLECHA, JJ.
DATE : 18th DECEMBER, 2018.

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 25th February, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 25th February, 2015 is in respect of Assessment Year 2004-05.

2 The Revenue urges the following question of law for our consideration:

> *" Whether on the facts and in the circumstance of the case and in law, the Tribunal was correct in law in holding that the denial of benefit under section 11 of the IT Act will be restricted only to that income of the Trust which was used/applied directly or indirectly for the benefit of the prohibited persons?"*

3 It is an un-disputed position that the Respondent-Assessee is a Trust, engaged in the activity of running educational institution. It is a registered Trust under Section 12AA of the Act. The Respondent in its return of income filed on 29th October, 2004 for the Assessment Year

2004-05, declared its income as "*Nil*". During the Assessment Proceedings, the Assessing Officer noted that on 29th March, 2004, the Respondent-Asssessee had purchased one Skoda car valued at Rs.11.38 lakhs in the name of one of its Trustee - Mr. Sandeep Pachpande i.e. person specified in Section 13(3) of the Act. In the above circumstances, the Assessing Officer in its order dated 23rd December, 2006 passed under Section 143(3) of the Act, denied the benefit of exemption to the entire income under Section 11 of the Act. Thus bringing to tax its entire income of Rs.5.14 Crores in view of Section 13(2)(b) read with Section 13(3) of the Act.

4 Being aggrieved, the Respondent filed an appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. However, without success. This, as the appeal was dismissed by the order dated 28th September, 2007 of the CIT(A).

5 Being aggrieved, the Respondent filed a further appeal to the Tribunal. Before the Division Bench of the Tribunal, there was a difference of opinion amongst two members constituting the bench, inter alia, which was referred to the third member on the following question:-

> *"whether the denial of directly or indirectly tax benefit under Section 11 of the Act is rejected only to the deemed used or applied for the benefit of trustees or the total income of the Trust is not entitled to the benefit of Section 11 of the Act?*

The third member of the Tribunal by an order dated 3rd November, 2014, after having considered the decision of the Supreme Court in ***Director of Income Tax v/s. Bharat Diamond Bourse 259 ITR 280*** and the subsequent decision of the Karnataka High Court in ***CIT v/s. Fr. Mullers***

Charitable Institutions 366 ITR 378, held that denial of exemption under Section 11 of the Act should be limited to the amount which had been diverted to purchase the car in the name of prohibited person under Section 13 of the Act. In view of the above, the Regular Bench of the Tribunal by the impugned order dated 25th February, 2015 denied the benefit of Section 11 of the Act only to the extent the income is diverted/ used to purchase a car in the name of the trustee i.e. in view of Section 13(2)(b) read with Section 13(3) of the Act.

6 Before us, Mr. Suresh Kumar in support of the appeal, places reliance upon the decision of the Apex Court in Bharat Diamond Bourse (supra). This, to support the view of the Revenue that the benefit of exemption should be denied to entire income of the trust and not restricted only to the extent of income diverted in breach of Section 13 of the Act.

7 We find that the impugned order of the Tribunal has placed reliance upon the decision of the Karnataka High Court in Fr. Mullers Charitable Institutions (supra), after having noted that the the decision of the Supreme Court in Bharat Diamond Bourse (supra) does not very clearly specify whether it is only the income diverted as loans to a person specified under Section 13 of the Act, which was denied the benefit of Section 11 of the Act or the entire income was denied the benefit of exemption under Sect ion 11 of the Act. We have closely read the decision of the Apex Court in Bharat Diamond Bourse (supra) and it does not extend the benefit of Section 11 of the Act to the Trust. However, it is not clear whether it is only to the extent of income diverted or the entire income. This, for the reason that the dispute between the parties therein was not as arising in this case. The basic dispute in the above case was –

whether the objects of the Trust were charitable and whether the person to whom the loan was given was a person covered by Section 13 of the Act. The decision of the Karnartaka High Court in Fr. Mullers Charitable Institutions (supra), dealt with the very issue herein viz. the denial of exemption of entire income under Section 11 of the Act, or is the denial restricted only to the quantum of diverted funds. This, as it is hit by Section 13 of the Act. The Court held that the benefit of Section 11 of the Act will not be available only in respect of the diverted income. The above decision of Karnataka High Court was the basis for the view in the impugned order of the Tribunal. Moreover, we note that the order of Karnataka High Court in case of Fr. Mullers Charitable Institutions (supra) *inter alia*, places reliance upon the decision of this Court in ***DIT v/s. Sheth Mafatlal Gagalbahai Foundation Trust 249 ITR 533*** and the Delhi High Court in the case of ***IT (Exemption) v/s. Agrim Charan Foundation 253 ITR 593.*** Moreover, on a plain reading of Sections 11 and 13 of the Act, it is clear that the legislature did not contemplate the denial the benefit of Section 11 of the Act to the entire income of the Trust. If the interpretation sought to be advanced by the Revenue is accepted, it would lead to grave injustice as any mistake minor and/or misdemnour involving a small amount takes place by the Trust, the consequence would be denial of the benefit of exemption to the entire income otherwise admittedly used for charitable purposes. It is pointed out to us that the decision of the Karnataka High Court in Fr. Mullers Charitable Institutions (supra) was carried by the Revenue to the Supreme Court and its SLP was dismissed on 19th September, 2014 (CIT v/s. Fr. Mullers Charitable Institutions [2014] 227 Taxman 369 (SC).

8 In the above view, the view taken by the Tribunal in the impugned order is in accord with the view of the Karnataka High Court in Fr. Mullers Charitable Institutions (supra), Delhi High Court in Agrim Charan Foundation (supra) and this Court in Sheth Mafatlal Gagalbahai Foundation Trust (supra). Hence, the proposed question does not give rise to any substantial question of law. Thus, not entertained.

9 Accordingly, **Appeal dismissed.** No order as to costs.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**