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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.693 OF 2013

The Director of Income Tax (Exemptions), Mumbai ..Appellant.

V/s.

M/s. Shri Vile Parle Kelavani Mandal

..Respondent.

Mrs.S.V.Bharucha for the appellant.

Mr.Beni Chatterji, Senior Advocate i/b. M/s. S.K. Srivastav & Co. for the respondent.

**CORAM : S.C.DHARMADHIKARI AND
A.K. MENON, JJ.**

DATED : 23RD MARCH, 2015

P.C. :-

1. The appeal filed by the revenue challenges the order passed by the Tribunal dated 5th October, 2012.

2. Mrs.Bharucha appearing for the revenue submits that four questions which have been formulated at page Nos.4 & 5 by the revenue are all substantial questions of law.

3. With regard to the first question, she invites our attention to the various assessing officer's orders. She submits that the exemption which has been claimed in respect of the income under the head "*Management Development*

Programme and consultancy charges” was not admissible because the requirement which is set out in sub-section (4A) of section 11 of the Income Tax Act, 1961 has not been satisfied. This provision is not made for the attainment of the objects of the trust or the institution and separate books of account are not maintained by the trust / institution in respect of the said business.

4. In that regard, our attention has been invited by Mr.Chatterjee, learned senior counsel appearing on behalf of the assessee, to the finding in the order of Commissioner of Income Tax (A) and the Tribunal.

5. The Tribunal has held that the “Management and Development Program & Consultancy Charges’ is part and parcel of ‘Narsee Monjee Institute of Management Studies’ which has been set up by the respondent-assessee. The respondent-assessee is a trust and has set up 30 schools and colleges. The Commissioner as also the Tribunal has found that the element of business is missing in conducting management courses. There may be some surplus generated which itself is applied towards the attainment of the object of the educational institute. The separate books of account

cannot be insisted upon because once this programme is part and parcel of the activities undertaken and carried out by the Narsee Moonjee Institute of Management Studies, then the condition precedent set out in sub-section (4A) of section 11 of the I.T. Act is completely satisfied. Such finding of fact cannot be termed as perverse and it is in consonance with the factual aspect regarding activities of the trust and the object that it is seeking to achieve. Similarly, in regard to income from the hiring of the premises and advertisement rights, the said question is also not substantial question of law. Letting out of halls for marriages, sale and advertisement rights has not been found to be a regular activity undertaken as a part of business. The educational institutions require funds. The income is generated from giving various halls and properties of the institution on rentals only on Saturdays and Sundays and on public holidays when they are not required for educational activities, then, this cannot be said to be a business which is not incidental to attain the objects of the trust. This being merely an incidental activity and the income derived from it is used for the educational institute and not for any particular person, separate books of account are also maintained, then, this income cannot be brought to tax. This

conclusion is also not perverse and given the facts and circumstances which are undisputed.

6. As far as question No.4 is concerned, this Court has repeatedly held that there is nothing like double deduction. When the assessee has acquired an asset from the income of the trust and thereafter the amount that is claimed is the depreciation on the use of the assets, such depreciation claim does not mean double deduction. The deduction earlier claimed is towards application of funds of the trust for acquiring assets. The latter is depreciation and it is permissible deduction considering the use of the assets. This has been clarified repeatedly by this Court. If any reference is required then the case of **Commissioner of Income Tax V/s. Institution of Banking** reported in **(2003) 264 ITR 110 (Bom)** is enough.

7. Going by the law laid down by this Court, we are of the opinion that that even the question No.4 in the paper-book cannot be termed as substantial question of law. The appeal thus has no merits and is dismissed. No order as to costs.

(A.K. MENON, J.)

(S.C.DHARMADHIKARI, J.)