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

INCOME TAX APPEAL NO. 902 OF 2014

D.I.T. (Exemptions)
Mumbai .. Appellant

v/s.

Shri Sai Baba Charitable Trust .. Respondent

Mr. A.R. Malhotra a/w Mr. N.A. Kazi for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.

DATED : 15th OCTOBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 13th November, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2011-12.

2. The Revenue has urged following question of law for our consideration :-

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in setting aside the order of the DIT(E) passed u/s 80G of the I.T. Act, 1961 dated*

01.08.2012 and allowing the appeal of the assessee when it is a clear case of contravention of provisions of the BPT Act and the activities of the trust could not be considered to be genuine and in accordance with the law?"

3. The respondent assessee is a Charitable Trust duly registered under Section 12AA Act. On 2nd December, 2011, the respondent Trust applied to the Director of Income Tax (Exemption) for renewal of Certificate / approval under Section 80G of the Act. The application was rejected by an order dated 1st August, 2012 by the Director of Income Tax (Exemption). This rejection was on the ground that the Trust had obtained unsecured loan of Rs.50 lakhs from third parties without obtaining prior approval of the Charity Commissioner as required under Section 36A(3) of the Bombay Public Trust Act, 1950. Thus, concluding that the respondent assessee is not a genuine trust.

4. Being aggrieved, the respondent assessee filed an appeal to the Tribunal. The Tribunal by the impugned order held that there is no dispute that the respondent assessee fully satisfied the conditions specified in Section 80G(5) of the Act for approval thereunder. It further observed that there is no requirement under the Act that a breach / contravention of the Bombay Public Trust Act, 1950 would

result in the trust being dis-qualified from being approved under Section 80G of the Act. It held that the very fact that the Revenue had not initiated any action under Section 12AA of the Act to revoke its registration would imply that the activities of the Trust are genuine. Moreover, the Tribunal also records the fact that the Charity Commissioner has not taken any action against the respondent assessee for violation of the provisions of Section 36A of the Bombay Public Trust Act, 1950 in having borrowed funds without its prior permission. In the aforesaid circumstances, the appeal of the respondent assessee was allowed.

5. Mr. Malhotra, learned Counsel appearing for the Revenue urges that the Trust is not a genuine trust in as much as it has been borrowing funds on regular basis from third persons and has been repaying it by borrowing further funds from other parties on regular basis. Therefore, he submits that the facts arising in the impugned order of the Tribunal give rise to substantial question of law which would require consideration.

6. We find that the impugned order of the Tribunal has on the basis of the clear provision of Section 80G of the Act recorded that the

respondent assessee completely satisfies / fulfills all the conditions specified in Section 80G(5) of the Act for the purposes of availing benefit under Section 80G of the Act. This coupled with the fact that the Revenue itself has also not taken any proceedings to have the registration cancelled, would itself imply that the Revenue does consider the Trust to be a genuine trust. It is an undisputed position before us that the respondent assessee satisfies all conditions for approval of the trust under Section 80G of the Act. Therefore, it is not open to the Authorities to refuse approval by imposing conditions which are not mentioned in Section 80G of the Act. In the above circumstances, the impugned order of the Tribunal is unexceptional.

7. Therefore, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

8. The appeal is dismissed. No order as to costs.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**