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

INCOME TAX APPEAL NO. 682 OF 2016

CIT (Exemptions), Mumbai .. Appellant

v/s.

Seth Walchand Hirachand Memorial Trust .. Respondent

Mr. N.C. Mohanty for the appellant
None for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 27th NOVEMBER, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 15th July, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal relates to Assessment Year 2007-08.

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

(i) Whether on the facts and circumstances of the case and in law, the Tribunal was right in upholding the order of the CIT(A) allowing the claim of giving donations to other Trusts

having similar object being application of Income even when there were no sufficient income during the year and corpus fund were utilized ignoring the prohibition stipulated in Sec.12(1) of the Income Tax Act, 1961 ?

3. The respondent assessee had in the subject assessment year, made donations out of its accumulated income to other Trust having similar object to the extent of Rs.2.04 crores. The Assessing Officer disallowed the donation to the extent of Rs.1.52 crores made by the respondent assessee to other Trust having similar objects on the ground that the income of the Trust was only of Rs.52.70 lakhs for the subject assessment year. Thus, the Assessing Officer by assessment order dated 28th February, 2013 held that the balance amount of Rs.1.52 crores which is being disallowed as the donation is given by the respondent assessee from its accumulated income, then it is not deemed to application of income for charitable purpose.

4. Being aggrievd, the respondent filed an appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By order dated 15th November, 2013 the CIT(A) held that utilization of funds by making donations to other Trusts having similar objects amount to application of income within the meaning of Section 11 of the Act. The so called

corpus is in fact the accumulation of 15% of income from year to year in the past. Thus, it is not proper to assign the donations made during the year to be done by erosion of corpus fund of the respondent.

5. Being aggrieved, the Revenue filed an appeal to the Tribunal. By the impugned order dated 15th July, 2015, the Tribunal dismissed the Revenue's appeal. This by upholding the finding of the CIT(A) *inter alia* placing reliance upon the decision of Gujarat High Court in ***CIT Vs. Sarladevi Sarabhia Trust No.2 (1988) 172 ITR 698*** where on almost identical facts, by relying upon the CBDT instruction No.1132 dated 5th January, 1978 issued by the CBDT that utilization of the funds by making donations to another Trust would amount to application of income within the meaning of Section 11 of the Act. It further held that no case of diversion of income involving infringement of provisions of Section 13 of the Act was made out.

6. The grievance of the Revenue is that the donations are being made out of its corpus by the Trust. Thus, the allowance on account of donation should be restricted only to the income for the subject assessment year i.e. Rs.52.70 lakhs.

7. We find that there is no dispute that the donation made to other Charitable Trust would be an application of income within the meaning of Section 11 of the Act. The only grievance of the Revenue is that the donation has come out of its corpus. The CIT(A) found that the corpus itself was accumulation of 15% income from year to year. This view has been upheld by the Tribunal. No statutory provision is shown to us which prohibits the Trust from donating a part of its corpus to another Trust having similar objects for utilization to fulfill its charitable objects.

8. In these circumstances, the view taken by the Tribunal in the present fact cannot be found fault with. Thus, the question as formulated does not give rise to any substantial question of law. Thus, not entertained.

9. Accordingly, appeal is dismissed. No order as to costs.

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