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

INCOME TAX APPEAL NO.689 OF 2016

CIT (Exemptions), Mumbai .. Appellant

v/s.

M/s. Bhansali Trust .. Respondent

Mr. N.C. Mohanty a/w Ms. Padma Divakar for the appellant
None for the respondent

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

DATED : 11th DECEMBER, 2018.

P.C.

1. This appeal is filed by the Revenue challenging the judgment of Income Tax Appellate Tribunal ("the Tribunal" for short) dated 31.08.2015.

2. Following question has been presented for our consideration :-

"Whether on the facts and in circumstances of the case and in law, the Tribunal was right in allowing the claim of exemption u/s 11 of the I.T. Act, 1961 even though assessee failed to intimate the changes made in object clause to CIT(Exemptions), as per the undertaking given in form no.10A and continued to enjoy benefits of valid 12A Registration year after year?"

3. Brief facts are that the respondent assessee is a registered / Charitable Trust. The Trust was also granted registration under Section 12A of the Income Tax Act, 1961 ("the Act" for short) by the Commissioner of Income Tax after examining the objects of the Trust and the nature of its activities. The registration was granted on 27.11.1973 on the basis of the Trust Deed dated 19.03.1969. The Trust Deed under went amendments in the year 1975 and again in the year 1979. These amendments were not communicated to the Commissioner. The Income Tax Officer was of the opinion that since material changes were made in the Trust deed which were not communicated to the Commissioner, the registration under Section 12A of the Act would be rendered invalid. In absence of such registration, according to the Assessing Officer, benefit under Section 11 of the Act would not be available to the Trust. The Assessing Officer passed an order of assessment accordingly on 28.12.2011 for the Assessment Year 2009-10.

4. The assessee carried the matter in appeal. The Commissioner (Appeals) allowed the appeal *inter alia* holding that the registration of the Trust which was granted under Section 12A of the Act since 40

years, had not been cancelled. Further, the original object of the Trust of providing education to the students which included paying fees, scholarship, prizes, books and loans had not been deleted nor changed. Further, the object of providing medical facilities and relief to poor, was also not been deleted. The same was only modified so as to include giving donations to hospitals and charitable dispensaries and to promote and develop rural, socio-economic welfare and uplift of public in rural areas. According to Commissioner, therefore, post these amendments also the object remained charitable and did not cause any detriment to the original objects of the Trust.

5. The Revenue carried the matter in appeal before the Tribunal. Tribunal by the impugned judgment dismissed the Revenue's appeal and confirmed the view of CIT(Appeals). The Tribunal noted that the Assessing Officer has presumed that the registration originally granted under Section 12A of the Act does not survive, which would mean denial of benefit under Section 11 of the Act. The Tribunal also held that even after the amendments in the Trust Deed, which took place in the year 1975 and 1979, the objects of the Trust continued to be charitable. The Tribunal was of the opinion that the said amendments were in the nature of enabling powers given to the Trust to accomplish

its original objects. The Tribunal referred to and relied upon the judgment of the Bombay High Court in case of ***Deccan Gymkhana Vs. Commissioner of Income Tax (2003) 262 ITR 459*** and on the Supreme Court in the case of ***Commissioner of Income Tax Vs. Federation of Indian Chambers of Commerce & Industries, (1981) 130 ITR 186*** to make a distinction between the purpose of the Trust and the powers conferred upon the Trust to accomplish its original objects.

6. Counsel for the Revenue submitted that admittedly though required, the Trust did not intimated the changes made in the Trust Deed to the Revenue Authorities. He drew our attention to the judgment of the Allahabad High Court in case of ***Allahabad Agricultural Institute Vs. Union of India, (2007) 291 ITR 116*** in which it was held that where the objects of Trust have been altered wholesome after grant of registration and intimation of alteration had not been given to the Commissioner, registration granted on the basis of a particular representation, would not survive. He submitted that though this decision in *Allahabad Agricultural Institute* (supra) was cited before the Tribunal, it was incorrectly distinguished.

7. As noted, the facts on record are not seriously in dispute. The respondent assessee Trust was granted registration under Section 12A of the Act on the basis of the objects of the Trust recorded in the original Trust deed dated 19.03.1969. The principal objects of the Trust were education of students for which purpose the Trust grants fees, scholarship, prizes, books and loans without interest. Another object of the Trust was providing medical facilities and helping the poor. The amendments of the Trust added additional object of rural development including the programme of promoting socio-economic welfare or up-liftment of the public in rural areas.

8. The CIT(Appeals) and the Tribunal examined the original objects of the Trust and the changes brought about by successive amendments. The conclusions of the CIT(A) and the Tribunal were that the original objects of the Trust were not altered or even diluted. The additional objects were also in the nature of charitable activities. The foundational characteristics of the Trust, therefore, did not under go any change. Under the circumstances, we do not think that the Tribunal has committed any error in dismissing the Revenue's appeal. The decision of Allahabad High Court was rendered on the foundational fact that after the amendment, the objects of the Trust were altered in the

wholesome manner which is not the case in the present appeal. We wonder whether the Assessing Officer could have ignored the registration of the Trust granted by the Commissioner without its cancellation by the authority, who granted it. However, we keep the question open.

9. The appeal is dismissed.

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