

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

INCOME TAX APPEAL NO. 762 OF 2016

WITH

INCOME TAX APPEAL NO. 782 OF 2016

The Commissioner of Income
Tax, (Exemption), Pune

.. Appellant

v/s.

Sri. Balaji Society

.. Respondent

Mr. Suresh Kumar for the appellant

Mr. Jehangir Mistry a/w Mr. Subhash Jadhav, Mr. Rupesh Geete and
Mr. Shradha Achliya I/b Parinam Law Associates for the respondent

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

DATED : 11th DECEMBER, 2018.

P.C.

1. These appeals involve the same assessee and identical questions of facts and law. In fact, they arise out of a common impugned judgment of Income Tax Appellate Tribunal ("the Tribunal" for short) dated 18.2.2015. These appeals are filed by the Revenue.

2. Following questions have been presented for our consideration :-

“(i) Whether the Tribunal was correct in law by holding that the provision of section 13(1)(c) and 13(2)(c) of the I.T. Act were not attracted in this case despite the fact that payments

were made on account of advertisement to prohibited persons?

(ii) Whether the Tribunal was right in holding that the assessee was allowed to claim exemption u/s 11 of the act despite the fact that the payments were made to prohibited persons as defined u/s 13(1)(c) and 13(2)(c) of the I.T. Act?

3. The respondent assessee is a charitable trust and enjoys the registration under Section 12AA of the Income Tax Act, 1961 ("the Act" for short). During the Assessment Years 2008-09 and 2009-10, the Assessing Officer noticed that the assessee had incurred expenditure, some of which was paid to one M/s. Sri Balaji Creativites ("SBC" for short) towards advertisements in various magazines and souvenirs. The Assessing Officer noticed that said SBC was a partnership firm consisting of three partners who happened to be trustees of the respondent assessee trust. The Assessing Officer was of the opinion that the firm i.e. SBC was a firm covered under Section 13(3)(e) of the Act *visa-a-vis* Trust. The Assessing Officer thereafter carried out the analysis of the expenditure in connection with the advertisements with a special focus on the payments made to the said SBC. He denied the benefit under Section 11 of the Act relying upon the provisions of Section 13(2)(c) of the Act.

4. The assessee carried the matter in appeals. The CIT(A) examined the material on record at length and came to the conclusion that the Assessing Officer had incorrectly invoked the said provision in making the dis-allowance. He was of the opinion that the payments were not made in excess of what may be reasonably paid for the services in question. The Revenue challenged the decision of the CIT(A) before the Tribunal. Tribunal by the impugned judgment dismissed the Revenue's appeal upon which the present appeals have been filed.

5. We have heard learned Counsel for the parties and perused the material on record. Clause (c) of sub-section 2 of Section 13 of the Act can be invoked, if any amount is paid by way of salary, allowance or otherwise to any person referred to in sub-section 3 out of resources of the Trust for services rendered to the Trust and the amount so paid is in excess of what may be reasonably paid for such services. Thus, essential requirement for invoking the said provision is that the amount paid was in excess of what may be reasonably paid for the services. In the present case, the CIT(A) and the Tribunal have elaborately examined the accounts of the assessee, the payments made to the SBC, the payments made to other agencies for similar work,

comparative rates of payments and came to the conclusion that no excess payment was made to the related person. Essentially, this is a pure question of fact. Two authorities concurrently held in favour of the assessee. No question of law arises.

6. The tax appeals are dismissed.

(M.S. SANKLECHA, J.)

(AKIL KURESHI, J.)