R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 542 OF 2017

Ram Nagar Trust No. 1 .. Appellant

Versus

The Dy. Director of Income Tax (Exemp)-1(1), Mumbai & Anr. .. Respondents

....
- Mr. Madhur Agarwal i/by Ruturaj H. Gurjar for the Appellant
- Mr. A.R. Malhotra a/w Mr. N.A. Kazi for the Respondents

....

CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : JUNE 18, 2019.

P.C.:

1. This appeal is filed by the assessee to challenge the judgment of the Income Tax Appellate Tribunal, Mumbai ("the Tribunal" for short) dated 31.5.2016.

2. Following question is presented for our consideration:-

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in not deciding the appellant's claim of certain receipts being capital receipts despite reproducing appellant's entire submission in the Tribunal order?"

3. We have heard learned counsel for the parties for final disposal of the appeal. The appeal arises out of the assessee's return of income for the assessment year 2010-11. In the return, the assessee had shown receipt of sum of Rs. 2 Crores received pursuant to the settlement and for withdrawing the suit filed by the assessee against the original defendant in respect of an immovable property. It was claimed that said receipt is capital receipt and therefore not exigible to tax. The assessee being a Trust had taken an alternative contention that in any case, since the said Trust has accumulated such income, the same would be exempted from tax in terms of Section 11(2) of the Income Tax Act, 1961 ("the Act" for short). The Assessing Officer having taxed the income, the assessee carried the matter in appeal. The Commissioner decided both the issues against the assessee upon which the assessee approached the Tribunal. The Tribunal, by the impugned judgment, held the alternative contention of the assessee in favour of the assessee and resultantly was of the opinion that it was not necessary to decide the question of very taxability of the income. Relevant portion of the Tribunal's judgment reads as under:-

> "... In our considered view, the assessee - trust is entitled for the benefit of accumulation of funds u/s 11(2) of the Act to the tune of

Rs.1,89,10,525/- as claimed by the assessee - trust as per our detailed reasoning and discussions as set out above. Since, we have decided the issue of allowability of the claim of deduction of the assessee - trust of benefit of accumulation of funds u/s 11(2) of the Act in favour of the assessee - trust in the instant appeal as set out above, we are refraining from deciding the issue of claim of the assessee - trust that the said amount of Rs.2 crores was received in lieu of foregoing right to sue and is capital receipt not exigible to tax and the said ground of appeal / question is kept open. In view of our above discussions and reasoning as set out above, we set aside the appellate orders dated 07-01-2015 of the learned CIT(A) and consequentially the assessment orders dated 25-03-2013 passed by the AO u/s. 143(3) of the Act and allow the grounds of appeal raised by the assessee - trust as indicated above by holding that the assessee trust is entitled for benefit u/s 11(2) of the Act of the accumulation of funds to the tune of Rs.1,89,10,525/- as claimed by the assessee - trust in the return of income filed with Revenue and also in form no 10 filed before the AO. We order accordingly."

4. From the reproduced portion of the Tribunal's judgment, it can be gathered that in view of the fact that the Tribunal had decided the question of accumulation of the Trust's fund in favour of the assessee, the Tribunal refrained from deciding the assessee's contention that the receipt was not taxable at all.

5. Learned counsel for the assessee pointed out that if the assessee is unable to utilize the fund for a period of five years, the benefit of exemption would stand withdrawn. He stated that subsequent events would lead to this possibility. It is, therefore, important for the assessee to press for the main ground of the receipt not being taxable at all.

6. In view of the fact that the Tribunal has rested its judgment only on the assessee's alternative contention and as pointed out by the learned counsel for the assessee that it may happen that this ground may fail on account of future developments, it is necessary that the assessee must get an answer to its primary contention of the receipt not being taxable at all.

7. Under these circumstances, we request the Tribunal to decide this issue on merits. For this limited purpose, we place the proceedings back before the Tribunal for deciding this question in accordance with law.

8. We have not expressed any opinion. All contentions of both the parties on ground ground are kept open. The appeal is disposed of.

[S.J. KATHAWALLA, J.] **[AKIL KURESHI, J]**