

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

INCOME TAX APPEAL NO. 766 OF 2017

Commissioner of Income Tax (Exemption) .. Appellant

v/s.

Manekji Mota Charitable Trust .. Respondent

Mr. Ashok Kotangle I/b Padma Divakar for the appellant
None for the respondent

**CORAM : M.S. SANKLECHA &
NITIN JAMDAR, J.J.**

DATED : 16th AUGUST, 2019

P.C.

1. This appeal under Section 260A of the Income Tax Act, 1961 (the Act) challenges the order dated 22nd August, 2016 passed by the Income Tax Appellate Tribunal (Tribunal). The impugned order dated 22nd August, 2016 reversed the order dated 21st February, 2013 of the Director of Income Tax (Exemption) and granted Registration under Section 12A of the Act.

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

(i) Whether on the facts and in circumstances of the case and in law, the Tribunal was right in overlooking the fact that in the absence of “Dissolution Clause” in the Trust Deed, the net assets of the Trust on its dissolution would be transferred to any entity / distributed among the trustees thus defeating the very purpose of registration u/s 12AA of the I.T. Act, 1961?

(ii) Whether on the facts and in circumstances of the case, the Tribunal was right in law by overlooking the facts that the assessee had incurred 29% out of its gross receipt towards religious activities which substantially higher than allowable i.e. 5% as per I.T. Act for religious purpose”

3. Regarding question no.(i) :-

(a) Mr. Kotangle, learned Counsel appearing in support of the appeal states that the impugned order allowed the respondent's appeal by placing reliance upon the decision of its co-ordinate bench in the case of Geeta Lalwani Foundation Vs. Commissioner of Income Tax (Exemption). Mr. Kotangle, fairly states that the Revenue being aggrieved by the above order of the Tribunal had preferred an appeal to this Court being Income Tax Appeal No.91 of 2016 (Commissioner of Income Tax (Exemption) Vs. Geeta Lalwani

Foundation). This Court by order dated 3rd July, 2018 dismissed the above Appeal on the identical question as framed herein.

(b) Thus, for the reasons indicated in the order dated 3rd July, 2018 in Geeta Lalwani Foundation (supra), question no.(i) as proposed herein does not give rise to any substantial question of law. Thus, not entertained.

4. Regarding question no.(ii) :-

(a) The Director of Income Tax (Exemption) rejected the petitioner's application for registration under Section 12A of the Act on the ground that 29% of its gross receipts were expended on making donations for religious purposes. This activity of making donations for religious purposes was not in accordance with the objects of the Trust. This led the Director of Income Tax (Exemption) to doubt the genuineness of the Trust and, therefore, rejected the application for registration by order dated 21st February, 2013.

(b) Being aggrieved with the order dated 21st February, 2013 of the Director of Income Tax (Exemption), the respondent preferred an appeal to the Tribunal.

(c) In appeal, the Tribunal in the impugned order noted the fact that at the time of registration of the Trust, the question of application of income of the Trust is premature. These are issues which are appropriately dealt with during the assessment proceedings while considering the application of Section 11 of the Act. Thus, allowed the appeal.

(d) We note that undisputedly 71% of the receipts of the Trust are being spent in accordance with its objects. Therefore, this itself would establish that the Trust is in existence. A partial expenditure which is not authorized by the Trust would not by itself lead to the Trust becoming non-genuine. The consequence would be that the benefit of Section 11 of the Act will not be available to that extent. At the stage of registration, this issue is premature.

(e) Accordingly, the questions no.(ii) as proposed does not give rise to any substantial question of law. Thus, not entertained.

5. Accordingly, the appeal is dismissed.

(NITIN JAMDAR, J.)

(M.S. SANKLECHA, J.)