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

INCOME TAX APPEAL NO.973 OF 2016

CIT (Exemptions) … Appellant

V/s.

Madarsa-E-Mohammeda Mandsaur … Respondent

Mr.Ashok Kotangle with Ms.Padma Divakar for the Appellant.

CORAM : AKIL KURESHI AND
B.P.COLABAWALLA, JJ.
DATE : JANUARY 08, 2019.

P.C.:-

1. Revenue has filed this appeal against the judgment of Income Tax Appellate Tribunal ("Tribunal" for short) dated 4th August, 2015.

2. Following question is presented for our consideration:

> "Whether on the facts and in circumstances of the case, the ITAT was right in law 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?"

3. Learned counsel for the revenue candidly brought to our notice an order dated 31st July, 2017 passed by the division bench of this Court in Income Tax Appeal No.247 of 2014 in which similar question came up for consideration. The Court rejected the revenue's appeal making following observations:-

> "1 The order passed by the Tribunal directing registration of the respondent trust under Section 12A of the Act is assailed.
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> 2 Mr.Kotangle, the learned counsel submits that the registration of trust was not granted by the authority CIT (Exemptions) to the respondent on the ground that the Trust Deed did not provide for a clause regarding dissolution of the trust. In absence of the clause for dissolution of the Trust, the Trust could not have been registered. The said order has been rightly passed by the authority. No valid reason has been given for not incorporating the dissolution clause in the Trust Deed. In case the objects and activities of the Trust cannot be carried out, it has to be dissolved. Its corpus and properties remaining on the date of the dissolution have to be transferred to another Trust having similar objects. As no such clause is found in the Trust Deed, the Director of Income Tax (Exemption) has rightly rejected the application for dissolution of the Trust.
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> 3 Mr.Sanjiv Shah, the learned counsel for the respondent, supports the order.
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> 4 The registration of the Trust has to be done on compliance of the provisions of Section 12AA of the Act. The authority is required to consider the

genuineness of the activities of the Trust and the section does not lay down that unless and until the clause of dissolution of the Trust is incorporated in the Trust Deed, the Trust cannot be registered.

5 The statute takes care of the apprehension as is shown by the Director of Income Tax (Exemptions). The authority has observed that in case the objects / activities of the Trust cannot be carried out and it has to be dissolved, the corpus and properties remain on the date of the dissolution transferred. The absence of the clause of dissolution in the Trust Deed would be in no manner an impediment in the operation of the statute. Section 55 of the Maharashtra Public Trust Act takes care of such contingency. The Tribunal in its order has considered the scope of Section 12A of the Act and has rightly passed the order.

6 No substantial question of law arises. The appeal, as such, is dismissed. No costs."

4. In the result, no question of law arises. Tax Appeal is dismissed.

(B.P.COLABAWALLA,J.) **(AKIL KURESHI,J.)**

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