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

INCOME TAX APPEAL NO. 1680 OF 2016

CIT (Exemptions) Mumbai ...Appellant
vs
M/s Matoshri Arts & Sports Trust ...Respondent.

WITH
INCOME TAX APPEAL NO. 1683 OF 2016

CIT (Exemptions) Mumbai ...Appellant
vs
M/s Matoshri Arts & Sports Trust ...Respondent.

WITH
INCOME TAX APPEAL NO. 1686 OF 2016

CIT (Exemptions) Mumbai ...Appellant
vs
M/s Matoshri Arts & Sports Trust ...Respondent.

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Mr Ashok Kotangale a/w Mr Prabhakar Ranshur I/b Padma Divakar for the Appellant.
Mr Tanmay Phadke for the Respondent.

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CORAM : AKIL KURESHI &
B.P.COLABAWALLA, JJ.
FEBRUARY 11, 2019.

P.C. :

These appeals are filed by the Revenue to challenge the Judgment of the Income Tax Appellate Tribunal raising the following question of law for our consideration-

"(1) Whether, on the facts and in the circumstances of the case and I law the Honourable Tribunal erred in allowing the exemption u/s 11 of the I.T.Act, 1961 ignoring the fact that the assessee has violated the objects of the trust and in spite of the fact that the assessee has taken deposits and charging rent for running Bar, Restaurant & Catering Services from different parties and paid license fee for liquor, though these activities are not incidental to the attainment of the objectives of the trust. Moreover no separate books of accounts are maintained by the assessee for carrying out other leasing activities as per provision of section 11(4A) of the Income Tax Act, 1961 ?"

2 The Respondent - assessee is a trust duly registered under Section 12A of the Income Tax Act, 1961 ("IT Act" for short) carrying on various objects of the trust which are in the nature of charitable purpose. Facts may be noted from Income Tax Appeal No. 1680 of 2016 which arises out of Assessment Year ("A.Y." for short) 2009-10. The Assessing Officer ("A.O." for short) passed an order of assessment denying to the assessee exemption in terms of Section 11 of the Act primarily on the ground that the assessee, in his opinion, had engaged itself in running catering, restaurant and bar services. The CIT(A) granted relief to the assessee referring to the order in previous A.Y. in which the following observations made -

> "Looking to these facts, I do not find any merits on the part of the A.O. in treating the appellant as AOP instead of trust. Merely saying that the property on which the business is carried on is in dispute with the BMC authorities cannot be a base for non-granting of exemption to the appellant. As far as the maintenance of separate books is concerned, I agree with the appellant that sports together, is a single identity and different activity of sports cannot be treated as different activities of the trust in view of decision of Supreme Court in the case of Thanthi Trust reported in 247 ITR 785. In addition to this, I find that the appellant trust has given the premise for rent/royalty to other business entity to provide the different facilities to the trust. Further to that, I also find that the appellant trust is no where running restaurant, bar etc. Hence maintaining of separate books of accounts of such entity is nowhere required to be maintained by the appellant trust. The activities of the appellant trust are for the attainment of the object of the trust as per trust deed agreement. In view of the same, I am of the considered view that the appellant is having a valid registration u/s 12A granted by DIT(E),

> Mumbai. It is also seen that the A.O. has not pointed out any violation of the trust deed as well as provisions of section 11, 12 and 13 of the IT Act in the assessment order. Hence in my considered view the A.O. was not justified in denying the exemption u/s 11 of the IT Act. Accordingly I direct the A.O. to allow the claim of exemption u/s 11 of the IT Act to the appellant trust. Thus these grounds of appeal are allowed."

3 The revenue carried the matter in appeal before the Tribunal. The Tribunal by the impugned judgment dismissed the Revenue's appeal relying on its earlier Judgment for the earlier A.Y. We were informed that the low tax for the A.Y. 2007-08, the Revenue had not carried out such Judgment before this Court. We, therefore, rely on a copy of the Judgment provided to us by the counsel for the Revenue which contains more detail discussion of the relevant issues at hand.

4 Having heard learned counsel for parties and having perused the documents on record, we do not find any reason to interfere in the decision of the Tribunal . As noted, CIT(A) proceeded on the basis of the finding that the Assessee trust was granted registration under Section 12A of the Act, and therefore, had claimed exemption under Section 11 of the Act. It is observed that different sports activities of the assessee were in the nature of single activity. Further the assessee had given the premises on rent to other entities to provide different facilities to the trust. The trust was nowhere engaged in running the restaurant, bar etc, and therefore, the

question of maintaining separate books of accounts for such activities did not arise. These observations were confirmed by the Tribunal. No questions of law, therefore, arises. The Income Tax Appeals are dismissed accordingly. No order as to costs.

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