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ITAT/371/2017
IA No.GA/2/2017 (Old No.GA/3666/2017)

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX
EXEMPTION, KOLKATA

-Versus-

FUTURE EDUCATION & RESEARCH
TRUST "NIMPHOOL"

Appearance:
Mr. Soumen Bhattacharya, Adv.
...for the appellant.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE SUPRATIM BHATTACHARYA

Date : 7th September, 2022.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, is directed against the order dated 8th February, 2017 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No.1031/Kol/2013 and CO No.69/Kol/2013 for the assessment year 2009-10.

The revenue has raised the following substantial question of law for consideration:

- (i) *Whether on the facts and in the circumstances of the case the learned Tribunal was justified in law to hold that the quantum of income not qualifying for exemption under Section 11 of the said Act should be restricted partly to the tune of Rs.11.93 lakhs and not wholly for the purpose of taxation?*

We have heard Mr. Soumen Bhattacharya, learned standing counsel for the appellant/revenue. None appears for the respondent/assessee.

On going through the order passed by the Commissioner of Income Tax (Appeals)[CIT(A)] which order was affirmed by the learned tribunal, we find that the entire matter is factual. In fact, the CIT(A) and the learned tribunal had granted partial relief to the respondent/assessee by examining the factual position. The endeavour of the learned standing counsel for the appellant/revenue is to convince this Court that the learned tribunal erred in restricting the rejection of the claim for exemption only to the tune of Rs.11.93 lakhs and not for the entire sum. In support of his contention the learned standing counsel for the appellant/revenue has

referred to the decision of the Hon'ble Supreme Court in the case of Director of Income Tax Vs. Bharat Diamond Bourse, reported in (2003) 179 CTR SC 225 and has drawn our attention to paragraph 36 of the said judgment. On going through the said decision, we find that it was rendered considering the factual position in the said case and the said decision will not render any assistance to the case of the revenue before us. On the factual aspect the learned tribunal has rendered the following finding :

"On examination of the order of Authorities Below and other relevant records, we find that flat was purchased at Alipore in the financial year 2009-10 on 23.09.2009 which was registered in the name of trustee and his wife. The total cost of flat purchased was for Rs.2,25,60,000/- as evident from the indenture of conveyance which is placed on page 7 of the paper book. Further, the same was sold in the financial year 2010-11 dated 08.02.2011 for Rs.2.50 crores as evident from the indenture of conveyance which is placed on record. Thus the benefit of Rs.24.40 lacs was derived by the trustee and his wife on the sale-purchase of Alipore property. Admittedly, assessee made investment of Rs.1.10 crores in the purchase of the said property located at Alipore. Therefore, in our considered view, the assessee is entitled for the share of profit to the extent of its investment i.e. $\text{Rs.24.40 lacs} \times 1.10 \text{ crores} \div \text{Rs.2.25 crores} = 11.93 \text{ lacs}$. So this amount of profit has to be taxed under the IT Act as the provision of Sec. 13(1)(c) of the Act as the provisions has been contravened to this extent on the basis of available facts and

circumstances. We also find that there is no dispute with regard to amount of Rs.1.10 crores which was financed by the trust has come back to the trust. Therefore, the amount of profit to the extent of Rs.11.93 lacs has to be subject to tax in the relevant year in which the profit was derived. As such, the assessee will not be eligible for claiming exemption u/s 11 of the Act for the amount of profit of Rs.11.93 lacs but the entire exemption claimed by the assessee cannot be denied."

The learned tribunal had also taken note of the decision in the case of *CIT Vs. Fr. Mullers Charitable Institutions*, reported in 363 ITR 230 (Kar.) and the decision in the case of *DIT(E) Vs. Sheth Mafatlal Gagalbhai Foundation Trust*, reported in (2001) 249 ITR 533 (Bom) and held that in the event of violation of the provisions of Section 13(1)(c) of the Act, the amount of benefit applied to the specified persons will not be eligible for exemption under Section 11 and, therefore, the benefit under Section 11 of the Act to the extent of Rs 11.93 lakhs was held to be not available to the assessee in the assessment year 2011-12. Thus, the finding having been rendered taking note of the peculiar facts and situation, we find that there is no substantial question of law arising for consideration in this appeal. Accordingly, the appeal (ITAT/371/2017) fails and is dismissed.

Consequently, the connected application for stay
(IA No.GA/2/2017) stands closed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

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