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T.C.A.Nos. 337 & 338 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2025

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

and

THE HONOURABLE MR.JUSTICE P. DHANABAL

T.C.A.Nos. 337 & 338 of 2012

and

M.P.No.1 of 2012

M/s. KAS Foundation
80, Salai Road,
Woraiyur, Trichy – 620 003.

.. Appellant
in both appeals

VS

Director of Income-Tax,
Trichy.

.. Respondent
in both appeals

Prayer : Appeals filed under Section 260A of the Income-Tax Act, 1961
against the order of the Income-Tax Appellate Tribunal 'B' Bench,
Chennai dated 19.05.2012 passed in I.T.A.No. 1892/Mds/2010 and
C.O.No. 83/Mds/2011.



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For Appellant : Mr.T.Vasudevan
(in both appeals)

For Respondent : Mr.J.Narayanaswamy
Senior Standing Counsel
(in both appeals)

COMMON JUDGMENT

(Delivered by Dr. ANITA SUMANTH..J)

These appeals are for Assessment Year 2007 – 08. The appellant is the assessee, a Section 25 Company, registered with the Registrar of Companies.

2. For assessment year, 2007 – 08, a return of income had been filed and an order of assessment passed on 24.12.2009, wherein, the assessing authority, denies the benefit of exemption claimed under Section 11 of the Income-Tax Act, 1961 (in short, ‘the Act’) on the ground that there is a violation under Section 13(1)(d) thereof.

3. In appeal, the Commissioner of Income-Tax (Appeals), intervenes to the effect of holding that where the trust contravenes the



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provisions of Sections 13(1)(c) or 13(1)(d), maximum marginal rate

would be applicable only in respect of that part of the income which is a violation and the entirety of the income, would not lose the benefit of exemption under Section 11.

4. The Commissioner of Income-Tax (Appeals) refers to Circular No. 387 dated 06.07.1984 issued by the Central Board of Direct Taxes applied by the Bombay High Court in the case of *DIT (E) v Seth Mafatlal Gagalbhai Foundation*¹. The Tribunal, at the instance of Revenue, reverses the order of the Commissioner of Income-Tax (Appeals), and rejects the cross objection filed by the appellant, aggrieved by which, the present appeals has been filed by the assessee/appellant.

5. The following substantial questions of law have been admitted for consideration on 17.10.2012:-

“1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was correct in law in holding that the entire income of the trust is to be taxed at maximum marginal rate, even though undisputedly, violation of Section 11(5) was limited only to the amount borrowed from the Bank?

¹249 ITR 533 (Bom)



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2. *Whether on the facts and in the circumstances of the case, the finding and conclusion of the Tribunal is perverse, especially in the context of all other investments and application of income by the trust being in conformity with the objects of the trust and the provisions of the Act?*

3. *Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in reversing the order of the CIT (A) and denying exemption under Section 11 on the entire income without adverting to the contentions placed before it?*

4. *Whether the Tribunal was right in law in holding that the entire income of the trust is liable to be taxed in spite of the provisions of Section 11(2)(b) and proviso to Section 164(2), as also the Board Circular No. 387 dated 6.7.84, which mandates only the non-conforming portion of income as liable for taxation at the maximum marginal rate of tax?*

5. *Whether the Tribunal was correct in law in merely holding that there was violation of Section 13(2)(h) and deny exemption under Section 11, without any material and also assigning any reason for the same?*

6. *Whether the Appellate Tribunal was justified in rejecting the claim to tax only the alleged violative portion of investment, even though the High Court decisions in 249 ITR 253 – Director of I.T v SMG Foundation Trust and 311 ITR 425 – CIT v Narinder Mohan Foundation and also the Board Circular No. 387 dated 6.7.84 squarely apply on all fours to the facts of assessee's case?"*



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6. Both Mr.Vasudevan, for the appellant/assessee and Mr.Narayanaswamy, appearing for the Department, are consensus *ad idem* on the position that the issue raised in these appeals stand covered by a decision of this Court in *Commissioner of Income-Tax v Working Women's Forum*². The question in that case as well, related to whether the denial of exemption under Section 11 should be only to the extent of income which is violation of Section 13(1)(d) of the Act.

7. In the case of *Working Women's Forum*³, this Court has also noted the decision of the Bombay High Court in *Seth Mafatlal Gagalbhai Foundation*⁴ and, extracting the following paragraph and its agreement with the statement of the Bombay High Court therein, has rejected the revenue's appeal. We may usefully extract the same paragraph below:-

"Under section 161(1A), which begins with a non obstante clause, it is provided that where any income in respect of which a person is liable as a representative assessee consists of profits of business, then tax shall be charged on the whole of the income in respect of which

²365 ITR 353 (Madras)

³Foot note supra 2

⁴Foot note supra 1



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such person is so liable at the maximum marginal rate. Therefore, reading the above two phrases show that the Legislature has clearly indicated its mind in the proviso to section 164(2) when it categorically refers to forfeiture of exemption for breach of section 13(1)(d), resulting in levy of maximum marginal rate of tax only to that part of the income which has forfeited exemption. It does not refer to the entire income being subjected to maximum marginal rate of tax. This interpretation of ours is also supported by Circular No. 387, dated July 6, 1984 (see [1985] 152 ITR (St.) 1). Vide the said circular, it has been laid down in para. 28.6 that, where a trust contravenes section 13(1)(d) of the Act, the maximum marginal rate of income-tax will apply only to that part of the income which has forfeited exemption under the said provision and not to the entire income. We may also add that in law, there is a vital difference between eligibility for exemption and withdrawal of exemption/forfeiture of exemption for contravention of the provisions of law. These two concepts are different. They have different consequences. It is interesting to note that although the Legislature withdrew section 164(2) by the Direct Tax Laws (Amendment) Act, 1987, which provision was reintroduced by the Direct Tax Laws (Amendment) Act, 1989, the Legislature did not touch the proviso to section 164(2) which has been on the statute book right from April 1, 1985. The said proviso was inserted by the Finance Act, 1984. The proviso specifically refers to violation of section 13(1)(d) and its consequences."

8. In light of the decision in *Working Women's Forum*⁵, with which

⁵Foot note supra 2



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we respectfully concur, the questions of law are answered in favour of the

assessee / appellant and adverse to the revenue.

9. These Tax Case (Appeals) are allowed in terms of this order. No costs. Connected miscellaneous petition is closed.

[A.S.M, J.] [P.D.B, J.]

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Index: Yes

Neutral Citation: Yes

ssm

To

The Director of Income-Tax,
Trichy.



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