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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 20.03.2025*+ **ITA 470/2023****COMMISSIONER OF INCOME TAX
(EXEMPTIONS)**

.....Appellant

Through: Mr. Abhishek Maratha, SSC
with Mr. Apoorv Agarwal, Mr.
Parth Semwal, JSCs and with
Ms. Nupur Sharma, Mr. Gaurav
Singh, Mr. Bhanukaran Singh
Jodha, Ms. Muskan Goel, Mr.
Himanshu Gaur, Mr.
Kamakshraj Singh and Mr.
Yamit Jetley, Advocates

versus

INDIAN BROADCASTING FOUNDATIONRespondent

Through: Mr. Ajay Vohra, Sr. Advocate
with Ms. Ishita Farsaiya, Mr.
Sparsh Bhargava, Mr. Apoorv
Shukla, Mr. Jaidev Prasada and
Ms. Vanshika Taneja,
Advocates

CORAM**HON'BLE MR.JUSTICE VIBHU BAKHRU****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J.**

1. The Revenue has preferred this appeal under Section 260A of the Income Tax Act, 1961 [hereafter '*the Act*'] impugning an order



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dated 08.09.2022 [hereafter '*the impugned order*'] passed by the learned Income Tax Appellate Tribunal [hereafter '*the ITAT*'] in ITA No. 5589/Del/2018, in respect of the assessment year (AY) 2015-16.

FACTUAL BACKGROUND

2. As revealed from the records, the Indian Broadcasting Foundation [hereafter '*the Assessee*'] was incorporated on 27.09.1999 as a not-for-profit company under Section 25 of the Companies Act, 1956 [hereafter '*the Companies Act*']. The Assessee was also registered under Section 12A of the Act *vide* order dated 10.01.2001. The Assessee is an association of broadcasters formed to protect the interests of various stakeholders and related entities in the field of television broadcasting, including the television viewing audience. Its objectives include spreading awareness about the latest developments in the television industry, disseminating knowledge among its members, and supporting, protecting, and defining the rights of its members.

3. The Assessee filed its return of income declaring *Nil* income on 30.09.2015 for the AY 2015-16, claiming exemption under Sections 11 and 12 of the Act. The case was subsequently selected for scrutiny assessment under the Computer-Assisted Scrutiny Selection (CASS). A notice under Section 143(2) of the Act, dated 26.07.2016, was issued and served upon the Assessee. Thereafter, a notice under Section 142(1) of the Act was issued, along with a questionnaire, requiring the Assessee to furnish information and documents in support of its claims. In response, Sh. Rajat Jain and Sh. Vipin Dixit,



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Chartered Accountants and Authorized Representatives (ARs) of the Assessee, appeared before the Assessing Officer (AO) from time to time and submitted the requisite information/ documents.

4. During the assessment proceedings, upon perusal of the records and past year additions, the AO noticed certain investments made by the Assessee. From Note No. 9 of the balance sheet for the AY under consideration, it was observed that the Assessee had made an investment of ₹15,00,000/- in Equity Shares, numbering 1,50,000 of ₹10/- each, in an entity named Broadcast Audience Research Council [hereafter '**BARC**']. The AO noted that BARC is a 100% subsidiary of the Assessee. Further, as per Note No. 13 of the balance sheet, it was observed that the Assessee had made an investment of ₹2,85,00,000/- in Share Application Money.

5. The AO took a view that these investments were not in accordance with the forms or modes prescribed under Section 11(5) of the Act. Accordingly, the Assessee was issued a show cause notice, asking it to explain why the investments made in contravention of Section 11(5) of the Act should not be considered a violation within the meaning of Section 13(1)(d) of the Act. The Assessee was further asked to justify why, in view of the violation of Section 13(1)(d), the benefits of Sections 11 and 12 of the Act should not be withdrawn and why the entire surplus of ₹5,93,77,490/- should not be treated as the Assessee's taxable income for the relevant AY.

6. At this juncture, it is relevant to note that the Assessee had deployed ₹99,990/- towards the equity share capital of BARC (9,999



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shares @ ₹10 each) in FY 2010-11. A further amount of ₹14,00,010/- was deployed for the same purpose in FY 2010-11, and equity shares were issued by BARC to the Assessee in respect of the said amount in FY 2011-12. As on 31.03.2012, the Assessee held total shares of ₹15,00,000/- (1,50,000 equity shares @ ₹10 each) in BARC. Thereafter, share application money of ₹45,00,000/- and ₹2,40,00,000/- were deployed by the Assessee with BARC in the FY 2012-13 and FY 2013-14 respectively for issuance of shares. These amounts are reflected as 'share application money' in the Assessee's books of accounts. These amounts of ₹45,00,000/- and ₹2,40,00,000/- were later refunded to the Assessee in the FY 2015-16.

7. The Assessee contended before the AO that the deployment of funds towards BARC's equity capital was directly aligned with its objectives and was made in compliance with the directions of the Ministry of Information and Broadcasting [hereafter '**MIB**'] and the recommendations of the Telecom Regulatory Authority of India [hereafter '**TRAI**']. It was submitted that the funds were deployed solely to fulfill its objectives and not for earning any income, interest, or profit, and thus should be treated as application of income rather than an investment. The Assessee relied on certain judgments to assert that the deployment of funds towards BARC's equity did not constitute an investment violating Section 13(1)(d) of the Act, as no income was earned from the funds deployed. In the alternative, citing CBDT Circular No. 387 dated 06.07.1984 and various case laws, the Assessee submitted that even if the deployment was deemed a violation under Section 13(1)(d) of the Act, the exemption withdrawal



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should be restricted to any income earned from such deployment, which in this case was *Nil*, and not on the entire income of the Assessee.

8. The AO after considering the submissions and documents, concluded that the Assessee had violated Section 13(1)(d) of the Act by making an investment of ₹15,00,000/- in equity shares (1,50,000 shares of ₹10/- each) and ₹2,85,00,000/- in Share Application Money in BARC, which was not in compliance with Section 11(5) of the Act. As a result, the AO denied the benefit of exemption under Sections 11 and 12 of the Act and assessed the income under the normal provisions as per Chapter IV of the Act. The income of the Assessee was assessed at ₹6,22,39,580/-, which was held as taxable at Maximum Marginal Rate in accordance with provisions of Section 164(2) of the Act.

9. The Assessee, being aggrieved by the order of AO, preferred an appeal before the learned Commissioner of Income Tax (Appeals)-40, Delhi [hereafter '*CIT(A)*']. The learned CIT(A), while adjudicating Ground No. 2 of the appeal, addressed the Assessee's challenge to the AO's decision to withdraw the exemptions under Section 11 and 12 of the Act and making additions of ₹5,93,77,490/- pursuant to same, by holding that the transactions involving the purchase of shares and the deployment of funds were violative of provisions of Section 11(5) of the Act. The learned CIT(A), after considering the assessment order and the submissions made by the Assessee, including reliance placed on the judgment of this Court in the Assessee's own case, i.e. *Indian*



Broadcasting Foundation v. Chief Commissioner of Income Tax (E) & Ors.: W.P.(C) 2489/2017, which was rendered on the issue of stay of demand, noted that this Court had categorically observed that the amount deposited with BARC was not by way of investment or choice, but on account of a Central Government policy, made through the directives of the appropriate ministry. Relying on these observations, the learned CIT(A) concluded that the Assessee had not committed any violation under Section 13(1)(d) of the Act by deploying the aforesaid funds in BARC, as such deployment was pursuant to government policy and not a voluntary investment. Accordingly, the CIT(A) directed the AO to allow the benefit of exemption under Sections 11 and 12 of the Act, since the only reason for denial of exemption was the alleged violation under Section 13(1)(d) of the Act.

10. The Revenue assailed the order of learned CIT(A) by way of an appeal (ITA No. 5589/Del/2018) before the learned ITAT. The Revenue contended that the learned CIT(A) had erred in relying on the observations made by this Court in ***Indian Broadcasting Foundation v. Chief Commissioner of Income Tax (E) & Ors.*** (*supra*), as this Court had not rendered a final decision on the merits but had merely directed the CIT(A) to adjudicate the matter on merits. The Revenue also contended that the transactions involving the purchase of shares worth ₹15 lakhs and the deployment of ₹45 lakhs as share application money in BARC constituted an investment, and therefore, the findings of the AO were justifiable. On the other hand, the Assessee contended that the core issue was whether the deployment of funds in BARC,



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made pursuant to Central Government policy, TRAI recommendations, and MIB directives, amounted to an investment violating Section 11(5) read with Section 13(1)(d) of the Act. The Assessee asserted that the funds deployed in BARC should be treated as an application of income, not an investment, and therefore, Section 13(1)(d) of the Act was inapplicable.

11. The learned ITAT, by way of the impugned order, dismissed the appeal preferred by the Revenue. The ITAT upheld the findings of the CIT(A) and concluded that the Assessee had not committed any violation under Section 11(5) read with Section 13(1)(d) of the Act. The ITAT relied upon the decision of its Coordinate Bench in Assessee's case pertaining to AY 2014-15 (i.e. decision dated 14.09.2020 in ITA No. 4194/Del/2017), wherein it was observed that the Assessee's deployment of funds towards equity and share application money in BARC was made in compliance with the directives of the Central Government, TRAI, and MIB, and was intended to fulfill the Assessee's key objectives, and not to earn income or profit. It was noted in the said decision that both the Assessee and BARC are not-for-profit entities, and BARC's Memorandum of Association expressly prohibits distribution of dividends or surplus to shareholders, thereby reinforcing that the funds were deployed solely for charitable purposes. The ITAT had also relied on several judicial precedents to conclude that the deployment of funds in this case did not constitute an 'investment' violating Section 13(1)(d) of the Act. Consequently, the learned ITAT in the present case affirmed the order of the CIT(A), and held that the



Assessee was entitled to exemption under Sections 11 and 12 of the Act.

12. The Revenue has preferred the present appeal, challenging the impugned order passed by the learned ITAT.

QUESTIONS OF LAW

13. By way of order dated 24.10.2024, this Court had framed following Questions of Law for consideration:

“(1) Whether on facts and in circumstances of the case and in law, Hon'ble ITAT is right in holding that the transactions of purchasing shares and investment by way of Share Application Money were within the meaning of section 11(5)(vii) of the Income Tax Act, 1961?

(2) Whether on facts and in circumstances of the case in law, the Hon'ble ITAT is right in upholding the order of Ld. CIT(A) wherein exemption u/s 11 & 12 was allowed?”

RIVAL CONTENTIONS

14. The learned counsel for the Revenue contended that the impugned order passed by the learned ITAT is perverse both on facts and on law. It was argued that the learned ITAT erred in ignoring the fact that in the Assessee's own case, this Court had not adjudicated the matter on merits but had only directed the CIT(A) to decide the case. Despite this, the learned ITAT incorrectly treated the observations made in the writ petition as conclusive. The learned counsel further submitted that the learned ITAT has erred in holding that the transactions of purchasing shares and deploying funds by way of share application money fall within the permissible modes of investment



under Section 11(5)(vii) of the Act. It was argued that such transactions constitute ‘investment’ and are in violation of Section 13(1)(d) of the Act, which restricts investments that do not conform to the prescribed modes.

15. It was contended on behalf of the Revenue that the learned ITAT has erred in confirming the order of the CIT(A), which allowed the Assessee’s exemption under Sections 11 and 12 of the Act. The Revenue asserted that the words ‘investment’ and ‘deposit’ in Section 13(1)(d) of the Act are broad and include investments in shares and deposits made for charitable purposes, irrespective of whether such investments are intended to generate profit or income. The learned counsel emphasizes that investment in shares or share application money, even if made for charitable objectives, falls within the scope of Section 13(1)(d) of the Act unless it conforms strictly to the forms and modes prescribed under Section 11(5) of the Act. Therefore, it is urged that the impugned order be set aside, and the Revenue’s appeal be allowed.

16. *Conversely*, the learned senior counsel for the Assessee contends that the Assessee, a not-for-profit association of television broadcasters, was formed to protect industry interests and provide reliable viewership data. The deployment of funds in BARC was made pursuant to the directions of the MIB, following TRAI’s Recommendations of 2008, which mandated the creation of an industry-led, self-regulatory body for generating transparent TRP ratings. The Assessee was required to retain a 60% shareholding in



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BARC as per government policy, and such participation was a regulatory obligation, not a voluntary investment.

17. It is argued that the term ‘investment’ under Section 11(5) read with Section 13(1)(d) of the Act implies a voluntary act intended to generate income or profit. However, in the present case, BARC’s Memorandum of Association prohibits the distribution of dividends or any income to members, making it incapable of generating any income or return for the Assessee. Therefore, the deployment of funds was an application of income to achieve the Assessee’s objectives, not an investment.

18. The learned senior counsel further submits that both the learned CIT(A) and the learned ITAT have recorded concurrent findings of fact that the deployment of funds was solely to meet the Assessee’s charitable objectives, and no income or profit was derived from such deployment. It is asserted that these findings, being factual and based on the material placed on record, should not be interfered with.

19. Additionally, it is contended that even if a violation under Section 13(1)(d) of the Act is presumed, the *proviso* to Section 164(2) of the Act provides that only the income earned from such restricted investments is taxable at the maximum marginal rate, not the entire income of the Assessee. Since no income was earned from BARC, no tax liability of the Assessee arises in this case. Therefore, it is prayed that the present appeal be dismissed.



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THE DECISION

20. At the outset, it shall be apposite to note that the present appeal was heard along with *ITA 469/2023*, captioned ***Commissioner of Income Tax (Exemptions) v. Indian Broadcasting Foundation***, filed by the Revenue against the same Assessee in respect of AY 2014-15, assailing a similar order passed by the learned ITAT. These appeals were admitted on the same questions of law by this Court.

21. By way of judgment dated 20.03.2025 delivered today in *ITA 469/2023*, we have answered the question of law in favour of the Assessee and against the Revenue, and held that the application of funds by the Assessee in BARC does not qualify as ‘investment’ under Section 11(5) read with Section 13(1)(d) of the Act, inasmuch as the said deployment was not intended to yield income, profit, or return, but was made pursuant to a statutory and regulatory obligation to further the Assessee’s charitable objectives.

22. In view thereof, we are of the opinion that the order of the learned ITAT does not suffer from any infirmity or error and, is, therefore upheld.

23. Accordingly, in view of the detailed reasons and conclusion recorded in the judgment delivered in *ITA 469/2023*, the present appeal also stands dismissed.

DR. SWARANA KANTA SHARMA, J

VIBHU BAKHRU, J.

MARCH 20, 2025/ns