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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: August 25, 2014

+ ITA 188/2014

DIRECTOR OF INCOME TAX-(EXEMPTION)

..... Appellant

Through Mr.Kamal Sawhney, Senior
Standing Counsel

versus

THE AJAY G. PIRAMAL FOUNDATION

..... Respondent

Through Mr.Ajay Vohra, Advocate with
Ms.Kavita Jha, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J (ORAL)

1. This appeal by the Revenue, under Section 260A of the Income Tax Act, 1991 ('Act'), impugns the order dated 30.06.2013 passed by the Income Tax Appellate Tribunal ('Tribunal'), in the case of Ajay G. Piramal Foundation (assessee) and pertains to the assessment year 2006-07.

2. Ajay G.Piramal Foundation was founded on 30.07.2005 with the object to establish, develop, maintain and operate hospitals,



medical schools, medical colleges, nursing institutions, dispensaries, maternity homes and child welfare centres etc. It was granted registration under Section 12AA with effect from 30.07.2005 and approval under Section 80G was also accorded vide order dated 31.01.2006.

3. Return, declaring income 'Nil' income, for the assessment year 2006-07 was filed on 30.10.2006. On 10.01.2007, the respondent assessee filed a revised return declaring income of Rs.13,95,711/-. We shall be referring to the note appended by the assessee, as to why the revised return was filed, subsequently. During the course of the assessment proceedings the assessee claimed that the revised return, dated 10.1.2007, be ignored and the first return should be treated as the correct and true return. Revised computation was filed. The Assessing Officer did not agree and held that in terms of the decision of the Supreme Court in *Goetze (India) Limited vs. CIT [284] ITR 323*, the assessee could not have filed the revised computation and said claim could have been only made by way of a re-revised return. Further, the time period for filing of a revised or re-revised return under Section 139(5) had come to an end. Thus, the revised return dated 10.01.2007, could only be taken into consideration.



4. The Assessing Officer thereafter went into the question whether 16,50,000/- shares of Nicholas Piramal India Limited received by way of gift/donation, from The Piramal Enterprises Executives Trust on 03.08.2005 was, towards corpus of the respondent trust. He held that the market value of the shares received was taxable in terms of Section 2(24)(iii) of the Act and accordingly made an addition of Rs.42,41,32,500/-. On the question of income from capital gains, as the respondent assessee had sold 4 lac shares of Nicholas Piramal India Limited during the period 20.12.05 to 03.01.06 for consideration of Rs.11,41,95,430/-, the Assessing Officer held that there was a distinction between donation and gift and being a donation the short term capital gains was computed as Rs.1,13,75,430/-, instead of declared income of Rs.13,95,711/-, in the revised return dated 10.01.2007.

5. In the first appeal, the Commissioner of Income Tax (Appeals) came to the conclusion that the assessee could not have filed the revised computation and decision of *Goetze (India) Limited* case (supra) was applicable. Reliance placed on the decisions by the respondent assessee did not permit the assessee from getting over the revised return. However, he deleted addition of Rs.1,13,75,430/-. With regard to addition of Rs.42,41,32,500/-,



he upheld the order of the Assessing Officer.

6. Assessee preferred further appeal before the Tribunal. Revenue accepted the order passed by the Commissioner of Income Tax (Appeals).

7. The Tribunal by the impugned order has held that the revised computation filed by the assessee during the course of the assessment proceedings and their submission that they were withdrawing the revised return should have been accepted in view of decisions in *NTPC vs. CIT [1998] 229 ITR 383*, *Jute Corporation of India Ltd. vs. CIT [1991] 187 ITR 688 (SC)*, *CIT vs. Jai Parabolic Springs Ltd. [2008] 306 ITR 42 (Delhi)*, *CIT vs. Pruthvi Brokers & Shareholders [2012] 349 ITR 336 (Bom.)*, *Balmukund Acharya vs. DCIT [2009] 310 ITR 310 (Bom.)* and some decisions of the Tribunal. It was further held that in the present case the shares which were transferred or gifted to the respondent assessee were to form part and parcel of the corpus of the trust and therefore Section 11(1)(d) was applicable. Further proviso (iia) to Section 13(1)(d) would protect the assessee in respect of the assessment year in question. Thus, addition of Rs.42,41,32,500/- was deleted.

8. The first issue which arises and has been raised in the present



appeal is whether the revised return filed on 10.01.2007 was binding on the assessee, as the Trust was barred and could not have filed a revised return. The first return was filed on 30.10.06 declaring 'Nil' income. Then, the revised return was filed on 10.01.07. The reason given for revising the return, as mentioned was:-

“As the foundation is holding equity shares of a limited company it falls within the preview of section 13(1)(d) and has lost the exemption under section 11 to 13 accordingly, a revised return of income has been filed on 30.10.2006 vide acknowledgment 02082.”

9. The stand of the respondent assessee was that the aforesaid statement was made on wrong legal advice and there was no violation of Section 13(1)(d) in the assessment year in question. Subsequently, during the course of the assessment proceedings the assessee therefore stated that they withdraw their revised return, and would rely upon their original return. Revised computation of income was filed on the said basis.

10. We do not think that in the facts and circumstances of the present case, the decision of *Goetze (India) Limited* case (supra) would be applicable, as the assessee during the course of the assessment proceedings, before the Assessing Officer had stated that they had proceeded on wrong legal advice and would like to withdraw the revised return filed on 10.01.2007 and would rely



upon the original return dated 30.10.2006. The Assessing Officer in fact has gone into the merits and examined the assertions, made in the original return.

11. In the case of *NTPC* case (supra), the Supreme Court had clarified that the legal issue, which does not involve disputed facts, can be entertained even at the appellate stage. Similar view has been expressed in the case of *Jute Corporation of India* case (supra), in which Supreme Court observed that

“6.... The declaration of law is clear that the power of the Appellate Assistant Commissioner is co-terminus with that of the Income Tax Officer, if that be so, there appears to be no reason as to why the appellate authority cannot modify the assessment order on an additional ground even if not raised before the Income Tax Officer. No exception could be taken to this view as the Act does not place any restriction or limitation on the exercise of appellate power. Even otherwise an Appellate Authority while hearing appeal against the order of a subordinate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations if any prescribed by the statutory provisions. In the absence of any statutory provision the Appellate Authority is vested with all the plenary powers which the subordinate authority may have in the matter. There appears to be no good reason and none was placed before us to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order of assessment passed by the Income Tax Officer”



In Jai Parabolic (supra), a division bench of this court, after referring to judgment of Supreme Court in Jute Corporation (supra) and some other judgments observed that there is no prohibition on the powers of the Tribunal to entertain an additional ground which according to the Tribunal arises in the matter and for the just decision of the case.

In Pruthvi Brokers (supra), a division Bench of Bombay High Court, referred to the judgments of Supreme Court in Jute corporation (supra), NTPC (supra) and Goetze (India) Limited (supra) and observed as under : -

“23. It is clear to us that the Supreme Court did not hold anything contrary to what was held in the previous judgments to the effect that even if a claim is not made before the assessing officer, it can be made before the appellate authorities. The jurisdiction of the appellate authorities to entertain such a claim has not been negated by the Supreme Court in this judgment. In fact, the Supreme Court made it clear that the issue in the case was limited to the power of the assessing authority and that the judgment does not impinge on the power of the Tribunal under section 254.”

Thus there cannot be any doubt or debate, that the claim and submission could have been raised by the respondent assessee before the appellate authorities. In either way, the issue has been rightly decided in favour of the respondent-assessee.



12. The next issue which arises for consideration is whether or not there was violation of Section 13(1)(d) of the Act as the assessee was gifted or donated 16,50,000/- shares of Nicholas Piramal India Limited by way of gift, by The Piramal Enterprises Executives Trust on 03.08.05. The Assessing Officer has noted that The Piramal Enterprises Executive Trust had passed the following resolution in their meeting held on 03.08.05.

“Resolved that 16,50,000/- equity shares of Rs. 2/- each in Nicholas Piramal India Limited be and hereby transferred without any consideration to The Ajay G Piramal Foundation 58 Ring Lajpat Nagar III New Delhi 24 and that Mr Ajay G Piramal, and / or Dr Swati A Piramal and /or Mr N Santhanam are hereby severally authorized to do all such acts, deed mattes and things as are necessary to effectuate the above transfer.”

The aforesaid resolution states that 16,50,000/ shares of Rs. 2/- each of Nicholas Piramal India Limited should be transferred to the respondent assessee trust and the persons, mentioned therein, were severally authorized to do all such acts, deeds, matters and things as were necessary to effectuate the above transfer. By a contemporaneous letter dated 03.08.05, executed by the donor trust to the respondent assessee, it was informed:

“Date: August 3, 2005



*The Trustees,
The Ajay G.Piramal Foundation,
58, Ring Road,
Lajpat Nagar III,
New Delhi 110024.*

Dear Sirs,

Re: Gift of 1,650,000 shares of Nicholas Piramal India Limited

The Trustees of the Piramal Enterprises Executives Trust have decided in its meeting held on August 3,2005 to irrevocably gift 1,650,000 shares of Rs.2/- each of Nicholas Piramal India Limited to The Ajay G. Piramal Foundation, 58 Ring Road, Lajpat Nagar III, New Delhi 110024. It is directed that the said gift is towards the corpus of the Trust, to be utilized in accordance with your Trust Deed of charitable purposes.

Thanking you,

*For Piramal Enterprises Limited
(in its capacity as Trustees of the
Piramal Enterprises Executives
Trust)*

*Sd/-
Trustee”*

The aforesaid letter in categorical terms states that the gift would be towards corpus of the respondent assessee trust. The Tribunal after referring to the resolution and the letter, concluded and rightly observed that both have to be read together and there was a specific direction that 16,50,000 shares would form part of the corpus and



should not be treated as voluntary contribution. We do not see any reason to interfere with the said finding.

13. In these circumstances, Section 11(1)(d) of the Act would be applicable and the donation made, would become a part of the corpus and would not be income earned. Section 11(1)(d) reads:

“Section 11(1): Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

[(a)

(b)

(c)

[(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution.]”

14. Similarly in Section 12(1), it has been stated as under:-

“Section 12: Income of trusts or institutions from contributions.- (1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.”



15. It may be relevant to state here that in the original return filed on 30.10.06, the respondent assessee had mentioned and given the following note:-

“On August 3, 2005 the trust has received 1,650,000 shares of Nicholas Piramal Limited as a gift from the Piramal Enterprises Executive Trust towards the corpus of the trust which is exempt under section 11(1)(d) of the Act.

During the year under consideration the trust has sold 400,000 shares of Nicholas Piramal India Limited in terms of section 49(1)(ii) of the Act, the cost of acquisitions of the shares shall be the cost for which the donor of the shares has acquired it, which is Nil.

As specified in Explanation to section 2(42A) of the Act, in determining the period for which the shares were held by the trust, the period for which the shares were held by the trust the period of which the shares were held by the Donor is included the period of holding of the above shares were for more than 12 months. The shares are sold on a stock exchange and the transaction is chargeable to securities transaction tax accordingly, the gains arising on transfer of shares are characterized as long term capital gain and the same are exempt under section 10(38) of the Act.”

16. It is, therefore, clear, right from the very beginning that even when the return of income was filed on 30.10.06, the stand of the respondent assessee was that 16,50,000 shares of Nicholas Piramal India Limited were gifted towards and to form part of the corpus of the trust. It was further claimed that the respondent trust had sold 4 lac shares in terms of Section 49(1)(ii). The period of holding of the



donor had been taken into consideration and the costs of acquisition was taken as 'Nil' but the gain from transfer of the shares were exempt under Section 10(38) of the Act. In view of the above discussion, this aspect requires no interference.

17. The last issue is whether or not, the respondent assessee had violated Section 13(1)(d) of the Act and therefore should be denied exemption under Section 11 to 13 of the Act. Clause (iia) of proviso to Section 13(1)(d) reads as under:-

“any asset, not being an investment or deposit in any of the forms or modes specified in sub-section (5) of section 11, where such assets is not held by the trust or institution, otherwise than in any of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1993 whichever is later.”

18. It is an admitted position that the shares in question were acquired by the respondent assessee on 03.08.05. As per Clause (iia) to the proviso, Section 13(1)(d), would be applicable, post period of one year from the end of the previous year in which the shares were acquired. That means, there would be no violation of Section 13(1)(d) on the part of the respondent assessee till 31.03.07.

19. In view of the aforesaid position, the assessee had rightly claimed that they had not violated Section 13(1)(d) in the



assessment year in question. Appropriate, would be to refer to *Director of Income Tax versus Shree Radha Krishan Charitable Trust* [2011] 201 Taxman 184 (Del). In this case, the assessee had not disinvested the shares upto 31.03.93 and the assessment year involved was 1992-93. The High Court held that the embargo resulting in disqualification would be only applicable after 01.04.93 and therefore would be an issue to be examined in the assessment year 1993-94 and not an issue in the assessment year 1992-93, though this fact was known even when the assessment order was passed for the assessment year 1992-93.

20. Learned counsel for the respondent assessee has pointed out that the assessee has not claimed exemption from benefit of Section 11 to 13 of the Act with effect from 2007-08 onwards.

21. In view of the aforesaid discussion, the appeal is dismissed.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

AUGUST 25, 2014
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