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

% **Decision delivered on: 31.07.2023**

+ **ITA 416/2023 and CM APPLS. 38416/2023 & 38417/2023**

COMMISSIONER OF INCOME TAX (EXEMPTIONS) DELHI

..... Appellant

Through: Mr Abhishek Maratha, Sr. Standing
Counsel with Mr Akshat Singh, Jr.
Standing Counsel.

versus

JAMNALAL BAJAJ FOUNDATION

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This appeal concerns Assessment Year (AY) 2009-10.
2. *Via*, this appeal, the appellant/revenue seeks to assail the order dated 03.09.2021 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. Record shows that the respondent/assesee had preferred an appeal with the Tribunal against the order dated 01.02.2017 passed by the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"].
4. The respondent/assesee's appeal was rejected by the CIT(A), which



resulted in the penalty order, passed against it being sustained. *Via*, the penalty order the respondent/assessee has been mulct with penalty amounting to Rs. 5,39,56,443/-.

5. The record also discloses that the respondent/assessee which is registered under Section 12A of the Income Tax Act, 1961 [in short, “The Act”] had filed its return on 30.09.2009 declaring “nil” income.

6. The respondent/assessee’s case was selected for scrutiny assessment. During the pendency of the scrutiny assessment, the respondent/assessee filed a revised return on 24.03.2011 and declared an income amounting to Rs. 18,87,107/-.

6.1 The taxes on the income declared in the revised return were paid by the respondent/assessee.

7. It appears that the respondent/assessee had filed a revised return as the accumulated surplus amounting to Rs. 20 crore, in line with the provisions of Section 11(2) of the Act was utilized for granting donations to other charitable trusts.

8. It is in this backdrop that the respondent/assessee’s assessment was completed under Section 143(3) of the Act and its assessed income was pegged at Rs. 19,02,18,230/-.

9. Evidently, penalty proceedings were initiated against the respondent/assessee under Section 271(1)(c) of the Act in the course of the assessment proceedings.

10. A show-cause notice (SCN) under Section 271(1)(c) dated 19.12.2011 of the Act was served on the assessee. The service it appears was effected on 03.03.2014.



10.1 In response to the said notice, a communication dated 12.03.2014 was filed on behalf of the respondent/assessee. *Inter alia*, the respondent/assessee asserted that it had not concealed any facts or furnished inaccurate particulars concerning its income, therefore, penalty under Section 271(1)(c) of the Act ought not to be imposed.

11. Respondent/assessee's reply cut no ice and hence, penalty order was passed which, as indicated above, was taken in appeal to the CIT(A).

12. The CIT(A), as noticed hereinabove, dismissed the appeal. This led the assessee filing an appeal with the Tribunal.

13. What is emerged from the record is that in the earlier AY, the respondent/assessee had opted for accumulation of its corpus donations. The accumulation led to the respondent/assessee having a corpus donation of Rs. 25,16,00,000/-. The details, as provided in the order of the Tribunal, are extracted hereafter:

S. No.	Assessment Year	Amount
1	2006-07	4,66,00,000/-
2	2007-08	10,50,00,000/-
3	2008-09	10,00,00,000/-
	TOTAL	25,16,00,000/-

14. There appears to be no dispute that out of the aforementioned amount i.e., Rs. 25,16,00,000/-, Rs. 20 crores was utilized by way of donations to other charitable institutions.

15. Consequently, since the provisions of Section 11(3)(c) of the Act



were attracted, the respondent/assessee filed a revised return to bring to the fore this aspect.

16. It is also not in dispute that the respondent/assessee did pay tax amounting to Rs. 7,75,69,270/-, as per the computation of its total income set forth in the revised return.

17. The Tribunal, having regard to the aforesaid facts, reversed the order of the CIT(A) on two grounds:

(i) First, there was no concealment of income. The Tribunal was of the view that the respondent/assessee had disclosed the utilisation of the corpus donation accumulated in earlier AYs in its revised return, before it was flagged by the Assessing Officer (AO).

(ii) Second, the penalty notice issued to the respondent/assessee did not specify which limb of Section 271(1)(c) of the Act was triggered against the respondent/assessee i.e., whether the charge levelled concerned concealment of income or furnishing inaccurate particulars.

18. We have heard Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of appellant/revenue. Mr Maratha has sought to place reliance on the order of the CIT(A) to sustain the appeal.

19. We are of the view that the Tribunal is correct, both with regard to the fact there had been no concealment, as also concerning the view taken by it that the penalty proceedings did not indicate the limb under which the penalty was sought to be levied on the respondent/assessee.

20. In the instant matter, the Tribunal had taken into account the earlier judgments of this Court, as well as the judgments of the Karnataka High Court.



21. In *Pr Commissioner of Income Tax-3 v Ms Minu Bakshi* 2022:DHC:2814-DB, a coordinate bench of this court, [of which one of us i.e., Rajiv Shakhder, J. was a member], the issue concerning the penalty notice not indicating the precise limb of Section 271(1)(c) under which the assessee was proceeded came up for consideration. The relevant observations made therein are extracted hereafter:

“7. In our opinion, the conclusion reached by the Tribunal in the instant case that the notice for imposition of penalty under Section 271(1) (c) of the Act, did not specify which limb of the said provision the penalty was sought to be levied, is covered by the following decisions, which includes a decision rendered by a coordinate bench of this Court.

(i) CIT and Anr. v M/s SSA’s Emerald Meadows, passed in ITA No. 380/2015, dated 23.11.2015.

(ii) Commissioner of Income Tax v Manjunatha Cotton and Ginning Factory (2013) 359 ITR 565 (Kar.)

(iii) PCIT vs M/s Sahara India Life Insurance Company Ltd., passed in ITA No.475/2019, dated 02.08.2019.

7.1. To be noted, the Special Leave Petition filed against the judgement in SSA’s Emerald (mentioned above) was dismissed via order dated 05.08.2016.

7.2. We are in agreement with the view taken by the Karnataka High Court in the above-mentioned judgements (in SSA’s Emerald and Manjunatha Cotton) and, in any event, are bound by the view taken by the coordinate bench of this court in the Sahara India case”.

22. Thus, for the foregoing reasons, we are not inclined to interfere with the impugned order as, according to us, no substantial question of law arises for our consideration.



23. The appeal is accordingly closed.
24. Consequently, the pending applications shall also stand closed.

**RAJIV SHAKDHER
JUDGE**

**GIRISH KATHPALIA
JUDGE**

JULY 31, 2023/RV