

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 187 of 2005****With****TAX APPEAL NO. 188 of 2005****With****TAX APPEAL NO. 219 of 2005****With****TAX APPEAL NO. 220 of 2005****With****TAX APPEAL NO. 227 of 2005****TO****TAX APPEAL NO. 234 of 2005****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE K.J.THAKER****सत्यमेव जयते**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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COMMISSIONER OF INCOME TAX....Appellant(s)**Versus**

S.P. MEHTA MEMORIAL TRUST....Opponent(s)

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Appearance:

MR PRANAV G DESAI, ADVOCATE for the Appellant(s) No. 1

MRS SWATI SOPARKAR, ADVOCATE for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE KS JHAVERI**
and
HONOURABLE MR.JUSTICE K.J.THAKER

Date : 13/11/2014

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. Being aggrieved and dissatisfied with the impugned judgment and orders passed by the Income Tax Appellate Tribunal, Rajkot Bench (hereinafter referred to as 'the Tribunal') dated 03.08.2004 in ITA Nos. 15/Rjt/04, dated 01.07.2004 in ITA No. 194/Rjt/04, 192/Rjt/04, 195/Rjt/04, order dated 02.07.2004 in 647/Rjt/03, 648/Rjt/03, 649/Rjt/03, 199/Rjt/04, 200/Rjt/04, dated 01.07.2004 in ITA No. 197/Rjt/04, 198/Rjt/04 and order dated 29.06.2004 in ITA No. 73/Rjt/04 for the Assessment Years 1997- 98, 1998-99, 1997-98, 1997-98, 1995-96, 1996-97, 1997-98, 1996-97, 1997-98, 1996-97, 1997-98 and 1996-97 respectively, the revenue has preferred the present Tax Appeals for consideration of the following substantial question of law in the following appeals:

“Whether on the facts and in the circumstances of the case, the ITAT is right in holding that the income of the trust, which loses exemption u/s 11 of the IT Act if the conditions mentioned there are not fulfilled and the

corpus fund cannot be treated as the income of the trust for violation of Section 11(5) of the Act and only that income which is earned in violation of Section 11(5) of the Act could lose exemption?"

2. The assessee trust had filed its return of income for the assessment years in question declaring its total income as NIL. During the course of assessment proceedings the Assessing Officer found that the trust had invested amount in Gujarat Lease Finance Ltd (GLFL) and claimed exemption u/s 11(5). The Assessing Officer was of the opinion that the investment made by assessee with (GLFL) is not a specified investment and hence assessee is not entitled for exemption u/s 11(5) and accordingly the Assessing Officer disallowed the claim of exemption and the entire amount was added to the total income.

2.1 Being aggrieved by the same, the assessee filed appeal before CIT(A). The CIT(A) deleted the addition made by the Assessing Officer. The revenue therefore preferred appeal before the Tribunal. The Tribunal upheld the order passed by the CIT(A).

3. Mr. Pranav Desai, learned advocate appearing for the revenue contended that the authorities below committed an error in coming to the conclusion that there was a bonafide belief on the part of the assessee. He submitted that the Tribunal has erred in law in coming to the conclusion that the interest income earned from the investments would not qualify for exemption u/s 11 of the Act.

4. Mr. Soparkar, learned advocate appearing for the respondent supported the impugned order passed by the Tribunal and submitted that the Tribunal has not committed any error in passing the same. He submitted that in fact in view of the decision of the Bombay High Court in the case of **Director of Income-tax (Exemption) vs. Sheth Mafatlal Gagalbhai Foundation Trust reported in 249 ITR 533 (Bombay)** wherein it is held that violation of section 13(1)(d) by assessee will attract maximum marginal rate of tax only on that part of income which has forfeited exemption under said provisions and not on entire income of trust. Mr. Soparkar has also relied on decision of the Delhi High Court in the case of **Director of Income Tax vs. Agrim Charan Foundation reported in 253 ITR 593** as well as decision of Karnataka High Court in the case of **Commissioner of Income Tax and Another vs. Fr. Mullers Charitable Institutions reported in 363 ITR 230** wherein also similar view is taken.

5. Having heard learned advocates for the parties we are of the opinion that the Tribunal was justified in upholding the order passed by CIT(A). The CIT(A) has very clearly observed that the provisions of Section 11(1)(a) are very clear and provide that the income derived from the property held under trust shall not be included in the income to the extent it is applied for the charitable or religious purposes (expenses incurred during the year) or accumulated/set apart to be applied for that purpose in future out of 75% to which the restriction u/s 11(5) applies. The Tribunal has relied upon its own decision on a similar issue rendered in ITA No. 644 to 646/Rjt/2003 dated 22.12.2003. We are in complete agreement with the reasonings adopted by the CIT(A) as well

as Tribunal.

6. Even otherwise, the law on the subject is also well settled. In the case of **Fr. Mullers Charitable Institutions (supra)** the Karnataka High Court has held that a perusal of section 13(1)(d) of the Income-tax Act, 1961 makes it clear that it is only the income from such investment or deposit which has been made in violation of section 11(5) of the Act that is liable to be taxed and violation under section 13(1)(d) does not result in denial of exemption under section 11 to the total income of the assessee and that where the whole or part of the relevant income is not exempted under section 11 by virtue of violation of section 13(1)(d) of the Act, tax shall be levied on the relevant income or part of the relevant income at the maximum marginal rate. Therefore, we do not see any reason in interfering with the impugned orders.

7. In the premises aforesaid, question raised in the present appeals is answered in favour of assessee and against the revenue. Appeals stand dismissed accordingly.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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