

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 1719 of 2005****TO****TAX APPEAL NO. 1721 of 2005****With****TAX APPEAL NO. 949 of 2006****With****TAX APPEAL NO. 734 of 2009****With****TAX APPEAL NO. 1383 of 2006****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI****and****HONOURABLE MR.JUSTICE K.J.THAKER**

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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****ORPAT CHARITABLE TRUST....Opponent(s)****Appearance:****MR MR BHATT, SR. ADVOCATE with MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1****MR RK PATEL, ADVOCATE for the Opponent(s) No. 1****CORAM:****HONOURABLE MR.JUSTICE KS JHAVERI**
and

HONOURABLE MR.JUSTICE K.J.THAKER**Date : 03/12/2014****COMMON ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE KS JHAVERI)**

1. Since, the issue involved in all these appeals is common, they are heard together and disposed of by this common judgment.

2. By way of this group of appeals, the appellant-Revenue seeks to challenge the order of the learned ITAT, Rajkot Bench, Rajkot (for short, 'the Tribunal'), Dated : 28.06.2005, passed in (1) ITA No.685/Rjt/2003 for the A.Y. 1997-98, (2) ITA No.686/Rjt/2003 for the A.Y. 1998-99, (3) ITA No.687/Rjt/2003 for the A.Y. 1999-00 as well as the order of the Tribunal in (4) ITA No.429/Rjt/2007, Dated : 06.11.2008, for the A.Y. 2001-02, (5) ITA No.1147/Rjt/2004, Dated : 22.11.2005, for the A.Y. 1997-98 and (6) ITA No.1584/Rjt/2005, Dated : 28.02.2006, for the A.Y. 2000-01.

3. The brief facts of the case are that the respondent-assessee filed its return of income for the different assessment years, as stated above. Later on, the concerned AOs examined the case of the assessee and denied exemption to the assessee on the respective amounts in connection with the deposits made by it in contravention of Section

11(5) read with Section 13(1)(d) of the Income Tax Act. The assessee, hence, carried the matter before the learned CIT(A), by filing separate appeals for each assessment year. Later on, when the matters were further carried before the ITAT, it passed the impugned orders, as referred to in Para-1, herein above. Hence, the present appeals.

4. Present Tax Appeals involves the questions of law, which are more or less similar in nature and read as under;

"(A) Whether the Appellate Tribunal is right in law and on facts in confirming the order passed by the CIT(A) directing the Assessing Officer to restrict the disallowance of exemption u/s.11 of the Act in respect of deposits in contravention of section 11(5) read with section 13(1)(d) of the Income Tax Act, as against denial of exemption on the entire income by the Assessing Officer?

(B) Whether the Appellate Tribunal is right in law and on facts in holding that exemption can be denied only to the extent of investment contravening the provisions of section 11(5) and not the entire amount?"

5. Mr. Bhatt, learned Sr. Advocate, submitted that the Tribunal ought to have appreciated the provisions of Section 11(5) read with Section 13(1)(d) of the Income Tax Act ('the

Act', for short) in its proper perspective. He submitted that taking into consideration the relevant provisions of the Act, the Tribunal ought to have held that the concerned AOs were justified in denying exemption on the entire amount for the relevant assessment years. He, further, submitted that the Tribunal gravely erred in coming to the conclusion that exemption can be denied only to the extent of investment contravening the provisions of section 11(5) of the Act. He, therefore, prayed that the appeals be allowed.

6. On the other hand, Mr. Patel, learned Advocate for the respondent-assessee, submitted that the Tribunal has committed no error, while appreciating the provisions of Section 11(5) and 13(1)(d) of the Act. In support of his submission, Mr. Patel stated that the issues involved in these matters are no more *res integra* and he relied on a decision of this Court in Tax Appeal No. 187 of 2005 and the allied matters in the case of "**CIT VS. S.P. MEHTA MEMORIAL TRUST**" dated 13.11.2014.

7. Heard, learned Counsel for the parties and perused the material on record as well as the orders passed by the learned CIT(A) and the Tribunal. As stated by Mr. Patel, herein above,

the issues involved in this matter are no more *res integra* and we have already decided the same in favour of the assessee and against the revenue by observing and holding as under in Paras-5 and 6 of the aforesaid decision;

"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."

8. In the result, all the appeals fail and are **DISMISSED**. The questions raised in these appeals are answered against the appellant-revenue and in favour of the respondent-assessee, accordingly. No order as to costs.

(K.S.JHAVERI, J.)

(K.J.THAKER, J)

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