IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI F BENCH, MUMBAI

[Coram: Justice P P Bhatt (President) and
Pramod Kumar (Vice President)]

ITA No. 3738/Mum/2019
Assessment year: 2014-15

J R D Tata Trust **…….Appellant**
Bombay House, 24, Homi Mody Street
Fort, Mumbai 400 001[PAN: AAATT0165F]

Vs

Deputy Commissioner of Income Tax
Exemption Circle 2(1), Mumbai **……Respondent**

Appearances by
P J Pardiwala, Sr Advocate, *along-with* **Madhur Agarwal, Sukh Sagar Syal, T P Ostwal and Indira Anand** *for the appellant*
Rajesh Damor (CIT-DR) and Brijendra Kumar *for the respondent*

Date of concluding the hearing : December 11, 2020
Date of pronouncement of order : December 28, 2020

O R D E R

Per bench:

1. By way of this appeal, the assessee appellant has challenged the correctness of the order dated 29th March 2019 passed by the learned Commissioner of Income Tax (Exemptions) under section 263 r.w.s. 143(3) of the Income Tax Act, 1961 *(hereinafter referred to as 'the Act')*, for the assessment year 2014-15.

2. Grievances raised by the appellant, which, being interconnected, will be taken up together, are as follows:

> **1. On the facts and under the circumstances of the case and in law, the learned Commissioner of Income-tax (Exemptions) ['CIT(E)'] erred in initiating proceedings under section 263 of the Act against the Appellant**

The Appellant prays that the order passed under section 263 of the Act be set aside.

2. On the facts and under the circumstances of the case and in law, the learned CIT(E) erred in holding that the assessment order passed by the Deputy Commissioner of Income-tax (Exemptions) — 2(1) ('the learned Assessing Officer') was erroneous as due verification was not undertaken by the learned Assessing Officer.

The Appellant prays that it be held that the assessment order passed was not erroneous since adequate verification had been undertaken by the learned Assessing Officer.

3. On the facts and under the circumstances of the case and in law, even assuming the assessment order was erroneous, the learned CIT(E) erred in exercising jurisdiction under section 263 of the Act by holding the assessment order was prejudicial to the interest of the Revenue without appreciating that there is no tax effect of the proposed directions given by the CIT(E).

The Appellant prays that it be held that assessment order was not prejudicial to the interest of the Revenue since there is no tax effect of the proposed directions / verifications.

***4.* On the facts and under the circumstances of the case and in law, the learned CIT(E) has erred in directing the learned Assessing Officer to pass a de novo assessment since the learned Assessing Officer had allegedly failed to verify the applicability of section 13(1)(c), 13(1)(d) and 13(2)(h) of the Act.**

The Appellant prays that the aforesaid directions of the CIT(E) be held as bad in law and accordingly be quashed.

3. Shortly after concluding hearing of this appeal, we had heard another appeal in the same group of cases, dealing with all the above issues plus another additional issue dealing with the payments to trustees being reasonable and in accordance with the provisions of the trust deed and the Income Tax Act, 1961, in the case of Sir Dorabji Tata Trust Vs DCIT (ITA No. 3909/Mum/2019). The stand of the learned Commissioner, in the impugned order, is materially the same as in the said case, and, at many places, it's a cut paste job except for the minor variations. The proceedings at the assessment stage and the background facts are also materially identical. The arguments made in this appeal were adopted in the said hearing as well, and in fact there were some additional arguments, because of an added issue having been included there. This appeal had to refixed for clarifications, as, within days of concluding the hearing of this case in March, 2020, the Covid-19 lockdown started, and when the office work begun its journey towards normalcy, one of us (i.e. the Vice President) had to proceed on

medical leaves for almost two months due to a fracture. The matters were thus fixed for clarification hearing. In the course of this clarification hearing, learned representatives appearing before us have fairly accepted that whatever we decide in the said case will apply *mutatis mutandis* in this case as well.

4. Vide our order of even date, in the case of Sir Dorabji Tata Trust (supra), we have held as follows:

> *3. Briefly stated, the relevant material facts are like this. The assessee before us is a public charitable trust, set up in the year 1932, registered under the Bombay Trusts Act, 1950. The assessee trust is also registered as a charitable institution under section 12A of the Income Tax Act, 1961. The assessee trust had filed its return of income on 30th September 2014, and its assessment, under section 143(3) of the Act, was completed on 30th December 2016 determining 'Nil' taxable income. Subsequently, however, learned Commissioner of Income Tax (Exemptions) [hereinafter referred to as 'the Commissioner'] issued a show cause notice requiring the assessee to show cause as to why this order not be subjected to revision under section 263 of the Act…. ……*
>
> *(Paragraphs 4,5 and 6 are not relevant in the present context, as the issues on which this show-cause notice was initially issued do not exist in this appeal)*
>
> *6. Rather than yielding to these submissions, learned Commissioner issued a further show cause notice on 15th March 2019 which was as follows:*
>
> > ***1. On verification of records, it is noticed that there is an investment of funds of assessee in shares which is in a prohibited mode of investment prescribed in the section 11(5) r.w.s. 13(1)(d) of the Act, unless it is covered by exceptions. Further the same may result into denial of exemption if such investment is not covered by exceptions. This important aspect, however, has not been verified as it comes out from the following:***
> >
> > ***(a) Vote letter dated 02.12.2016, the AO asked certain details of investment in shares. Vide letter dated 09.12.2016, it was stated that none of the investment are covered by section 13(1)(d) of the I.T. Act, Further, the details of investment in shares have been submitted in "Annexure-1". It shows holding of shares in following companies,'***
> >
> > | | ***Quoted Share*** | | ***Unquoted Shares*** |
> > |---|---|---|---|
> > | ***i)*** | ***Indian Hotel Co. Ltd.*** | ***i)*** | ***Tata Sons Ltd.*** |
> > | ***ii)*** | ***Tata Steel Ltd. Weaving*** | ***ii)*** | ***Central Ind Spg And manufacturing Co. Ltd.*** |
> > | ***iii)*** | ***Tata Motors Ltd.*** | ***iii)*** | ***Tata Mills Co. Ltd.*** |

iv) Tata Powers Ltd.
v) Tata Chemical Ltd.
vi) Associated Cement Co. Ltd.
vii) State Bank of India

(b) In the details so provided, the shares were shown as held on 01 June, 1973 and subsequently, accretion of bonus shares it there. However, nowhere, it is mentioned that the shares were part of the corpus as on 01.04.1973. The only other facts mentioned in the column seeking details of consideration paid for acquisition/value are the amounts. The amounts so mentioned do not make it clear as to it represent cost of acquisition or Face Value and in any case does not show that the shares were part of corpus.

Thus, the above reply and details on records do not show as to whether the above investments are covered by exception provided in proviso (i) & (ia) to section 13(1)(d) or not. As the investment in shares such m above is normally a prohibited mode of investment and unless it is covered by exceptions, it results into denial of exemptions. It is clear that the AO has failed to make basic but necessary verification on this issue.

2. On perusal of records of A.Y.2014-15, it is also noticed that you have continued to hold investment in shares of Tata Sons Ltd and its group of companies. In-fact, in Tata Sons Ltd., you are holding 27.98% shares of the company. As per Article of Association of Tata Sons Ltd. (one of company where you are holding investments), your trustees and the trustees of Sir Ratan Tata Trust jointly also appoint non-executive directors on the board.

The clause (h) of sub-section (2) of section 13 provides that if any trust has invested in any concern in which any person referred to in sub-section (3) has substantial interest, it shall be deemed that the assessee trust has used or applied its income for the benefit of such person and thereby operation of section 11 or 12 would cease so as to exclude it from the total income. Despite, your holding of 27.98% shares of Tata Sons Ltd. and close relationship of trustees with the above company, the Assessing officer has not examined the applicability of provisions of section 13(2)(h) of the Act.

3. The AO during the assessment proceedings raised issue of holding & controlling shares of Tata Sons Ltd. by you and also your control in the business of the company. He also gathered certain information & evidences from third parties but failed to make proper verification & investigation and to reach to proper conclusion.

(a) In view of close relationship of trustees and investee company i.e. Tata Sons Ltd., the AO vide notice dated 02.12.2016 asked you about Veto/Special Right of benefits derived by the trustees from any of the investee companies and ought the subsidiaries. It was replied that the trustee of the assessee trust jointly with

trustee of Sir Ratan Tata Trust only have power to appoint directors of board and Tata Sons Ltd. With reference to the query regarding benefit having derived by the trustee from the investee company. It was submitted that information is not available with the trust.

(b) The AO had sought certain details from Tata Sons Ltd. vide notice issued u/s 133(6) of the Act on 29.11.2016 such as names, Article of Association, details of shares holding, details of special voting right/veto rights in terms of share holder agreement and certain other documents as relationship of trustee of the assesses trust. On receipt of these basic details from Tata Sons Ltd. and its examination the AO ride another notice u/s. 133(6) dated 13.12.2016 asked for some more details and explanation citing various Article of Association of the company. This notice was issued to the company as well as by the e-mail to 4 directors. The details were received from Tata Sons Ltd. on 21.12.2016 and also from one of the directors on 22.12.2016.

(c) After receipt of this information, the AO again vide show notice dated 26.12.2016 raised the issue of close relationship of trustees of the trust and Tata Sons Ltd. through appointed directors seeking reply as to whether the activities are in accordance with the objects of the trust, what kind of control trust is exercising on business of Tata Sons Ltd. and also the issue that the trustee who were earlier directors/employees of Tata Sons Ltd. are taking benefit from the company because of through the control of directors appointed by the trust.

(d) In response to this show cause, a reply was submitted on 28.12.2016 by you. In the reply besides giving some explanation to the queries of AO, the material/factual basis of allegations in show cause was sought from the AO. On the same date, Tata Sons Ltd. also submitted details in response to notice u/s.133(6) of I.T. Act. He did not raise this issue and finalized the assessment.

Despite the material being available on records, which could lead to prima facie opinion that the trustees are having control over the affairs of Tata Sons Ltd. The AO has failed to take the issue to any logical conclusion. The above indicates that examination of such material was necessary in order to ascertain the facts as also whether any direct or indirect benefit as stated in section 13(1)(c) of the Act is being taken by the connected persons as referred in section 13(3) of the I.T. Act.

4. The AO has allowed you to accumulate unspent surplus u/s.11(2) amounting to Rs.10,04,61,710/- (which arises by virtue of the order u/s.143(3)) referring letter dated 29.12.2016 of assessee by noting that the assessee has filed form 10 and copy of Resolution along with it, for exercising its option u/s.11(2). However, neither there is reference of Form 10 in assessee's letter dated 29.12.2016 nor it was found on record. Thus it appears that the benefit of exemption u/s.11(2) has been allowed without proper verification.

5. On perusal of records of A.Y.2014-15, it is also noticed that you have received interest of Rs.33,58,30,979/-. However, the AO has not obtained any details of investment despite the related details/schedule being not available on records from which it could have been ascertained that whether the interest income earned is from deposit in banks or from the investment in some companies. Further, as the income from dividend was being claimed as exempt, therefore, assessee has not claimed application of the same in its return of income. The assessing officer has not asked you to demonstrate that entire income of the trust was applied or being applied for the object of the Trust. The above facts also indicate that the Assessing Officer has not made some basic verifications on facts & circumstances of case were warranted.

6. Thus, the discussions on various made above also prima facie show that the order passed by the AO is erroneous is so far as it is prejudicial to the interest of the revenue and requires revision. In view of the above facts, you are requested to explain as to why above facts shall also not be considered in the ongoing proceedings u/s. 263 of I.T Act and order u/s. 263 of the Act should not be passed enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment in your case.

In this regard, you are requested to attend in person or through your authorized representative before the undersigned and file the written submission and ague the matter on 22.03.2019 at 12:15 PM in my office.

In case you fail the avail of this opportunity, the matter may be decided on merits.

7. Once again, the assessee made elaborate submissions in response to the show cause notice. His detailed reply, as set out in the letter dated 27th March 2019, is set out below:

Background

The Trust is one of India's oldest philanthropic organizations was established to catalyse development across the nation through contemporary initiatives.

It supports an assortment of causes, institutions and individuals n a wide variety of areas including a whole range of community development programmes across the country.

As per the Trust Deed the objects of the Trust are briefly as under:

> ***"From and after the death of the Settlor the Trustees shall apply the said net rents profits and income of the said immovable properties and Trust Funds and so much of the corpus thereof as to the Trustees at their discretion shall seem meet in all or any of the following purposes without any distinction of place nationality or creed, that is to say the institution, maintenance and support of schools educational institutions hospitals, relief of any distress caused by the elements of nature such as famine, pestilence, fire, tempest, flood, earthquake or any other calamity in advancement learning in all its branches especially research work in connection with medical and industrial problems or in giving further aid to the Indian Institute of Science at Bangalore by providing funds for instituting professorships or lectureships or giving scholarships or travelling fellowships in any branch of science or art in assisting students to study abroad either by payment of lump sum or by payment of periodical sums or in giving further aid to any other charitable institutions or objects endowed by the Settlor in his lifetime or by the grandfather father and brother of the Settlor."***

Since its inception, the Trust has played a pioneering role in transforming traditional ideas of charity ad introducing the concept of philanthropy to make a real difference to communities. Through grant-making, direct implementation and co-partnership strategies, the Trust supports and drives innovation in a variety of areas. The Trust engages with competent individuals and government bodies, international agencies and like-minded private sector organisations to nurture a self-sustaining eco-system that collectively works across all these areas.

The Trust has over 336 grants under execution for a financial outlay of Rs.714 crs. In addition, the Trust is also supporting a variety of cancer care initiatives for an outlay of Rs.66 crs.

The Trust has also played a pioneering role in the vision of the Government in Nation building and in partnership with the Central or State Governments and has undertaken several leading projects. The Trust has also entered into various MoUs with the Central Government, State Governments as well as other institutions on matters relating to the Trust objects. For example MoU signed with the State Government of Tripura to build capacities in various sectors including education, fisheries, dairy and upgradation of industrial training institutes etc. Further, some of the projects undertaken by the Trust with the Government are as under:

- ***National Nutrition Mission Fellowship Programme (Zilla Poshan Prerak);***

- ***Applying the DELTA framework in 85 most backward districts of India in collaboration with Niti Aayog and Bill and Melinda Gates Foundation***
- ***A programme for supporting teh Model Urban Primary Health Centre in Nagpur***
- ***Data Driven Governance***

Current proceeding.

The Trust is now in receipt of the notice dated March 15, 2019 (received on March 18. 2019) wherein your °misc. has asked it to explain why an order under section 263 of the Act should not be passed enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment for the captioned AY (a copy of the said notice is enclosed as Annexure 1).

The assessee submits that it is a legally settled position that the provisions of section 263 Of the A. can be invoked only if both the conditions stipulated are satisfied 1.e. the order Of the AO is not only erroneous and also prejudicial to the interest of the Revenue. Also the error should be a patent error which results in prejudice to the Revenue.

In this connection, at the outset, the assessee submits that as regards the points noted in the notice, the assessment order passed by the Deputy Commissioner of Income-tax (Exemptions) - 2(1). Mumbai (hereinafter referred to as the 'Learned AO, is neither erroneous nor prejudicial to the revenue so as to require any revision of the same.

The assessee had furnished all the necessary information at the time of assessment proceedings and thus the assessee denies your goodself's allegation that the Learned AO has not verified the details mentioned in your goodself s notice. In the instant case, during the course of the assessment proceedings, the Learned AO has sought information on the points mentioned in the notice under section 263 of the Act. All the information required by the Learned AO was submitted during the course of the proceedings. Thus, the Learned AO had complete information during assessment proceedings. It was only after considering the information that he had passed the order under section 143(3). Merely because the AO has not discussed Or commented upon the information / details given in the order, it cannot be said to be covered by section 263.

Without prejudice to the above, the assessee's detailed response to the alleged omissions and errors of the Learned AO (as mentioned in the notice) is as under.

Applicability of section 13(1)(d) of the Act

1) The Learned AO during the course of assessment proceedings had sought details about the investments held by the Trust vide, his notice dated December 2, 2016 of The Trust responded to this notice vide its letter dated December 9, 2016 details of the shares held by the assessee along with the

year of each bonus / sub-division of such shares and the final number of shares hold by the Trust as on March 31, 2014 (copies enclosed as Annexure 2 and 3).

2) As can be seen from the response, complete details of the holding have been provided i.e. including the position as on June 1, 1973 end subsequent accretions by way of bonus to those shares. The assessee submits that all its shares held are in compliance with the provisions of the Act.

3) A perusal of these details indicates that there has been no acquisition of any shares dun, the year. Accordingly, the question of verification of any conditions year of section 13 in respect of those shares is not relevant for the current assessment

4) Without prejudice to the above, the assessee submits that all the shams held during financial year 2013-14 are either shares held by the assessee prior to June 1, 1973 or subsequent accretions thereto by way of bonus. The assessee further submits that all these shares are held by it as corpus and the income earn. by way of dividend from these shares is used by the trust for carrying out its charitable objects. Further, the assessee submits that virtually all the shares held by it today (except shares received as bonus) were held by it prior to enactment of Income-tax Act,1961 Even the conduct shows that the Two held these shares for more than 45 years at least.

5) There has been no change in the above position for more than 4 decades. In all the past years, the assessee has been more granted exemption under section 11. It may be pointed out that in the past, assessments of the Trust have been I completed under section 143(3) and no additions has been made on this issue. It is submitted that section 263 cannot be applied to a matter on which no addition has been made by the revenue for several decades. After decades of this settled position to call upon the assesses to demonstrate fulfilment of conditions regarding its support of its claim for exemption is grossly unfair.

6) The assessee further submits that after duo verification of an the information furnished by the assesses, if the order does not have an adverse finding regarding the shareholding in the assessment order, this should not warrant a revision under section 261 Further, it may also be pointed out that these details are being asked for and submitted on a year on year basis pursuant to which exemption benefits have been granted consistently.

7) The assesses submits that your goods has stated that "It is clear that the AO has failed to make bass but necessary verification on this issue. In this connection, the assesses submits that:

> ***(a) The AO during the course of assessment proceedings had sought details about the investments held by the Trust,***
>
> ***(b) The Trust duly replied and filed for all the details and information.***

(C) Thus, the AO has made enquiries and it cannot be said that the AO has failed to make basic but necessary verification on the issue. In fact, it is submitted that the AO made detailed verification of the claim and was satisfied by the contention of the Trust

8) Therefore the assesses prays that no revision under section 263 is warranted on this issue.

9) In any case considering the fact that the details relate back to more than 45 years the assesses craves leave to produce further information and documents to substantiate its position, if required.

Applicability of provisions of section 13(2)(h)

10) At the outset, the assesses submits that your goodself's allegation that the Learn. AO had not examined the applicability of provisions of section 13(2) de-spite the assesses holding 27.98% shares of TSL and close relationship of the Trustees with TSL is incorrect.

11) The learned AO had vide his notice dated December 2, 2016 and December 26, 2016 had examined the applicability of provisions of section 13(2) to the assessee. The assessee vide its letters dated December 9, 2016 and December 28, 2016 had provided appropriate explanation to substantiate that there is no violation of section 13(2) in its case (copies enclosed as Annexure 4 and 5).

12) The assessee submits that none of the Trustees as on March 31, 2014 held substantial interest in TSL and therefore the provisions of section 132(2)(h) would not be applicable. Further, the assessee submits that the Trustees have not received any benefit from TSL in their capacity as Trustees. No part of the Trust's property or income has been applied directly or indirectly for the benefit of Trustees.

13) The assessee submits that the Learned AO sought the details which were duly filed by the Trust. Therefore, it cannot be said that the Learned AO has not examined the applicability of the provision of section 13(2)(h).

Trust - haying control over affairs of TSL

14) As regards pars 3 of the notice, the assessee respectfully submits that the Learned AO has made proper verification and investigation and has reached a conclusion regarding whether the assessee controls the business of TSL.

15) In respect of pars 3(a) wherein your goodself has stated that the requisite information relating to benefit derived by the Trustees was not available with the assessee, the assessee states that vide letter dated December 28, 2016 it has sub-mitted that no benefit has been derived by the Trustees.

16) As regards your pars 3 (b), (c) and (d) indicates that the Learned AO had done comprehensive inquiries on this issue whether the trust controls the

business of TSL. In respect of information sought by the Learned AO under section 133(6), the assessee submits that vide notice dated December 26, 2016, the Learned AO had had provided its explanation on various points comments and the assessee vide its letter dated December 28, 2016 had provided its explanation of various points.

17) The assessee submits that all the points raised by you in Para 3 (b) (c) and (d) have been put to the assessee by the Learned AO and appropriate response has been submitted by the assessee. Accordingly, in assessee's view there is no infirmity in the verification undertaken by the Learned AO. The assessee respectful submits that if after due inquiries, the Learn. AO has not held that the assessee is controlling the business of TSL in his assessment order, it cannot be regarded as erroneous under section 263 and hence, it would not warrant a revision under section 263.

Exercise of option under section 11(2)

As regards pars 4 of the notice, the assessee submits that even as per the assessment order dated December 30, 2016 as against the income of Rs. 132.32 crs, the assessee has applied an amount of Rs 122.27 crs i.e. more than 85, of the income. Thus, there is no question of surplus to be carried forward.

Interest income earned — mode of investment

18) As regards pars 5, the assessee submits that all the information in relation to interest earned was available with the Learn. AO on record i.e Form 26AS and hence we would believe that he would have carried out his appropriate verification. In any case, the assessee submits that the interest earned is from the following permissible investments

Particulars	*Rs.*	*As per section 11(5)*
Interest on long term deposits with:		
Housing Development Finance Corporation Ltd	***20,33,64,100***	***11(5)(ixa)***
Housing & Urban Development Corporation Ltd	***2,23,51,249***	***11(5)(ixa)***
HDFC Bank Ltd	***3,34,48,993***	***11(5)(iii)***
ICICI Bank Ltd	***71,25,000***	***11(5)(iii)***
Barclays Bank PLC	***90,41,992***	***11(5)(iii)***
IDBI Bank Ltd	***1,35,47,652***	***11(5)(iii)***
Interest on short term deposits with:		
HDFC Bank Ltd.	***2,16,27,281***	***11(5)(iii)***
ICICI Bank Ltd.	***93,29,943***	***11(5)(iii)***
Credit Agricole Corporate & Investment Bank	***34,19,153***	***11(5)(iii)***
Standard Chartered Bank	***1,05,93,666***	***11(5)(iii)***
Interest on Savings bank a/c	***1748959***	***11(5)(iii)***
Total	***33,55,97,988***	

The assesses also have interest on loans given to staff of Rs.43,241, interest on the 8% Government of India Bonds of Rs 2,86,02,666 and on Permanent deposit with Tata Sons Ltd of Rs 1,89,750.

Exempt dividend income — application tends object of the Trust

19) The jurisdictional Hon'ble Bombay High Court in the case of DIT-(E) v Jasubhai Foundation (ITA 1310 of 2013) has held that in computing the income of charitable Institutions exempt under section 11, income exempt under section 10 has to be excluded. The Court further held that the requirement in section 11 with regard under section 10.

20) Thus, the action of the assessee in not including dividend in its income-tax computation is in accordance with the jurisdictional High Court decision.

21) The assessee submits that the exclusion of dividend income from total income is only for the purpose of computing the total income under the Act. However, the Trust expends its entire income (including dividend income) for charitable purposes.

22) Thus, you goodself's allegation that the assessee does not apply its funds for charitable purposes is baseless and unfounded.

<u>Prayer</u>

We submit that as evident from the above discussion that all information was made available to the Learned AO and Learned AO has verified. Further, the Learned AO has applied his mind and adjudicated the issue having regard to the facts and material on record and come to an appropriate conclusion on the matter. Therefore, the assessee submits that the order of the Learned AO is neither erroneous nor prejudicial revenue to warrant any revision

Without prejudice, in any event, even if the Learned AO has not verified certain details this would not result in any prejudice to the revenue or the sections 11 to 13.

The assessee therefore prays that the current proceedings initiated be dropped.

Should your goodself require any further clarifications, please let us know.

8. None of these submissions, however, impressed the learned Commissioner.

9. (Not relevant in the present context)

10. As regards investments of funds in shares in a prohibited mode of investment prescribed in section 11(5) r.w.s. 13(1)(d) is concerned, the conclusions arrived at by the learned Commissioner are as follows:

8.3 I have considered the arguments of the assessee and also the records referred by it. It is observed that :

(a) Vide letter dated 02.12.2016, the AO asked certain details of investment in shares.

(b) Vide letter dated 09.12.2016, it was stated that none of the investment are covered by section 13(1)(d) of the I.T. Act, Further, the details of investment in shares have been submitted in "Annexure-1". It shows holding of shares in following companies:-

	Quoted Share	***Unquoted Shares***
viii)	***Indian Hotel Co. Ltd.***	***i) Tata Sons Ltd.***
ix)	***Tata Steel Ltd. Weaving***	***ii) Central IND SPG And manufacturing Co. Ltd.***
x)	***Tata Motors Ltd.***	***iii) Tata Mills Co. Ltd.***
xi)	***Tata Powers Ltd.***	
xii)	***Tata Chemical Ltd.***	
xiii)	***Associated Cement Co. Ltd.***	
xiv)	***State Bank of India***	

(c) In the details so provided, the shares were shown as held on 01 June, 1973 and subsequently, accretion of bonus shares is there. However, nowhere, it is mentioned that the shares were part of the corpus as on 01.04.1973. The only other facts mentioned in the column seeking details of consideration paid for acquisition/value are the amounts. The amounts so mentioned do not make it clear as to they represent cost of acquisition or Face Value and in any case does not show that the shares were part of corpus.

The provisions of Section 13(1)(d) are applicable for denying exemption u/s.11, if during the previous year, the funds of assessee remain invested in shares in a company other than shares in a Public Sector Company or as prescribed u/s.11(5)(xii) are held after 30th November 1983, unless they are covered by exceptions provided in Proviso (i) and (ia). The provisions are reproduced hereunder:

Section 13(1)(d) : in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year-

(i) any funds of the trust or institution are invested or deposited after the 28th day of February, 1983 otherwise than in any one or more

of the forms or modes specified in sub-section (5) of section 11; or

(ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11 continue to remain so invested or deposited after the 30th day of November, 1983; or

(iii) any shares in a company, other than-

(A) Shares in a public sector company;
(B) Shares prescribed as a form or mode of investment under clause (xii) of sub-section (5) of section 11, are held by the trust or institution after the 30th day of November, 1983

Provided that nothing in this clause shall apply in relation to-

(i) any assets held by the trust or institution where such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973

[(ia) any accretion to the shares, forming part of the corpus mentioned in clause (i), by way of bonus shares allotted to the trust or institution;]

From the plain reading of above provision also, it is clear that the investment in shares held by the assessee after 30th November 1983 are exempt only if they are covered under proviso (i) or (ia). As per the condition prescribed in proviso (i), such shares shall be part of the corpus. However, the only fact which come out from the submissions of assessee is that the shares were held as on 01.06.1973, but it does not become clear as to whether the same were held as 'corpus', which was necessary to be verified because only the shares held in corpus and accretion of bonus to them are exempt from provisions of section 13(1)(d).

To sum up, the above reply and details on records do not show as to whether the above investments in shares are covered by exception provided in proviso (i) & (ia) to section 13(1)(d) or not. As the investment in shares such as above is normally a prohibited mode of investment and unless it is covered by exceptions, it results into denial of exemptions. It is clear that the AO has failed to make basic but necessary verification on this issue.

8.4 It is also submitted in reply dated 27/03/2019 that all the shares are held by it as corpus and the income earned by way of dividend from them is used for carrying out the charitable objects. Virtually, all the shares are held by it today. The position is continuing for 4 decades. The assessee has been consistently granted the exemption u/s. 11 of the Income-tax Act. Therefore, calling upon the assessee to demonstrate the fulfilment of conditions is grossly unfair. In this regard, it is stated that:

a) It is a settled judicial principle of res judicata does not apply to the Income-tax Act.

b) Whether the records of earlier years were complete or due verification was made in other assessment years, is not before the undersigned. In any case, it is not a case of assessee that

the shortcomings in verification pointed out by the undersigned were not there in other years.

8.5 Regarding the assessee's contention reproduced in Para (vi) & (vii) of para 8.2 above, it is clear from the discussion made in Para 8.3 of this order that the Assessing Officer did not seek complete details which were required for due verification of this aspect. From the details it does not come out that the shares were held as corpus on 01.06.1973, which is an exempt category. For this reason, due compliance of assessee also does not help its case because it is the failure of Assessing Officer to make due verification on the basis of which jurisdiction u/s.263 can be invoked.

It is further contended by the assessee that as the details relate back to a period of more than 45 years, it craves leave to produce further information and documents to substantiate its position, if required. In this regard, it is stated that the undersigned has not formed any opinion about the applicability of section 13(1)(d) of the I.T. Act on the basis of facts available on record. The conclusion drawn by the undersigned is that due verification required to reach to a conclusion on this issue has not been made. Therefore, the assessee is free to furnish further information and documents to substantiate it position before the Assessing Officer, who is being directed to give assessee sufficient opportunity and reach to a conclusion in accordance with law, after going through the documents/evidence and explanation, which assessee can furnish before him.

11. As regards the examination of application of provisions of section 13(2)(h) in view of continuing investment of the assessee in shares in the concerns in which persons referred to in section 13(3) have substantial interest, learned Commissioner concluded as follows:

9.3 After receiving assesee's reply, I have given perused the assessment records as well as the questionnaires of Assessing Officer and the documents referred by the assessee. Annexure-4 to its reply to the show cause notice dated 26/12/2016 has no reference of the applicability of provisions of section 13(2)(h) of the I.T Act. Similarly, assessee's reply dated 28/12/2016 (Annexure-5 of assessee's reply) also does not have any reference of applicability of provisions of section 13(2)(h). Both these documents are about the control and management of business of Tata Sons Ltd. Therefore, assessee's contention that this issue was discussed by the Assessing Officer is not factually correct.

9.4 The assessee has also submitted that none of the Trustees as on 31.03.2014 hold substantial interest in Tata Sons Limited and therefore, the provisions of section 13(2)(h) of the I.T Act should not be applicable. This submission of assessee however requires verification because in Section 13(3) there are different clauses, the application of which needs to be examined to

find out whether the investment is with any connected person. It is although more necessary in the case of assessee because the investment of assessee itself in above company is more than 20%. The A.O ought to have examined the applicability of examination 3 of below section 13. In this regard, it is also pertinent to mention that in the case of the Tata Trust Group, i.e. Jamshedji Tata Trust, it has been held by the ld. ITAT, Mumbai, vide order dated 26/03/2014 in ITA No. 7006/Mum/2013 for Asstt. Year 2010-11 that the provisions of section 13(2)(h) of the I.T Act are applicable on the holdings of assessee in Tata Sons Ltd. In view of the above judgement, it was all the more necessary for the Assessing Officer to examine the applicability of Section 13(2)(h) of the I.T Act, which he has failed to do. Therefore on this ground the impugned order is erroneous and prejudicial to the interest of the revenue.

12. On the question as to whether there was any failure on the part of the Assessing Officer to examine the issue of control of affairs of Tata Sons Limited, as also the question as to whether any direct or indirect benefit in terms of the provisions of Section 13(1)(c) is being taken by the connected persons, learned Commissioner's conclusions were as follows:

10.3 The assessee's contention that all the points raised in the show cause notice u/s.263 of the IT. Act were put to it by the Assessing Officer and appropriate response to the same was submitted by the assessee, there is no infirmity of verification undertaken by the Assessing Officer, is not acceptable for the following reasons :

i) As confronted in Para 3(b) of the show cause notice u/s.263 of the IT. Act, it was noticed on receipt of these basic details from Tata Sons Ltd. and its examination, the Assessing Officer vide another notice u/s. 133(6) dated 13.12.2016 asked for some more details and explanation citing various Article of Association of the company. This notice was issued to the company as well as by e-mail to 4 directors. The details were received from Tata Sons Ltd. on 21.12.2016 and also from one of the directors on 22.12.2016. Further, the details and information received from one of the Directors, Shri Cyrus Mistry on 22/12/2016 was however not confronted to the assessee by the Assessing Officer.

ii) The Assessing Officer vide show cause notice dated 26.12.2016 raised the issue of close relationship of trustees of the trust and Tata Sons Ltd. through appointed directors seeking reply as to whether the activities are in accordance with the objects of the trust, what kind of control trust is exercising on business of Tata Sons Ltd. and also the issue that the trustee who were earlier directors/employees of Tata Sons Ltd. are taking benefit from the company through the control of directors appointed by the trust. But it was done without mentioning the facts or evidence on the basis of which the above preliminary inference was drawn by the Assessing Officer.

iii) In the reply besides giving some explanation to the queries of Assessing Officer, the material/factual basis of allegations in the show cause

notice was sought by the assessee from the Assessing Officer. In the assessee's reply, besides giving some explanation to the queries of Assessing Officer, the assessee itseslf had asked for the material/ factual basis of allegation in the show cause notice, to which the Assessing Officer did not respond. The above facts and circumstances clearly show that the Assessing officer has not conducted verification/ enquiries properly, which could take the issue to the logical conclusion.

iv) Importantly, the Assessing Officer, in the Office Note with the assessment order u/s. 143(3) of the I.T. Act, after referring to his show cause notice dated 26/12/2016 and assessee's reply dated 28/12/2016, has noted that:

> ***One of its Directors and Chairman for the time being Mr. Cyrus Mistry filed a letter received in this office on 22/12/2016 along with 2 box files containing various documents in support of his letter mentioning that the Trustees have lot of inference/control over the business. In reply Mr. Cyrus Mistry has also stated that Mr. Ratan Tata, and Mr. R. Venkatramanan are taking lots of services/benefit from M/s. Tata Sons Ltd. But Trust, in response to show cause notice issued, replied that same services/benefit are being received in the capacity of ex-chairman and not in the capacity of Trustee. After going through the said reply/all the emails/internal communication between Tata Sons Ltd. and the trustees, prima facie, it appears that Trustees are having control over the affairs of the company.***
>
> ***Presently, since the case is getting time barred on 31/12/2016, order is being passed. Remedial action may be taken as per I.T. Act, 1961, if required, on detailed examination of submissions/allegations made by Mr. Cyrus P. Mistry, which are on record and any new facts which may come to notice subsequently.***

This clearly shows that the Assessing Officer did not use the material available with him to take the matter to the logical conclusion and has acted against his own prima facie opinion. This note itself makes the order of Assessing Officer on this issue erroneous and prejudicial to the interest of revenue.

To sum up, on the basis of the above facts, I am of the opinion that despite the material being available on records, which could lead to prima facie opinion that the trustees are having control over the affairs of Tata Sons Ltd., the Assessing Officer has failed to take the issue to any logical conclusion. The above indicates that examination of such material was necessary in order to ascertain the facts as also whether any direct or indirect benefit as stated in section 13(l)(c) of the Act is being taken by the connected persons as referred in section 13(3) of the I.T. Act.

13. As regards the alleged non-verification of investment details in which the interest has been earned, learned Commissioner's conclusions were as follows:

> ***12.3 The first part of the reply of assessee quoted above makes it clear that the Assessing Officer has not obtained details of investment as the Schedule was not available on record. It was therefore, not possible for him to make verification from Form 26AS. The details submitted by assessee before this office in its reply dated 27.03.2019 were not there before the Assessing Officer, Therefore, it would be in the fitness of things that the same are verified by the Assessing Officer.***
>
> ***12.4 Regarding the application of exempt income of dividend towards the object of the Trust, it is pertinent to mention that the Id. ITAT, Mumbai, in the case of Jamshedji Tata Trust, for A.Y. 2010-11, in ITA No. 7006/Mum/2013, has held that:***
>
> > ***"For the purpose of application of income in terms of section 11(1) and (2), the entire income of the trust has to be considered including the dividend and long term capital gain claimed as exempt u/s. 10. It is pertinent to mention that for availing the exemption u/s 11, the income derived from the property held under trust has to be considered irrespective of the fact that some of the income so derived is also exempt u/s. 10, therefore, 85% of the entire income without exclusion of dividend and long term capital gain on shares has to be applied for such purpose in India for availing deduction u/s, 22."***
>
> ***Therefore, irrespective of the decision of Hon'ble High Court to allow exemption u/s. 10 on such dividend income, the Assessing Officer ought to have asked the assessee to demonstrate that the entire income of the Trust was applied or being applied for the purpose of the Trust.***

14. As regards assessee's submission against assumption of jurisdiction under section 263 on the facts of this case, learned Commissioner concluded as follows:

> ***15. Without prejudice to the above discussion, which makes it very clear that it was always a consistent interpretation of various Courts, that not making proper enquiry or failure to make due verification by the Assessing Officers gives jurisdiction under section 263, now the legal position itself has been made it clear by inserting Explanation (2) to Section 263 of the I.T. Act, which is declaratory nature of providing clarity on the issue. The amended law is also squarely applicable in the case of the assessee for the following reasons :***
>
> ***15.1 By Finance Bill 2015, Explanation 2 to section 263 was inserted w.e.f. 1st June 2015 to declare the law which reads as under:—***
>
> > ***"[Explanation 2, - For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer shall be deemed***

to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner —

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person. "]

The assessee's case is clearly covered by Clause (a) of above explanation (2) to section 263 of the I.T. Act.

15.2 The Hon'ble Supreme Court in the case of Sundaram Filial v. Pattabiram reported in (1985) 1 SCC 591, culled out from earlier cases the following as objects of an explanation to a statutory provision (Reference Page 214-215, Principles of Statutory Interpretation by Justice G.P. Singh, 13th Ed.):—

(a) To explain the meaning and intendment of the Act itself,

(b) Where there is any obscurity or vagueness in the main enactment to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) To provide an additional support to dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act if it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) It cannot, however, take away a statutory right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same.

At this stage, it will therefore be relevant to refer to the Memorandum to Finance Bill 2015 which is as under:

"Memorandum to Finance Bill 2015
Revision of order that is erroneous in so far as it is prejudicial to the interests of revenue
The existing provisions contained in sub-section (1) of section 263 of the Income- tax Act provides that if the Principal Commissioner or Commissioner considers that any order passed by the assessing officer is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making an enquiry pass an order modifying the assessment made by the assessing officer or cancelling the assessment and directing fresh assessment.

The interpretation of expression "erroneous in so far as it is prejudicial to the interests of the revenue" has been a contentious one.
In order to provide clarity on the issue it is proposed to provide that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it prejudicial to the interests of the revenue, if, in the opinion commissioner or Commissioner.

(a) the order is passed without making inquiries or verification which, should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or
the order has not been passed in accordance with any decision, prejudicial

(d) to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person. This amendment will take effect from 1st day of June, 2015."

Thus, as can be seen above, the amendment to section 263 of the Act by insertion of Explanation 2 to Section 263 is declaratory in nature and is inserted to provide clarity.

15.3 Earlier also, the Hon'ble Supreme Court has time and again declared various explanations in certain statute as declaratory in nature. For example:

In CIT v. Podar Cement (P.) Ltd. [1997] 226 ITR 625/92 Taxman 541 (SC), the Hon'ble Supreme Court held that amendment introduced by the Finance Act, 1987 in so far the related to Section 27(iii), (iiia) and (iiib) which redefined the expression 'owner of house property', in respect of which there was a sharp divergence of opinion amongst the High Courts, was clarificatory

and declaratory in nature and consequently retrospective. Similarly, in Brij Mohan Das Laxman Dasv. C/T(1997] 223 ITR 825/90 Taxman 41 (SC), explanation 2 added to section 40 of the Act was held to be declaratory in nature and, therefore, retrospective.(Reference Page 569-570, Principles of Statutory Interpretation by Justice G.P. Singh ,13th Ed.).

15.4 The Ld. Jurisdictional ITAT, Mumbai in the case of Anuj Jayendra Shah 67 taxmann.com 38, relying on above judgments and after analyzing explanation & Memorandum to Finance Act has also held this amendment only declaratory and charificatory in nature. It is held that the amendment to section 263 of the Act by insertion of Explanation 2 to Section 263 is declaratory in nature and is inserted to provide clarity on the issue as to which orders passed by the AO shall constitute erroneous and prejudicial to the interest of Revenue whereby it is provided, inter-alia, that if the order is passed without making inquiries or verification by the AO which, should have been made or the order is passed allowing any relief without inquiring into the claim, the order shall be deemed to be erroneous and prejudicial to the interest of Revenue.

15.5 From the reply of assessee dated 11,03.2015, it is clear that it has also accepted that Explanation (2) to Section 263 is clarificatory in nature. However, by relying on the following two judgments;

(i) Torrent Pharmaceuticals Ltd. vs DCIT [2018] 97 Taxmann.com 671
(Ahemadabad Tribunal)

(ii) Narayan Tatu Rane [2016] 70 Taxmann.com 227 (Mumbai),

It is claimed that the explanation being clarificatory in nature, it would not lead to dilution of basic requirements of Section 263 (1) of the I.T. Act. In this regard, it is stated that the discussion made so far on facts of each issue and in view of judicial pronouncements discussed in Para 14 above, it is very clear that on facts and circumstances of this case, it is a fit case for invoking provisions of Section 263 of the I.T. Act.

15. It was in this light that the learned Commissioner set aside the assessment framed under section 143(3) of the Act, and concluded as follows

16. Thus, it clearly comes out from the above judgments that not conducting due verification amounts to the order being erroneous and prejudicial to the interest of revenue. No enquiry or due verification, even in cases where the issue was debatable also amounts to the order being erroneous and prejudicial to the interest of revenue. Similarly, adopting the pertinent line of enquiry but not taking it to the logical end also renders the order erroneous and prejudicial to the interest of revenue.

> ***17. In the light of the discussion in the preceding paragraphs, I am of the opinion that the order u/s 143(3) dated 30.12.2016 for the assessment year 2014-15 is erroneous in so far as it is prejudicial to the interests of the revenue. Therefore, order is set aside to the file of the A.O. for making a de-novo assessment after proper examination of various issues including the aforesaid issues. Needless to mention, the Assessing Officer must decide the issue after affording reasonable opportunity of being heard to the assessee and must pass a speaking and well reasoned order dealing with all the submissions of the assessee.***

16. Aggrieved by the stand so taken by the learned Commissioner, the assessee is in appeal before us.

17. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

18. We find that the case of the Commissioner hinges on, what he perceives as, lack of inquiry, the inadequacy of inquiry, or taking up the pertinent line of inquiry but not following it to its logical conclusion. Learned Departmental Representative has also been very gracious to submit that none doubts the philanthropic work being done by the assessee trust but the short question before us really is whether or not the due verifications have been carried out by the Assessing Officer. The stand of the learned Commissioner has simply been reiterated by the Departmental Representative, and a lot of emphasis is placed on the fact in the light of Explanation 2 to Section 263 once Commissioner is of the view, as he has been on the facts of this case, that "the order is passed without making inquiries or verification which should have been made", the order is required to be treated as erroneous and prejudicial to the interest of the revenue. Therefore, we must examine the nature of inquiries conducted by the Assessing Officer and whether these inquiries were so deficient as to render the order 'erroneous and prejudicial to the interests of the revenue', within meanings of that expression assigned under section 263.

19. The question that we also need to address is as to what is the nature of scope of the provisions of Explanation 2(a) to Section 263 to the effect that an order is deemed to be "erroneous and prejudicial to the interests of the revenue" when Commissioner is of the view that "the order is passed without making inquiries or verification which should have been made".

20. Undoubtedly, the expression used in Explanation 2 to Section 263 is "when Commissioner is of the view," but that does not mean that the view so formed by the Commissioner is not subject to any judicial scrutiny or that such a view being formed is at the unfettered discretion of the Commissioner. The formation of his view has to be in a reasonable manner, it must stand the test of judicial scrutiny, and it must have, at its foundation, the inquiries, and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant- that an Assessing Officer is expected to be. If we are to proceed on the basis, as is being urged by the learned Departmental Representative and as is canvassed in the impugned order,

that once Commissioner records his view that the order is passed without making inquiries or verifications which should have been made, we cannot question such a view and we must uphold the validity of revision order, for the recording of that view alone, it would result in a situation that the Commissioner can de facto exercise unfettered powers to subject any order to revision proceedings. To exercise such a revision power, if that proposition is to be upheld, will mean that virtually any order can be subjected to revision proceedings; all that will be necessary is the recording of the Commissioner's view that "the order is passed without making inquiries or verification which should have been made". Such an approach will be clearly incongruous. The legal position is fairly well settled that when a public authority has the power to do something in aid of enforcement of a right of a citizen, it is imperative upon him to exercise such powers when circumstances so justify or warrant. Even if the words used in the statute are prima facie enabling, the courts will readily infer a duty to exercise a power which is invested in aid of enforcement of a right—public or private—of a citizen. ***[L Hirday Naran Vs Income Tax Officer [(1970) 78 ITR 26 (SC)].*** *As a corollary to this legal position, when a public authority has the powers to do something against any person, such an authority cannot exercise that power unless it is demonstrated that the circumstances so justify or warrant. In a democratic welfare state, all the powers vested in the public authorities are for the good of society. A fortiorari, neither can a public authority decline to exercise the powers, to help anyone, when circumstances so justify or warrant, nor can a public authority exercise the powers, to the detriment of anyone, unless circumstances so justify or warrant. What essentially follows is that unless the Assessing Officer does not conduct, at the stage of passing the order which is subjected to revision proceedings, inquiries and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant- that an Assessing Officer is expected to be, Commissioner cannot legitimately form the view that "the order is passed without making inquiries or verification which should have been made". The true test for finding out whether Explanation 2(a) has been rightly invoked or not is, therefore, not simply existence of the view, as professed by the Commissioner, about the lack of necessary inquiries and verifications, but an objective finding that the Assessing Officer has not conducted, at the stage of passing the order which is subjected to revision proceedings, inquiries and verifications expected, in the ordinary course of performance of duties, of a prudent, judicious and responsible public servant that the Assessing Officer is expected to be.*

21. That brings us to our next question, and that is what a prudent, judicious, and responsible Assessing Officer is to do in the course of his assessment proceedings. Is he to doubt or test every proposition put forward by the assessee and investigate all the claims made in the income tax return as deep as he can? The answer has to be emphatically in negative because, if he is to do so, the line of demarcation between scrutiny and investigation will get blurred, and, on a more practical note, it will be practically impossible to complete all the assessments allotted to him within no matter how liberal a time limit is framed. In scrutiny assessment proceedings, all that is required to be done is to examine the income tax return and claims made therein as to whether these are prima facie in accordance with the law and where one has any reasons to doubt the correctness of a claim made in the income tax return, probe into the matter deeper in detail. He need not look at everything with suspicion and

investigate each and every claim made in the income tax return; a reasonable prima facie scrutiny of all the claims will be in order, and then take a call, in the light of his expert knowledge and experience, which areas, if at all any, required to be critically examined by a thorough probe. While it is true that an Assessing Officer is not only an adjudicator but also an investigator and he cannot remain passive in the face of a return which is apparently in order but calls for further inquiry but, as observed by Hon'ble Delhi High Court in the case of Gee Vee Enterprises Vs ACIT [(1195) 99 ITR 375 (Del)], "it is his duty to ascertain the truth of the facts stated in the return ***when the circumstances of the case are such as to provoke an inquiry****. (Emphasis, by underlining, supplied by us). It is, therefore, obvious that when the circumstances are not such as to provoke an inquiry, he need not put every proposition to the test and probe everything stated in the income tax return. In a way, his role in the scrutiny assessment proceedings is somewhat akin to a conventional statutory auditor in real-life situations. What Justice Lopes said, in the case of* ***Re Kingston Cotton Mills [(1896) 2 Ch 279, 288)]****, in respect of the role of an auditor, would equally apply in respect of the role of the Assessing Officer as well. His Lordship had said that an auditor (read Assessing Officer in the present context) "****is not bound to be a detective, or, as was said, to approach his work with suspicion or with a foregone conclusion that there is something wrong. He is a watch-dog, but not a bloodhound.****". Of course, an Assessing Officer cannot remain passive on the facts which, in his fair opinion, need to be probed further, but then an Assessing Officer, unless he has specific reasons to do so after a look at the details, is not required to prove to the hilt everything coming to his notice in the course of the assessment proceedings. When the facts as emerging out of the scrutiny are apparently in order, and no further inquiry is warranted in his bonafide opinion, he need not conduct further inquiries just because it is lawful to make further inquiries in the matter. A degree of reasonable faith in the assessee and not doubting everything coming to the Assessing Officer's notice in the assessment proceedings cannot be said to be lacking bonafide, and as long as the path adopted by the Assessing Officer is taken bonafide and he has adopted a course permissible in law, he cannot be faulted- which is a sine qua non for invoking the powers under section 263. In the case of* ***Malabar Industrial Co Ltd Vs CIT [(2000) 243 ITR 83 (SC)]****, Hon'ble Supreme Court has held that "****Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue, for example, when an ITO adopted one of the courses permissible in law and it has resulted in loss of revenue; or where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the revenue unless the view taken by the ITO is unsustainable in law****." The test for what is the least expected of a prudent, judicious and responsible Assessing Officer in the normal course of his assessment work, or what constitutes a permissible course of action for the Assessing Officer, is not what he should have done in the ideal circumstances, but what an Assessing Officer, in the course of his performance of his duties as an Assessing Officer should, as a prudent, judicious or reasonable public servant, reasonably do bonafide in a real-life situation. It is also important to bear in mind the fact that lack of bonafides or unreasonableness in conduct cannot be inferred on mere suspicion; there have to be some strong indicators in direction, or there has to be a specific failure in doing what a prudent, judicious and responsible officer would have done in the normal course of his work in the similar circumstances. On a similar note, a coordinate bench of the*

Tribunal, in the case of ***Narayan T Rane vs ITO [(2016) 70 taxmann.com 227 (Mum)]*** *has observed as follows:*

> ***20. Clause (a) of Explanation states that an order shall be deemed to be erroneous, if it has been passed without making enquiries or verification, which should have been made. In our considered view, this provision shall apply, if the order has been passed without making enquiries or verification which a reasonable and prudent officer shall have carried out in such cases, which means that the opinion formed by Ld Pr. CIT cannot be taken as final one, without scrutinising the nature of enquiry or verification carried out by the AO vis-a-vis its reasonableness in the facts and circumstances of the case. Hence, in our considered view, what is relevant for clause (a) of Explanation 2 to sec. 263 is whether the AO has passed the order after carrying our enquiries or verification, which a reasonable and prudent officer would have claimed out or not. It does not authorise or give unfettered powers to the Ld Pr. CIT to revise each and every order, if in his opinion, the same has been passed without making enquiries or verification which should have been made.***

22. Having said that, we may also add that while in a situation in which the necessary inquiries are not conducted or necessary verifications are not done, Commissioner may indeed have the powers to invoke his powers under section 263 but that it does not necessarily follow that in all such cases the matters can be remitted back to the assessment stage for such inquiries and verifications. There can be three mutually exclusive situations with regard to exercise of powers under section 263, read with Explanation 2(a) thereto, with respect to lack of proper inquiries and verifications. The first situation could be this. Even if necessary inquiries and verifications are not made, the Commissioner can, based on the material before him, in certain cases straight away come to a conclusion that an addition to income, or disallowance from expenditure or some other adverse inference, is warranted. In such a situation, there will be no point in sending the matter back to the Assessing Officer for fresh inquiries or verification because an adverse inference against the assessee can be legitimately drawn, based on material on record, by the Commissioner. In exercise of his powers under section 263, the Commissioner may as well direct the Assessing Officer that related addition to income or disallowance from expenditure be made, or remedial measures are taken. The second category of cases could be when the Commissioner finds that necessary inquiries are not made or verifications not done, but, based on material on record and in his considered view, even if the necessary inquiries were made or necessary verifications were done, no addition to income or disallowance of expenditure or any other adverse action would have been warranted. Clearly, in such cases, no prejudice is caused to the legitimate interests of the revenue. No interference will be, as such, justified in such a situation. That leaves us with the third possibility, and that is when the Commissioner is satisfied that the necessary inquiries are not made and necessary verifications are not done, and that, in the absence of this exercise by the Assessing Officer, a conclusive finding is not possible one way or the other. That is perhaps the situation in which, in our humble understanding, the Commissioner, in the

exercise of his powers under section 263, can set aside an order, for lack of proper inquiry or verification, and ask the Assessing Officer to conduct such inquiries or verifications afresh.

23. Let us, in this light, take up the learned Commissioner's allegations regarding deficient inquiries and our findings thereon, vis-à-vis each specific issues.

(Paragraphs 24 to 29 are not relevant for the present purposes)

30. The next issue raised by the learned Commissioner is with respect to the alleged failure of the Assessing Officer in not examining whether investments held by the assessee are in conformity with the provisions of Section 11(5) of the Act, and in not examining whether the assessee is covered by the exceptions carved out under proviso to Section 13(1)(d).

31. So far as this aspect of the matter is concerned, we have noted that the Assessing Officer has extensively examined the compliance with the requirements of Section 11(5) and Section13(1)(d) of the Act. Vide letter dated 2nd December 2016, the Assessing Officer specifically asked the assessee "whether any investment of the trust for last three years is in contravention of Section 11(5) of the Income Tax Act, 1961. Also, whether any investment of the trust in the last three years is covered by the provisions of Section 13(1)(d), please specify the same". In reply to this requisition, the assessee had duly furnished all the details of the investments held by the assessee. It was also categorically confirmed that these investments did not violate the provisions of Section 11(5) and 13(1)(d). In Annexure 1 to the letter dated 9th December 2016, the assessee filed complete details of all the scrips, the bifurcation of shares held as on 1st June 1973 and subsequent bonus shares allotted in connection with the holdings as on 1st June 1973, and it was thus made clear that no investments were made after 1st June 1973. The complete specific details about holdings in each of these shares as on 1st June 1973, and accretion in these holdings on account of allotment of bonus shares thereafter, were in 9 pages- and copies of these details were also furnished before us at pages 216-223 of the paper book filed before us. All these details were also furnished in the year-end financial statements, which were duly filed with the Assessing Officer. The Assessing Officer categorically notes this and observes that "the assessee has to follow the accumulation provisions of Section 11(2), specific modes of investment/ deposits under section 11(5) and other related provisions of Section 13". Satisfied with the details filed by the assessee, the Assessing Officer had no issues with respect to section 11 and 15, and he noted that the income derived from property held under trust, which included these investments, is covered by the exemption under section 11 and, accordingly, he disallowed exemption of dividend under section 10(34). Learned Commissioner does not dispute these facts but adds that the Assessing Officer did not examine the fundamental question as to whether these shareholdings, as on 1st June 1973, were part of the corpus or not. Unless, according to the learned Commissioner, these shareholdings were held to be part of the corpus of the trust, these investments can not be held to be permissible investments under section 13(1)(d), and it is Assessing Officer's not looking into this aspect of the matter that rendered the subject assessment order erroneous and prejudicial to the interests of the revenue.

32. There is no dispute with the proposition that in terms of the provisions of Section 11(1)(d)(iii) the assessee trust could not have invested in the shares of a company, other than in shares of a public sector company or shares prescribed as a form or mode of investment under clause (xii) of Section 11 (5), after 30th November 1983. None of these conditions are satisfied in the present case. However, proviso to Section 13(1) (d) states that nothing in the clause, containing aforesaid provision, will apply to, inter alia, " (i) any assets held by the trust or institution where such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973; and (ia)any accretion to the shares, forming part of the corpus mentioned in clause (i), by way of bonus shares allotted to the trust or institution". Therefore, as long as the shares are part of the corpus, as on 1st June 1973, or the shares are received as accretion to the shares being held to be part of the corpus, the provisions of Section 13(1)(c) will not come into play.

33. It is an admitted position that the shares becoming part of the investment, after 1st June 1973, were accretion to the original shareholdings as on 1st June 1973 and these were allotted as bonus shares only. So far as the question of the shares being part of 'corpus' is concerned, the current financial period was over forty years after the cut-off date of 1st June 1973, and in none of those forty-plus years, the exemption was declined on the ground that these shares were not part of the corpus. There was no good reason to doubt these shares being part of the corpus. As we have noted earlier, an Assessing Officer can only be faulted for doing anything less than "what an Assessing Officer, in the course of his performance of his duties as an Assessing Officer should, as a prudent, judicious or reasonable public servant, reasonably do bonafide in a real-life situation". Viewed thus, we cannot fault the conduct of the Assessing Officer in not disturbing, or even not probing, something being constantly accepted for over four decades- particularly when there is no occasion or trigger to re-examine that aspect of the matter in this particular year and when there is no change in legal or factual position in this particular year. It may also be noted that, as pointed out to us by the learned counsel, the assessee trust was notified as an institution established for charitable purposes under section 10(23C)(iv), and this notification has been renewed from time to time. The conditions precedent for grant of notification under section 10(23C) were similar to section 13(1)(d) inasmuch as it was provided that if the funds were invested in modes other than those specified under section 11(5), the benefit of 10(23C) would not be available but an exception was made if such assets were to form part of the corpus as on 1st June 1973. On these facts, while granting the exemption under section 10(23C), Under Secretary in the Central Board of Direct Taxes, Govt of India, vide letter no 197/126/91-ITA-I dated 31st July 1992, had written a letter to the assessee trust seeking clarification whether all the shares form part of the corpus. The assessee trust, vide letter dated 21st August 1992, had clarified the said position, and it was only thereafter, on 10th May 1993, notification was issued by the Government of India notifying the assessee trust under section 10(23C). These facts, which are set out on page 17 of the second compilation filed before us, do show that the assessee trust was accepted to be holding these shares as part of the corpus by the CBDT itself. When an issue has been decided in a certain way by the CBDT, it cannot normally be open to the field officers to question the correctness of that position- particularly when it's a factual aspect, and this factual aspect has been found in a particular manner, and no interference in these settled facts is warranted on account of any particular reason.

34. While it is indeed true that there is no res judicata in the assessment proceedings, the principle of consistency, nevertheless has its firm roots in the income tax jurisprudence. Hon'ble Supreme Court's has, in the case of ***Radhasoami Satsang v. CIT [(1992) 193 ITR 321 (SC)]*** *held that, while strictly speaking, res judicata does not apply to income-tax proceedings but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other, and the parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year. In the case of* ***PCIT v. Quest Investment Advisors Pvt Ltd. [(2018) 419 ITR 545 (Bom.)]****, referring to this judgment and taking note of subsequent legal developments, Hon'ble jurisdictional High Court has, inter alia, observed as follows:*

> ***7. We note that the impugned order of the Tribunal records the fact that the Revenue Authorities have consistently over the years i.e. for the 10 years years prior to Assessment Years 2007-08 and 2008-09 and for 4 subsequent years, accepted the principle that all expenses which has been incurred are attributable entirely to earning professional income. Therefore, the Revenue allowed the expenses to determine professional income without any amount being allocated to earn capital gain. In the subject assessment year, the Assessing Officer has deviated from these principles without setting out any reasons to deviate from an accepted principle. Moreover, the impugned order of the Tribunal also records that the Revenue was not able to point out any distinguishing features in the present facts, which would warrant a different view in the subject assessment year from that taken in the earlier and subsequent assessment years. So far as the decision of Radhasoami Satsang (supra) is concerned, it is true that there are observations therein that restrict its applicability only to that decision and the Court has made it clear that the decision should not be taken as an authority for general applicability.***
>
> ***8. However, subsequently the Apex Court in Bharat Sanchar Nigam Ltd. v. Union of India [2006] 282 ITR 273 has after referring to the decision of Radhasoami Satsang (supra) has observed as under :—***
>
> > ***"20. The decisions cited have uniformly held that res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The courts will generally adopt an earlier pronouncement of the law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of res judicata but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual***

> ***gateways of distinguishing the earlier decision of where the earlier decision is per incuriam. However, these are fetters only on a co-ordinate Bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior strength or in some cases to a Bench of superior jurisdiction." (emphasis supplied)***
>
> ***9. The principle accepted by the Revenue for 10 earlier years and 4 subsequent years to the Assessment Years 2007-08 and 2008-09 was that the entire expenditure is to be allowed against business income and no expenditure is to be allocated to capital gains. Once this principle was accepted and consistently applied and followed, the Revenue was bound by it. Unless of course it wanted to change the practice without any change in law or change in facts therein, the basis for the change in practice should have been mentioned either in the assessment order or at least pointed out to the Tribunal when it passed the impugned order. None of this has happened. In fact, all have proceeded on the basis that there is no change in the principle which has been consistently applied for the earlier assessment years and also for the subsequent assessment years. Therefore, the view of the Tribunal in allowing the respondent's appeal on the principle of consistency cannot in the present facts be faulted with, as it is in accord with the Apex Court decision in Bharat Sanchar Nigam Ltd.'s case (supra).***

35. We are not, in this context, really concerned about the final determination of merits on this issue. Our limited point is that given the accepted past history of the case, and given the fact that there were no material factual or legal developments in the relevant financial period, it was not at all unreasonable on the part of the Assessing Officer not to question whether or not the investments in shares were part of the corpus. There were no reasons to provoke such an inquiry.

36. In any event, even if these investments were to be held to be contrary to the provisions of Section 11(5), all that could have been done by the Assessing Officer was to decline exemption under section 11 in respect of income from these investments, i.e., dividends, which, for the reasons we will set out now, is completely tax neutral for the assessee. In support of this consequence of investment being in violation of the provisions of Section 11(5), we may draw support from the following observations made by Hon'ble jurisdictional High Court, in the case of ***DIT Vs Sheth Mafatlal Gaganbhai Foundation Trust [(2001) 249 ITR 533 (Bom****)]:*

> ***In other words, only the non-exempt income portion would fall in the net of tax as if it was the income of an AOP. Section 11(5) lays down various modes or forms in which a trust is required to deploy its funds. Section 13(1) lays down cases in which section 11 shall not apply. Under section 13(1)(d)(iii), it has been laid down that any share in a company, not being a Government company, held by the trust after 30-11-1983 shall result in forfeiture of exemption. By virtue of the proviso (iia) it has been laid down that any asset which does not form part of permissible investment under section 11(5) shall***

be disposed of within one year from the end of the previous year in which such asset is acquired or by 31-3-1993, whichever is later. In the present case, the assessee was required to dispose of the shares under the said proviso by 31-3-1993 [See the judgment of this Court in IT Appeal No. 81 of 1999 dated 14-9-2000]. The shares have not been disposed of even during the assessment year in question. Now, under section 164(2), it is, inter alia, laid down that in the case of relevant income which is derived from property held under trust for charitable purposes, which is of the nature referred to in section 11(4A), tax shall be charged on so much of the relevant income as is not exempt under section 11. Section 164(2) was reintroduced by the Direct Tax Laws (Amendment) Act, 1989 with effect from 1-4-1989. Earlier it was omitted by the Direct Tax Laws (Amendment) Act, 1987. However, the Legislature inserted a proviso by the Finance Act, 1984 with effect from 1-4-1985. By the said proviso, it is, inter alia, laid down that where whole or part of the relevant income is not exempt by virtue of section 13(1)(d), tax shall be charged on the relevant income or part of the relevant income at the maximum marginal rate. The phrase 'relevant income or part of the relevant income' is required to be read in contradistinction to the phrase 'whole income' under section 161(1A). This is only by way of comparison. Under section 161(1A), which begins with a non obstante clause, it is provided that where any income in respect of which a person is liable as a representative assessee consists of profits of business, the tax shall be charged on the whole of the income in respect of which such person is so liable at the maximum marginal rate. Therefore, reading the above two phrases shows that the Legislature has clearly indicated its mind in the proviso to section 164(2) when it categorically refers to forfeiture of exemption for breach of section 13(1)(d), resulting in levy of maximum marginal rate of tax only to that part of the income which has forfeited exemption. It does not refer to the entire income being subjected to maximum marginal rate of tax

37. The insertion of subsection (6) and (7) to Section 11, it may be added, is effective from 1st April 2015, and, therefore, the tax exemption under section 10(34), so far as the present assessment year is concerned, cannot be disturbed. In any event, since the income from dividends was exempt under section 10(34), as the aforesaid amendments had not come into effect at that point of time, it was completely tax neutral, even if these amendments can be said to have any influence on the taxability of dividends, as to whether or not income from the dividends in these shares is eligible for exemption under section 11 or not. As a matter of fact, the Assessing Officer has declined the exemption under section 10(34) only on the ground that the assessee was eligible for exemption under section 11 on this income. Therefore, even if the assessee is to be declined exemption under section 11 in respect of dividend income on these shares, he will be eligible for exemption under section 10(34). In the case of ***DIT Vs Jasubhai Foundation [(2016) 374 ITR 315 (Bom)]****, Hon'ble jurisdictional High Court has also observed as follows:*

…….The provisions, namely, sections 10 and 11 fall under a Chapter which is titled "Incomes Which Do Not Form Part of Total Expenditure" (Chapter

> ***III). Section 10 deals with incomes not included in total income whereas section 11 deals with income from property held for charitable or religious purposes. We have not found anything in the language of the two provisions nor was Mr. Malhotra able to point out as to how when certain income is not to be included in computing total income of a previous year of any person, then, that which is excluded from section 10 could be included in the total income of the previous year of the person/assessee. That may be a person who receives or derives income from property held under trust wholly for charitable or religious purposes. Thus, the income which is not to be included in computation of the total income is a matter dealt with by section 10 and by section 11 the case of an assessee who has received income derived from property held under trust only for charitable or religious purposes to the extent to which such income is applied to such property in India and that any such income is accumulated or set apart for application for such purposes in India to the extent of which the income so accumulated or set apart in computing 15% of the income of such property, is dealt with. Therefore, it is a particular assessee and who is in receipt of such income as is falling under clause (a) of sub-section (1) of section 11 who would be claiming the exemption or benefit. That is a income derived by a person from property. It is that which is dealt with and if the property is held in trust for the specified purpose, the income derived therefrom is exempt and to the extent indicated in section 11(1)(a) of the Income Tax Act, 1961. There is nothing in the language of sections 10 or 11 which says that what is provided by section 10 or dealt with is not to be taken into consideration or omitted from the purview of section 11***

38. It is thus clear that there is no prejudice to the legitimate interests of the revenue on this point either. Whether an income is exempt under section 10(34) or under 11, it does not prejudice the interests of the revenue in any way. Accordingly, even if the order can be said to be 'erroneous' for any reason, it cannot be said to be 'prejudicial to the interests of the revenue', and, therefore, section 263 could not have been invoked on this point either. We may, in this regard, refer to the following observations of Hon'ble Supreme Court in the case of ***Malabar Industrial Co Ltd*** *(supra),:*

> ***"A bare reading of this provision makes it clear that the pre-requisite to exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the ITO is erroneous insofar as it is prejudicial to the interests of the revenue. The Commissioner has to be satisfied with twin conditions, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the revenue. If one of them is absent - if the order of the ITO is erroneous but is not prejudicial to the revenue or if it is not erroneous but is prejudicial to the revenue - recourse cannot be had to section 263(1)"***

39. These reasons are, however, not the only reasons as to why the stand of the Commissioner, in invoking section 263, is wholly unsustainable in law. Even on merits, for the reasons we will set out now, it is clear that the investments in questions were held as the corpus, and, as such, the provisions of Section 13 (1)(d) were not attracted.

40. Explaining the scope of expression "corpus," Hon'ble Karnataka High Court, in the case of ***DIT Vs Shri Ramakrishna Seva Ashram [(2013) 357 ITR 731 (Kar)]*** *has observed as follows:*

> ***11. The word 'corpus' is not defined under the Act. We do not find any judgment explaining the meaning of 'corpus'. In the Chambers 21st Century Dictionary, the meaning of the word 'corpus' has been given as under:***
>
> ***(i) body of writings, eg: by a particular author, on a particular topic, etc.;***
> ***(ii) a body of written and/or spoken material for language research;***
> ***(iii) anatomy any distinct mass of body tissue that may be distinguished from its surroundings.***
>
> ***Latin: meaning- 'body'.***
>
> ***12. In the Law Lexicon of P. Ramanatha Aiyar, 2nd Edition reprint-208 the meaning of the word 'Corpus' is given as under:***
>
> ***"A Body; human body; an artificial body created by law; as a corporation; a body or collection of laws; a material substance; something visible and tangible; as the subject of a right; something having legal position as distinguished from an incorporeal physical substance as distinguished from intellectual conception; the body of estate; or a capital of on estate".***
>
> ***13. The word 'Corpus' is used in the context of Income Tax Act. We have to understand the same in the context of a capital, opposed to an expenditure. It is a capital of an assessee; a capital of an estate; capital of a trust; a capital of an institution. Therefore, if any voluntary contribution is made with a specific direction, then it shall be treated as the capital of the trust for carrying on its charitable or religious activities. Then such an income falls under Section 11(d) of the I.T. Act and is not liable to tax. Therefore, it is not necessary that a voluntary contribution should be made with a specific direction to treat it as 'corpus', If the intention of the donor is to give that money to a trust which they will keep it in trust account in deposit and the income from the same is utilised for carrying on a particular activity, it satisfies the definition part, of the corpus. The assessee would be entitled to the benefit of exemptions from payment of tax levied.***
>
> ***14. In fact the Bombay High Court in the case of Trustees of Kilachand Devchand Foundation v. CIT [1988] 172 ITR 382 /[1987] 32 Taxman 393 dealing with the said voluntary contribution made for a charitable purpose, held that for being eligible for exemption, the donations must be voluntary and of a capital nature. That cannot be applied to charitable or religious purposes if the income thereof they must be so applied. The contribution made expressly to the capital or corpus of trust fall within the purview of sub-section (2) of Section 12. Therefore, such contributions cannot be be deemed to be***

the income derived from the property for the purpose of Section 11 of the said Act and provisions of Section 11 will not apply.

15. The Rajasthan High Court in the ease of Sukhdeo Charity Estate v. ITO [1991] 192 ITR 615 (Raj.) dealing with such contributions held that, the principles enunciated in various cases when applied to the present case, leave no room for debate that the intention of the donor-trust as well as donee-trust was to treat the money as capital to be spent for Ladnu Water Supply Scheme. It is of no consequence whether the amount had since been paid to the State Government or kept in the account of the above-referred scheme by the assessee-trust. From whatever angle it may be seen, the deposited amount cannot be said to be income in the hands of the recipient-trust. Therefore, what ultimately reveals that,-(i) the intention of the donor and (ii) how the recipient-assessee treat the said income. If the intention of the donor is that the amount/donation given is to be treated as capital and the income from that capital has to be utilised for the charitable purposes, then the said voluntary contribution is towards the part of the corpus of the trust. Similarly, the assessee after receiving the amount, keeps the amount in deposit and only utilise the income from the deposit to carry out the charitable activities, then also the said amount would be a contribution to the corpus of the trust and the nomenclature in which the amount is kept in deposit is of no relevance as long as the contribution received are kept in deposit as capital and only the income from the said capital which is to be utilised for carrying on charitable and religions activities of the institute/corpus of the trust, for which Section 11(i)(d) of the Act is attracted and the said income is not liable for tax tinder the Act.

[Emphasis, by underlining, supplied by us]

41. What essentially follows is that it's not the declaration of an investment being a corpus investment but the fact of its being treated as capital and rather than using the investment for the purposes of the trust, using the income from investment for the purposes of the trust, which is determinative of its being in the nature of corpus investment. How the trust is treating the investment, i.e., in the capital field or not, is thus truly determinative of the investment being part of the corpus. Viewed thus, the mere fact of these investments being held as capital for at least more than four decades- as conclusively established by the material before the Assessing Officer, and only income from these investments being applied for the purposes of the trust, clearly establishes the fact of these investments being part of the corpus of the trust.

42. In view of the foregoing discussions, as also bearing in mind the entirety of the case, learned Commissioner was clearly in error in invoking powers under section 263 on the ground that the Assessing Officer failed to examine the investments of the trust complying with the provisions of Section 11(5) and Section 13(1)(d) of the Act. We disapprove his action on this point as well.

43. The next issue that we need to consider it is whether there was any failure on the part of the Assessing Officer to examine whether the assessee has exercised control

of affairs of Tata Sons Limited, whether, by virtue of such a control, any benefit is derived by any of the persons referred to in Section 13(3) of the Act, and if so, tax implications thereof.

*44. Let us once again take a quick look at some relevant facts so far as Commissioner's stand on this issue is concerned. We have noted that, as the learned Commissioner himself records in the impugned order "**The Assessing Officer vide show cause notice dated 26.12.2016 raised the issue of close relationship of trustees of the trust and Tata Sons Ltd. through appointed directors seeking reply as to whether the activities are in accordance with the objects of the trust, what kind of control trust is exercising on business of Tata Sons Ltd. and also the issue that the trustee who were earlier directors/employees of Tata Sons Ltd. are taking benefit from the company through the control of directors appointed by the trust"** but does not find that inquiry to be sufficient on the ground, as is stated in the immediately following sentence, that **" but it was done without mentioning the facts or evidence on the basis of which the above preliminary inference was drawn by the Assessing Officer".** What essentially follows is that not putting the material on the basis of which this preliminary inference was drawn rendered the inquiry insufficient. It is difficult to understand this approach. The issue is admittedly looked into by the Assessing Officer and the Assessing Officer has come to certain conclusions. No infirmities are pointed out in this process. The deficiency is said to be that the material, on the basis of which preliminary inference was drawn, is not confronted. How does it make inquiry deficient or order erroneous and prejudicial to the interest of the revenue? If at all non-disclosure of this material is prejudicial to the interest of someone, that is to the interests of the assessee, but that is not relevant inasmuch as the matter has been looked into. We, therefore, see no merits in the stand of the learned Commissioner on this point. It is then noted that **"In the reply besides giving some explanation to the queries of Assessing Officer, the material/factual basis of allegations in the show cause notice was sought by the assessee from the Assessing Officer. In the assessee's reply, besides giving some explanation to the queries of the Assessing Officer, the assessee itself had asked for the material/ factual basis of allegation in the show cause notice, to which the Assessing Officer did not respond. The above facts and circumstances clearly show that the Assessing Officer has not conducted verification/ enquiries properly, which could take the issue to the logical conclusion".** These observations only repeat what has been pointed out in the preceding objection taken by the learned Commissioner. Not responding to the request of the assessee to share the material and factual basis on which the preliminary inference is drawn cannot be said to prejudicial to the interests of the revenue either. In fact, it has nothing to do with the adequacy of inquiry with respect to the control being exercised by the assessee over Tata Sons Limited. The inquiry having been conducted on this issue is not in dispute but what is being alleged is that the inquiry is deficient because the assessee is not confronted with the material on the basis of which the inquiries are initiated, and the initial inference is drawn against the assessee. By no stretch of logic, this inaction of the Assessing Officer, even if that be so, renders the assessment order erroneous and prejudicial to the interests of the revenue. The stand of the learned Commission, in the impugned order in this respect, cannot meet any judicial approval.*

*45. Learned Commissioner had also taken note of the office note appended to the assessment order, which records the fact that, on 22nd December 2016 i.e. just a week before the assessment under section 143(3) was to be finalized, one Cyrus Mistry wrote a letter to the Assessing Officer, and sent two box files containing documents in support of the content of his letter, informing the assessee the trustees of having control over the business of Tata Sons Ltd and that the trustees are "taking lots of services and benefits from Tata Sons Ltd". This note also records that while prima facie there may be substance in trustees having control over the affairs of Tata Sons Ltd, since the matter is getting time-barred on 31st December 2016, the order is being passed as of now, and, the remedial measures, if required on a detailed examination of allegations made by Cyrus Mistry and on new facts coming to knowledge, will be taken. Learned Commissioner's stand is that these observations "**clearly shows that the Assessing Officer did not use the material available with him to take the matter to the logical conclusion and has acted against his own prima facie opinion"** and that **"this note itself makes the order of Assessing Officer on this issue erroneous and prejudicial to the interest of revenue."***

46. Let's not lose sight of the legal position that so far as the exercise of powers under section 263 is concerned, these powers can only be exercised when the subject order is erroneous and prejudicial to the interest of the revenue. The fundamental fact that we must examine is whether the action of the Assessing Officer, on the given set of facts, could be said to be erroneous at all. The Assessing Officer receives some complaint against the assessee, and additional material against the assessee, at the fag-end of the assessment proceedings, and based on this additional last-minute material he is not able to come to a definite conclusion withing the statutory time limit for completing the assessment. He, therefore, records an office note to the effect that these allegations may be looked into later, and, if required, appropriate remedial measures be taken thereafter. It is only elementary that once a scrutiny assessment is completed, the Assessing Officer is not denuded of the powers to examine the correctness or otherwise of the assessment thereafter. For example, where an Assessing Officer comes to the conclusion that an income has escaped assessment, he can as well initiate proceedings under section 147 to bring that income to tax. There is, therefore, no infirmity in the note appended to the assessment order. If one week is not sufficient to investigate everything in the complaint and two box files of documents supplied by the complainant, that does not mean that the time limit for completion of assessment proceedings will get extended. The Assessing Officer has adopted a reasonable course of action, and, as we have noted in our analysis earlier, the test of what the ought to have done is not what an Assessing Officer should have done in the ideal circumstances and with all his calls being right, but what an Assessing Officer, in the course of his performance of his duties as an Assessing Officer should, as a prudent, judicious or reasonable public servant, reasonably do bonafide in a real life situation. A prima facie view of the Assessing Officer cannot be reason enough to decline the assessee certain tax treatment which has been given to the assessee all along for decades, but it can surely be reason enough to leave a window for appropriate action being taken against the assessee, if so warranted- and that is exactly what the Assessing Officer has done. The stand of the Assessing Officer is, in our humble understanding, quite apt and bonafide. It cannot be faulted.

37. As we have seen above, one of the allegations that the learned Commissioner has made is against the Assessing Officer's "not using the material available with him to take the matter to the logical conclusion," and it is also observed by the learned Commissioner that "this note itself makes the order of Assessing Officer on this issue erroneous and prejudicial to the interests of the assessee." What is being done now is to send the matter back to the Assessing Officer for examination de novo so as to inquire into the allegations so made by Cyrus Mistry. What this approach overlooks is that it is only elementary that what can not be done directly cannot be done indirectly either. If receipt of some inputs at the last minute from a third party cannot result in an extension of time for completion of assessment under section 143(3) directly, it cannot be done by way of invoking Section 263 either.

38. It is well known that Cyrus Mistry, a former Chairman of the Tata Group, was removed from his position in the Tata Group on 24th October 2016, and within eight weeks of his removal, he sends this material, against the trusts in the Tata group-including the assessee before us, to the Assessing Officer. The objectivity of the averments made by Cyrus Mistry, in such a situation and to say the least, seems to be extremely doubtful. His action of supplying documents to the income tax department, without any authorization of the company even though which were apparently obtained by him in the fiduciary capacity, almost immediately after being removed as Chairman of the Tata Sons Ltd parallels, cannot be said to be influenced by call of a pure conscious and high ground of morality. He was Chairman of Tata Sons Ltd since 2013 and its director since 2006, but apparently, knowing everything very well, he keeps quiet all along. Just as he is expelled from the office of the Chairman of Tata Sons, he gathers copies of the documents accessed by him in a fiduciary capacity and hands these documents over to the income tax department. This kind of conduct is unheard of in the civilized corporate world. The inputs from those engaged in a rivalry with an assessee should be taken with a reasonable degree of circumspection and should not be placed on such a high pedestal so as to relegate all other material facts and accepted past assessment history of the case into insignificance.

39. No doubt, dehors the credibility of such elements, even their inputs are used by the law enforcing agencies, but these inputs are not placed on such high pedestals that, even without veracity of these inputs being established beyond doubt, these inputs are considered to be material enough to dislodge the foundational facts which have been established in the assessments for several decades. Ironically, however, this is what the learned Commissioner's stand, in effect, advocates.

40. Be that as it may, the Assessing Officer received this material on 22nd August 2016, and he had just six working days for completing the assessment. Even if he was to put all this material to the assessee, which is the minimum expected of the Assessing Officer before using it against the assessee, these six days were less than sufficient for this basic exercise. Clearly, therefore, the Assessing Officer was not in a position, in the course of completion of the scrutiny assessment proceedings, to examine the correctness or otherwise of the contents of this material received from Cyrus Mistry. That, however, cannot be the end of the matter. It is open to the Assessing Officer to examine the material so coming into his possession and take action, for example, under section 147 in the event of his coming to the conclusion that income has escaped

assessment. There are several other consequences, as prescribed under the Act, that investigation into material received from third party, i.e. other than the assessee, can ensue, but such consequences do include the extended time for completion of a scrutiny assessment. However, in effect, that is precisely what is being sought to be done as a result of the scrutiny assessment order being subjected to revision proceedings on this count. We cannot approve of this approach.

41. That brings us to the core question that the learned Commissioner has raised apprehensions about, whether any direct or indirect benefit as stated in section 13(l)(c) is being taken by the connected persons as referred in section 13(3). However, as we do so, it is important that we understand the scheme of the Income Tax Act, 1961, in this respect.

*42. Section 13(1)(c) provides that "**nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof….. in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof (i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or (ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied. directly or indirectly for the benefit of persons referred to in sub section (3)**". In plain words, the benefit of exemption under section 11 will not be available in respect of income which is enured or applied for the benefit of persons specified in section 11(3). Elaborating upon the scope of Section 13(1)(c), section 13(2)(h) further provides that "**Without prejudice to the generality of the provisions of clause (c) and clause (d)] of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),**…… **if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971), in any concern in which any person referred to in sub-section (3) has a substantial interest**". Therefore, as long as investment by the trust is made in a concern in which persons referred to in section 13(3) have "substantial interest", the income and the property of the trust will be deemed to have been applied for the benefit of persons specified in section 13(3). Coming to Section 13(3), it lists out such persons as **(a)the author of the trust or the founder of the institution; (b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds thousand rupees; (c) where such author, founder or person is a Hindu undivided family, a member of the family; (cc) any trustee of the trust or manager (by whatever name called) of the institution; (d) any relative of any such author, founder, person, member, trustee or manager as aforesaid; (e)any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest.** Explanation 3 to Section 13 further adds that for the purposes of this section, **"a person shall be deemed to have a substantial interest in a concern, (i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty**

per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-section (3)……". *What follows is that when one or more of the specified persons hold more than 20% equity shares, carrying not less than 20% voting powers, in a company in which the trust has made investments, such an investment can be treated, to be an application of trust funds for the benefit of the specified persons, disentitling itself of the benefits of section 11 accordingly.*

43. As noted by the learned Commissioner in para 9.4 of his order, "the assessee has submitted that none of the trustees as on 31.3.2014 hold substantial interest in Tata Sons Ltd and, therefore, the provisions of Section 13(2)(h) of the Income Tax Act, 1961 are not applicable". His objection, however, is that "the submission of the assessee, however, requires verification because in section 13(3), there are different clauses the application of which needs to be examined to find out whether the investment is with any connected person" and that the assessee itself has more than 20% equity investment in Tata Sons Ltd. Learned Commissioner has also relied upon a decision of the Tribunal, in the case of Jamshedji Tata Trust Vs JCIT (ITA No. 7006/Mum/2013; AY 2010-11), to justify the need for greater probe into the matter. These objections are, however, devoid of any legally sustainable merits. Once the assessee clarifies that none of the trustees have any substantial interest in Tata Sons Ltd, and Section 13(2)(h) is not applicable, that should be the end of the matter, unless, of course, there is anything on record, or in the knowledge of the Assessing Officer, which indicates to the contrary. The fact that the assessee trust itself had over 20% equity investments in Tata Sons Limited does not suggest or imply that the trustees must also be having 'substantial interest' in Tata Sons Limited. It is not even the case of the revenue, even today, nor is there any material even prima facie indicating that any of the persons specified under section 13(3) has substantial holdings in Tata Sons Ltd. It cannot, therefore, be open to the Commissioner to hold the order erroneous and prejudicial to the interests of the revenue that this aspect of the matter, regarding indirect or associated holding as emerging out of the scheme of Section 13(3), has not been thoroughly investigated. In any event, there was nothing to trigger or justify such a thorough probe. The decision of the coordinate bench in Jamshedji Tata Trust (supra) is in the case of some other assessee, not this assessee, and there is nothing to justify the application of section 13(2)(h) in this case. The relevant observation made in the said decision is anyway a sweeping observation based on conviction, rather than material on record, as it states that "As far as the violation of clause (h) of section 13(2) is concerned we find that the author of the assessee trust and its relative definitely have a substantial interest in the Tata Sons Ltd, therefore, the investment in the shares of Tata Sons Ltd is a clear violation of clause (h) of section 13(2)". No basis of this observation, or relevance of the same to the present fact situation, is evident from the material on record. We see no relevance of this observation in the present context. We are thus unable to find anything in support of the contention that any direct or indirect benefit under section 13(1)(c) read with Section 13(2)(h) was obtained by the specified persons under section 13(3), or that lack of reasonable inquiries in this regard would render the subject assessment order erroneous and prejudicial to the interests of the revenue. When none of the specified persons under section 13(3) are stated to have any substantial interest in Tata Sons Ltd, and when there is nothing on record to even suggest incorrectness of this averment of the assessee, the question of direct or indirect benefit under section

13(1)(c) read with section 13(2)(h) does not arise, and, as is well settled, provisions under section 263 cannot put into service to make some roving and fishing inquiries.

44. As repeated references are made to assessee's shareholding of more than 20%, approximately 23.5%, to be more precise) in the Tata Trust Limited, and its control over the Tata Sons for that reason, it is necessary to deal with that aspect of the matter in some detail. The assessee before us is one of the shareholders in Tata Sons Ltd, a company incorporated over a century ago, which is the holding company of the Tata Group of companies. Sir Dorabji Tata, founder shareholder of Tata Sons Ltd, had endowed his personal shareholdings in Tata Sons in favour of the charities, and he set up this Trust in 1932, and he left most of his personal wealth to this Trust. Similarly, many other Trusts, including Sir Rata Tata Trust and J R D Tata Trust, were set up from time to time. If the shareholdings of all these trusts are taken into account, we are told, these trusts collectively hold about 66% of shareholdings in Tata Sons Ltd. It's a unique shareholding structure in the sense that the majority of shareholdings in Tata Sons Ltd, the holding company of the Tata Group of companies, is not in the hands of the promoter family but with the charities who are under an obligation to apply the earnings for the charitable purposes. These shares constitute the principal corpus of these trusts, collectively referred to as Tata Trusts, and entire earnings from these shares is used for charitable purposes. This 23.5% shareholding by the assessee trust is thus a part of a complex, but admirably well-intentioned, model of ownership of the Tata Group wealth, with greater emphasis on the public charities being an owner rather than ownership by promotor families. A plain look at the first, second, and third schedules of the trust deed, which are on pages 23 to 33 of the paper-book filed before us, shows how almost all the personal assets of the settlor, including lands and buildings, shares in different companies and personal effects and pieces of jewellery, have been given away for the public good and charitable purposes. The investment in Tata Sons by the assessee trust is not thus for the purpose of investment in shares, but this shareholding being held by the assessee trust is undisputedly for the purpose of sharing the fruits of the success, of the Tata Group, for the benefit of the general public at large. The investments made by a charitable institution in furtherance of its objects, and the investments being held by a charitable institution, as its core corpus, for the furtherance of its objects are qualitatively very different.

45. In any case, once we hold that the shareholdings in Tata Sons Limited is in the nature of corpus, and as such, covered by the proviso to Section 13(1)(d), as we have indeed held in paragraphs 22 to 32 earlier in this order, it cannot be open to hold that the exemption will be forfeited by Section 13(2)(h). The CBDT, after a detailed examination of that aspect of the matter, has come to the conclusion that these shares were held as the corpus, which was a precondition for the issuance of notification under section 10(23C), and notified the assessee trust under section 10(23C) as such. The material facts remain exactly the same as these were at that point in time, and there is, thus, no occasion to revisit those factual findings. The application of Section 13(2)(h), in such a situation, is wholly academic. It is so for the reason that, as held by Hon'ble Bombay High Court in the case of ***CIT Vs Trustees of Mrs Kasturbai Walchand [(1990) 181 ITR 47 (Bom)]*** *the benefit given by proviso to section 13(1)(c) cannot be taken away by invoking section 13(2)(h). By the same logic, in our considered view, the benefit given proviso to Section 13(1)(d) cannot be taken away by invoking Section*

13(2)(h). Be that as it may, even on merits, there is nothing on record, barring some suspicion lurking in the mind of the learned Commissioner, to even suggest that the provisions of Section 13(2)(h) can be invoked on the facts of this case. In response to a question by us, the learned Departmental Representative could not even point out as to which specified person under section 13(3) needs to be probed for holding a substantial interest in the companies in which investments are made by the assessee trust. All that he has emphasized is that the matter needs to be probed in more detail and that submission is no more than a submission pleading for more roving and fishing inquiries- something which cannot be meet any judicial approval.

46. A lot of emphasis is placed by the learned Commissioner on the stand that since the assessee trust controls Tata Sons Ltd, the assessee trust is not entitled to the benefit of sections 11 and 12.

47. The concept of control over a company in which investment is made by the assessee trust is completely alien to the scheme of the Income Tax Act, 1961, so far as taxation of charitable institutions is concerned. Unless there is a specific disabling clause to that effect, merely because the assessee trust has control over the investee company, the benefits envisaged for the charitable institutions, which meet other statutory requirements, cannot be declined. Once it is found that the assessee trusts hold shares in a certain company, all that is required to be seen is whether these shares are held validly under section 11(5) read with Section 13(1)(d) of the Act- an aspect which has been found to be in order in the light of the detailed analysis earlier in this order. No legal embargo on the voting rights of the assessee trust or legal restrictions in the rights of the assessee trust to invest in the companies in which investments have been made have been shown to us. Quite clearly, therefore, the assessee trust validly holds these shares in Tata Sons Ltd, there is no legal embargo on the voting rights of the assessee trust or the manner in which these rights are exercised, and there are no legal restrictions to the rights that the assessee trust can have like any other shareholder in the company in which investments are made. There is no question of the assessee trust not exercising its rights as a shareholder in any manner less than an ordinary shareholder, as the position of the assessee trust, as a shareholder, is the same as that of any other shareholder. It is the duty of the assessee trust to protect the assets held by the assessee trust in a fair and reasonable and lawful manner.

48. As we have noted, the business model of ownership of Tata Sons Ltd, a holding company having investments in the group companies, is somewhat unique in the sense that majority shareholding in this holding company is collectively in the hands of various charitable institutions, including the assessee before us, and the articles of association of Tata Sons Ltd has, in recognition of this ownership model, granted certain rights to these charitable institutions on a collective basis- as long as these charitable institutions collectively hold not less than 40% of the shareholdings in Tata Sons. It is important to bear in mind the fact that these rights have been granted to these charitable trusts, and the assessee before us is only of these trusts, on a collective basis, and not to this assessee alone. Therefore, these rights, even if material, are not relevant in so far as control by this assessee is concerned. The assessee trust cannot, therefore, be said to be having control over the affairs of Tata Sons. In any case, as held by Hon'ble Supreme Court in the case of ***Arcelor Mittal India Pvt Ltd Vs Satisk***

Kumar Gupta & Ors [(2019) 2 SCC1], *the expression 'control' implies a 'positive and proactive' power and not 'merely a negative or reactive power'. Undoubtedly, by virtue of article 104 B of the articles of association, the Tata Trusts can collectively nominate one-third of the prevailing number of directors, but these directors on their own cannot pass the resolutions, they can at best stall the resolution in the exercise of their powers. Nothing much turns on these rights under the article of association, on which so much emphasis has been placed by the learned Commissioner because, given the fact that Tata Trusts collectively hold the majority, these provisions are really infructuous. These provisions would have been of practical relevance only when the collective shareholdings of Tata Trusts were to be less than the majority but more than 40% of shareholdings. Whatever rights Tata Trusts have with respect to Tata Sons is whatever any majority shareholders would have had in Tata Sons anyway. As long as the investments in Tata Sons meets the tests of what is permissible in law, an issue that we have decided in favour of the assessee for the detailed reasons set out earlier in this order, no objection can be taken to the powers that flow from such shareholdings or any powers within the limits of those powers.*

49. We have also taken note of the allegations about the trustee receiving certain benefits from Tata Sons Ltd, even though, as we will see a little later, whatever alleged benefits have been taken by the trustees from Tata Sons Ltd are as consideration of their services rendered in the past to Tata Sons Ltd, and have nothing to do with their role as trustees as such, it is important to bear in mind the fact that in order to invoke 13(1)(c), the "benefit" has to be out of the trust property. The assessee trust has made investments in Tata Sons Ltd, but that does not mean that Tata Sons Ltd is a property of the assessee trust- a proposition blatantly erroneous in law and in concept. What has been paid to the persons holding office as trustees, though in consideration for other roles played by them such as former directors and employees, has nothing to do with the determination of benefits to the trustees. The pension payments to Ratan N Tata and N A Soonawala, for example, have been held to be wholly and exclusively for the purposes of the business of Tata Sons Ltd (ITA No. 4630/Mum/16), and, therefore, the stand that these payments amounted to benefit to the trustees is ex facie incorrect.

50. In any case, as we have noted earlier, all these aspects were duly examined at the assessment stage, and the defects that the learned Commissioner has pointed out in the said examination during the assessment proceedings, for the detailed reasons we have set out earlier, cannot meet our judicial approval.

51. We are, therefore, of the considered view that learned Commissioner was not justified in subjecting the assessment order to revision proceedings on the ground that the Assessing Officer did not examine the matter regarding assessee's control over Tata Sons Ltd, and whether, by virtue of such alleged control, any of the specified persons under section 13(3) received any benefits, and whether the investments made by the assessee trust were in violation of Section 13(2)(h).

52. That brings us to the Commissioner's stand that non-verification of accumulation of unspent surplus under section 11(2) was wrongly stated to be allowed though the same was neither asked nor required as the surplus was less than 15%. Learned Commissioner has been fair enough to state that though the order is erroneous

on this issue, it is "not prejudicial to the interest of the revenue". He has, however, also added that "the claim of deduction of 15% of income under section 11(1)(a) is subject to verification of other issues". That, however, is irrelevant inasmuch as once it is not a legitimate ground on which revision proceedings can be initiated, inasmuch as to subject an order to revision proceedings it should be "erroneous" as also "prejudicial to the interest of the revenue"- which is admittedly not the case, there is no room for any other riders on verifications as a result of revision proceedings. This non-verification also, even if that be the correct position, cannot be ground enough to invoke the revision proceedings.

53. As regards the issue with respect to non-verification of interest income of Rs 33,58,30,979, the Commissioner has taken the stand that the Assessing Officer "has not obtained any details of investment despite the related details/schedule being not available on record from it could have been ascertained whether the interest income earned is from deposits in the banks or from investments in some companies." In response to this proposition being put to the assessee, it was explained by the assessee that "all the information was available with the learned AO on record, i.e., form 26AS". All these details about the entities from which the interest was earned were reported in Schedule VI to the financial statements, and interest income from each of these investments was also separately reported in Schedule XIII and XIV of the financial statements. The details were also before the Assessing Officer in form 26AS. In any event, it is not even in dispute that all the investments made by the assessee trust were in conformity with Section 11(5) requirements. In these circumstances, we are unable to see any reasons for holding the suspicion that some of the interest income may be from sources that are not qualified for exemption under section 11, and, for that reason, the verification about sources of interest income is required to be done extensively. Once all these details were on record, and there is not even a suggestion that any part of interest income is not qualified for exemption under section 11, we are unable to uphold the stand of the learned Commissioner that the subject assessment order was erroneous and prejudicial to the interest of the revenue for want of verifications of interest income sources. We disapprove of the action of the learned Commissioner on this point as well.

54. Learned Commissioner has also noted that even though the income from dividend was treated as exempt under section 10(34), the Assessing Officer should have nevertheless examined whether the entire income of the assessee trust was applied for the purposes of the assessee trust.

55. The observations so made by the learned Commissioner show that he has not even applied his mind to the undisputed facts of the case. If he had cared to look at paragraph 8 of the subject assessment order, he would have noticed that the Assessing Officer has already included the dividend income of Rs 95,63,30,094 in the available gross receipts of the assessee trust and examined the application of the said income. That is beside the point that such an action was contrary to the claim of the assessee that once this income of Rs 96,63,30,094 is held to be exempt under section 10(34), it cannot be brought to taxation under section 11 of the Act, and the rejection of the said claim is the subject matter of assessee's appeal before the CIT(A). Clearly, what was being directed by the learned Commissioner was already done by the Assessing Officer,

and, therefore, these directions clearly show that there was a clear and glaring non-application of mind to even undisputed material facts of the case. We, therefore, cannot approve justification of the subject assessment order being held to be 'erroneous and prejudicial to the interests of the revenue' for this reason as well. No other reason is pointed out to us.

56. In view of the detailed reasons set out above, as also bearing in mind the entirety of the case, we hold the impugned revision order as devoid of legally sustainable merits. We, therefore, quash the impugned revision order.

5. We see no reasons to take any other view in the matter than the view so taken by us in Sir Dorabji Tata Trust *(supra).*

6. Respectfully following the views so taken, we hold that the impugned revision order is devoid of legally sustainable merits. Accordingly, we hereby quash the impugned revision order.

7. In the result, the appeal is allowed. Pronounced in the open court today on the 28th day of December 2020.

Sd/xx ***Sd/xx***
Justice P P Bhatt **Pramod Kumar**
(President) (Vice President)
Mumbai, dated the 28th day of December, 2020

Copies to: *(1) The appellant (2) The respondent*
(3) CIT (4) CIT(A)
(5) DR (6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai