

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF SEPTEMBER 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE M.I.ARUN

I.T.A. NO.534 OF 2013

BETWEEN:

M/S CUTCHI MEMON UNION
NO.62-63, 1ST FLOOR
CHICK BAZAR ROAD
SHIVAJINAGAR
BANGALORE - 560 001

... APPELLANT

(BY SRI.ASHOK A KULKARNI, ADV.,)

AND:

THE DEPUTY DIRECTOR OF INCOME TAX (EXEMPTIONS)
CIRCLE - 17(1), BANGALORE.

... RESPONDENT

(BY SRI.K.V.ARAVIND, ADV.)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 14.08.2013 PASSED IN ITA NO.878/BANG/2012 FOR THE ASSESSMENT YEAR 2007-08, PRAYING THAT THIS HON'BLE COURT MAY BE PLEASED TO:

(I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN.

(II) ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE ITAT, BANGALORE IN ITA NO.878/BANG/2012 DATED 14.08.2013 AND SUITABLY MODIFYING IT AS SOUGHTI N THE APPEAL.

THIS ITA COMING ON FOR FINAL HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the assessee. The subject matter of the appeal pertains to the Assessment year 2007-08. The appeal was admitted by a bench of this Court vide order dated 07.02.2014 on the following substantial questions of law:

- (i) *Whether on the facts and in the circumstances of the case a statutory deduction as provided in Section 24(a) of the Act is not to be reckoned while determining the amount available for application towards charity, for the purpose of levying tax in considering the applicability of Section 11 to a public charitable trust as was done in the assessment order?*
- (ii) *Without prejudice and in the alternative whether even in the case of a public*

charitable trust tax could be levied on a public charitable trust only on its total income computed after taking into account all deductions including those available under Section 24(a) as well as what is to be excluded under Section 11 of the Act?

2. Facts leading to filing of the appeal briefly stated are that the assessee is a religious and charitable trust. The assessee filed return of income on 06.09.2007 for Assessment Year 2007-08 declaring 'NIL' income. The assessee had shown income from the House Property at Rs.1,00,93,959/- and income from other sources at Rs.1,45,294/-. The total taxable income shown in the statement of income was Rs.99,48,665/-. It is the case of the assessee that it had utilized the income derived from the property for the purposes enumerated under Section 11 of the Act. Therefore, no tax was paid and income was declared as 'NIL' for the purpose of payment of tax. The Assessing Officer by an

order dated 30.11.2009 disallowed the claim of deduction of the claim of assessee for an amount of Rs.43,25,983/- under Section 24(a) of the Act on the ground that the income of the trust has to be computed in a commercial manner and not as per the Act. The claim for depreciation was also disallowed. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeals), who by an order dated 27.04.2012, by placing reliance on decision of Calcutta High Court in ***CIT VS. JAYASHREE CHARITY TRUST, 159 ITR 280 (Cal)*** and decision of Gujarat High Court in ***CIT VS. GANGA CHARITY TRUST FUND, 162 ITR 612 (Guj)*** set aside the order of the Assessing Officer and allowed the appeal preferred by the assessee. Being aggrieved, the revenue approached the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal' for short). The Tribunal by an order dated 14.08.2013 allowed the appeal preferred by the revenue. In the aforesaid factual background, the

assessee has approached this court.

3. Learned counsel for the assessee has referred to the expression 'income', and 'total income' as defined under Section 2(24) and Section 2(45) of the Act. Our attention has also been invited to Section 139(4A) of the Act as well as Rule 12(g) of the Rules. It is submitted that the Rules, the form and provisions provide for deduction under Section 24 of the Act and therefore, the assessee is entitled to deduction under Section 24(a) of the Act. It is further submitted that under the Act, tax, if any, can be levied only on total income as computed under the Act after excluding from such total income the amounts, which are not includible under Chapter III of the Act. It is further submitted that total income of the trust has to be computed as per provisions of the Act i.e., by taking into account the statutory deductions like 30% of the annual rental value in respect of rental income. It is also urged that the Tribunal was not justified in levying tax on public charitable trust to deny

the benefit of statutory deductions. It is also argued that there is no provision in the Act that if the property of the assessee is held for charitable purposes, no deduction under Section 24 is available. It is further submitted that Section 24 allows deduction of 30% of rental income. In support of his submissions, learned counsel has placed reliance on the decisions of Supreme Court in **'COMMISSIONER OF INCOME-TAX VS. RAJASTHAN AND GUJARATI CHARITABLE FOUNDATION', (2018) 402 ITR 441 (SC)**, **'COMMISSIONER OF INCOME-TAX, CENTRAL-I, CALCUTTA VS. JAYASHREE CHARITY TRUST', 159 ITR 280 (Cal)**, **'COMMISSIONER OF INCOME-TAX VS. GANGA CHARITY TRUST FUND', 162 ITR 612 (Guj)**, **'COMMISSIONER OF INCOME-TAX VS. INSTITUTE OF BANKING PERSONNEL SELECTION (IBPS)', (2003) 131 TAXMAN 386 (BOM.)**.

4. On the other hand, learned counsel for the revenue submitted that income of the trust has to be

computed as per the commercial principles and the amount is required to be expended for the purposes of the trust. It is also argued that every receipt is an income and only the amount, which is applied for the purposes of the trust is eligible for deduction. It is also argued that wherever Section 11 is applicable, the provisions of Section 14 of the Act are not attracted. It is also submitted that the charging provision should provide for deduction and not the form or the Rules. It is also urged that decision relied upon by the learned counsel for the assessee have no application to the fact situation of the case.

5. We have considered the submissions made by learned counsel for the parties and have perused the record. Before proceeding further, it is apposite to take note of relevant statutory provisions:

2(24) " income" includes-

- (i) profits and gains;
- (ii) dividend;

(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (iiiæ) or sub-clause (via) of clause (23C) of section 10 (or by an electoral trust).

Explanation.- For the purposes of this sub-clause, "trust" includes any other legal obligation.;

2(45) *" total income" means the total amount of income referred to in section 5, computed in the manner laid down in this Act;*

11(1)(a) *income derived from property held under trust wholly for charitable or religious purpose, to the extent to which such income is applied to such purposes in India, and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of [fifteen] percent of the income from such property.*

24(a) *a sum equal to thirty per cent of the annual value;*

139(4A) *Every person in receipt of income derived from property held under trust or other legal obligation wholly for charitable or religious purposes or in part only for such purposes, or of income being voluntary contributions referred to in sub-clause (iia) of clause (24) of Section 2, shall, if the total income in respect of which he is assessable as a representative assessee. (the total income for this*

purpose being computed under this Act without giving effect to the provisions of Sections 11 and 12) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the Previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be, prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-Section (1).

6. The object of Section 11 of the Act is to grant immunity to the income of a charitable trust from income tax. The immunity however, is confined to the extent to which such income is applied to such purposes in India. The exemption will be denied if the income is not actually applied for charitable purposes. This exclusion from immunity, which has been granted by Section 11 of the Act has to be confined to the real income of the trust. The application or accumulation can

only be of real income which has actually been received by an assessee. It is pertinent to note that Central Board of Direct Taxes has issued a Circular No.5-P dated 19.05.1968, which provides that the word 'income' in Section 11(1a) of the Act must be understood in commercial sense and the entire income of the trust in the commercial sense has been spent for the purpose of charity. The real income of the trust is exempt to the extent to which some income is applied to such purposes in India. The aforesaid view has been taken by Calcutta High Court in JAYASHREE CHARITY TRUST supra as well as GANGA CHARITY TRUST supra with which we respectively agree. However, from perusal of the order passed by the Commissioner of Income Tax (Appeals) as well as the Tribunal, we find that neither the Commissioner of Income Tax (Appeals) nor the Tribunal has examined the case of the assessee on the touchstone of aforesaid well settled legal principles. We are therefore, in the facts of the case left with no option

but to quash the order of the Tribunal and remit the matter to the Tribunal afresh for consideration in the light of observations made supra. Since, the matter is being remitted to the Tribunal, therefore, it is not necessary for us to answer the substantial questions of law.

In the result, the appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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