

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “B” MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)**

**ITA No. 4766/MUM/2023
Assessment Year: 2021-22**

ITO(E)-1(1),
6th floor, Room No. 601, MTNL
Building, Cumballa Hill, DR GD
Deshmukh Marg (Pedder Road)
Mumbai-400026.

PAN NO. AAFCB 4096 F
Appellant

Vs.

Bhavitha Foundation,
3502, Octavius Heeranandani,
Powai,
Mumbai-400076.

Respondent

Assessee by	:	Dr. K. Shivaram, Sr. Adv. Mr. Rahul K. Hakani
Revenue by	:	Mr. S. Srinivanu, CIT-DR

Date of Hearing	:	28/05/2024
Date of pronouncement	:	30/05/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 02.11.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2021-22, raising following grounds:



1. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right by ignoring the fact that the assessee was clearly hit by the provisions of section 13(1)(d) (ii) of the IT. Act, 1961 for the reason that as per section 11(5) investment in shares is not a specified mode. Consequently, the dividend received there from such shares could not be therefore qualify to be an investment in specified modes us 11(5) of the Act

2. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was right in allowing relief on the basis of the judgement in the case Hon'ble Supreme Court in Hon'ble Supreme Court of India in Commissioner of Income tax(Exemption), Kochi V. Mata Amrithananadamayi Math Amritapuri (2018] 94 taxmann.com 82 (SC), wherein the issue involved was about "interest on FD's but in the instant case the AO has clearly distinguished the fact that the issue pertains to 'dividend received on shares' ?.

2. Briefly stated, facts of the case are that the assessee is a registered charitable institution and filed its return of income on 04.01.2022 declaring total income at Rs. Nil. The return of income filed by the assessee was selected for scrutiny assessment for verification of the large corpus donation received by the assessee. The statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In the assessment completed u/s 143(3) of the Act dated 28.12.2022, the Assessing Officer disallowed the benefit of dividend income for exemption u/s 11 of the Act and made addition of Rs.48,70,00,000/- to the returned income of the assessee.

3. On further appeal, the Ld. CIT(A) deleted the addition. Aggrieved, the Revenue is in appeal before the Tribunal by way of grounds as reproduced above.

4. Before us, the Ld. counsel for the assessee has filed a Paper Book containing pages 1 to 110.



5. We have heard rival submission of the parties and perused the relevant material on record. The only issue in dispute is whether the dividend received on the shares, which were received by the assessee as donation towards corpus fund, could also be treated as part of corpus fund or to be treated as income of the assessee which was to be applied or invested as per the provisions of section 11 of the Act. The facts qua the issue in dispute are that the assessee received 5,00,000 equity shares of Majesco Ltd. as corpus donation. The donor vide its letter dated 17.12.2020 (PB-74) directed the assessee that said shares, any receipt thereof in the form of dividend/sale proceeds and receipts on securities /deposits made out of dividend/sale proceeds was to be treated as corpus donation. The copy of the said donation letter was enclosed by the assessee in support of its claim. Thus, according to the assessee the dividend received and interest received on deposit made out such dividend was to be treated as corpus donation , which was claimed exempt u/s 11(1)(d) of the Act while filing the return of income. However, according to the Assessing Officer, once the asset is donated and transferred, generation of future income from asset will be governed as per the provisions of the Act only, and not under any conditions set by the donor. According to the Assessing Officer, the entire interpretation of section 11(1)(d) of the Act was done wrongly by the assessee and claimed the dividend as exempt under the corpus fund and therefore, he assessed income from dividend under the head 'income from other sources'. Before the Ld. CIT(A) the assessee



relied on the decision of the Hon'ble High Court of Kerala in the case of **Commissioner of Income-tax (Exemption) v. Mata Amrithanandamayi Math [2017] 85 taxmann.com 261 (Kerala)** wherein it is held that if the donor had instructed that the interest income earned on the corpus donation shall also be added to the corpus of the trust then said interest earned on contribution already made by the donor would also partake in the form of voluntary contribution made with the specific direction that said shall form of the corpus of the trust. The Ld. CIT(A) in view of the decision of the Hon'ble Kerala High Court(supra), which has been further affirmed by the Hon'ble Apex Court, rejected the contention of the Assessing Officer. Further, the Ld. CIT(A) observed that while dealing the application of the assessee u/s 197 of the Act for lower or Nil deduction of tax at source in respect of income from corpus, the TDS Assessing Officer had examined the computation of the income for financial year 2020-21 to financial year 2022-23 and accepted the claim of exemption of dividend of Rs.48,70,00,000/- u/s 11(1)(d) of the Act. The Ld. CIT(A) further observed that the income received by way of dividend was further invested in fixed deposits with HDFC Ltd. as well as saving bank account maintained with HDFC Bank. The relevant finding of the Ld. CIT(A) is reproduced as under:

“7.4 During the course of appellate proceedings, the appellant also submitted that the appellant furnished applications for certificate u/s 197 of the Act (LDC) for the FY 2021-22 and FY 2022-23 with the jurisdictional TDS Assessing Officer with a request of NIL withholding of tax in respect of income from corpus. During the course of LDC



processing, the TDS AO had examined the computation of income for FY 2020-21 to FY 2022-23 wherein the appellant claimed dividend of Rs.48,70,00,000/- during FY 2020-21 and also shown interests on deposits as corpus and claimed exemption u/s 11(1)(d) of the Act and the same was accepted by the TDS AO.

7.5 It is observed, during the course of assessment proceedings, that the AO contended that the appellant had not invested the income from corpus in the specified modes of investment as prescribed in the provisions of section 11(5) of the Act in accordance with the provisions of section 11(1)(d) of the Act. The AO further contended that the corpus donation had not been derived through any mode as laid down u/s 11(5)(i) to 11(5)(xii) of the Act neither through any 'other' mode as per the provisions of section 11(5)(xii) of the Act read with Rule 17C of the Income-tax Rules, 1962. In this regard, the appellant submitted that the appellant had received net dividend of Rs.45,04,75,000/- (Rs.48,70,00,000/- net of TDS) in the bank account on 30.12.2020. The appellant had invested Rs.40,00,00,000/- in fixed deposits with HDFC Ltd. in two tranches, i.e., Rs.20,00,00,000/- on 01.03.2021 and Rs.20,00,00,000/- on 08.03.2021) after analysing the efficient modes of investment. The balance proceeds of the dividends were invested in savings account maintained with HDFC Bank Ltd. In this regard, the appellant furnished copy of receipts confirming the fixed deposits and copy of bank statements in support of its claim. Thus, the balance dividend with scheduled bank, i.e., HDFC Bank Ltd as well as the fixed deposits with HDFC Ltd qualified as specified investment under the provisions of section 11(5)(iii) and 11(5)(ix) of the Act respectively. In this context, the provisions of section 11(5)(ii) and 11(5)(ix) of the Act is reproduced hereunder:

"Income from property held for charitable or religious purposes.

(5) The forms and modes of investing or depositing the money referred to in clause (b) of subsection (2) shall be the following, namely :—

.....

i deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).

Explanation.-In this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);*



.....
(ix) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is eligible for deduction under clause (viii) of sub-section (1) of section 36;"

It is pertinent that receipt of shares as corpus donation is in accordance with the section 11 of the Act read with section 13(1)(d) of the Act. In this regard, section 13(1)(d) of the Act is reproduced hereunder:

"13. (1) 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-

.....
(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

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

.....
(iia) any asset, not being an investment or deposit in any of the forms or modes specified in sub-section (5) of section 11, where such asset is not held by the trust or institution, otherwise than in any of the forms or modes specified in sub-section (5) of section 11, after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, 1993, whichever is later;"

5.1 The Ld. CIT(A) further clarified that the provisions of section 11(5) of the Act prescribe only mode of investment for trust instead of mode of acceptance of donation. In the case in hand, the assessee has received equity shares as corpus donation and the assessee has time limit till 31.03.2022 to comply with the



provisions of section 11(5) of the Act r.w.s. 13(1)(d) of the Act. Accordingly, assessee disinvested the equity shares in Majesco Ltd. on 23.06.2021 and duly invested as per section 11(5) of the Act , thus, the assessee complied with provisions of section 13(1)(d) of the Act with respect of acceptance , holding and disposal of the aforesaid shares received. The Ld. CIT(A) rejected the other contention of the Assessing Officer observing as under:

“In view of the foregoing discussion, it is observed that the provisions of section 11(1) of the Act permits registered charitable entity to accept donations in any form subject to compliance with the provisions of section 13 of the Act. The donation received by a charitable trust or religious institution can be either in money or in kind such as immovable property, movable property or shares etc. Thus, the provisions of section 11(5) of the Act prescribe the modes of investment for trust or institution instead of modes of acceptance of donations. In the case on hand, the appellant had received equity shares during the FY 2020-21 as corpus donation and the appellant had time limit till 31.03.2022 to comply with the provisions of section 11(5) of the Act read with section 13(1)(d) of the Act.

Accordingly the appellant disinvested the equity shares in Majesco Limited on 23.06.2021, i.e., during the FY 2021-22 and thus, duly invested as per modes specified u/s 11(5) of the Act and the appellant complied with the provisions of section 13(1)(d) of the Act with respect to acceptance, holding and disposal of the aforesaid shares received.

7.6 It is further observed from the record that the AO stated in the assessment order that TDS was deducted on the dividend distributed and the dividend amount was shown in the balance sheet of the appellant as income from investment of corpus donation under the same head 'Corpus Fund' and the entire amount along with interest from FD and SB account was claimed exempt u/s 11(4) of the Act and the TDS deducted was claimed as refund u/s 237 of the Act in its ITR for Rs.3,65,25,000/-. The AO further stated in assessment order that dividend cannot be treated as corpus and donor had no right as to how the income from the corpus had to be utilized whether as corpus or otherwise and the appellant had not furnished Form 9A or 10 and accordingly the appellant couldn't claim deemed application of income and hence it was deemed income u/s 11(3) and taxable under normal provisions of the Income-tax Act. In this regard, the appellant submitted that the dividend received along with interest on savings bank account and fixed deposits as part of the corpus of the appellant and never claimed exemption u/s 11(4) of the Act wherefrom the observation of the AO regarding invoking the provisions of section 11(3) and 11(4) of the Act



in the instant case seems to be inconsequential. The appellant submitted that the AO had not provided any cogent reasons / conclusive evidence and / or judicial precedents to treat the dividend received as excess income from business undertaking deemed to be applied to purposes other than charitable or religious purposes and the AO had also not raised any questions pertaining to section 11(4) of the Act during the course of assessment proceedings. It is pertinent that in order to invoke provisions of section 11(4) of the Act, the onus is shifted on the part of AO to provide conclusive evidence that (i) the trust or the institution has business undertaking and ii) that the excess income from such business undertaking has not been utilized / applied for the purposes of the object of the trust. The appellant further submitted that the appellant had not carried out any business activity as defined u/s 2(13) of the Act. Further, the appellant is a charitable entity holding the shares received as corpus in compliance with the provisions of section 11(1)(d) read with section 13(1)(d) of the Act and the same cannot be treated as business undertaking.”

5.2 Before us, the Revenue has raised the issue that investment in shares was not a specified mode u/s 11(5) of the Act. We find that the Ld. CIT(A) has duly clarified the issue that the shares of Majesco Ltd. was received by way of donation and it was not an investment by the assessee in the specific mode and therefore, the provisions of section 11(5) of the Act are not applicable as far as the shares of Majesco Ltd. received as corpus donation. Further, it has been raised by the Revenue that dividend received from such shares could not qualify to be an investment as same is not specified as any mode of investment u/s 11(5) of the Act. We find that Hon’ble Kerala High Court in the case of **Mata Amrithanandamayi Math (supra)** held that when a corpus donation in the form of fixed deposit has been given to the assessee with the specific direction that said asset along with any interest earned thereon shall also to be added to the corpus of the trust, then said interest partake character of the income in the form of voluntary contribution mode



with the corpus of the trust and therefore, the dividend income received also forms part of the corpus donation. Thus, same is not liable to be considered for application of income under the provisions of section 11(5) of the Act. The relevant provisions of section 11 of the Act, excluding the corpus donation for the purpose section 11(5) is reproduced as under:

“11(1)(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution [subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus].”

5.3 Since, the assessee has already invested the dividend received in the form of fixed deposits and saving account in the HDFC Bank and therefore, same qualifies for the purpose of section 11(5) of the Act. The different forms and mode of the investment provided in section 11(5) are reproduced as under:

“11(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely :—

(i) investment in savings certificates as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;*

(ii) deposit in any account with the Post Office Savings Bank;

(iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).

Explanation.—In this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of*



1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

(iv) investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);

(v) investment in any security for money created and issued by the Central Government or a State Government;

(vi) investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;

(vii) investment or deposit in any public sector company:

Provided that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector company,"

5.4 The another ground, which has been raised by the Revenue is that the ratio in the case of Mata Amrithanandamayi Math (supra) does not apply in the case of the assessee. We have perused the ratio in the above decision and find that the Hon'ble High Court has held that where the fixed deposits has been donated as corpus donation with the direction to treat the interest thereon as also part of the corpus donation, then such interest earned on the fixed deposits shall also form of the corpus donation. In the instant case rather than fixed deposits shares have been donated as corpus donation and therefore, the dividend income earned thereon under the direction of the donor to treat is same as part of corpus donation has been correctly held by the Ld. CIT(A) as part of the corpus donation. In our opinion, the Ld. CIT(A) has validly followed the decision of the Hon'ble Kerala High Court which has been uphold by the Hon'ble Supreme Court. Accordingly, we do not find



any infirmity in the order of the Ld. CIT(A) on the issue in dispute.
The grounds raised by the Revenue are accordingly dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 30/05/2024.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 30/05/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai