Muniwar Abad Charitable Trust — Income Tax Appeal Nos. 2515/2018 and 1457/2018

2026:BHC-OS:11203-DB P.H. JAYANI 07 WITH 10 ITXA1457.2018 .DOC IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISIDICTION INCOME TAX APPEAL NO. 2515 OF 2018 Commissioner of Income Tax- (Exemption), R.No. 617 Mumbai, Piramal Chamber, Lalbaug, ...Appellant Mumbai - 400 012. Versus M/s. Muniwar Abad Charitable Trust 405A/407, Jolly Bhavan No.1 10, New Marine Lines, Mumbai - 400 020. ... Respondent WITH INCOME TAX APPEAL NO. 1457 OF 2018 Commissioner of Income Tax- (Exemption), Mumbai, Piramal Chamber, Lalbaug, Mumbai - 400 012. ...Appellant Versus M/s. Muniwar Abad Charitable Trust 405A/407, Jolly Bhavan No.1 10, New Marine Lines, Mumbai - 400 020. ... Respondent Mr. Suresh Kumar for the Appellant. Mr. Balakrishna V. Jhaveri for the Respondent. CORAM: SUMAN SHYAM & SHYAM C. CHANDAK, JJ. RESERVED ON : 26th MARCH, 2026 PRONOUNCED ON : 29th APRIL, 2026 JUDGMENT : (PER : SHYAM C. CHANDAK, J.)

1. These are Appeals under the provisions of of the Income Tax Act, 1961 (for short 'the Act') preferred by the Revenue challenging the common Order dated 6 th September, 2017 passed by the Income Tax Appellate Tribunal (for short 'ITAT'), Page 1 of 12 29th April, 2026 ::: Uploaded on - 30/04/2026 ::: Downloaded on - 30/04/2026 21:35:56 ::: P.H. JAYANI 07 WITH 10 ITXA1457.2018 .DOC Mumbai in Income Tax Appeal No.784/Mum/2015 (A.Y.2004-05) and in Income Tax Appeal No.785/Mum/2015 (A.Y.2005-06) respectively. Thereby said Appeals filed by the Respondent (Assessee) were allowed. Income Tax Appeal No.2515/2018 relates to the Assessment Year 2004-05 and Income Tax Appeal No.1457/2018 pertains to the Assessment Year 2005-06.

2. The assessee resisted the Appeals by filing the Affidavit-in- Reply of its trustee Mr. Ahmed Akbarali Sundrani.

3. Heard Mr. Suresh Kumar, the learned counsel appearing for the Appellant and Mr. Balakrishna Jhaveri, the learned counsel appearing for the Respondent.

4. The Appeals raise following substantial questions of law :- > "A. Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was correct in holding proceedings invalid on the ground that the income has not escaped assessment for non disclosure of true and full disclosure of facts by the assessee despite the fact that in the Return of Income and during assessment proceedings neither the complete and correct facts relating to computation of capital gain and claim of deduction ■10†u/S. The learned CIT (Appeals) upheld the re-opening of the assessment by observing that, various essential and material facts relating to the nature and mode of capital assets held by the trust and sold out during the year, were not fully disclosed; that, the Assessing Officer had also not verified and examined the mode and nature of acquisition of Page 3 of 12 29th April, 2026 ::: Uploaded on - 30/04/2026 ::: Downloaded on - 30/04/2026 21:35:56 ::: P.H. JAYANI 07 WITH 10 ITXA1457.2018 .DOC the capital assets held by it; that, it had not provided the full details; that, it had not placed on record the necessary details and documents which could lead to the conclusion that there were material discrepancies in receipt of the sale consideration and the alleged fixed deposits purchased by the assessee; that, the record of cash and bank balances reflecting common pool of funds, was not sufficient to segregate the amounts and dates of fixed deposits as required for making the claim of exemption ■cite■10†u/S. 11(1A)■ of the said Act; that, the claim of fixed deposits classified and recorded in the balance sheet under the head cash and bank balances was incomplete disclosure; that, it was misleading accounting; that, there was no full and true disclosure by the assessee on the issue of sale and acquisition and subsequent compliance or condition in the context of capital assets. Accordingly, the CIT(A) passed an Order dated 18.12.2014. > Being further aggrieved, the assessee preferred Income Tax Appeal No.784/Mum/2015 (A.Y.2004-05) before the ITAT, Mumbai. Vide impugned Order dated 6th September, 2017 the said Appeal was allowed by the ITAT, Mumbai holding that the AO has not established the failure of the assessee to disclose truly and fully the material facts necessary for making the original assessment. It has been observed that failure of the assessee is not only to be alleged but has to be demonstrated by positive evidences. The AO has used the terminology used in the Section, but has not explained as to how and which material facts the assessee did not or had failed to disclose. All the facts about the sale of development rights and investments of sale proceeds in form of FDRs was dealt with by the AO in great details in the original Page 4 of 12 29th April, 2026 ::: Uploaded on - 30/04/2026 ::: Downloaded on - 30/04/2026 21:35:56 ::: P.H. JAYANI 07 WITH 10 ITXA1457.2018 .DOC assessment.

8. We have considered these submissions and perused the entire order. Page 5 of 12 29th April, 2026 ::: Uploaded on - 30/04/2026 ::: Downloaded on - 30/04/2026 21:35:56 ::: P.H. JAYANI 07 WITH 10 ITXA1457.2018 .DOC

9. The AO reopened the case on the ground that the taxable income had escaped the assessment. Accordingly, notice of the Act was issued to the assessee. The assessee vide its letter dated 31/03/2011 requested the AO to consider the original returns filed in response to the notice. After hearing the objection of assessee in respect to the supply of reasons for reopening, the AO observed and held that the assessee had sold a plot of land and received sale consideration of Rs.7,80,00,000/-. However, the assessee had failed to invest the sale consideration as required by of the Act. Therefore, the assessee cannot get the benefit of accumulation as per sub-clause (b) of of the Act. As a result, the sale consideration of Rs.7,80,00,000/- was added to the income of the assessee for the year under the Appeal.

10. The learned ITAT observed that the power to reopen an assessment of the Act is in the nature of an exception to the general principle that an assessment order once made would be final. The effect of reopening is to partly vacate or set aside the original order of assessment and to substitute it. No doubt, escapement of income includes both non-assessment/under- assessment, but, it is mandated by the provisions of the Act that reasons to believe must necessarily show, indicate and communicate why and on what grounds it can be said that any income has escaped assessment. Reasons recorded must be germane, pertinent and disclose a prima facie belief that income has escaped assessment. The relevance of reason has to be established.

15. Additionally it was observed that, although the assessee had filed detailed objections against re-opening, the AO had not passed a speaking or reasoned order as to why the objections were not sustainable. It was found that the AO had not established the failure of the assessee to disclose truly and fully the material facts necessary for making original assessment. All the facts about sale of development rights and investments were produced and deliberated upon during the original assessment proceedings. Nevertheless, the AO had not

explained as to how the assessee had failed in his statutory duty to disclose the material facts leading to "Rs. Nil" tax liability.

16. As to the facts of the case, the learned ITAT found that the issue of sale of development rights and investment of sale proceeds in the form of FDRs was dealt with by the AO in great details in the original Assessment. It was noticed that the assessee had filed various details of the transaction including the details of FDRs on 02/08/2006 and 20/09/2006 before the AO. The note in the computation of income for the year under appeal contained the details about the transaction. The assessee had also supplied the details of dates of receipt of consideration amounts, dates of deposits and amounts invested by the assessee during the year under consideration. By its letter dated 02/08/2006, the assessee had filed detailed note on sale of the property, order of the charity commissioner sanctioning the sale of property dated 17/03/2003 and a copy of sale agreement with VDL. Later on, by its letter dated 20/09/2006, the assessee had filed details about names and addresses of the partners of VDL, copies of fixed deposits with Development Credit Bank, a copy of bank book giving detailed narration of all the receipts and payments. It was also emphasised that all the deposits were for the term exceeding 6 months including renewals.

18. As noted above, the facts of the Income Tax Appeal No.785/Mum/2015 were identical. The only difference was the location of the property sold and the sale price received. During the relevant financial year, the plot of land was sold in Pune for Rs.11.93 crores. Therefore, following the findings, reasons and the Order in Income Tax Appeal No.784/Mum/2015, the learned ITAT had decided the effective ground of Income Tax Appeal No.785/Mum/2015 in favour of the assessee and held that the impugned Order passed by the AO was invalid.

19. In so far as the cited decision in (supra) is concerned, the facts of the said case are materially distinct from the facts of the case in hand. While examining the impugned Order , this Court did not find any application of mind to the facts of the case, the issue to be dealt with and the reasons for passing the Order. In contrast to this, in the case in hand, the impugned Order is the outcome of a thoughtful consideration of the facts, appreciation of the evidence on record in its correct perspective and application of the settled principles of law in the field. Therefore, the cited case is of no avail to the Revenue.

20. In view of the above discussion, we are of the view that there is no perversity or an infirmity in the impugned Order so as to interfere with the same. No substantial question of law arises in the Appeals. As a result, we refuse to admit both the aforesaid Appeals and dismiss the same at the stage of admission. (SHYAM C. CHANDAK, J.) (SUMAN SHYAM, J.)