

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “G”, MUMBAI  
Before Shri Pawan Singh (JM) & Shri S.Rifaur Rahman(A.M.)  
ITA No. 6944/Mum/2018(Assessment year : 2012-13)

Saraswat Hitwardhak Mandal, 1 <sup>st</sup> Floor, Saraswat Bhawan, Chatrapati Shivaji Lane, Mahim, Mumbai – 400 016.  PAN : AAGTS 2691 M	vs	ITO-18(3)(4), Mumbai.
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

Appellant by	Shri Siddharth Sinkar, CA
Respondent by	Shri V. Vinod Kumar, Sr DR
Date of hearing	16-01-2020
Date of pronouncement	21-01-2020

**ORDER**

**PER PAWAN SINGH, JM :**

1. This appeal by assessee is directed against the order of learned  
CIT(A)-48, Mumbai dated 28-09-2018 for assessment year 2012-

13. The assessee has raised the following grounds of appeal:-

“(a) As per the intimation u/s 143(1) of the Income Tax Act, 1961 passed by the assessing officer, the income was assessed as per return of income filed by the assessee at Rs. 19,47,230/- but the tax was computed at maximum marginal rate @ 30%. This was incorrect, invalid and not justified.

(b) The Assessing Officer erred in calculation of income tax including interest of Rs. 6,63,365/- on returned income even though the status of the assessee is mentioned as a charitable trust in the return of income.

(c) The Commissioner of Income Tax (Appeals) erred in considering only new registration certificate No. 47339 sanctioned u/s 12A of the Income Tax Act, 1961 dated 30<sup>th</sup> April, 2015. The old registration certificate No. INS/3105 sanctioned u/s 12A of the Income Tax Act, 1961 dated 8<sup>th</sup> August, 1975 was not at all considered by the Commissioner of Income Tax (Appeals). Copy of Registration Certificate issued u/s 12A is enclosed herewith.”

2. Brief facts of the case are that the assessee is a charitable trust registered with Charity Commissioner Mumbai and is also registered under section (u/s) 12A of Income-tax Act. Though the assessee was having registration u/s 12A, however, the assessee not claimed exemption under section 11 from several years. For the year under consideration, the assessee filed return of income on 26.07.2012 declaring income of Rs. 19,47,230/- and paid a tax on declared income of Rs. 4,69,004/-. The return was processed u/s 143(1) and the assessee was taxed maximum marginal rate and not as per Income Tax slabs. On appeal before Commissioner of (Appeal), the assessee urged that while filing return of income, the assessee has not claimed exemption u/s 11, even though the assessee was entitled. It was further stated that while filing return of income for the year under consideration, the assessee offered its income to tax considering the status of assessee as individual. The made reliance on the decision of Bombay High Court in the case of

DIT(Exem) vs. Sharadaben Bhagubhai Mafatlal Public Charitable Trust 247 ITR 1 (Bombay ). It was further stated that Assessing Officer treated the assessee as Association of Person (AOP) and has applied tax rate as maximum marginal rate on the income offered by assessee. The contention that assessee was not accepted by Ld. CIT(A) by taking view that there is no registration u/s 12AA for the assessment year under consideration. The Registration Certificate relied by the assessee is applicable w.e.f. assessment year 2015-16. Thus, further aggrieved the assessee has filed present appeal before us.

3. We have heard learned authorised representative (Id AR) of the assessee and learned departmental representatives ( Id.DR) for the revenue and also perused the material available on record. The Id. AR of the assessee submits that the assessee is a charitable trust carrying its educational and medical activities for the benefit of Saraswat Community. The trust is registered with charity Commissioner Mumbai on 29.12.1976. While filing return of income, the assessee offered its income considering its status as individual. The assessee has not claimed exemption u/s 11. The Id. AR submits that the Hon'ble Jurisdiction High Court in the case of DIT (Exem) vs. Sharadaben Bhagubhai Mafatlal Public Charitable

Trust (supra), the Hon'ble Bombay High Court while considering the question of law whether the assessee trust was assessable as an individual and consequently entitled to deduction under section 80L of the Act question allowed the issue in affirmative i.e. in favour of the assessee. Accordingly, the the Id. AR submits that in view of the Jurisdictional High Court, the assessee is entitled to be treated as individual for the purpose of tax rate.

4. On the other hand, the Id. DR for the Revenue supported the order of lower authorities.
5. We have considered the rival submissions of the parties and perused the material available on record. There is no dispute that assessee is trust. Further while filing return of income, the assessee has not claimed exemption u/s 11. The assessee was treated as AOP by Assessing Officer and taxed at marginal rate. The action of Assessing Officer was offered by Ld. CIT(A). Before us, the Id. AR of the assessee vehemently relied upon the decision of Hon'ble Jurisdiction High Court in the case of DIT(Exem) vs. Sharadaben Bhagubhai Mafatlal Public Charitable Trust (supra), wherein the Hon'ble Jurisdictional High Court while considering the question of law whether trust was assessable as an individual and consequently entitled to deduction under section 80L. Hon'ble High Court passed

the following order. For better appreciation of facts the question of law, facts and the submission of party are extracted below:

“10. The assessee trust is a public charitable trust. It came in existence after 1<sup>st</sup> June, 1973. The assessee filed its return of income on 31<sup>st</sup> October, 1993. The return was filed as AOP under protest. The AO, accordingly, assessed the assessee as AOP and not as an individual. Being aggrieved the assessee carried the matter in appeal. The Appellate Authority rejected the contention of the assessee that the trust should have been assessed as in individual and not as an AOP. The assessee had claimed deduction under section 80L. This was rejected by the AO and the First Appellate Authority on the ground that the assessee was an AOP and as an AOP, the assessee was not entitled to claim deduction under section 80L. The matter was carried in appeal to the Tribunal which followed the judgment of the Division Bench of this Court in the case of CIT vs Marsons Beneficiary Trust and Ors., following the said judgment, the Tribunal held that the assessee was assessable as an individual and not as an AOP. That, the assessee was entitled to deduction under section 80L. Being aggrieved by the decision of the Tribunal, the department has come in appeal under section 260A of the Income Tax Act.

#### ARGUMENTS ON QUESTION NO. 1

11. Mr. Desai, learned senior counsel for the department contended that the assessee trust should be assessee as an individual. He relied upon section 2(31) of the Income Tax Act. He contended that section 2(31) defines a person to include an individual, a Hindu undivided family, a company, a firm, an AOP or a body of individuals whether incorporated or not. He contended that section 80L did not apply to an AOP. It applied only to individuals. He contended that a public trust cannot come under the category of individual under section 2(31) because section 2(31) refers to only an individual as a natural person. He contended that trust is not a natural person. Therefore, he contended that a trust cannot be an individual. He contended that provisions of section 160 to 162 have no application to this case. He contended that the word ‘individual’ has not been defined in the Act. He contended that the assessee trust had

admitted in the form of its return that it is an AOP. In the circumstances, the tribunal erred in coming to the conclusion that the assessee was assessable as an individual. He contended that the judgment of the Division Bench of this Court in CIT vs Marsons Beneficiary Trust and Ors., has no application to this case. He contended that the said judgment was under section 161 and section 164 of the Income Tax Act. He contended that the said two sections cannot apply to a public trust. He contended that section 80L applied to individuals. That, the said section did not apply to AOP. Hence, the assessee was not entitled to claim deduct in under section 80L. He contended that under identical circumstances, in the case of CIT vs G.B.J. Seth and C.O.J. Seth, the Madhya Pradesh High Court has held that since the assessee. In that matter, had never disputed their status as an AOP., the Tribunal was right in assessing the assessee as an AOP. He contended that in this matter also, the assessee filed their return as AOP. Therefore, they were stopped from claiming status of individual under the Act. Mr. F.B. Andhyarujina, on the other hand, contended that trustees of the public charitable trusts have to be assessed in the capacity of an individual. He contended that an AOP is an association of persons who have come together for a common purpose of earning income. He contended that in the present case the beneficiaries have not come together with such common purpose. They have not set up the trust. They have not authorized the trustees to carry on business. The trustees derive their authority from the settler and not from the beneficiaries. That, all kinds of income of a trust have to be assessed under section 161(1) of the Act. That, whether assessment is made on the trustees under section 161(1), the tax is levied upon and recoverable from a trustee in a like manner and to the same extent as it would be leviable and recoverable from the person represented by him. ON other words, income which comes to the share of a beneficiary has to be assessed as if it was then income of the beneficiary and tax has to be levied accordingly. He contended that the plain reading of sections 160 to 162 of Income Tax Act which show that a representative assessee has either to be an individual or artificial juridical person who is equated with an individual. Under section

160(1)(iv), it is the trustee who is the representative assessee. The trustee, therefore, has to be an individual or a group of individuals. He relied upon the judgment of this Court in CIT vs Marsons Beneficiary Trust. He also relied upon the judgment of the Madras High Court in the case of CIT vs Venu Suresh Sanjay Trust and others,. He also relied upon the judgement of the Supreme Court in the case of CIT vs Sodra Devi.

#### FINDINGS ON QUESTION NO. 1

12. In the case of CIT vs Ramesh Mahesh Sanjay Trust and others, the facts were as follows. The assessee was a private trust. It was a discretionary trust. The shares of the beneficiaries were not ascertainable. The issue that arose for consideration was, whether the assessee was eligible for relief under section 80L of the Act. The AO was of the view that the assessee was an AOP because there was more than one beneficiaries whose share in the trust was not definite. He denied the benefit of section 80L. He relied upon section 164. On appeal, the First Appellate Authority accepted the plea of an assessee. On appeal, the Tribunal found that section 164 was not an independent section. That, section 164 did not determine the status of an assessee. That, it merely imposed a liability at the same rate of tax as an AOP. Therefore, the Tribunal found that the assessee was the representative assessee and that such representative assessee has to be an individual or an artificial juridical person equated with an individual. The trustee acts for each individual beneficiary. He is responsible for the tax liability of such an individual. Therefore, the assessment is to be made on the trustee as an individual in his representative capacity. That fact that beneficiaries are a group of individuals does not mean that the liability of the assessee is of AOP. This judgment of the Tribunal was upheld by the Madras High Court in the above judgment. The Madras High Court held that the determination of the total income depended on various provisions of the Income Tax Act which took into consideration deductions to be provided under section 80L of the Act. That, the charge of tax comes into play after the income has been determined in the manner stated above. The court found that the trustee was an individual and from his individual income, he was entitled to deduction under section 80L of the Act. On

the income so computed, the tax has to be charged. Therefore, the assessee was entitled to deduction under section 80L of the Act. Accordingly, it was held that the Tribunal was right in granting the relief under section 80L of the Act. In the case of CIT vs Venue Suresh Sanjay Trust and others (supra), the Madras High Court has held that a discretionary Trust is not an HUF or an AOP. Such a trust would be entitled to deduction under section 80L, as it is an individual. The term individual does not mean a single living human being. It can include a body of individuals constituting a unit for the purposes of the act. Even though the assessment of income is in the hands of the trust, it has to be made in the same manner and to the same extent as it would have been made in the hands of the beneficiaries. Therefore, it was held that the representative assessee in the case of a discretionary trust must be regarded as an individual and it would be entitled to the benefit of deductions under section 80L of the Act. In that matter also, the assessee was a public trust. It was a discretionary trust as the shares of the beneficiaries were not ascertainable. In the case of CIT Madhya Pradesh vs Sodra Devi ((supra)), the Supreme Court was considering the scope of section 16(3) of the Income Tax Act, 1922: In the said judgment, the Supreme Court has held that the word 'assessee' was wide enough to cover not only an individual but also HUF, Company, Local Authority, Firm and AOP or the partners of the firm or the members of the association individual. That, the word 'individual' has not been defined in the Act. That the word 'individual' did not mean only a human being but it included a group of persons forming a unit. In the case of CIT vs Marsons Beneficiary Trust, the Division Bench of this Court has held that all kinds of income of a trust have to be assessed under section 161(1). That, the trustees are authorized to carry on business under a deed of trust. They do not derive their authority from the beneficiaries. They derive their authority from the settler under the deed of trust. The beneficiaries are merely recipients of the income earned by the trust. They have not come together for a common purpose to earn income. Therefore, they cannot be considered as AOP or a body of individuals. In the said judgment, the Division Bench of this court rejected the



contention of department that the beneficiaries constituted AOP. The trustees did not carry on business on behalf of the beneficiaries just as the receivers. The beneficiaries are merely recipients of the income earned by the trust. Accordingly, it was held that the trustees were not assessable as AOP. In view of the above judgment, the Tribunal was right in coming to the conclusion that the assessee trust ought to have been assessed in the status of an individual. The judgment of the Madhya Pradesh High Court in the case of CIT vs G.B.J. Seth and C.O.J. Seth, has no application to the facts of this case. In the matter, the assesseees were executors of the will. They were assessed in respect of the income of the estate of the deceased in the status of an AOP. Relief under section 80L was denied. The above contentions were not advanced. It was contended on behalf of the assesseees that the assesseees could not have been assessed as an AOP. However, that question was not referred to the High Court. The High Court, therefore, did not go into the question. The question did not arise for determination. Hence the judgment has no application.

13. Accordingly question No. 1 is answered in the affirmative i.e. in favour of the assesseees and against the department.”

6. Considering the decision of Hon’ble Bombay High Court, wherein the trust was treated as individual, therefore, the Assessing Officer is directed to tax the assessee by treating individual instead of AOP.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 15-01-2020.

Sd/-

Sd/-

(S.Rifaur Rahman)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 15<sup>th</sup> January, 2020

Biswajit, Sr. P.S.

Copy to :

1. Appellant
2. Respondent – ITO – 18(3)(4), Mumbai.
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai