

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

INCOME TAX APPEAL NO. 1190 OF 2016

CIT (Exemptions)

.. Appellant

Versus

Kanakia Art Foundation

.. Respondent

-
- Mr. Suresh Kumar for the Appellant
 - Mr. Atul Jasani for the Respondent
-

**CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.**

DATE : MARCH 26, 2019.

P.C.:

1. Revenue has filed this appeal to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short). Following question is presented for our consideration:-

" Whether on the facts and circumstances of the case and in law, the Tribunal was right in not appreciating the fact that the objects of the Trust being non charitable / commercial and without a binding clause, the trustees are at liberty / enjoy unfettered discretion to apply the income of the Trust towards attainment of any one of its commercial / non-charitable objects, thus defeating the very purpose of provisions of Section 12AA of the Income Tax Act, 1961?"

2. Respondent assessee is a trust. The assessee desired to obtain registration as a Charitable Trust under Section 12A of the Income Tax Act, 1961 (“the Act” for short). Said application came to be rejected by the Commissioner by order dated 21.12.2012. He referred to some of the objects of the trust to hold that these objects were not in the nature of charitable purposes. He also recorded that the trust deed gave full discretion to the trustees to utilize the income of the trust for any of the objects. In his opinion, therefore, the trustees could as well have utilized the income of the trust for non-charitable purposes. He, therefore, refused to grant the registration.

3. The assessee carried the matter in appeal. The Tribunal by the impugned judgment allowed the appeal holding that none of the objects of the trust were in the nature of charitable purposes. If the trust was not following the objects of the trust, it is always open for the Assessing Officer to examine the same while granting exemption under Section 11 of the Act.

4. We are in agreement with the view of the Tribunal. We have perused the objects of the trust with a special focus on the objects which the Commissioner has referred to for holding that they are not charitable in nature. The Commissioner has referred to clause (f) of the objects but reproduced only part of it to contend that the object is "*to convert plays intoepisodes on T.V.....*" and this cannot be termed as charitable. In our opinion, the Commissioner has wholly misread the objects. Clause (e) is of the objects is to create a culture among the elite class of the society for considering work of art an asset than can be passed on to the next generation with pride and prestige. Immediately, following clause (f) which has not been fully reproduced by the Commissioner in his order is to write through or with the help of literary persons, of different aptitudes or classes, plays in art and culture and other languages on different topics, to translate plays written different languages into other languages, or to convert plays into drams in to short plays or episodes or T.V. or radio plays. The Commissioner, thus, picked a portion of this clause in isolation to argue that the same was not charitable.

5. In the result, no question of law arises. Income Tax Appeal is dismissed.

[SARANG V. KOTWAL, J.]

[AKIL KURESHI, J]