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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on*: *20.03.2025*

\+ **ITA 469/2023**

COMMISSIONER OF INCOME TAX (EXEMPTIONS) .....Appellant

Through: Mr. Abhishek Maratha, SSC with Mr. Apoorv Agarwal, Mr. Parth Semwal, JSCs and with Ms. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha, Ms. Muskan Goel, Mr. Himanshu Gaur, Mr. Kamakshraj Singh and Mr. Yamit Jetley, Advocates

versus

INDIAN BROADCASTING FOUNDATION .....Respondent

Through: Mr. Ajay Vohra, Sr. Advocate with Ms. Ishita Farsaiya, Mr. Sparsh Bhargava, Mr. Apoorv Shukla, Mr. Jaidev Prasada and Ms. Vanshika Taneja, Advocates

CORAM
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

JUDGMENT

DR. SWARANA KANTA SHARMA, J

1. The Revenue has preferred this appeal under Section 260A of the Income Tax Act, 1961 [hereafter '***the Act***'] impugning an order

dated 14.09.2020 [hereafter '***the impugned order***'] passed by the learned Income Tax Appellate Tribunal [hereafter '***the ITAT***'] in ITA No. 4194/Del/2017, in respect of the assessment year (**AY**) 2014-15.

FACTUAL BACKGROUND

2. As revealed from the records, the Indian Broadcasting Foundation [hereafter '***the Assessee'***] was incorporated on 27.09.1999 as a not-for-profit company under Section 25 of the Companies Act, 1956 [hereafter '***the Companies Act***']. The Assessee was also registered under Section 12A of the Act *vide* order dated 10.01.2001. The Assessee is an association of broadcasters formed to protect the interests of various stakeholders and related entities in the field of television broadcasting, including the television viewing audience. Its objectives include spreading awareness about the latest developments in the television industry, disseminating knowledge among its members, and supporting, protecting, and defining the rights of its members.

3. The Assessee filed its return of income declaring *Nil* income on 29.09.2014 for the AY 2014-15, claiming exemption under Sections 11 and 12 of the Act. The case was subsequently selected for scrutiny assessment under the Computer-Assisted Scrutiny Selection (CASS). A notice under Section 143(2) of the Act, dated 28.08.2015, was issued and served upon the Assessee. Thereafter, a notice dated 04.04.2016 under Section 142(1) of the Act was issued, along with a questionnaire, requiring the Assessee to furnish information and documents in support of its claims. In response, Sh. Rajat Jain and Sh.

Siddharth Bhargava, Chartered Accountants and Authorized Representatives (ARs) of the Assessee, appeared before the Assessing Officer (**AO**) from time to time and submitted the requisite information/ documents.

4. During the assessment proceedings, upon perusal of the records and past year additions, the AO noticed certain investments made by the Assessee. From Note No. 9 of the balance sheet for the AY under consideration, it was observed that the Assessee had made an investment of ₹15,00,000/- in Equity Shares, numbering 1,50,000 of ₹10/- each, in an entity named Broadcast Audience Research Council [hereafter '***BARC***']. The AO noted that BARC is a 100% subsidiary of the Assessee. Further, as per Note No. 13 of the balance sheet, it was observed that the Assessee had made an investment of ₹2,85,00,000/- in Share Application Money.

5. The AO took a view that these investments were not in accordance with the forms or modes prescribed under Section 11(5) of the Act. Accordingly, the Assessee was issued a show cause notice, asking it to explain why the investments made in contravention of Section 11(5) of the Act should not be considered a violation within the meaning of Section 13(1)(d) of the Act. The Assessee was further asked to justify why, in view of the violation of Section 13(1)(d), the benefits of Sections 11 and 12 of the Act should not be withdrawn and why the entire surplus of ₹5,34,24,581/- should not be treated as the Assessee's taxable income for the relevant AY.

6. At this juncture, it is relevant to note that the Assessee had deployed ₹99,990/- towards the equity share capital of BARC (9,999 shares @ ₹10 each) in FY 2010-11. A further amount of ₹14,00,010/- was deployed for the same purpose in FY 2010-11, and equity shares were issued by BARC to the Assessee in respect of the said amount in FY 2011-12. As on 31.03.2012, the Assessee held total shares of ₹15,00,000/- (1,50,000 equity shares @ ₹10 each) in BARC. Thereafter, share application money of ₹45,00,000/- and ₹2,40,00,000/- were deployed by the Assessee with BARC in the FY 2012-13 and FY 2013-14 respectively for issuance of shares. These amounts are reflected as 'share application money' in the Assessee's books of accounts. These amounts of ₹45,00,000/- and ₹2,40,00,000/- were later refunded to the Assessee in the FY 2015-16.

7. The Assessee contended before the AO that the deployment of funds towards BARC's equity capital was directly aligned with its objectives and was made in compliance with the directions of the Ministry of Information and Broadcasting [hereafter '***MIB***'] and the recommendations of the Telecom Regulatory Authority of India [hereafter '***TRAI***']. It was submitted that the funds were deployed solely to fulfill its objectives and not for earning any income, interest, or profit, and thus should be treated as application of income rather than an investment. The Assessee relied on certain judgments to assert that the deployment of funds towards BARC's equity did not constitute an investment violating Section 13(1)(d) of the Act, as no income was earned from the funds deployed. In the alternative, citing CBDT Circular No. 387 dated 06.07.1984 and various case laws, the

Assessee submitted that even if the deployment was deemed a violation under Section 13(1)(d) of the Act, the exemption withdrawal should be restricted to any income earned from such deployment, which in this case was *Nil*, and not on the entire income of the assessee.

8. The AO after considering the submissions and documents, concluded that the Assessee had violated Section 13(1)(d) of the Act by making an investment of ₹15,00,000/- in equity shares (1,50,000 shares of ₹10/- each) and ₹2,85,00,000/- in Share Application Money in BARC, which was not in compliance with Section 11(5) of the Act. As a result, the AO denied the benefit of exemption under Sections 11 and 12 of the Act and assessed the income under the normal provisions as per Chapter IV of the Act. The income of the Assessee was assessed at ₹5,51,84,040/-, which was held as taxable at Maximum Marginal Rate in accordance with provisions of Section 164(2) of the Act.

9. The Assessee, being aggrieved by the order of AO, preferred an appeal before the learned Commissioner of Income Tax (Appeals)-40, Delhi [hereafter '***CIT(A)***']. The learned CIT(A), while adjudicating Ground No. 2 of the appeal, addressed the Assessee's challenge to the AO's finding that the transactions involving the purchase of shares worth ₹15 lakhs in BARC and the deployment of ₹45 lakhs as share application money were violative of provisions of Section 11(5) of the Act. The learned CIT(A), after considering the assessment order and the submissions made by the Assessee, including reliance placed on

the judgment of this Court in the Assessee's own case, i.e. ***Indian Broadcasting Foundation v. Chief Commissioner of Income Tax (E) & Ors.:*** *W.P.(C) 2489/2017*, which was rendered on the issue of stay of demand, noted that this Court had categorically observed that the amount deposited with BARC was not by way of investment or choice, but on account of a Central Government policy, made through the directives of the appropriate ministry. Relying on these observations, the learned CIT(A) concluded that the Assessee had not committed any violation under Section 13(1)(d) of the Act by deploying the aforesaid funds in BARC, as such deployment was pursuant to government policy and not a voluntary investment. Accordingly, the CIT(A) directed the AO to allow the benefit of exemption under Sections 11 and 12 of the Act, since the only reason for denial of exemption was the alleged violation under Section 13(1)(d) of the Act.

10. The Revenue assailed the order of learned CIT(A) by way of an appeal (ITA No. 4194/Del/2017) before the learned ITAT. The Revenue contended that the learned CIT(A) had erred in relying on the observations made by this Court in ***Indian Broadcasting Foundation v. Chief Commissioner of Income Tax (E) & Ors.*** *(supra)*, as this Court had not rendered a final decision on the merits but had merely directed the CIT(A) to adjudicate the matter on merits. The Revenue also contended that the transactions involving the purchase of shares worth ₹15 lakhs and the deployment of ₹45 lakhs as share application money in BARC constituted an investment, and therefore, the findings of the AO were justifiable. On the other hand, the Assessee contended

that the core issue was whether the deployment of funds in BARC, made pursuant to Central Government policy, TRAI recommendations, and MIB directives, amounted to an investment violating Section 11(5) read with Section 13(1)(d) of the Act. The Assessee asserted that the funds deployed in BARC should be treated as an application of income, not an investment, and therefore, Section 13(1)(d) of the Act was inapplicable.

11. The learned ITAT, by way of the impugned order, dismissed the appeal preferred by the Revenue. The ITAT upheld the findings of the CIT(A) and concluded that the Assessee had not committed any violation under Section 11(5) read with Section 13(1)(d) of the Act. The ITAT observed that the Assessee's deployment of funds towards equity and share application money in BARC was made in compliance with the directives of the Central Government, TRAI, and MIB, and was intended to fulfill the Assessee's key objectives, and not to earn income or profit. It was noted that both the Assessee and BARC are not-for-profit entities, and BARC's Memorandum of Association expressly prohibits distribution of dividends or surplus to shareholders, thereby reinforcing that the funds were deployed solely for charitable purposes. The ITAT also relied on several judicial precedents to conclude that the deployment of funds in this case did not constitute an 'investment' violating Section 13(1)(d) of the Act. Consequently, the learned ITAT affirmed the order of the CIT(A), and held that the assessee was entitled to exemption under Sections 11 and 12 of the Act.

12. The Revenue has preferred the present appeal, challenging the impugned order passed by the learned ITAT.

QUESTIONS OF LAW

13. By way of order dated 24.10.2024, this Court had framed following Questions of Law for consideration:

> "(1) Whether on facts and in circumstances of the case and in law, Hon'ble ITAT was correct in holding that the transactions of purchasing shares and investment by the way of Share Application Money were within the meaning of section 11(5)(vii) of the Income Tax Act, 1961?
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> (2) Whether on facts and in circumstances of the case and in law, Hon'ble ITAT was correct in upholding the order of Ld. CIT(A) confirming the allowance exemption u/s 11&12 of the Income Tax Act, 1961?"

RIVAL CONTENTIONS

14. The learned counsel for the Revenue contended that the impugned order passed by the learned ITAT is perverse both on facts and on law. It was argued that the learned ITAT erred in ignoring the fact that in the Assessee's own case, this Court had not adjudicated the matter on merits but had only directed the CIT(A) to decide the case. Despite this, the learned ITAT incorrectly treated the observations made in the writ petition as conclusive. The learned counsel further submitted that the learned ITAT has erred in holding that the transactions of purchasing shares and deploying funds by way of share application money fall within the permissible modes of investment under Section 11(5)(vii) of the Act. It was argued that such transactions constitute 'investment' and are in violation of Section

13(1)(d) of the Act, which restricts investments that do not conform to the prescribed modes.

15. It was contended on behalf of the Revenue that the learned ITAT has erred in confirming the order of the CIT(A), which allowed the Assessee's exemption under Sections 11 and 12 of the Act. The Revenue asserted that the words 'investment' and 'deposit' in Section 13(1)(d) of the Act are broad and include investments in shares and deposits made for charitable purposes, irrespective of whether such investments are intended to generate profit or income. The learned counsel emphasizes that investment in shares or share application money, even if made for charitable objectives, falls within the scope of Section 13(1)(d) of the Act unless it conforms strictly to the forms and modes prescribed under Section 11(5) of the Act. Therefore, it is urged that the impugned order be set aside, and the Revenue's appeal be allowed.

16. *Conversely*, the learned senior counsel for the Assessee contends that the Assessee, a not-for-profit association of television broadcasters, was formed to protect industry interests and provide reliable viewership data. The deployment of funds in BARC was made pursuant to the directions of the MIB, following TRAI's Recommendations of 2008, which mandated the creation of an industry-led, self-regulatory body for generating transparent TRP ratings. The Assessee was required to retain a 60% shareholding in BARC as per government policy, and such participation was a regulatory obligation, not a voluntary investment.

17. It is argued that the term 'investment' under Section 11(5) read with Section 13(1)(d) of the Act implies a voluntary act intended to generate income or profit. However, in the present case, BARC's Memorandum of Association prohibits the distribution of dividends or any income to members, making it incapable of generating any income or return for the Assessee. Therefore, the deployment of funds was an application of income to achieve the Assessee's objectives, not an investment.

18. The learned senior counsel further submits that both the learned CIT(A) and the learned ITAT have recorded concurrent findings of fact that the deployment of funds was solely to meet the Assessee's charitable objectives, and no income or profit was derived from such deployment. It is asserted that these findings, being factual and based on the material placed on record, should not be interfered with.

19. Additionally, it is contended that even if a violation under Section 13(1)(d) of the Act is presumed, the *proviso* to Section 164(2) of the Act provides that only the income earned from such restricted investments is taxable at the maximum marginal rate, not the entire income of the Assessee. Since no income was earned from BARC, no tax liability of the Assessee arises in this case. Therefore, it is prayed that the present appeal be dismissed.

ANALYSIS *&* FINDINGS

20. At the outset, it shall be relevant to take note of the provisions of Section 11, 12 and 13 of the Act, which form the statutory

framework governing the taxation of income derived from property held under trust for charitable or religious purposes.

21. Section 11 of the Act provides for the exemption of income from property held for charitable or religious purposes, subject to the application of such income towards the objects of the trust and investments made in the prescribed modes under Section 11(5) of the Act. Section 12 of the Act extends the exemption to voluntary contributions received by a trust or institution, which are treated as income derived from property held under trust. However, the benefits under Sections 11 and 12 are subject to the conditions laid down under Section 13 of the Act, which enumerates circumstances under which such exemptions may be denied, particularly for investments that are not in compliance with the modes specified under Section 11(5) of the Act.

22. Section 13(1)(d) of the Act, which is central to the present dispute, provides that income from investments or deposits made otherwise than in the prescribed modes shall not be eligible for exemption under Section 11 and 12 of the Act.

23. In the above context, the first issue for our consideration is whether the deployment of funds by the Assessee in BARC was made pursuant to the directions and recommendations of the TRAI and MIB i.e. as per Government policy, or whether it was an independent investment for earning income or profit.

24. The learned ITAT, in the impugned order, has clearly observed that BARC was required to be established as an industry-led body

based on the recommendations of TRAI and the policy of the Central Government, with the Assessee playing a crucial role in its promotion. The ITAT specifically held that both the Assessee and BARC are not-for-profit companies formed with the larger objective of serving public charitable purposes, namely, the promotion of the television industry and viewership in India. The learned ITAT further observed that BARC was created to provide reliable and transparent viewership data to the members and stakeholders of the Assessee, including public sector broadcaster Doordarshan, thereby directly enabling the Assessee to meet its objectives. The learned ITAT thus found that the deployment of funds in BARC was not for earning income or profit but for achieving the Assessee's key objectives, noting that BARC, as a company registered under Section 25 of the Companies Act, was prohibited from distributing dividends or profits to its shareholders, and in the event of liquidation, any surplus would be transferred to another company registered under Section 25 of the Companies Act with similar objectives.

25. Having perused the order of the learned ITAT, we find significant support for this conclusion from the detailed submissions placed on record by the Assessee, which trace the evolution of BARC and the regulatory framework that mandated its formation. It is relevant to note that the Assessee was formed with the primary objective of protecting the interests of stakeholders in the television broadcasting industry and promoting awareness and knowledge-sharing among its members. The Assessee, being the industry body of television broadcasters, was entrusted with the responsibility to ensure

the availability of impartial, reliable, and accurate viewership data to its members, as emphasized in its Memorandum of Association. It is pertinent to highlight that the need for an independent and transparent television rating system arose due to serious concerns regarding the inaccuracy and opacity of the previous TAM rating system. Recognizing the importance of credible viewership data for the television industry and public broadcaster Doordarshan, the MIB engaged the TRAI to recommend a regulatory framework for television ratings.

26. The Coordinate Bench of this Court, in ***Indian Broadcasting Foundation v. Chief Commissioner of Income Tax (E) & Ors.*** *(supra)*, had also noted, after considering the material placed on record, that the Assessee herein had deposited amounts with BARC – not by way of an investment or a choice – but on account of a policy of the Central Government.

27. We note that in pursuance of the Government's initiative, TRAI, on 19.08.2008, had published its recommendations on Television Audience Measurement/Television Rating Points. In its report, TRAI categorically recommended a self-regulatory approach through the creation of an industry-led body to be called as BARC. In particular, Para 2.8.2 of the TRAI Recommendations are set out below:

> "BARC proposes to be a not-for-profit body registered under section 25 of the Companies Act, 1956 with an equal representation (four members each) from Indian Society of Advertisers (ISA), Indian Broadcasting Foundation (IBF) and Advertising Agencies Association of India (AAAI). The IBF has

> the broadcasters as members... Each of the three members will have equal representation and equal voice in the design and monitoring of the rating system and in the administration of BARC..."

28. We note that TRAI had clearly endorsed the formation of BARC as a not-for-profit entity with equal representation from broadcasters, advertisers, and media agencies; and the Assessee, as the primary industry body representing television broadcasters, including Doordarshan, was entrusted with the responsibility to promote and establish BARC.

29. Further, it is relevant to note that the Standing Committee of Parliament on Information Technology, in its Fourteenth Report titled 'Television Audience Measurement in India' presented on 21.08.2010, had reinforced the self-regulatory model proposed by TRAI and recommended as follows:

> "The committee note that the leading industry associations of the broadcasters, the media, and the advertising sector have jointly formed the Broadcasting Audience Research Council (BARC) to oversee and control the television rating system in India. A not-for-profit body under Section 25 of the Companies Act, 1956, it has equal representation from the Indian Society of Advertisers (ISA), the Indian Broadcasting Foundation (IBF), and the Advertising Agencies Association of India (AAAI)."

30. It is thus clear that the formation of BARC and the Assessee's role in its promotion were not voluntary or discretionary but were mandated by the policy of the Government of India, supported by the recommendations of both TRAI and the Standing Committee of Parliament. The documents placed on record further show that the TRP Committee constituted by the Ministry of Information and

Broadcasting in May 2010 had also endorsed the creation of BARC as a self-regulatory industry body for television ratings, which was later affirmed by TRAI's "Guidelines for Television Rating Agencies" dated 11.09. 2013.

31. This Court also notes that BARC's objectives, as set out in its Memorandum of Association, align directly with the Assessee's key objectives. The Memorandum of Association of BARC clearly states that its purpose is:

> "To conduct and commission market research and studies... to provide accurate, up-to-date and relevant findings relating to audiences of Television... in a completely transparent and objective manner... and thereby creating an awareness among the television viewing audiences and stakeholders."

32. These objects are directly supportive and ancillary to the Assessee's objects as defined in its own Memorandum of Association, which include:

> "To encourage the growth of friendly relations amongst members engaged in broadcasting; to disseminate information relating to the television industry; and to collect and furnish information for the benefit of members and stakeholders."

33. It is also significant to note that BARC, being a company registered under Section 25 of the Companies Act, is legally prohibited from distributing any dividends or profits to its shareholders. Additionally, in the event of liquidation, Memorandum of Association of BARC mandates that any surplus must be transferred to another company registered under Section 25 of the

Companies Act with similar objectives, thereby negating any possibility of personal gain or profit for the Assessee from its deployment of funds.

34. Therefore, in view of the aforesaid, this Court finds merit in the Assessee's submission that the deployment of funds by the Assessee in BARC, by way of purchase of its shares, was – *prima facie* – not for earning any income or profit, but solely to meet the Assessee's objectives, as mandated by Government policy, following the TRAI Recommendations.

35. The next issue for our determination is whether the deployment of funds by the Assessee in the shares of BARC constitutes an 'investment' within the meaning of Section 11(5) read with Section 13(1)(d) of the Act.

36. For the purpose of adjudication of this issue, it shall be first apposite to examine the scope and meaning of the term 'investment' and an analysis of the relevant judicial precedents wherein the said terms have been interpreted, including in the context of charitable institutions and their entitlement to exemption under Sections 11 and 12 of the Act.

37. The term 'investment' has been defined in the Oxford English Dictionary (11th edition, 2004), as "*a thing worth buying because it may be profitable or useful in the future*". The Black's Law Dictionary defines 'investment' as "*an expenditure to acquire property or other assets in order to produce revenue. The placing of capital or laying out of money in a way intended to secure income or profit from its*

employment." P. Ramanatha Aiyar's Law Lexicon (Reprint Edition, 1987) elaborates on the term 'invest' in the following manner:

> "To place property in business; to place it so that it will be safe and yield a profit. Investment means, in common parlance, putting out money on interest, either by way of loan or by the purchase of income-producing property."

38. From these definitions, it is clear that the essential feature of an investment is – the intention to earn a return, profit, or income from the money laid out. The term 'investment' in both common parlance and legal sense implies an expenditure with the objective of generating a financial return or profit.

39. Insofar as judicial precedents on the issue are concerned, we note that the Coordinate Bench of this Court in ***CIT v. Sir Sobha Singh Public Charitable Trust:*** *(2001) 250 ITR 475 (Delhi)* had discussed the scope of the term 'investment' and highlighted that the 'intention to earn income' is central to the concept of investment. The Court had observed as under:

> "The word "investment" means to lay out money in business with a view to obtain income or profit. In order to constitute an investment the amount laid down should be capable of resulting in an income or return or profit to the investor and in every case of investment, the intention and positive act on the part of the investor should be to earn such income, return or profit to the investor. In order to constitute an investment, the money shall be laid out in such manner, as to acquire some species of property which brings in an income to the investor. An investment popularly means every application of money which is intended to fetch return by way of interest income or profit. This only employed as capital in a business is money invested in business, (vide Edwards J., in Tax

> Commissioner v. Australian Mutual Provident Fund Society [1902] 2 NZLR 445). In Arnaild v. Grinstead (21 WR Eng 155), it was observed that in its most comprehensive sense it is generally understood to signify the laying out of money in such a manner that it produces a revenue. An illuminating observation was made in Inland Revenue Commissioners v. Desoutter Bros. Ltd. [1946] 1 All ER 58 (CA) about what "investment" means. It was observed that the word "investment" is not a word of art, but has to be interpreted in a popular sense. It is not capable of legal definition, but a word of current vernacular. The words "invest", and "investment" are to be taken in the business sense of laying out of money for interest or profit"

40. Similarly, the Coordinate Bench of this Court in ***Anand Charitable Trust v. Commissioner of Wealth-tax:*** *(2002) 257 ITR 275 (Delhi)* had held as under:

> "10. The word 'investment' means to lay out money in business with a view to obtain income or profit. In order to constitute an investment the amount laid down should be capable of resulting in an income or return or profit to the investor and in every case of investment, the intention and positive act on the part of the investor should be to earn such income, return or profit to the investor. In order to constitute an investment, the money shall be laid out in such manner, as to acquire some species of property which brings in an income to the investor. An investment popularly means every application of money which is intended to fetch return by way of interest income or profit.
>
> 11. Thus only employed as capital in a business is money invested in business, (vide Edwards J. in Tax Commissioner v. Australian Mutual Provident Fund Society, [1902] 22 NZLR 445). In Arnaild v. Grinstead (21 WR Eng 155), it was observed that in its most comprehensive sense it is generally understood to signify the laying out of money in such a manner that it produces a revenue. An illuminating observation was made in IRC v. Desoutter Bros. Ltd., [1946] 1 All ER 58 (CA) about what 'investment means. It

> was observed that the word 'investment' is not a word of art, but has to be interpreted in a popular sense. It is not capable of legal definition, but a word of current vernacular. The words 'invest' and 'investment' are to be taken in the business sense of laying out of money for interest or profit."

41. In ***Director of Income-tax (Exemption) v. Alarippu:*** *(2000) 244 ITR 358*, the Coordinate Bench of this Court considered the distinction between the terms 'investment' and 'deposit' within the framework of Section 11(5) and Section 13(1)(d) of the Act. The case involved a charitable institution that had advanced funds to Mahila Haat, and the Revenue contended that such advancement amounted to an investment or deposit in violation of Section 11(5) of the Act, resulting in the withdrawal of exemption under Section 13(1)(d) of the Act. The ITAT, however, found that the transaction was neither an investment nor a deposit but was a deployment of funds for fulfilling the charitable objectives of the institution. This Court, affirming the findings of the ITAT, held that the expressions 'investment' and 'deposit' are to be understood in a business sense and cannot be equated with a charitable application of income. The Court clarified that an 'investment' implies the laying out of money with the intention of earning income or profit, while a 'deposit' implies an obligation of repayment and is placed for safekeeping or security. The Court found that the transaction with Mahila Haat lacked the essential characteristics of both investment and deposit, as the money was not laid out for earning a return, nor was it placed with a view to safekeeping or security. Consequently, this Court held that the transaction did not contravene Section 11(5) or Section 13(1)(d) of the

Act, and the institution was entitled to exemption under Section 11 of the Act.

42. The Bombay High Court, in ***Commissioner of Income-tax-I v. Dr. Vikhe Patil Foundation:*** *[2014] 42 taxmann.com 190*, had addressed the issue as to whether a transaction involving the purchase of shares in cooperative banks by a charitable trust constituted an 'investment' under Section 11(5) of the Act and thereby violating Section 13(1)(d) of the Act. The assessee therein, a charitable foundation, had purchased shares in two cooperative banks as a pre-condition for obtaining loans from those banks, and these shares were recorded as 'investments' in its books of account. The Assessing Officer had held that the assessee had violated Section 11(5) of the Act by making investments in a mode not prescribed under the Act and, consequently, had denied the exemption under Section 11. The CIT(A) had upheld this view. However, on further appeal, the concerned ITAT had allowed the assessee's claim, holding that the purchase of shares was not an 'investment' but a necessary obligation to obtain loans from the banks, which were used to further the charitable objects of the trust. It was further noted that the holding of shares was incidental and not with an intention to earn income or profit. The Bombay High Court, affirming the decision of the ITAT, held that the nature of the transaction must be determined based on the factual matrix rather than mere classification in the books of account. The depiction of the shares as 'investments' in the balance sheet was not conclusive, and it was necessary to examine the substance and intent behind the transaction. Thus, the Court held that the investment

in shares of cooperative banks was a precondition of raising of loans and it was therefore not an investment as normally understood.

43. From the foregoing discussion, we are of the view that the essence of 'investment' lies in the intention and the capacity of the expenditure to yield income, profit, or return. The consistent judicial view is that mere deployment of funds does not amount to an investment unless it is aimed at earning income or return.

44. Applying these principles to the facts of the present case, it is evident that the Assessee had invested funds in the shares of BARC, a not-for-profit company, which is legally prohibited from distributing any dividends or profits. Even on liquidation, the surplus of BARC would be transferred to another charitable entity and not to its shareholders. Thus, no financial return or gain was possible from the Assessee's deployment of funds in BARC.

45. As a sequitur to the aforesaid, we are of the opinion that the application of funds by the Assessee in BARC does not qualify as 'investment' under Section 11(5) read with Section 13(1)(d) of the Act, inasmuch as the said deployment was not intended to yield income, profit, or return, but was made pursuant to a statutory and regulatory obligation to further the Assessee's charitable objectives.

46. Since we have held that there was no violation of Section 11(5) read with Section 13(1)(d) of the Act committed by the Assessee herein; consequently, the decision of the CIT(A), upheld by the learned ITAT, to allow the exemption to the Assessee under Sections 11 and 12 of the Act, is also affirmed.

47. Accordingly, we find no infirmity with the impugned order of the learned ITAT. The Question of Laws are answered in favour of the Assessee and against the Revenue.

48. The appeal is accordingly dismissed.

DR. SWARANA KANTA SHARMA, J

VIBHU BAKHRU, J

MARCH 20, 2025/ns