आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER

आयकर अपील सं./ITA No.1548/Mds/2015
निर्धारण वर्ष /Assessment Year : 2011-12

Vels Institute of Science Technology And Advanced Studies (Vistas), No.521/2, Annai Salai, Nandanam, Chennai – 600 035. PAN AAATV9804F (अपीलार्थी/Appellant)	v.	The Additional Commissioner of Income-tax, (Exemptions), Chennai Range, Chennai. (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर /Appellant by : Shri R. Sivaraman, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri Pathlavath Peerya, CIT

सुनवाई की तारीख/Date of Hearing : 20.10.2016
घोषणा की तारीख/Date of Pronouncement : 19.12.2016

आदेश /O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal by the assessee is directed against the order of the Commissioner of Income-tax(Appeals)-17, Chennai dated 09.03.2015.

2. The facts of the case are that the assessee is a trust registered u/s.12AA of the Act vide order of the DIT(E) dated 25.09.2007. The assessee filed its return for the AY 2011-12 on 30.09.2011 admitting 'nil' income. The case was selected for scrutiny and notice u/s.143(2) of the Act was issued accordingly. In response, the ld. A.R. appeared from time to time. Details called for were filed. After scrutinizing the details filed and discussing the case with the authorized representative, the assessment was completed u/s.143(3) of the Act on 27.3.2014 determining the total income at ₹ 14,53,26,850/-. During the course of assessment proceedings, the AO found that a sum of ₹42,01,66,152/- remained outstanding as on 31.3.2011 under the head "Loans and Advances" in the balance sheet. Out of the above sum, ₹ 21,85,60,000/- was shown as "advance for property under Vels University" and the details of payment made by the assessee are as under:

S. No.	Date	Location of properties	Paid to whom	Amount (₹)
				(OB) 15,76,00,000
1.	28.06.2010	Thalambur	Anthem Foundation	2,25,00,000
2.	08.07.2010	Thalambur	-do-	25,00,000
3.	08.02.2011	Thalambur	-do-	1,00,00,000
4.	10.03.2011	Manjakarunal	Dr. Isari K. Ganesh	1,15,00,000
5.	14.03.2011	Madurai	Arthi Associates	94,60,000
6.	14.03.2011	Madurai	-do-	50,00,000
			Total	21,85,60,000

According to the AO, out of the above transactions, the amounts outstanding as on 31.03.2011 against Managing Trustee, Mr. Isari K. Ganesh was ₹ 16,91,00,000/- and Trustee, Mrs. Arthi Ganesh was ₹1,44,60,000/-.

2.1 The AO observed that the above mentioned sums were paid to Managing Trustee and a company in which Mrs. Arthi, Trustee is one of the Directors for purchase of land. Out of ₹16,91,00,000/- paid, ₹ 15,76,00,000/- was given to Dr. Isari K. Ganesh during the AY 2010-11 and ₹ 1,15,00,000/- was given during AY 2011-12. The details are as under :

01.07.2009	₹ 20,00,000
04.12.2009	₹ 5,00,00,000
23.01.2010	₹ 55,00,000
27.01.2010	₹ 10,00,00,000
27.01.2010	₹ 50,000
01.02.2010	₹ 50,000
Sub-total	₹ 15,76,00,000
10.03.2011	1,15,00,000
Total	₹ 16,91,00,000

2.2 According to the AO, copy of agreement for sale dated 01.07.2009 between Dr. Isari K. Ganesh and the assessee reveals that the consideration fixed for sale was ₹ 20 crores and

₹ 20 lakhs was paid to Dr. Isari K. Ganesh on 1.7.2009 i.e. on the date of agreement itself. The agreement also reveals that the properties mentioned in Sl.Nos.1 to 10 therein were purchased by Dr. Isari K. Ganesh only on 5.3.2008 from different parties by different sale deeds i.e. exactly 15 months before the agreement of sale. The AO observed that Dr. Isari K. Ganesh purchased the above land for a consideration of ₹ 1.73 crores only. The AO obtained the guideline value for the said properties for the period 1.8.2007 to 31.3.2012 from the Registration Department, which works out to ₹ 2,52,41,000/- only. Therefore, the AO surprised that as to how the assessee trust came forward to pay ₹ 20 crores to purchase the above property which was purchased only for ₹ 1.73 crores just 15 months back and he worked out the actual cost of the land as on 5.3.2008 (i.e. date of purchase by Dr. Isari K. Ganesh) by applying cost inflation index notified by the CBDT for capital gains.

$$1,73,31,000 \times \frac{582}{519} = ₹\ 1,94,34,763/- @ 75\% \text{ inflation}$$

The AO again worked out @ 100% inflation and arrived the value at ₹ 2,59,13,017 (i.e. 1,94,34,763 x 4/3). The AO further

took a lenient step and double the cost to arrive at ₹ 5.18 crores. Therefore, the AO observed that the value of the land to be purchased by the assessee cannot exceed ₹ 5.18 crores at any cost. But the assessee was prepared to give ₹ 20 crores to buy the property from Dr. Isari K. Ganesh, who is the Managing Trustee of the assessee. Hence, according to the AO, the transaction is covered by the provisions of sec.13(1)(c) and sec.13(1)(d) of the Act.

2.3 When questioned by the AO about it, the assessee could not furnish any comparable sale by third party in the nearby locality. Hence, the AO observed that the transaction attracts provisions of sec.13(2)(a) of the Act. The AO, further observed that before the C IT(A) for the AY 2010-11, it was contended that Dr. Isari K. Ganesh pledged his properties as a security for the loans availed by M/s. Vels Educational Trust (VET). The loans availed by VET were in turn advanced to the assessee and the amount outstanding as on 31.3.2012 was ₹ 8.40 crores. The assessee claimed that the MD has not charged any commission/fee either from VET or from the assessee. Hence,

the assessee is deriving no benefit from the transaction with related persons, rather the related persons benefitting of ₹ 8.4 crores from VET at the time of entering into agreement of sale. The AO also observed that the assessee informed the CIT(A) during appellate proceedings relating to AY 2010-11 that ₹ 4.06 crores as compensation/interest received from Dr. Isari K. Ganesh by the trust. It was clarified by the AO that the receipt was consequent to the cancellation of sale agreement in the subsequent assessment year and in no way connected to the proceedings of the AY 2011-12, which is under appeal. Thus, according to the AO, the transaction of the assessee with the Managing Trustee, Dr. Isari K. Ganesh is hit by provisions of sec.13(1)(c), 13(3) and 13(3) of the Act and the assessee trust is not entitled for exemption u/s.11 of the Act and to support his view, he relied on the following decisions:

1. Kanahyalal Punj Charitable Trust vs.DIT(E)297 ITR 66(Delhi)
2. DIT vs. Bharat Diamond Bourse (126 Taxman 365)(SC)
3. CIT vs. V.G.P. Foundation (2003) 263 ITR 187 (Mad)
4. CIT vs. Shree P. Subramaniam Religious Trust (129 Taxman 144(Ker.)

2.4 The AO observed that a sum of ₹ 16.91 crores has been lent to the Managing Trustee without interest. Similarly, ₹ 1.44 crores was lent to M/s. Arthi Associates (in which Mrs. Arthi Ganesh Trustee is one of the Directors) without interest. But the assessee paid ₹ 1,00,56,422/- as interest on the term loan of ₹14,28,80,463/- obtained from ICICI Bank. This is violative of sec.13(2)(a) of the Act. Therefore, the AO calculated the interest foregone by the assessee trust and quantified at ₹1,58,97,473/- and added the same to taxation. The AO relied on the decision of the Rajasthan High Court in the case of Shree Poongalia Jain Swetember Mandir vs. CIT (1987), 168 ITR 516. According to the AO, since the assessee was in receipt of ₹2,25,01,001/- being the corpus donation during the AY in appeal and the assessee becomes ineligible for exemption, the corpus fund becomes taxable and the same was brought to tax. Accordingly, the AO determined the total income of the assessee at ₹ 14,53,26,850/- and raised a tax demand of ₹ 6,27,33,679/-. Against this, the assessee went in appeal before the CIT(Appeals).

3. On appeal, the CIT (Appeals) observed that during the AY 2010-11, a sum of ₹ 15,76,00,000/- was paid to Dr. Isari K. Ganesh, Managing Trustee and the sum remained outstanding as on 31.3.2011. A further sum of ₹ 1,15,00,000/- was paid to him as land advance during the AY 2011-12 and the same also remains outstanding as on 31.3.2011. A sum of ₹ 1,44,60,000/- was paid to Mrs. Arthi Ganesh, Trustee of the assessee during the AY 2011-12 and remains outstanding as on 31.3.2011.

3.1 The CIT(Appeals) observed that according to sec.13(1)(c) of the Act, sections 11 and 12 of the Act are not applicable if any part of income enures, used or applied directly or indirectly for the benefit of any person referred to in sub-section(3) of sec.13 of the Act. According to the deed of amendment of the assessee trust, Dr. Isari K. Ganesh is the founder and Managing Trustee and hence, covered by clause(a) of sub-sec.(3) of sec.13 of the Act. Mrs. Arthi Ganesh, Trustee of the assessee is covered by clause(cc) of sub-sec.(3) of sec.13 of the Act. Hence, he observed that sec.13(3) of the Act is clearly attracted in this case. With regard to sec.13(1)(c) of the Act is attracted

or not, the CIT(Appeals) observed that a sum of ₹ 16,91,00,000/- (₹15,76,00,000 during AY 2010-11 + ₹ 1,15,00,000/- during AY 2011-12) was paid to Dr. Isari K. Ganesh as land advance to purchase lands from him. Similarly ₹ 1,44,60,000/- was paid to Mrs. Arthi Ganesh as land advance to purchase lands from her. The CIT(Appeals) observed that the AO established in the assessment order that the lands belonging to the Managing Trustee is not the worth for the consideration fixed i.e. ₹ 20 crores by agreement of sale dated 1.7.2009. Similar is the case with the transaction with Mrs. Arthi Ganesh, Trustee regarding advance given to her for purchase of land. These transactions proved beyond doubt that income enures or is used or applied directly or indirectly to the Managing Trustee and Trustee thereby sec.13(1)(c) is attracted. Regarding applicability of sec.13(2) of the Act,, he observed that in this case, clause (a) and clause (g) of sub-sec.(2) of sec.13 are clearly attracted. A sum of ₹ 20 crores was agreed to be given to the Managing Trustee of the assessee to purchase his land which is worth ₹5.18 crores (the highest valued fixed by the AO which is prohibitive at any standard in that area during the

relevant period) and ₹ 16.91 crores were paid during AY 2010-11 and 2011-12. A sum of ₹ 1.44 crores was paid to Mrs. Arthi Ganesh, Trustee for similar land transaction. The CIT(Appeals) observed that the income of the assessee is or continues to be lent to persons referred to in sec .13(3) of the Act without adequate security or interest in the garb of land advance and it is a case of diversion of income of the trust in favour of person referred to in sec.13(3) of the Act. Hence, according to the CIT(A), it is a case of violation of sec.13(2) of the Act. Regarding whether the transaction attracts sec.13(1)(d) of the Act, the CIT(Appeals) observed that the AO made a finding that the amounts paid to the Managing Trustee and Trustee are not in accordance with sec.11(5) of the Act and sec.13(3)(d) is attracted and exemption u/s.11 and 12 of the Act are not available to the assessee.

3.2 Further, he observed that there is a diversion of ₹ 16.19 crores to the Managing Trust and ₹ 1.44 crores to the trustee from the trust and subsequent compensation received by these persons are not relevant for issue under consideration.

Accordingly, he observed that there is violation of sec.13(1)(c) r.w.s.13(2) and 13(3) of the Act, and thus, the non-granting of exemption u/s.11 of the Act by the AO is confirmed by CIT(A). Further he observed that receipt of corpus donation of ₹ 2.25 crores chargeable to tax in view of violation of sec.13(3) r.w.s.13(1)(c) of the Act. Against this, the assessee is in appeal before us.

4. We have heard both the parties and perused the material on record. Similar issues came for consideration before this Tribunal for the AY 2010-11 in ITA No.1759/Mds/2013 and CO 15/Mds/2014. The Tribunal vide its order dated 28.10.2015 held as follows :

> *7. We have considered the rival submissions on either side and perused the relevant material on record. It is not in dispute that the assessee-Trust is registered under Section 12AA of the Act. It is also not in dispute that there was an agreement for sale of the land belonging to the Managing Trustee to the assessee-Trust. The only objection of the Revenue appears to be that the sale of the land is not on par with the market value. From the order of the Assessing Officer it appears that the market value of the land is very less than what was agree to be sold to the assessee-Trust. The fact remains that there was an agreement for sale of the property and the assessee-Trust*

advanced the funds. There is no fixed price for sale of land. The price of a land is flexible, depending upon various factors. The urgency of the vendor to sell the property, the necessity of the purchaser to purchase the property, the location of the land, the area of the land, infrastructures available nearer to the land and future prosperity for development of the land, etc. need to be considered while determining the market value of a land. Apart from that, it is well settled principles of law that market value is nothing but a price agreed between the willing seller and willing purchaser. Therefore, we cannot say that a particular land has to be sold by a particular person for a particular rate. If two willing persons agreed to sell and purchase the property for a particular price, then the Assessing Officer may not have any role to dismiss the agreed price unless there are some evidences found that the agreed price disclosed is not actually the agreed price. In the case before us, it is nobody's case that the price agreed between the Managing Trustee and the Trust is not actually the agreed price. Therefore, the observation of the Assessing Officer in the assessment order that the value of the land is much less than what was agreed between the parties cannot stand in the eye of law. When the assessee-Trust intended to establish a medical college for which it requires minimum 25 acres of land and the Managing Trustee has such vast area of land, nothing wrong in purchasing the land from the Managing Trustee by paying the market value. Subsequently, the assessee-Trust could not establish medical college. Therefore, the agreement was cancelled. In fact, the Managing Trustee repaid the part amount along with interest. It is not the case of the Revenue that the interest paid by the Managing Trustee is not in market rate.

8. We have carefully gone through the provisions of Section 13 of the Act. Section 13(1)(a) says that if any part of the property or income of the Trust is given to the interested person without either adequate security or adequate interest, for the benefit of the person interested, then there shall be a diversion of funds for the interested person. Section 13(1)(c) says that if the amount paid is excess of what was reasonably paid for the service rendered has to be considered as used or applied for the benefit of person interested. In the case before us, the Managing Trustee has not rendered any service. In fact, there was an agreement for purchase of property. Therefore, the question arises for consideration is whether the money advanced by the assessee to the extent of ₹15,76,00,000/- is without adequate security and after cancelling the agreement, whether the assessee has received the adequate interest from the Managing Trustee. We have carefully gone through the order of the CIT(Appeals). From the order of the CIT(Appeals) it appears that the assessee has received ₹4,06,92,078/- being the interest from the Managing Trustee, in addition to the principal amount after cancellation of agreement. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly found that after cancellation of agreement, the assessee-Trust was returned and compensated by way of interest. Therefore, the transaction between the assessee-Trust and the Managing Trustee cannot be construed as without any adequate security or without any adequate interest. Therefore, this Tribunal is of the considered opinion that the money was in fact advanced in pursuance of the agreement for sale. After cancellation of agreement, the money was returned in its entirety. Since there was delay in repayment of money received as advance for sale

of the land, the Managing Trustee has also paid interest to the extent of ₹4,06,92,078/-. Therefore, at any stretch of imagination, it cannot be said that the money was diverted for interest of the Managing Trustee. Therefore, this Tribunal is of the considered opinion that there is no violation of Section 13 of the Act.

9. Now coming to the receipt of donation from Sri Balaji Charitable and Educational Trust, what was received by the assessee is capital asset by way of three institutions and its infrastructures. It is nobody's case that the assessee's funds were diverted to any other Trust. When the assessee received three institutions for carrying out its charitable activity, it cannot be said that there was a violation of any other provisions of Income-tax Act. In fact, the Assessing Officer himself disallowed the claim of the assessee on the ground that the money was advanced to the Managing Trustee. Since this Tribunal found that there was no violation of Section 13(1)(c) of the Act in respect of the agreement entered between the assessee-Trust and the Managing Trustee for purchase of property and it is not in dispute that the Managing Trustee returned entire amount with interest of ₹4,06,92,078/-, the assessee is entitled for exemption under Section 11 of the Act. Therefore, this Tribunal do not find any infirmity in the order of the CIT(Appeals) and accordingly, confirmed. "

5. Since the issue relating to the money advanced to Mr. Isari K. Ganesh and other parties was subject matter of appeal before this Tribunal for assessment year 2010-11 vide order dated 28.10.2015 taking the consistent view on the facts of the case and by placing reliance on the judgement of jurisdictional High Court in the case of CIT Vs. L. G. Ramamurthi in [1977] 110 ITR 453 (Mad) wherein held that Tribunal is not right in

taking altogether different view in later year on same set of facts, when there is no fresh material brought before it, we are inclined to decide the issue in favour of assessee by holding that there is no violation of provisions of the section 13(1)(c) read with section 13(3) of the Act and the assessee cannot be denied exemption u/s.11 of the Act on this count.

6. 1 Regarding treatment of contributions made with the specific direction to the assessee as income of assessee in terms of sec.12 of the Act, the Ld.CIT(A) observed that once there is a violation of provisions of the section 13(3) r.w.s.13(1)(c), the provisions of the section 11 & 12 shall not operate so as to exclude the income of the trust from the total income of the previous year. According to sections 11 & 12 of the Act, the voluntary contribution made with specific direction that they shall form part of the corpus of the trust or institution, shall not be included in the total income of the previous year of the trust. But once, the exemption u/s.11 and 12 is denied, the assessee would not get any protection from sec.11 & 12 and the voluntary contribution would be treated as income, as per the definition of income given in sec.2(24)(iia) of the Act, according

to which income includes the voluntary contribution receipts by a trust thereby once the exemption u/s.11 & 12 of the Act is withdrawn all the receipts of the trust either by voluntary contribution or income derived from the property would be income of the Trust in a normal course and is chargeable to tax. Accordingly, the Ld.CIT(A) held that the corpus donation is chargeable to tax. Now, aggrieved, the assessee is in appeal before us.

7. We have heard both the parties and perused the material on record. According to the Authorised Representative these funds are contributed to the trust for the specific purpose and it being a capital receipt, it cannot be taxed and this is not collected from students so as to treat the same as income of assessee u/s.2(24)(iia) of the Act in view of the Amendment to this Section with effect from 01.04.1989. According to the AR these funds are contributed to the trust for specific purpose and it being capital receipt it cannot be taxed and this is not collected from the students so as to treat the same as income of the assessee u/s 2(24)(iia) of the Act in view of the amendment to this section w.e.f. 1.4.1989. The assessee contended that this

amount was collected towards “Corpus fund” with a specific direction for capital expenditure and the amount so received was spent for specific purpose for which it was collected. According to the AR it cannot be treated as income of the assessee as it is a specific grant. According to the AR the entire receipts received towards specific purpose cannot be taxed.

7.1 The issue for our consideration is whether the amounts received by the assessee were in the nature of voluntary donations received for specific purpose. If yes, whether the same could be considered towards corpus of the trust. Alternatively, if the donations are not voluntarily made, then whether such donations could be considered as income chargeable to tax. The assessee has taken a plea before us that these donations are received for a specific purpose, it is a tied up grant. Sections 11, 12 and 2(24)(iia) of the Act speak of voluntary contributions. Therefore, firstly, it has to be seen whether such donations are voluntary or not. According to the dictionary meaning, an act can be said to be voluntary if it is done by free choice of once own accord, without compulsion or obligation, without valuable consideration, gratuitous, etc. There is no material on record to

suggest that such donations are given against the will of the donors or by any compulsion or under any obligation. In that sense, it can be said that the donations are voluntary. If the donations are not voluntarily made, the same fall outside the ambit of sections 11, 12 and 2(24)(iia) of the Act. Consequently, general provisions of Income-tax Act would become applicable. According to the general provisions of the Act, all receipts are not income. Donations received for specific object are to be considered as tied up fund and it is capital receipt. If the donations are made voluntarily for specific purpose, the same cannot be held as income of the assessee, since the donations were, in our opinion, given for specific purpose as tied up grant and it cannot be taxed as income.

7.2 As far as section 2(24)(iia) is concerned, this section has to be read in the context of introduction of section 12. It is significant that section 2(24)(iia) was inserted with effect from 1.4.1973 simultaneously with the present section 12, both of which were introduced from the said date by Finance Act, 1972.

Section 12 makes it clear by the words appearing in parenthesis that contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall not be considered as income of the trust. The Board circular No. 108 dated 20.3.1973 is extracted at page 1754 of Volume-I of Sampath Iyengar Law of Income-tax (10th Edition), in which the interrelation between sections 12 and 2(24) has been brought out. Gifts made with clear direction that they shall form part of the corpus of the religious endowment can never be considered as income. In the case of R.B. Shreeram Religious and Charitable Trust v. CIT (172 ITR 373) (Bom) the Hon'ble High Court held that even ignoring the amendment to section 12, which means that even before the words appearing in parenthesis in the present section 12, it cannot be held that voluntary contributions specifically received towards corpus of the trust may be brought to tax. The aforesaid decision was followed by the Bombay High Court in the case of CIT vs. Trustees of Kasturbai Scindia Commission Trust (189 ITR 5) (Born). In the present case donations being received for specific

purpose, towards corpus of the trust, cannot be assessed as income of the assessee.

7.3 Being so, as seen from the above judgment, the amount received by the assessee for specific purpose would only mean that the assessee agreed to act as a trustee of a special fund received by assessee from various persons. As a result, it need not be pooled or integrated with the assessee's normal income. The assessee is acting as an independent trustee for that amount received from various persons just as some trustee can act as a trust for more than one trust. Tied up or specific grant need not, therefore, be treated as amounts which are required to be considered for assessment. In other words, tied up grant received from donors for a specific purpose cannot form part of assessee's income. In view of the above discussion, voluntary contributions in the nature of corpus fund received by the assessee cannot be brought to tax. The tied up grant or corpus fund received by the assessee should not be taxable as income of the assessee, if it is used for specific purpose for which it has

been given and it cannot be considered as revenue receipts so as to tax the same.

7.4 In view of the above, we are inclined to hold corpus donation received by the assessee for the specific purpose cannot be treated as revenue receipt and same be considered as capital receipt and not liable to be taxed. Accordingly, the appeal of the assessee is allowed.

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

Order pronounced on 19th December, 2016 at Chennai.

Sd/-	Sd/-
(जी. पवन कुमार)	(चंद्र पूजारी)
(G. Pavan Kumar)	(Chandra Poojari)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated, the 19th December, 2016.
K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF