

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: BENCH "F" NEW DELHI**

**BEFORE SRI R.K.PANDA, ACCOUNTANT MEMBER  
AND  
SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 1994/Del/2011  
A.Y. 2007-08**

Puran Chand Dharmarth Trust	Vs.	ITO
C/o. M/s. RRA Taxindia,		Ward-1
D-28, South Extension, Part-I		
New Delhi		Gurgaon
PAN: AAATD7474 R		

**(Appellant)**

**(Respondent)**

**Revenue by:** Sh. Atiq Ahmad, Sr.D.R.

**Assessee by:** Dr. Rakesh Gupta, Sh. Ashwani Taneja  
& Sh. Shantanu Jain, Adv.,

**Date of hearing:** 07.02.2018

**Date of Pronouncement:** 04.05.2018

**ORDER**

**PER BEENA A PILLAI, JUDICIAL MEMBER**

Present appeal has been filed by assessee against order dated 24/02/2011 passed by Ld. CIT (A), Panchkula for assessment year 2007-08 on the following grounds of appeal:

*"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in denying the exemption u/s 11 & 12 and erred in making addition of Rs. 1,54,50,000/-, more so when there was no violation of any statutory conditions.*

*2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in denying the exemption u/s 11 by holding that the case of appellant hit by section 13(1)(c) read with section 13(2)(a) and section 13(1)(d) and that too disregarding the Hon'ble Tribunal's decision in appellant's own case and has further erred in giving direction to Ld. AO to rework the taxable income of the appellant."*

**2. Brief facts of the case are as under:**

Assessee filed its return of income for year under consideration on 31/10/07 declaring nil income. Assessee claimed income of the trust exempt under section 11 of the Act amounting to Rs.9,39, 04, 141/-. The case was processed under section 143 (1) of the Act and statutory notices were issued to assessee, in response to which representatives of the assessee appeared before Ld. AO.

3. Assessee was granted exemption under section 10 (23C) (vi) for assessment years 2005-06 to 2007-08 vide order dated 26.02.2007 which was withdrawn vide order dated 19.09.08 in terms of violation of 13<sup>th</sup> proviso to sub section 23 of section 10 of the income tax Act, as assessee had advanced loan of Rs.1,54,50,00,000/- to another trust namely Hare Krishna Dharmarth Trust which was as per revenue was not specified form of investment or deposit as per section 11 (5) of the Act.

4. During assessment proceedings, Assessing Officer issued questionnaire dated 23/11/09 to furnish specific information regarding following points:

*“Since exemption granted to you under section 10 (23C) for assessment year 2007-08 has been withdrawn in terms of 13<sup>th</sup> proviso to clause 23C of section 10 by worthy Chief Commissioner of Income Tax, Panchkula, vide order dated 19/09/08 by observing that by advancement of loan of Rs.1,54,50,000/- to another trust, the assessee has violated the terms of section 10 (23C) of the I T. Act, you are requested to show cause as to why*

*the total receipt of Rs.7,94,14,052/- be not treated as your income for taxation under the income tax act 1961.”*

5. Ld. AO after considering the submissions advanced by Assessee treated Rs. 1,54,50,000/-advanced as loan to another trust as not an approved investing modes, specified in section 11(5) of the Act and that it was advanced in violation of provisions of section 11(5) of the Act. He accordingly added said sum in the hands of assessee. Aggrieved by order of Ld. AO, Assessee preferred appeal before Ld. CIT (A).

6. Ld. CIT (A) upheld addition made by Ld. AO. Ld.CIT(A) further directed Ld.AO rework the taxable income of the appellant keeping in view the provisions of S.11 to 13 of the Act.

6.1. Aggrieved by the order of Ld. CIT(A) assessee is in appeal before us now.

**Ground No. 1 and 2**

7. These grounds relates to the denial of benefit of exemption under section 11 by invoking the provision of section 13 (1)(d) of the Act on the ground that there has been violation of mode of investment in terms of section 11(5) by advancing a loan to another charitable trust.

8. Ld. Counsel submitted that sum of Rs. 1,54,50,000/-was not a donation received but was loan given to another Trust. It was submitted that during financial year 2004-05, assessee advanced financial help to another trust, which was also registered under section 12A(a) of the Act. He submitted that the funds were advanced out of its accumulated amount of corpus fund which do not form part of its income. It has been submitted that this transaction does not in any way contravene the

provisions of section 10(23C)(vi) or 11(5) of the Act. It is also been submitted that the said amount has been returned back to assessee by the other trust on 28/04/08 that is during the financial year 2008-09.

9. Ld.Counsel contended that section 11(2) and Explanations – 2 are applicable only to clause (a) or clause (b) of section 11(1) of the Act. Ld. Counsel submitted that loan advanced to other trust was covered under section 11(1)(d) of the Act being, income in the form of voluntary contributions made with specific directions, that they shall form part of the corpus of the other trust. He further submitted that trust to which the loan was advanced, was engaged in running of engineering College and was registered trust under section 12 A.

10. He placed reliance upon following decisions wherein it has been held that loan given by a trust constitutes application of income in furtherance of objects of the assessee trust and the same cannot be treated as investment or deposit in view of provisions of section 13(1)(d) of the Act. Reliance is placed on following judgments :-

- “1. *Alarippu vs. ITO* 60 ITD 478(Del)
2. *Director of Income-tax (Exemption) vs. Alarippu* 224 ITR 358 (Del)
3. *Income-tax Officer vs. Devanga Educational Association* 8 ITD 490 ITAT (Madras)
4. *ITO vs. Ramlalji Dhapidevi Golchha Charity Trust* 42 ITD 312 ITAT (Calcutta)
5. *Director of Income Tax (Exemption) vs. Acme Educational Society* 326 ITR 146 (Del.) (HC)
6. *Director of Income Tax vs. Pariwar Sewa Sansthan* 254 ITR 268 (Del.) (HC).”

11. Ld.Counsel thus submitted that Ld.CIT(A) erred in opining that once Section 11(5) is violated, disability u/s 13(1)(d) comes into play and exemption would not be available u/s 11. In support he placed reliance on the following:

CIT vs. FR Mullers Charitable Institution reported in 363 ITR 230 (Kar.)

He submitted that in the following decisions corpus donation also cannot be brought to tax even in case of an unregistered society or trust -:

- *Shri Shankar Bhagwan Estate vs. Income Tax Officer 61 ITD 196 (Cal.)*
- *Income Tax Officer vs. Gaudiya Granth Anuvad Trust 65 SOT 137 (Agra) (Tribu.)*
- *ITO (Exemption) vs. Smt. Basanti Devi & Shri Chakhan Lal Garg Education Trust [IT Appeal No. 5082 (Delhi) of 2010, dated 30.1.2009] (para 6) and*
- *Pentafour Software Employee Welfare Foundation vs. Asstt. CIT [IT Appeal Nos. 751 & 752 (Mds) of 2007] (para 6)."*

12. Ld.Counsel submitted that sum advanced as loan to other trust has been subsequently returned back to assessee in assessment year 2009-10 cannot be treated as investments as specified under section 11 (5) of the Act.

13. On the contrary Ld.Sr. DR by placing reliance upon observations of Ld. CIT (A) submitted that assessee as well as the other trust were having common trustees, and therefore provisions of section 13(1)(c) read with section 13(2)(a) would come into play. He also submitted that whatever is not contributed as capital, will get hit by section 11(5) of the Act. He submitted that Ld. CIT (A) has rightly denied the exemption under section 11 of the Act and further in making addition of the

amount so advanced as it was not in accordance with section 11 (5) of the Act.

14. We have perused submissions advanced by both sides and light of records placed before us.

15. It is observed that Assessing Officer treated the amount of loan advanced out of corpus fund to other charitable trust as not eligible for deduction under section 11 as it was in contravention to the modes and forms as defined under section 11(5) of the Act. Whereas Ld. CIT (A) traversed a step further by denying exemption under section 11 and 10(23C) on the ground that assessee has violated the condition of investment specified under section 11 (5) of the act. Thus the issues that arises out of the impugned order is as under:

*“Whether there is any violation of Sec.11(5) of the Act?*

*Whether violation of section 11(5) read with section 13(1)(c) or 13(1)(d) results in denial of exemption under section 11 & 10(23C).*

*Whether violation of section 11(5), read with section 13(1)(d), by assessee trust attracts maximum marginal rate of tax on the entire income of the trust”.*

15. In the present context, the provisions of sections 13(1)(c), 13(1)(d) and 13(2) of the Act, are relevant. The same are discussed as follows :

Provisions of sections 13(1)(c) of the Act, for the sake of ready reference, the relevant part of section 13(1)(c) of the Act, is reproduced as follows :

*“13. ....*

*(1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—*

*(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—*

*(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income ensures, or  
(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3)”*

16. From the aforesaid provisions of section 13(1)(c)(ii), it may be seen that if any part of income or any property of trust is applied directly or indirectly for benefit of any trustee, etc, then the benefit of exemption under section 11 of the Act, will not be available to the trust, in respect of such income.

17. We also refer to Sec.11(5) of the Act, being allowable modes of investment, which is reproduced here under.

**“Section 11(5) in The Income- Tax Act, 1995**

*(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub- section (2) shall be the following, namely:-*

*(i) investment in savings certificates as defined in clause (c) of section 2 of the Government Savings Certificates Act, 1959 3 (46 of 1959 ), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;*

*(ii) deposit in any account with the Post Office Savings Bank;*

*(iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co- operative land mortgage bank or a co- operative land development bank). Explanation.- In this clause, " scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955 ), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959 ), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 19704 (5 of 1970 ) or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 198 05 (40 of 1980 ), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934 );*

*(iv) investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963 );*

*(v) investment in any security for money created and issued by the Central Government or a State Government;*

*(vi) investment in debentures issued by, or on behalf of, any company or corporation both the principle whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;*

*(vii) investment or deposit in any<sup>6</sup> public sector company];*

*(viii) deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long- term finance for industrial development in India and which is approved by the Central Government for the purposes of clause (viii) of sub-section (1) of section 36;*

*(ix) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long- term finance for construction or purchase of houses in India for residential purposes and which is approved by the Central Government for the purposes of clause (viii) of sub- section (1) of section 36;*

*(x) investment in immovable property. Explanation.-" Immovable property" does not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to, or permanently fastened to, anything attached to the earth;]*

*(xi) deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964 );]*

*(Xii) any other form or mode of investment or deposit as may be prescribed.]*

#### Provisions of section 13(1)(d) of the Act.

For the sake of ready reference, the relevant part of section 13(1)(d) of the Act, is reproduced as follows :

*"13. Section 11 not to apply in certain cases.*

*(1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—*

*(d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year—*



*(i) any funds of the trust or institution are invested or deposited after the 28th day of February, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of section 11; or*

*(ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983 otherwise than in any one or more of the forms or modes specified in subsection (5) of section 11 continue to remain so invested or deposited after the 30th day of November, 1983; or*

*(iii) any shares in a company, other than—*

*(A) shares in a public sector company ;*

*(B) shares prescribed as a form or mode of investment under clause (xii) of sub-section (5) of section 11, are held by the trust or institution after the 30th day of November, 1983:”*

17. From the aforesaid provisions of section 13(1)(d), it may be seen that if the conditions laid down are not fulfilled, then trust will lose benefit of exemption under section 11 of the Act, in respect of income referred to therein.

Provisions of section 13(2) of the Act.

In the present context, section 13(2) of the Act is also relevant. For the sake of ready reference, section 13(2) of the Act, is reproduced as follows :

*“13. Section 11 not to apply in certain cases.*

*(2) Without prejudice to the generality of the provisions of clause (c) and clause (d) of subsection (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—*

*(a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3) for any period during the previous year without either adequate security or adequate interest or both;*

*(b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;*

*(c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in*

*sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;*

*(d) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;*

*(e) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;*

*f) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate;*

*(g) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3): Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed one thousand rupees;*

*(h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971), in any concern in which any person referred to in sub-section (3) has a substantial interest.”*

18. From the aforesaid provisions of section 13(2), it is observed that in respect of various circumstances referred to in clauses (a) to (h) thereof, the income or property of the trust or institution or any part of such income or property shall, for the purposes of section 13(1)(c) and 13(1)(d), be deemed to have been used or applied for the benefit of the trustee, etc. It clearly implies that section 13(2) is nothing but an extension of section 13(1)(c) / 13(1)(d).

19. Further, as per the proviso to section 164(2), where the whole or any part of the relevant income is not exempt under section 11 or section 12, by virtue of provisions of section

13(1)(c) or section 13(1)(d), tax shall be charged on the relevant income or part of relevant income, at the maximum marginal rate. In view of the aforesaid proviso to section 164(2), the Courts have held that in case of violation of conditions under section 13(1)(c) or 13(1)(d) of the Act, only relevant income or part of such relevant income is liable to be taxed at maximum marginal rate. It is also held that the violation of section 13(1)(c) or 13(1)(d) does not result in denial of exemption under section 11, in respect of the total income of the assessee. In other words, only the non-exempt income, in view of the provisions of section 13(1)(c) / 13(1)(d) would fall in the tax-net and the other income of the charitable trust / institution would remain exempt under the provisions of section 11 of the Act.

20. Now coming to the decisions relied upon by Ld. counsel, we shall deal with the decision as under:

*CIT Vs Fr.Mullers Charitable Institutions [2014] 363 ITR 230 (Karn)*

In this case, the assessee, a charitable trust, for the AYs 2000-01 and 2001-02 claimed exemption under section 11. The AO noticed that the assessee had advanced a sum of Rs.30 lakhs during the AY 2000-01 and a sum of Rs.50 lakhs during the AY 2001-02, respectively, to a company which was running a Kannada daily. According to the AO, advancing of such a huge amount was in violation of section 11(5). Further, as per section 13(1)(d), the trust shall not be entitled for exemption under sections 11 and 12 of the Act. Accordingly, the AO assessed the aforesaid advances to tax. However, the CIT was of the opinion that in view of violation of section 11(5), the entire income of trust ought to have been assessed, as the trust was not entitled

to any exemption under sections 11 and 12 of the Act and the CIT revised the order passed by the AO.

21. On appeal, the Tribunal, after considering the matter in detail and on examining sections 11, 12, 13(1)(d) and section 164(2) of the Act, inter alia, held that the order passed by the CIT was contrary to section 164(2) of the Act and the entire income of the assessee could not be assessed. On appeal by the Revenue before the High Court, one of the substantial question of law admitted was whether the Tribunal was correct in holding that when a part of income is held to be violative of the provisions of section 13(1)(d), only to the said extent, maximum marginal rate of tax is to be levied and not for the whole income, more particularly when there was violation of the provisions of section 11(5) of the Act. It was held by the High Court that a reading of section 13(1)(d) of the Act, makes it clear that it is only the income from such investment or deposit which has been made in violation of section 11(5) of the Act, that is liable to be taxed and that the violation of section 13(1)(d) does not tantamount to denial of exemption under section 11 to the total income of the assessee. Accordingly, the appeals of the IT Department were dismissed.

22. In the aforesaid case, the Karnataka High Court has placed reliance on the judgement of the Bombay High Court, in the case of DIT(E) Vs Sheth Mafatlal Gagalbhai Foundation Trust [2001] 249 ITR 533 (Bom). Besides, a reference has also been made to the judgement of Delhi High Court, in the case of DIT(E) Vs Agrim Charan Foundation [2002] 253 ITR 593 (Del). In this context, the following observations of the Hon. High Court, on page 238 of the

Report are very relevant : “We are in respectful agreement that the views expressed by the Bombay High Court as well as the Delhi High Court for violating section 11(5) of the Act and the entire income of the Respondent trust cannot be assessed for the tax” [Emphasis added] Thus, it was made very clear that where the whole or part of the relevant income is not exempted under section 11, by virtue of violation of section 13(1)(d) of the Act, tax shall be levied on the relevant income or part of the relevant income, at the maximum marginal rate. However, violation of section 13(1)(d) does not result in the denial of exemption under section 11, to the total income of the assessee.

*DIT(E) Vs Sheth Mafatlal Gagalbhai Foundation Trust [2001] 249 ITR 533 (Bom).*

23. In this case, according to the AO, on account of violation of section 11(5) of the Act, the assessee forfeited exemption under section 11, in respect of its entire income, viz. dividend income plus interest income, whereas according to the assessee, they were entitled to claim exemption and they were entitled to continuance of exemption in respect of interest income, though they had forfeited the right to claim exemption vis-a-vis the dividend income, as the assessee continued to hold the shares in a non-Government company even after 31.3.1993. On appeal, the CIT(A) came to the conclusion that the assessee was not entitled to the benefit of exemption under section 11, in respect of the entire income. On further appeal, the Tribunal came to the conclusion that in view of section 164(1), the income receivable by the trust was the relevant income. That a portion of such relevant income only would suffer tax because of the violation of

the condition of investment prescribed under section 11(5). The Tribunal found that non-fulfilment of such condition could not deprive the trust of the exemption of its other income, which had been granted to it in the earlier years. Hence, the Tribunal allowed the appeal of the assessee. Against the aforesaid judgement of the Tribunal, an appeal was filed by the Department before the High Court. The following question was raised before the Hon.High Court :

*“Whether violation of section 11(5), r.w.s.13(1)(d), by the assessee trust attracts maximum marginal rate of tax on the entire income of the trust”.*

24. It was held by the High Court that section 164(2) refers to the relevant income which is derived from property held under trust wholly for charitable or religious purposes. If such income consists of severable portions, exempt as well as taxable, the portion which is exempt is to be left out and the portion which is not exempt is charged to tax as if it is the income of the association of persons. Therefore, a proviso was inserted by the Finance Act, 1984, with effect from 1.4.1985, under which in cases where the whole or any part of the relevant income is not exempt under section 11 or section 12, because of the contravention of section 13(1)(d), then tax shall be charged on such income or part thereof, as the case may be, at the maximum marginal rate. In other words, only non-exempt income portion would fall in the net of tax, as if it was the income of an association of persons. It was further held by the High Court that as per proviso to section 164(2), it is, inter alia, laid down that in cases where the whole or part of the relevant

income is not exempt by virtue of section 13(1)(d), tax shall be charged on the relevant income or part of the relevant income at the maximum marginal rate. The phrase “relevant income or part of relevant income” is required to be read in contradistinction to the phrase “whole income” under section 161(1A). This is only by way of comparison. Under section 161(1A) which begins with a non-obstante clause, it is provided that where any income in respect of which a person is liable as a representative assessee consists of profits of business, then tax shall be charged on the whole of the income, in respect of which such person is so liable at the maximum marginal rate. Therefore, reading the aforesaid two phrases show that the Legislature has clearly indicated its mind in the proviso to section 164(2), when it categorically refers to forfeiture of exemption for breach of section 13(1)(d), resulting in levy of maximum marginal rate of tax only to that part of income, which has forfeited exemption. It does not refer to the entire income being subjected to maximum marginal rate of tax. This interpretation is also supported by Circular No.387, dt.8.7.1984 [152 ITR (St)1]. It was also held that in law, there is a vital difference between eligibility for exemption and withdrawal of exemption / forfeiture of exemption for contravention of the provisions of law. These two concepts are different. They have different consequences.

25. In the circumstances, it was held that there was merit in the contention of the assessee that in the present case, the maximum marginal rate of tax would apply only to the dividend income from shares in Mafatlal Industries Ltd and not to the entire income. Accordingly, the aforesaid question was answered in the

negative, that is, in favour of the assessee and against the Department. It is, therefore, clearly established that the Bombay High Court approved the judgement of the Tribunal to the effect that non-fulfilment of condition of investment prescribed under section 11(5) of the Act, could not deprive the trust of the exemption of its other income, which had been granted to it in the earlier years. In other words, it is clearly established that violation of section 13(1)(d) does not tantamount to denial of exemption under section 11 to the total income of the assessee.

We Shall also referred to the decision of Allahabad High Court in the case of:

*CIT Vs. Red Rose School [2007] 163 Taxman 19 (All.)*

It was, inter alia, held in this case that language used in section 12AA for registration of a trust, only requires activities of trust or institution must be genuine, which, accordingly, would mean that they are in consonance with objects of trust / institution and are not mere camouflage, but are real, pure and sincere and are not against the objects of the trust. The profit earning or misuse of income derived by charitable institution from its charitable activities may be a ground for refusing exemption only with respect to that part of the income, but cannot be taken to be a synonym to the genuineness of the activities of the trust or institution.

26. In the light of the discussion brought out in the preceding paragraphs, the following conclusions are clearly established -:

1. As per provisions of section 13(1)(d), it is only the income from such investment or deposit which has been made in violation of section 11(5) of the Act, that is liable to be taxed and violation



under section 13(1)(d) does not result in the denial of exemption under section 11 to the total income of the trust.

2. Similarly, as per the provisions of section 13(1)(c), it is only the income or value of the property misused by trustee that is liable to be taxed and violation under section 13(1)(c) will not automatically result in denial of exemption under section 11 of total income of the trust.

3. As regards the provisions of section 13(2), the same being an extension of the provisions of section 13(1)(c) / 13(1)(d), the violations there under will be dealt with on similar lines as the violations under section 13(1)(c) / 13(1)(d) of the Act.

27. On the basis of the above discussions and plethora decisions referred to hereinabove, we are of the considered opinion that Ld.CIT(A) erred in denying benefit available to assessee and registration granted u/s 10(23C) of the Act.

28. Now coming to second Part of withdrawal of exemption u/s 11 on such funds advanced as loan to another trust. In the present facts of the case, sum of Rs.1,54,40,000/- was a loan given to another Trust. Neither the object of assessee before us has been disputed, nor that of the recipient trust by authorities below.

29. In our considered opinion Ld.CIT(A) has overlooked the applicability of Sec.13(2)(a) to the facts of present case. Admittedly the money has been advanced as a loan to other trust for which assessee has not received any securities or interest. The said sum has been returned by the other trust during financial year ending on 31.03.2008 to assessee.

30. Authorities below are alleging that these are common trustees and therefore s.13(1)(d) of the Act comes into play. But nothing has been brought on record to establish that the common trustees have substantial interest in the other trust.

31. Ld.CIT(A) placed reliance on decision of Hon'ble Gujarat High Court in case of Sarla Devi Sarabai Trust 40 Taxman 388 which approves the exception in Sec.13(2)(a). Authorities below have not been able to bring on record anything to prove contrary to what has been held by Hon'ble Gujarat High Court.

33. We are therefore of considered opinion that the amount advanced cannot be held to be in violation of Sec.13(1)(d). Sec.11(5) cannot be applied to present facts as the money advanced is not an investment but a loan.

34. We therefore reverse the findings of Ld.CIT(A) and delete the disallowance made by Ld.AO.

35. In the result appeal filed by the assessee stands allowed.

Order pronounced in the open court on 04.05.2018.

**Sd/-**

**(R.K.PANDA)**  
**ACCOUNTANT MEMBER**

**Sd/-**

**(BEENA A PILLAI)**  
**JUDICIAL MEMBER**

Dt. 04<sup>th</sup> May, 2018

\*BR\* / Manga

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches