

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ “B”, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCHES 'B', CHANDIGARH
श्री एन.के. सैनी, उपाध्यक्ष एवं श्री सतबीर सिंह गोदारा, न्यायकि सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT & SHRI SATBEER SINGH
GODARA, JUDICIAL MEMBER

आयकर अपील सं./ **ITA No. 174/Chd/2019**

निर्धारण वर्ष / Assessment Year : 2015-16

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| M/s Shaheed Kartar Singh Saraba Charitable Trust (Redg.), VPO Sarabha, Distt. Ludhiana. | बनाम | Deputy Commissioner of Income Tax (Exemptions), Circle-1, Chandigarh. |
| स्थायी लेखा सं./PAN No: AAATS 4168 H | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by: Shri Ashwani Kumar, Shri Aditya Kumar & Shri Bhavesh Jindal (CAs)
राजस्व की ओर से/ Revenue by: Smt. Geetinder Maan (Addl.CIT)

सुनवाई की तारीख/Date of Hearing: 02/11/2020
उद्घोषणा की तारीख/Date of Pronouncement: 10/11/2020

आदेश/ORDER

PER: SATBEER SINGH GODARA, J.M.:

This assessee's appeal for A.Y. 2015-16 arises against the Commissioner of Income Tax (Appeals)-4, Ludhiana (in short, the CIT(A)) order dated 19/12/2018 passed in appeal No. 132/ROT/IT/CIT(A)-4/LDH/2017-18 involving proceeding U/s 143(3) of the Income Tax Act, 1961 (in short, the Act).

2. The assessee has raised following substantive grounds in the instant case:

“1. That order dated 19/12/2018 passed u/s 250(6) of the Income Tax

Act, 1961 by the Learned Commissioner of Income Tax (Appeals)-4, Ludhiana is against law and facts on the file inasmuch as she was not justified to uphold the action of the Learned Assessing Officer and in enhancing the income of the appellant by denying benefit u/s 11 of the Act by Rs. 11,98,68,227/-.

2. *That order dated 19/12/2018 passed u/s 250(6) of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals)-4, Ludhiana is against law and facts on the file inasmuch as she was not justified to treat the amount paid to persons covered u/s 13(3) as excessive by treating the rate of interest of unsecured loan (liabilities) with rate of interest of deposits (assets).*
3. *That the Id. CIT(A) was not justified and without jurisdiction to enhance the income of the applicant.*
4. *That order dated 19/12/2018 passed u/s 250(6) of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals)-4, Ludhiana is against law and facts on the file inasmuch as she has enhanced the entire income and has not restricted the addition to the excessive amount paid to persons covered u/s 13(3) of the Act.*
5. *That order dated 19/12/2018 passed u/s 250(6) of the Income Tax Act, 1961 by the Learned Commissioner of Income Tax (Appeals)-4, Ludhiana is against law and facts on the file inasmuch as she has not considered the entire set of submissions of the appellant wherein the ground of consistency was pleaded in the submissions made before her."*

Heard both the parties. Case file records perused.

3. We advert to the basic relevant facts. This assessee is admittedly assessed as a Charitable Trust since enjoying both Section 12A and Section 80G registration(s) since 25/02/1997 and 14/12/2012 respectively. The Assessing Officer noticed during the course of scrutiny that it had paid interest of Rs. 1,13,41,361/- to one of its trustee Shri Hoshiar Singh Grewal qua net balance with

interest of Rs. 12,82,64,914/- as on 31/3/2015. He sought the assessee's explanation/justification.

4. The assessee pleaded before the assessing authority that there was neither any application of income nor its property used for the benefit of the specified persons U/s 13 of the Act. It highlighted the fact that no such related person worked in the hospital nor any transaction had been carried out with related parties except the impugned interest paid to Shri Grewal due to shortage of funds in the Trust and in order to reduce the term loan carrying higher rate of interest. All this failed to prevail upon the Assessing Officer who compared the assessee's interest derived from fixed deposits @ 7.5% to 7.75% with the interest paid in issue @ 10%. He went by foregoing comparison to disallow/add the assessee's interest payment of Rs. 1,13,41,361/- U/s 11(1) to 13(1)(c) r.w.s 13(3) of the Act.

5. The CIT(A) has enhanced the Assessing Officer's action in the following terms:

"7. Grounds of appeal no. 1 and 2 are regarding addition of interest paid totaling Rs.1,13,41,361.00 made by the assessing officer.

7.1 I have carefully considered the facts of the case and submissions of the assessee. As per balance sheet of the trust as on 31.03.2015, the trust has taken unsecured loan from S. Hoshiar Singh Grewal Rs.12,59,76,038/-. As on that assessee has cash in hand of Rs.6,18,144/- bank

balance of 1,63,31,717/- and Fixed Deposits of Rs.3,05,52,533/-. The assessee has taken unsecured loan from one of its trustees, S.Hoshiar Singh Grewal @ 10%, whereas huge surplus of cash is reflected in the form of cash and bank balance of the assessee trust. Accordingly, a show cause notice for enhancement of income was issued to the assessee.

The Ld. Counsel has explained that the assessee trust has taken term loan from state Bank of Patiala @ 14.75% for infrastructure development. To reduce the higher interest costs, it was decided to seek help of sh. Hoshiar Singh Grewal who is one of the present trustees. He was provided funds without collateral security. Sh. Hoshiar Singh Grewal has introduced funds more than Rs.10 Crores over the time period with which the assessee trust has paid back the bank loan. It was stated that interest being paid to Sh. Hoshiar Singh Grewal was reasonable.

Further, Ld. Counsel has explained that cash and bank funds were required for day to day running of the trust. As regards, FDRs kept with bank, it was explained that FDRS have to be maintained with the bank to meet the requirements of the University with which the institution of the assessee trust are affiliated.

However, the assessee trust is maintaining following FDRs with State bank of India,

- i) Rs.10 Lacs @ 7.5% since 29.05.2014*
- ii) Rs.90 lacs @ 7.5% since 29.05.2014*
- iii) Rs.8,96,062 @ 7.75% since 10.02.2015*

Thus, assessee has made payment of interest to the trustee on unsecured loan @ 10% whereas, the surplus funds of the trust in the form of FDRs are earning interest from the bank @ 7.5% to 7.75% only. Thus, provisions of sec 13(1)(c) read with 13(2)(c) and 13(2)(g) are attracted in the case.

7.2 Reliance is place on the judgment of Hon'ble High Court Delhi in the case of Pt. Kanahya Lal Punj Charitable Trust vs. DIT, ITA No. 1651 of 2006, dated 14.05.2007, as under:

2. The assessee is a society registered under the Societies Registration Act as well as under section 12A of the Act. The assessee is having income mainly from the interest on fixed deposits and donations. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee has advanced huge amounts to M/s. Punj Lloyd Limited and as such he raised a query as to why section 13(1)(c) read with section 13(2)(a) of the Act be not invoked as no adequate interest has been charged on such amount, though that company was substantially interested in the trust. From the bank statements, the Assessing Officer found that as on March 31, 1997, a sum of Rs. 75 lakhs was outstanding with M/s. Punj Lloyd Ltd. In response to a query, it was stated that the assessee paid this amount to M/s. Punj Lloyd Ltd. as earnest money for purchase of land for a school project to be set up at Ponta Sahib (near Dehradun), and that interest charged by the bank from the trust was fully reimbursed by M/s. Punj Lloyd Ltd. to the trust and hence there was no loss to the trust. It was also noticed by the Assessing Officer that the trust has not taken adequate security to which the assessee stated that the security was provided in the form of equitable mortgage of commercial space owned by M/s. Punj Lloyd Ltd. The Assessing Officer found that the story of payments being made for purchase of land for a school was nothing but an afterthought, specially as there were no agreements with the vendors of land or corresponding bank transactions and no proof of the same was furnished. Since M/s. Punj Lloyd Ltd. made contribution in excess of Rs. 50,000 to the trust, and was an interested party, the Assessing Officer denied exemption under sections 11 and 12 of the Act.

3. The assessee preferred an appeal before the Commissioner of Income-tax (Appeals), who confirmed the denial of the exemption and dismissed the appeal filed by the assessee.

4. Thereafter, the assessee challenged the order of the Commissioner of Income-tax (Appeals) before the Tribunal and vide the impugned order, the Tribunal dismissed the appeal filed by the assessee and that is how the assessee is before this Court.

5. *It has been contended on behalf of the assessee that under section 11 of the Act, income of a trust held wholly for charitable or religious purpose is exempt. The assessee did not lend any amount to M/s. Punj Lloyd Ltd. during the course of commercial transactions and it had deposited the money with M/s. Punj Lloyd Ltd. as earnest money for purchase of land for a school and when the deal did not materialise, M/s. Punj Lloyd Ltd. returned the money and as such the assessee has been wrongly denied the exemption under sections 11 and 12 of the Act.*

6. *The basic requirement for the availability for exemption under sections 11 and 12 of the Act is that if any money is lent to an interested party as defined in section 13(3) of the Act for "any period" during the previous year, then the trust should charge "adequate interest" and there should be an "adequate security".*

7. *If the contention of the assessee is accepted that the payments were in the nature of earnest money for purchase of land, and the whole exercise was of a commercial nature, it cannot be explained why interest-free advances should be given. The Act requires very strictly that the trust should use their funds only for the charitable objects for which they have been set up and they cannot be permitted to loan or deposit funds available with them without interest as in the present case. Further, in the present case, not only interest was not charged, even adequate security was also not taken.*

8. *Section 13(1)(c) of the Act speaks of "any income" which has been used to benefit "directly or indirectly" any person referred to in section 13(3). The plain reading of this section would show that the Act is intended to eliminate any possibility of the trust's fund being used for the benefit of any interested person. In the present case, it cannot be denied that a benefit has "directly or indirectly" reached the interested person, namely M/s. Punj Lloyd Ltd. and thus, there is a clear violation of sections 13(1)(c) and 13(2)(a) of the Act.*

9. *The Tribunal in its order has noted that once there is a violation of provision of section 13(3) read with section 13(1)(c), the provisions of sections 11 and 12 of the Act shall not operate so as to exclude the income of the trust from the total income of the previous year. According to sections 11 and 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 under sections 11 and 12 is denied, the assessee would not get any protection from sections 11 and 12 and the voluntary contribution would be treated as income, as per the definition of income given in section 2(24) of the Act, according to which income includes the voluntary contribution receipts by a trust credited wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes meaning thereby once the exemption under sections 11 and 12 of the Act is withdrawn all the receipts of the trust either by voluntary contribution or income derived from its property would be an income of the trust in a normal course and is chargeable to tax.*

10. There are concurrent findings of the fact by three income-tax authorities and we do not find any reason to disagree with the conclusion arrived at by these authorities.

11. Under these circumstances, we hold that no fault can be found with the view taken by the Tribunal. Thus, the order of the Tribunal does not give rise to a question of law, much less a substantial question of law, to fall within the limited purview of section 260A of the Act, which is confined to entertaining only such appeal against the order which involves a substantial question of law.

12. Accordingly, the appeal is hereby dismissed.

7.3 The assessee trust has paid excessive interest to the trustee of the trust who is covered u/s 13(3) of the Income Tax Act. In the present case, it cannot be denied that direct benefit has been allowed to the trustee of the trust Shri. Hoshiar Singh Grewal by giving interest on the funds advanced by him @ 10% as against interest received from FDRs amounting to 1,08,96,062/- kept in the bank account of the assessee @ 7.5% Thus, there is a clear violation of section 13(1)(c) read with 13(2)(c) and 13(2)(g) of the Income Tax Act, 1961. Therefore, benefit U/s 11 of the Income Tax Act, 1961 is disallowed to the assessee.

As per the details provided by the assessee, total income of the trust during the year was Rs.11,98,68,227/-. The entire receipt of income of the trust will be assessed as income as the expenditure is not incurred by the trust for earning of income but it is a subsequent application of income out of receipts of trust. The income of the assessee is accordingly enhanced to Rs. 11,98,68,227/- and assessed as AOP and benefit of claim u/s 11 of the Income Tax Act, 1961 is denied. From the above facts, I am satisfied that the assessee has furnished inaccurate particulars of income. Therefore, penalty proceedings u/s 271(1)(c) of the

Income Tax Act, 1961 for furnishing inaccurate particulars of the income are also initiated.”

This leaves the assessee aggrieved.

5. We have given our thoughtful consideration to rival pleadings against and in support of impugned enhancement. Suffice to say, it is an admitted fact that the assessee has derived interest on its fixed deposits maintained with bank(s) @ 7.5% to 7.75% and in turn paid interest to its trustee Shri Grewal in question @ 10% and @ 14.75% to State Bank of Patiala in their relevant previous year (supra). All this same sufficiency indicates that the Assessing Officer had erred during the course of assessment in comparing the assessee's fixed deposits interest derived from banks against that paid forming subject matter on the instant lis.

6. The Revenue at this stage sought to draw support from CIT(A)'s action adding the trust's total income to the extent of Rs. 11,98,68,227/- on the ground that there was no justification to avail the interest bearing funds at such an unreasonable rate without any requirement since it had itself been maintaining FDRs with the banks. We find no reason to sustain either of the twin limbs of excessive as well as unjustified interest on aspects in favour of the Revenue. Paper Books pages 28 to 29 suggest that the assessee had 17 fixed deposit accounts with the bank(s) out of which the first one was in the nature of margin money security

in favour of the Dental Council of India whereas accounts 2 to 14 thereof are fund security(ies) of Nursing College(s) in favour of the Baba Farid University of Health Sciences. Meaning thereby that the said fixed deposit accounts are deposits are in the name(s) of affiliating/regulatory bodies than fixed deposit investment per se. We observe that these facts that it was very much justifiable on assessee's part to maintain all the said fixed deposits for the purpose of carrying out the trust's medical education activities.

7. We next advert to alleged excessive interest payments @ 10% to its trustee Shri Grewal. It has come on record that the department has itself accepted interest paid to the lender banks @ 14.75% in case of secured loans are against unsecured loans availed from Shri Grewal. That itself suggests that the impugned interest rate @ 10% is not excessive so as to attract the impugned disallowance/addition.

7. The Revenue's last contention seeks to buttress the CIT(A)'s finding relying on hon'ble Delhi high court decision (supra) deciding the issue in department's favour. We find that the said judicial precedent has been unnecessarily roped in by the CIT(A) in the given facts and circumstances of the case since the tax payer therein had extended interest free credit facility to the specified person (s) whereas we are dealing with this assessee paying market rate of interest to the trustee. We go by all this

elaborate reasoning to conclude that the assessing authority had erred in disallowing assessee's interest payment of Rs. 1,13,41,361/- followed by the CIT(A)'s enhancement action under challenge which is also not sustainable. The same stand reversed therefore.

8. This assessee's appeal is allowed.

Order pronounced in the open court on 10th November, 2020.

Sd/-
एन.के. सैनी,
(N.K. SAINI)
उपाध्यक्ष

Sd/-
सतबीर सिंह गोदारा
(SATBEER SINGH GODARA)
न्यायकि सदस्य /Judicial Member

दिनांक /Dated: 10/11/2020

*Ranjan

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar