

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1418/Ahd/2019
(Assessment Year: 2016-17)

The Assistant Commissioner of Income Tax (Exemption), Circle-1, Ahmedabad	Vs.	Shri MahudiMadhupuri Jain ShwetamberMurtipujak Trust, Mahudi, Taluko Mansa, Jillo Gandhinagar, Mahudi-382855
[PAN No.AAATS6952K]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Kamlesh Makwana,CIT D.R.
Respondent by:	ShriM. K. Patel, A.R.

Date of Hearing	02.08.2023
Date of Pronouncement	26.09.2023

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals)-9, (in short “Ld. CIT(A)”), Ahmedabad in Appeal No. CIT(A)-9/10229/DCIT(E)Cir-1/18-19 vide order dated 02.07.2019 passed for Assessment Year 2016-17.

2. The Revenue has taken the following grounds of appeal:-

“1. Whether the ld. CIT(A) has erred in law and on facts in allowing the claim of exemptions u/s. 11(1)(a) and 11(2) of the Act to the assessee without appreciating the facts and findings of the AO.

2. Whether the ld. CIT(A) has erred in law and on facts in holding that the assessee has not violated the provisions of Section 11(5) of the Act without appreciating the facts and findings of the AO.

3. *The Revenue craves to add, alter, amend, modify, substitute, delete and/or rescind all or any Grounds of Appeal on or before the final hearing, in necessity so arises.”*

3. The brief facts of the case are that the assessee is a Trust which has been granted approval under Section 12A of the Act since 14.02.1975. For the year under consideration, the assessee filed its return of income on 30.09.2016 declaring total income at Rs. Nil, which was arrived at after offering gross total income of Rs.27,29,67,560/- and applying the income of Rs. 11,54,77,014/- for the purposes specified under Section 11 of the Act, setting apart the income of Rs. 3,28,65,435/- (12.04% of gross total income) and an amount of Rs. 12,50,00,000/- being the amount accumulated or set apart for the specified purpose as per Section 11(2) of the Act and subject to conditions specified therein. During the course of assessment, the Assessing Officer observed that from the balance sheet it can be seen that the assessee has made an investment of Rs. 1,04,05,558/-in gold which is not an investment in the modes prescribed in Section 11(5) of the Act. The assessee submitted before the Assessing Officer that the assessee trust has made all its investments as per the provisions of Section 11(5) of the Act and a sum of Rs. 1,04,05,558/-is pertaining to the purchase of gold and silver only for the purpose of making ornaments. The aforesaid amount is not an investment and the entire investments of the trust are in nationalized banks as per the provisions of Section 11(5) of the Act. However, the Assessing Officer dismissed the contentions of the by the assessee with the following observations:

“4.1. With respect to the investment in gold, as per the reply of the Assessee the gold purchased during the year was for making ornaments. However, it can be seen that if the ornaments are made out of the gold and silver in hand ,

*the gold and silver in hand in the financial year 2015-16 as on 31/3/2015 should have been received , but the same is not done. As per the Balance Sheet for AY 2015-16, the investments in gold and silver is shown at Rs. 15,02,86,117/- as on 31/3/2015. If the total purchases during the financial year 2015-16 relevant to AY 2016-17 for Rs. 1,04,05,558/- is added to the previous financial year 2014-15 balance of Rs. 15,02,86,117/-, the total comes to Rs, 16,06,91,675/- as on 31/3/2016. Thus, it clearly shows that no gold and silver investments are being utilized for making ornaments out of the gold and silver in hand as reflected in balance sheet and the gold and silver purchases during the year are being added to the earlier balances of gold and silver. The Gold has been in possession of the trust for the whole year, which clearly highlights that the nature of purchase of gold was for investment. Our contention is duly supported by the Judgment of Chennai Tribunal in the case of Dy Commissioner of Income Tax (Exemptions) - II v/s. Sri Vekkaiiamman Educational and Charitable Trust(2014) 52-Taxman.com 139. In the judgment Hon'ble Court has clearly held that "purchasing of gold by the trust on plea of distribution of Gold Medals to be given to Meritorious students was an investment in Gold bullion in violation of section 11(5) of the Income Tax Act, 1961". Thus, in light of the above mentioned decision Assessee's contention is rejected. The Assessee has clearly violated the provisions of Section 11(5) of the Income tax Act and thus loses the right to claim exemption u/s 11 of the Act in view of Section 13(1)(d) of the Income tax Act, 1961 . The exemption claimed by the Assessee u/s. 11 is hereby disallowed u/s 13(1)(d) of the Income tax Act. **The assessee is involved in the charitable activities as well as religious activities.***

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6. *In view of the above facts and material available on record, it is observed that assessee is not liable for any exemption u/s. 11 & 12 of the I.T. Act, 1961 as it has violated the Section 11(5) of the I.T. Act, 1961. Therefore, the Trust is treated as AOP and its whole exemption is hereby disallowed/denied. Thus, the amount of Rs. 3,28,65,435/- claimed as accumulated or set apart u/s. 11 is added to the income of assessee and also the amount of Rs. 12,50,00,000/- claimed as amount accumulated or set apart for specified purposes as per Section 11(2) is disallowed."*

4. In appeal, Ld. CIT(Appeals) allowed the appeal of the assessee by observing that during the course of appellate proceedings, the assessee has given complete breakup of additions made by the assessee to gold

ornaments amounting to Rs. 1,04,05,558/- which shows that the assessee had purchased gold and silver along with silver bullion which were used for preparation of various gold and silver ornaments for various idols of the God in the temple of Mahudi. Further, CIT also observed that even in the earlier Assessment Years 2004-05, 2006-07, 2007-08, 2012-13 and 2014-15, the practice of purchasing gold and silver and its utilization thereof has been examined by the Assessing Officer during the course of assessment proceedings and no additions were made by Ld. Assessing Officer in the assessment orders for those years. The Ld. CIT(Appeals) held that the AO did not carry out the necessary enquiries to hold that there was a pure gold and silver lying with the assessee trust which could have been excluded from the modes of investment prescribed in Section 11(5) r.w.s 11(2)(b) of the Act. Further, Ld. CIT(Appeals) also held that the case laws on which reliance has been placed by the Assessing Officer while denying the complete claim of exemption by the assessee Trust are also clearly distinguishable from facts of the assessee. While allowing the appeal of the assessee, Ld. CIT(Appeals) made the following observations:

“4.4 It is noticed that the submissions made vide letter dated 20.02.2019 have been found to be made in respect of non-granting of stay of demand and the letter is addressed to this office which appears to be wrongly addressed. Therefore, whatever the contentions made in this letter are found to be irrelevant and not considered for deciding the issue at hand. Further, as per letter dated 17.06.2019, the appellant has mainly contended that-

- a) *There was opening balance of ornaments at Rs.15,02,86,117.62 as per Schedule H (copy of which has been made available at page-47 of the paper book) and there was addition of new gold ornaments of Rs.1,04,05,558/-(including the new ornaments, gold and silver of Rs.96,79,982/-) making the closing balance at Rs.16,06,91,676/- which is carried over to the balance-sheet. The appellant has furnished the complete details of the purchase of ornaments gold and*

silver of Rs.96,79,982/- in the paper book at page -55, On referring to this page, it is seen that the appellant had purchased the gold and silver through 15 bills which included 2 bills for the purchase of silver bullion which was claimed to be used for preparation of various gold and silver ornaments for various, idols of the God in the temple at Mahudi.

- b) The appellant has also analyzed the relied upon decision of the Chennai Tribunal in the case of Venkaliasman Educational & Charitable Trust(supra) and contended that in the past, the practice of purchasing gold and silver, receiving donation of these two precious metals was verified in the earlier assessment orders for A. Yrs. 2004-05, 2006-07, 2007-08, 2012-13 and 2014-15 and therefore, according to the principle of Res Judicata as laid down by the Hon'ble Supreme Court in the case of Excel Industries 358 !TR 295(SC), the A.O. ought to have accepted the explanation of the appellant in this regard and let the matter rest rather than pursue litigation for the sake of it.*
- c) It has also been contended that the A.O. has wrongly relied on, the cases of Hon'ble A.P. High Court and Delhi High Court wherein it had been held that the entire surplus is taxable in view of the provisions of section. 13(1)(d) of the Act in the given set of facts and the AO. has' ignored the binding decision of the Hon'ble Jurisdictional High Court in the case of Orpat Charitable Trust reported at (2015) 55 Tamann.com 211(Gujarat). .*
- d) The status of the appellant ought to have been adopted as that of "Trust" and not the "AOP" as held by the A.O. in the impugned assessment order.*

5. On close perusal of the paper book which contained the copies of accounts, computation of total income, xerox copies of the bills for purchase of gold & silver and making of ornaments, it is clearly noticed that the appellant had purchased silver bullion weighing 30.581 Kg. on 20.05.2015 and 37.318 Kg. on 31.05.2015 from M/s Chopra Bullion Pvt. Ltd. through two bills. The remaining bills are for the job work of making the gold coated silver ornaments for which the TDS has also been deducted by the appellant trust. By any stretch of imagination, it cannot be said that the appellant had purchased the gold and silver in its raw form to keep with it and show the investment purely for the gold and silver only. The accounting entries made in the books of accounts are for ornaments, gold & silver and thereby it has to be understood as the ornaments made of gold and silver. Since the A.O. has relied on section 11(5) of the I.T. Act and also section 13(1)(d) of the Act, the provisions of both the sections have been carefully examined."

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“The case of the A.O. is that the appellant had made investment in gold and silver or the ornaments made therefrom whereas the appellant claimed that the gold and silver was purchased for making the ornaments and utensils for worship as can be ascertained from the description of bills raised for job work. The close scrutiny of the bills of job work so raised clearly indicates that the ornaments like lotus made of silver, Ganga Jamuna set made of gold and silver, Divi-Stand made of seasam wood, seat made with lion-shaped legs covered with silver foil, Angi made of silver etc, were made out of purchase of silver bullion and used for preparation of gold & silver ornaments. The A.O. did not carry out necessary inquiries to hold that there was pure gold and silver lying with the appellant trust which could have been excluded from the modes of investments prescribed in section 11(5) of the Act read with section 11(2)(b) of the Act. Thus, the finding given by the A.O. is an erroneous one and not based on the concrete evidence in his possession. Therefore, the A.O.'s action to resort to section 13(1)(d) of the Act is not found to be fault-free.”

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“5.4 After having carefully considered the facts and the evidences placed in the paper book in the form of purchase bills of silver, labour bills, form No.16A for making TDS from labour charges, accounting treatment given to this specific transaction, past settled history on this issue etc., the A.O.'s finding in resorting to section 11(5) r.w.s.13(1)(d) of the Act is totally baseless, irrelevant and not based on any independent inquiry made so as to ascertain that the appellant had purchased the gold and silver in raw form i.e. in the form of bullion, bars, coins, biscuits etc. to be kept as an investment without further processing. Therefore, the disallowances made of Rs.3,28,65,425/- claimed as accumulated or set apart u/s 11 of the Act and also the amount of Rs. 12,50,00,000/- claimed to be set apart as per provisions of section 11(2) of the Act are directed to be deleted. The ground nos. 1,2 & 3 of the appeal are accordingly allowed. The A.O. is also directed to adopt the status of “Trust” and not an A.O.P. for the purpose of working the tax liability of the appellant trust.

6. Vide the ground no. 4, the appellant has contested charging of interest u/s 234B of the Act. Charging of interest is mandatory in nature. Accordingly, no interference is called for in the charging of interest. This ground of appeal is therefore dismissed.”

5. The Department is in appeal before us against the aforesaid relief granted by the Ld. CIT(Appeals). Before us, the Ld. DR placed reliance on

the observations made by the Assessing Officer in the assessment order. In response, the Counsel for the assessee submitted that Ld. CIT(Appeals) has correctly observed that the assessee has not made any investments in gold and silver in violation of the provisions of Section 11(5)(b) of the Act. The Counsel for the assessee submitted that the assessee is a Jain religious trust, in respect of which the Assessing Officer has disallowed the entire claim of exemption on an incorrect assumption of facts. However, Ld. CIT(Appeals) has noted the facts correctly in the appellate order and accordingly, allowed the appeal of the assessee. Further, the Counsel for the assessee drew attention to pages 122 onwards paper book submitted by him, which are the assessment orders for Assessment Years 2004-05, 2006-07, 2007-08, 2012-13 and 2014-15. It was submitted that on absolutely similar set of facts, no additions have been made in the hands of the assessee trust in various assessment proceedings for past Assessment Years. Accordingly, it was submitted that Ld. CIT(Appeals) has correctly appreciated the facts in the appellate order and allowed relief to the assessee.

6. We have heard the rival contentions and perused the material on record. On going to the facts of the instant case, we are of the considered view that looking into the instant facts, Ld. CIT(Appeals) has correctly observed that the Assessing Officer has erred in facts and in law in disallowing the entire claim of exemption to the assessee trust on the ground that the assessee has not violated the provisions of Section 11(5) of the Act. Further, it is also observed that on similar set of facts, the assessee trust has been subject to scrutiny assessment for various years, as mentioned in the preceding paragraphs and no additions have been made in the hands of the

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assessee, and therefore in absence of any change in facts, the principle of *res judicata* should apply as held by the Hon'ble Supreme Court in the case of **Excel Industries 358 ITR 295 (SC)**. Accordingly, looking into the facts of the instant case, the appeal of the Department is dismissed.

7. In the result, the appeal of the Department is dismissed.

This Order pronounced in Open Court on	26/09/2023
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 26/09/2023

TANMAY, Sr. PS

TRUE COPY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad