

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : A : NEW DELHI

BEFORE SHRI A.D. JAIN, JUDICIAL MEMBER  
AND  
SHRI J.S. REDDY, ACCOUNTANT MEMBER

ITA Nos.1062 & 2849/Del/2009  
Assessment Years : 2005-06 & 2004-05

ACIT,  
Central Circle-9,  
Room No.357, ARA Centre,  
Jhandewalan,  
New Delhi.

Vs. Bhartiya Jeevan Dhara  
Educational & Charitable Trust,  
C-128/2, Bhikaji Cama Place,  
New Delhi.  
PAN : AAATB4308E

CO Nos.357 & 358/Del/2009  
(ITA Nos. 1062 & 2849/Del/2009  
Assessment Years : 2005-06 & 2004-05

Bhartiya Jeevan Dhara  
Educational & Charitable  
Trust,  
C-128/2, Bhikaji Cama Place,  
New Delhi.  
PAN : AAATB4308E

ACIT,  
Central Circle-9, Room No.357,  
ARA Centre,  
Jhandewalan,  
New Delhi.

(Appellant)

(Respondent)

Assessee by : Shri Ved Jain, Smt. Rano Jain &  
Shri V Mohan, CA's  
Revenue by : Smt. Anuradha Misra, CIT, DR

ORDER

PER A.D. JAIN, JUDICIAL MEMBER

These are Department's appeals and Assessee's Cross  
Objections for Assessment Years 2005-06 & 2004-05 against the orders  
dated 22.12.2008 and 19.03.2009 passed by the CIT (A)-II, New Delhi  
and CIT (A)-III, New Delhi respectively.



ITA No.2849/Del/2009 & CO No.358/Del/2009

## 2. The Department has raised the following grounds in its appeal:-

"1. On the facts and in the circumstances of the case, the Id. CIT (A) has erred in deleting addition of Rs.3.97 crore made on account of bogus donations when he himself has observed that the said donations of Rs.3.97 crores were not received for charitable activities eligible u/s 11 for approved project u/s 35AC during the year under reference.

2. That the Ld. CIT (A) has erred in directing the Assessing Officer to assess Rs.39.70 lakh in its hand as 'commission income' earned from 'other than trust activities' as against the addition of Rs.3.97 Crores made by him on account of alleged donations received from M/s Laxmi Overseas Industries Ltd. and M/s M.P. Beers Products Ltd. toward projected u/s 35AC of the Income tax.

3. That the Ld. CIT (A) has erred in holding that only 10% of alleged donation i.e., Rs.39.70 lakh was retained by the assessee out of alleged donation of Rs.3.97 crores as its 'commission' for acting as a 'conduit' particularly when there is no such outgoings either in cash book or bank account of the assessee.

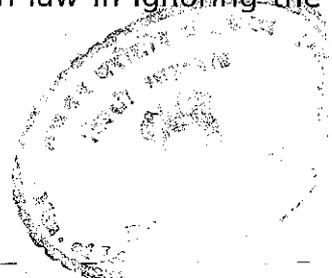
4. That Ld. CIT (A) has erred in holding that 90% of the donation received from alleged donors namely M/s Laxmi Overseas Industries Ltd. and M/s Beer Products Ltd. was returned back by the assessee to the same donors when there is no evidence produced to this effect either at the stage of assessment or during the appellate proceedings before the Ld. CIT (A).

5. That the Ld. CIT (A) has ignored the fact that in its audited books of accounts assessee has claimed that it has used/earmarked the donation of Rs.3.97 crore for application towards approved projects which means that the assessee was not left with any amount out of which alleged return of 90% of donation could have been made."

## 2.1 The assessee has taken the following effective Cross Objections:-

"2. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in confirming the addition of Rs.39,70,000 to the extent of 10% of the receipts.

3. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in ignoring the fact that



income applied as per A.O's own findings is more than that required under Section 11 of the Act and as such no income will be chargeable to tax.

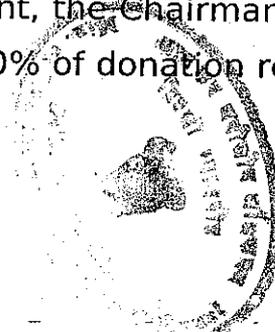
4. On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in ignoring the provision of Section 11 of the Act while confirming the above addition."

3. The facts are that the assessee is a Registered Trust u/s 12A of the Income-tax Act. The assessee filed its return for Assessment Year 2004-05 on 31.10.2004 at Nil taxable income, however, showing total income/receipts from donations and others at Rs.11,11,62,796/- and claimed as exempt U/s 11 of IT Act. The assessee also had a project approved u/s 35AC of the IT Act. The Assessing Officer noted that a sum of Rs.3,97,00,000/- was shown as donations received from following two parties:-

(i) M/s Laxmi Overseas Industries Ltd.	Rs.2,75,00,000/-
(ii) M/s M.P. Beers Products Ltd.	<u>Rs.1,22,00,000/-</u>
	Rs.3,97,00,000/-

4. The assessee had issued certificate to M/s Laxmi Overseas Inds. Ltd. for enabling them to claim 100% deduction u/s 35AC of the Income-tax Act, 1961. A survey u/s 133A of IT Act was conducted in the case of the assessee on 25.10.2004. The Assessing Officer stated that during the course of survey, various incriminating documents and papers were found to establish that the activities of the assessee were not charitable in nature. During the course of survey, statement of Shri N.K. Tripathi, Chairman of the Trust was recorded on oath. This statement has been reproduced by the Assessing Officer in full in the assessment order on pages 2 to 6 stating that 'this statement is giving a clear view of the ground realities of the case because it is very crucial and forms the backbone of the case for ascertaining the real activities of the assessee.' In the statement, the Chairman of the Trust stated that under prior oral agreement, 90% of donation received from

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two parties, namely, M/s Laxmi Overseas Inds. Ltd. and M/s M.P. Beers Products Ltd., were returned back through various means and only 10% was retained by the Trust. The amount returned back was partly in the form of donations to other charitable organizations/institutions and partly in cash. Donation to other organizations were paid directly from the bank account of the Trust and cash was paid through cash withdrawals from bank account of M/s Nirman Engineers Associates, operated by brother in law of the Chairman of the Trust after transferring the equivalent amount from the bank account of the Trust. The said pay back of 90% and retention of 10% was also re-confirmed on 01.12.2006 by Mr. N.K.Tripathi, Chairman, in his statement before ACIT, Central Circle, Patiala in response to notice u/s 131 in the case of M/s Laxmi Overseas Inds. Ltd. On the basis of these statements, the Assessing Officer observed that donation received U/s 35AC were not actually meant for charitable activities. The Trust has made substantial payments to M/s Nirman Engineers Associates, a proprietorship concern of Mr. Sanjay Mishra – brother-in-law of Shri N.K. Tripathi, Chairman of the Trust not for any construction work of the project but for some other use which has been stated to be as paying back to the original donors. The Trust has not obtained any receipt while paying back the money to the donor. This is a clear cut case of violations of provisions of Section 13 of the IT Act. Hence, exemption u/s 11 or 12 is not available to the assessee. Backed with these findings, the Assessing Officer concluded that the donation received u/s 35AC were not actually meant for charitable activities and added the above receipt of Rs.3.97 crores in taxable income of the assessee Trust.

5. By virtue of the impugned Order, the Ld. CIT (A) partly allowed the assessee's appeal, observing, inter alia, that the donations of ₹ 3.97 crore had not been received by the assessee Trust for charitable

activities eligible u/s 11, or approved project u/s 36AC of the Act; that thus, these donations could not be given any benefit of either Section 11 or Section 35AC during the year under consideration; that, however, since the statement of the Chairman was the sole basis of the addition, whereas such statement had neither been accepted in full nor rejected in toto; that if the statement were to be ignored, there was no case of any addition; that the assessee Trust had been used as a conduit for receiving the donation and paying them back to the donors through different means, for earning commission income; that the assessee having retained 10% as commission for such quid pro quo services, even in view of Section 35AC (6) of the Act, no addition of the total addition could be made in the year under consideration, since the approval u/s 35AC had been withdrawn vide Notification dated 20.06.2006; that therefore, only the net receipt of 35.70 lacs, being 10% of the amount of ₹ 3.97 crores, was required to be assessed as income under the head 'Commission not connected to the activities of the Trust'; and that against this income, the assessee could not take any benefit of application of income under general Trust activities.

6. The Department is in appeal before us against the action of the Ld. CIT (A) in restricting the addition to 10% of the receipt of ₹ 3.97 crores, as above, whereas the assessee, in its Cross Objections, has challenged such confirmation of the addition, contending that the entire addition ought to have been deleted.

7. The Ld. DR has contended that the Ld. CIT (A) has wrongly retained the addition only to 10%, whereas the entire addition made by the Assessing Officer was in accordance with law. The Id. counsel for the assessee, on the other hand, has submitted that the Assessing Officer used the statement of Shri N.K. Tripathi, Chairman of the assessee Trust, wherein he has submitted that 10% of the donation

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was the assessee's income; that since the assessee has utilized this income, it should be granted exemption u/s 11 of the Act.

8. At the outset, it is seen that the Assessing Officer, in the last portion of the assessment order, has observed, inter alia, as follows:-

"iii) In the explanation to this section, the term relative have been defined which includes brother or sister of the spouse of the individual.

In the present case, Shri N.K. Tripathi is the Chairman of the trust. Sh. Sanjay Mishra is his brother-in-law that is brother of the spouse. Huge amounts have been diverted to his bank account in the name of a proprietary concern. This is a clear cut case of violations of provisions of Section 13 of the IT Act. Hence, exemption u/s 11 or 12 is not available to the assessee in the present case."

9. Thus, the Assessing Officer has given a specific finding regarding the assessee having violated the provisions of Section 13 of the Act, due to which, according to the Assessing Officer, exemption under Sections 11 and 12 was not available to the assessee. In this regard, it is seen that the Ld. CIT (A) has observed as follows:-

" The appellant further submitted that section 13 gets attracted only when transfer of funds was for any direct or indirect benefit of person mentioned in section 13 (3). As against this, hard fact on record and not disputed by the learned A.O. is that not a single rupee of the trust was utilized directly or indirectly for the benefit of said Mr. Sanjay Mishra and/or Nirman Engineers Associates. It was contended that ratio of the decision held by Hon'ble High Courts, in the cases of Director of Income-tax Exemption vs Pariwar Sewa Sansthan (2002) 254 ITR, Delhi and CIT vs Kamla Town Trust (2005) 279 ITR 89 are squarely applicable on this issue. Thus, it was contended that there was no violation of provision of section 13, hence denial of exemption u/s 11/12 is misconceived and erroneous and deserve to be deleted."



9.1 The Id. Commissioner (Appeals) has found as follows:-

"6. I have considered the submissions as well as facts of the case. On a careful consideration of the facts including the statement recorded U/s 133A of Shri N.K. Tripathi, Chairman, it is clear that receipt of donation of Rs.397.00 lacs from two parties namely M/s Laxmi Overseas Industries Ltd. and M/s M.P. Beer Products Ltd., were tied-up receipts under guise of approved scheme of Mahavidhyalaya and Hospital project U/s 35AC. In the light of more than candid confession by the chairman himself, these donations of Rs.397.00 Lacs were not received for charitable activities eligible u/s 11 or approved project u/s 35AC. Thus, these donations receipts can neither be given any benefit of Section 11 nor u/s 35AC during the year under reference. However, there is a force in the assessee's submission that whole basis of the impugned addition is the 'statement' of the chairman. 'Statement' either has to be accepted in 'toto' or to be disregarded altogether. If one does not accept the 'statement', then there is no case. Considering the facts and circumstances of these two transactions, it is clear that the trust has been used as 'conduit' for receiving the said donations and paying back to original donors through different means, for earning commission income. I am of the considered view that against the donation from these two parties, the assessee retained 10% as commission for such quid pro quo services which is real net income of the appellant. Even in view of sub-section (6) of Section 35AC, no addition of the total amount can be made in the year under consideration as the approval u/s 35AC was withdrawn vide notification dated 20.06.2006. Therefore, net receipt of Rs.39.70 Lacs i.e., 10% of Rs.397.00 Lacs is required to be assessed as income under the head 'commission' not connected to the trust activities. Against this income, the appellant cannot take any benefit of application of income under general trust activities. Accordingly, the A.O. is directed to assess the commission income earned other than trust activities at Rs.39,70,000/- as against the addition of Rs.3,97,00,000/- made by him."

10. The Ld. CIT (A), thus, has not given any specific finding regarding the aforesaid observation of the Id. Assessing Officer regarding the violation of Section 13 of the Act by the assessee and the non-availability of exemption under Sections 11 and 12 of the Act to the assessee. Further, the Id. counsel for the assessee has contended before us that the amount, as per the statement of Shri N.K. Tripathi was received in May and June, 2004 and the cheques were encashed in



the period from 20.07.2004 to 10.09.2004, and that accordingly, no addition in this year on this account, can be made. The Ld. CIT (A) has also not examined this issue.

11. Accordingly, the matter is remitted to the file of the Ld. CIT (A) to examine these issues and decide the same in accordance with law, in view of our above observations.

ITA No.1062/Del/2009 and CO No.357/Del/2009.

12. This is Department's appeal and Assessee's Cross Objections for Assessment Year 2005-06. The matter involved herein, it is seen, is substantially the same as that involved in ITA No.2849 and CO No.358 (supra), but for the donation involved, i.e., ₹ 31 lacs in this year.

13. Since the matter for Assessment Year 2004-05 stands remitted to the Ld. CIT (A) as above and due to the fact that the issue involved in the present appeal and CO is substantially the same, this matter is also remanded to the file of the Ld. CIT (A), to be decided afresh in accordance with the law, as per our directions issued for Assessment Year 2004-05 (supra).

14. In the result, for statistical purposes, the appeals of the Department as well as the Cross Objections of the assessee are treated as allowed.

The order pronounced in the open court on 31.01.2013.

*Sd/-*  
[U.S. REDDY]  
ACCOUNTANT MEMBER

*Sd/-*  
[A.D. JAIN] J  
JUDICIAL MEMBER

Dated, 31/1/2013.

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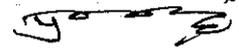
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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By *H*

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By Order,



Deputy Registrar,  
ITAT, Delhi Benches

सहायक पंजीकार,  
आयकर अपील विभाग

Income Tax Appellate Tribunal  
दिल्ली बेंच, ई दिल्ली

Delhi Benches, New Delhi.

