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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H': NEW DELHI

BEFORE SHRI N.V. VASUDEVAN AND SHRI DEEPAK R. SHAH

I.T.A No.1414/Del of 2005

Assessment Year: 1993-94

The Pocket Testament League (India),
19, Rajniwas Marg, Delhi.

vs DDIT(E), Trust Circle-IV,
New Delhi.

Appellant

Respondent

Appellant by: Shri Ved Jain & Ms Rant Jain
Respondent by: Shri S.K. Jain

ORDER

PER DEEPAK R. SHAH: AM

This appeal by assessee is directed against the order of learned CIT(A)-XXVII, New Delhi dated 31st December, 2004 in an appeal against assessment framed u/s 143(3) read with Section 254 of the Act.

2. The appellant filed return of income on 26.10.03 declaring nil income. The assessment was framed u/s 143(3) on 5.1.96 at a total income of Rs.4,99,580/-. It was held that since the appellant trust is not registered u/s 12A of the Act, the benefit of exemption u/s 11 cannot be given. Thus, after reducing the expenditure as per income and expenditure account, the surplus was brought to tax. Subsequent to the passing of the said assessment order, the appellant society had been granted registration u/s 12A vide order dated



4.11.96 w.e.f. 14.1988. The assessee, therefore, requested for rectification of the order and for claim of exemption u/s 11 of the Act. The rectification application was rejected and the order refusing rectification u/s 154 was confirmed by learned CIT(A). On further appeal before the Tribunal, the Tribunal held that the subsequent order of registration had rendered the AO's finding that there was no registration ~~and hence~~, a mistake apparent from record. The Tribunal, thereafter, set aside the matter to the AO to examine the case in light of the requirement of Sections 11, 12 & 13 and to determine eligibility for exemption and pass fresh order as per law.

2.1 Pursuant to the direction of the Tribunal, the AO took up the issue for framing assessment. The AO found that during the year total donation received were to the tune of Rs.29,01,392/-. Out of this foreign donation of Rs.27.48 lacs was mainly received from Pocket Testament League, UK and USA and Word of Outreach. The AO noted that following expenses were incurred:

Conference Expenses	Rs.7,34,404/-
Literature Expenses	Rs.4,84,800/-
Team Expenses	Rs.2,80,734/-
Training Expenses	Rs.2,28,165/-
Salary and honorarium	Rs.2,12,277/-
Establishment expenses	Rs.3,79,041/-
Including Gen. Admn, office	
Running, repair, maintenance & ors.	

2.2 The AO found that the conference expenses was incurred on boarding, food and traveling of delegates for this conference. As per the advertisement made in regard to conference, only pastors, Christian workers and Pastor's wives were eligible for participation. The conference was held for studies on eliminating distinction in the body of Christ, Church growth and developing core staff etc. The statement of chief functionary was recorded about the purpose of the conference. It was stated that the special conference was organized for Pastors, church leaders and delegates from the churches to give opportunity to come together and to give teachings based upon Bible value and ethics. The AO also observed that literature was distributed for uplift of disturbed people. The literature contained mainly the stories and teachings from Bible. The AO was, therefore, of the opinion that the activities have been carried out in such a way that it is for the benefit of particular religious community i.e. Christianity. The AO proposed to invoke the provisions of Section 13(1)(b) so as to deny exemption u/s 11 & 12 of the Act. The appellant submitted that the amount incurred on conference was spent on ordinary kind of food, stay and conveyance for the participants and it was donated by "Word Outreach". By this activity, there was no direct or indirect benefit to the participant. The benefit of this activity is for the public at large. The AO held that benefit of exemption u/s



11 & 12 would not be available to any trust which has created for the benefit of any religious community. The AO found that the society has incurred various expenditure on the teams which have been sent to different parts to serve the victims of flood for community service, to educate the masses etc. Such activities are charitable in nature. However, the society has also applied its income for the benefit of a particular religious community i.e. Christianity and hence, the benefit of exemption u/s 11 was denied. The entire donation was treated as income and only those expenditure i.e. on account of salary, honorarium and other would be expenses which are incurred towards earning the receipts were allowed and other expenses stated to be on the object of trust were disallowed. The total income was determined at Rs.23,10,074/-.

2.3 Before learned CIT(A), the assessee submitted that the appeal before the Tribunal was against an order refusing to rectification u/s 154. It is only the order u/s 154 has to be amended and in such a rectification, the income cannot be exceed as originally assessed. It was also submitted that the benefit of exemption u/s 11 cannot be denied as the assessee is to be treated as charitable as well as religious trust and hence, Section 13(1)(b) is not attracted. Learned CIT(A) confirmed the action of the AO and hence, this appeal.

2.4 Learned counsel for assessee reiterated the submissions made before the CIT(A). He also relied upon following case laws in support of his arguments:

1. CIT vs. Chandra Charitable Trust, 206 CTR 418;
2. CIT vs. Social Service Centre, 250 ITR 39 (AP);
3. CIT vs. Barkate Saifiyah Society, 213 ITR 492 (Guj)

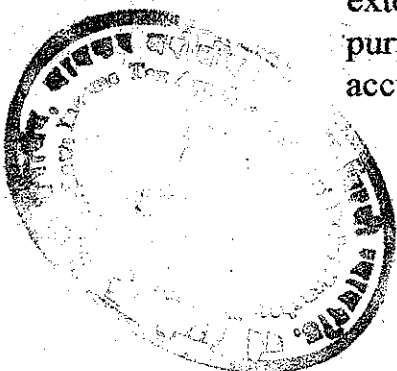
2.5 Learned DR, on the other hand, relied upon appellate order.

3. We have carefully considered relevant facts, arguments advanced and the case laws cited. As observed by AO in page 7 of his order, the society has incurred various expenditure on the teams which have been sent to different parts of the country to serve the victims of flood for community service, to educate the masses etc. These activities are no doubt charitable in nature. Section 11 & 13 which are relevant for the purpose of discussion herein are extracted:

“Section 11 : Income from property held for charitable or religious purposes:

(1) Subject to the provisions of ss. 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income –

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such



purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five per cent of the income from such property.”

Section 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 –

(a).....

(b) in the case of a trust for charitable purposes or a charitable institution created or established after the commencement of this Act, any income thereof if the trust or institution is created or established for the benefit of any particular religious community or caste,”

The phrases ‘charitable purpose’ is defined u/s 2(15) of the Act which reads as under:

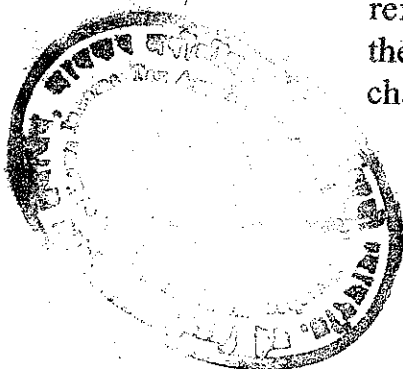
“Section 2(15) – ‘Charitable purpose’ includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.”

The exemption u/s 11(1)(a) is available where the income derived from property held under trust for charitable or religious purposes to the extent to which such income is applied to such purposes in India. Thus, even if the income is earned by trust, which is charitable as well as religious and is part of the income is applied for religious purposes, exemption u/s 11(1)(a) is

still available. The issue to be examined is that whether in view of the provisions of Section 13(1)(b), exemption u/s 11~~2~~ is to be denied or not.

Hon'ble Gujarat High Court in the case of Barkate Saifiyah Society (supra) held as under:

"19. By reading the aforesaid section, it is clear that it carves out an exception to s.11 or 12 by providing that in those cases which are covered by cls. (a), (b), (c) and (d), the provisions of s.11 or 12 shall not operate. Broadly speaking, it is divided into three categories and exception is carved out in the case of private religious trusts, charitable trusts and charitable or religious trust if the conditions mentioned in cls (a), (b), (c) and (d) are satisfied. Firstly, any part of the income from the property held under a trust for private religious trust which does not enure for the benefit of the public is not to be excluded as provided u/s 11. That means the benefit of s.11 would not be given to a trust which is a private religious trust which does not enure the benefit of the public (as per cl. (5)). Secondly, any income of a trust for charitable institution is created or established after the commencement of IT Act (sic). In each case the authority is required to find out whether the trust for charitable purposes is established for the benefit of a particular religious community or caste. If it is so established, then the provisions of s.11 would not be applicable. Thirdly, cls (c) and (d) carve out an exception in the case of a trust for charitable or religious purposes or a charitable or religious institution. It provides for certain cases in which any income thereof enures, or is used or applied, directly or indirectly, for the benefit of any person referred to in sub section (3). In cls (c) and (d), the Legislature has used the phrase trust for charitable purposes or charitable institution. It



does not deal with a trust for religious purposes. It only deals with a trust for charitable purposes or charitable institutions which are established for giving relief to the poor or medical relief or for education of any particular religious community or caste. Clauses (c) and (d) would be applicable to a trust which is either for charitable purposes or religious purposes or partly charitable purposes and partly religious. Hence it can be stated that if a charitable trust is established only for the benefit of any particular religious community or caste, then the provisions of s.11 would not be applicable. But in the case of a trust or an institution for religious purposes wherein certain activities can be termed as charitable activities for the benefit of any particular religious community or caste, cl.(b) would not be applicable.

21. In view of the aforesaid discussion, in our view, the Tribunal has rightly held that s.13(1)(b) applies only to trusts which were purely for charitable purposes and the assessee-trust was charitable as well as religious in nature and the assessee was entitled to exemption u/s 11. Hence, question No.1 is answered in the affirmative in favour of the assessee and against the revenue."

This decision was followed in the case of Chandra Charitable Trust (supra) wherein Hon'ble Gujarat High Court held as under:

"5. The question, that what should be the principle adopted and whether Jainism is a lifestyle or a religion, would lose much of its importance in view of the judgment of this court in the matter of CIT vs. Barkate Saidiyah Society (supra). If Jainism is accepted to be religion and from the covenants of the trust deed it can be spelt out that not only to propogate Jainism or help and assist maintenance of the temple, Sadhus, Sadhvis,

Shraviks and Shravaks, yet other goals are set in the trust deed, then the trust would become a charitable trust, so also a religious trust or it can be addressed as a charitable religious trust, and, if that be so, section 13(1)(b) would not be applicable. Once the basic question is answered against the interests of the Revenue, then the other questions can conveniently be decided against the interests of the revenue."

Hon'ble Andhra Pradesh High Court in the case of Social Service Centre (supra) held that an institution which is registered as a charitable institution can claim exemption for the activities which are of religious nature.

Following the aforesaid decision, it can be held that since the appellant trust was carrying a charitable purpose also and even if part of the income was applied for religious activities, the benefit of exemption u/s 11(1)(a) cannot be denied. The AO is directed to grant exemption u/s 11(1)(a).

4. The alternate ground that the income should be restricted as originally computed will not survive.
5. In the result, the appeal is allowed.
6. Pronounced in the open court on ... 21st ... September, 2007.

sd/-
(N.V. VASUDEVAN)
JUDICIAL MEMBER

sd/-
(DEEPAK R. SHAH)
ACCOUNTANT MEMBER

Dated: 21st September, 2007
Vijay



Copy to:

- ✓ 1. Appellant. — BY Hand
- 2. Respondent.
- 3. CIT
- 4. CIT(A)-XXVII, New Delhi.
- 5. DR

ITA: 74/4/05

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 Deputy Registrar
 Appellate Tribunal
 Income Tax
 New Delhi

