

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA**

**BEFORE SHRI A. T VARKEY, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.1368/Kol/2016**

**(निर्धारणवर्ष / Assessment Year: 2010-11**

<b>Singhania Foundation Education Trust</b>	<b>Vs.</b>	<b>DDIT(Exempt)-1, Kolkata</b>
E-12, 1 <sup>st</sup> Floor, 75C, Park Street, Kolkata – 700 016.		71, 10B, Middleton Row, 5 <sup>th</sup> Floor, Kolkata.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AACTS 6459 B		
<b>(APPELLANT)</b>	<b>..</b>	<b>(RESPONDENT)</b>

Appellant by :Shri K. M. Roy & Anshuman Tiwari, AR  
Respondent by :Shri Sallong Yaden, Addl. CIT

सुनवाईकीतारीख/ **Date of Hearing** : **01/09/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **29/11/2017**

**आदेश / O R D E R**

**Per Dr. Arjun Lal Saini, AM:**

The captioned appeal filed by the assessee, pertaining to assessment year 2010-11, is directed against the order passed by the Id. Commissioner of Income Tax (Appeals)–25, Kolkata, in Appeal No.143/2014-15, dated 15.04.2016, which in turn arises out of an order passed by the Assessing Officer under section 143(3)/11 of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 11.01.2013.

2. The assessee has raised the revised grounds of appeal as under:

*"1.That Id. CIT(A) has erred in denying benefit u/s 11 of IT Act by applying explanation to Section 11(2) of the IT Act, 1961 without appreciating the fact that the sum of Rs.2283087/- has been applied /spent for educational purposes out of current year's income and there was no application for accumulation.*

*2.That Id. CI(TA) could not appreciate the precedents for earlier years under similar facts and circumstances and has dealt the issue which was not the subject matter of assessment in a altogether different manner.*

*3.That appellant reserves the right to raise additional grounds at the time of hearing."*

3. The brief facts qua the issue are that return of income for A.Y 2010-11 was filed by the Trust on 28.09.2010 declaring total income of Rs.NIL. The Assessee's return of income was processed u/s 143(1) on 20.03.2012. Later,

the assessee's case was selected for scrutiny u/s 143(2) of the Act. The Assessing Officer denied the exemption u/s 11 of the Act and made the addition. During the assessment proceedings, the AO observed that the assessee has applied an amount of Rs.22,83,087/- in the charitable objects via Singhania University. That is, the assessee, during the year under consideration has transferred Rs.22,83,087/- to Singhania University. During the scrutiny proceedings, it was noted by AO that Rs.22,83,087/- was directly deposited in the bank accounts of various persons without routing through assessee's accounts by separate organizations named International Legal Consultants Ltd. and Law Firm Management Services Ltd. These direct credits into the bank accounts of various persons were claimed as application in charitable activities. Assessing officer noted that Singhania Foundation Education 'Samity' is a society registered under Rajasthan Societies Registration Act, 1958 having seven Trustees of which Shri D.C. Singhania is the Chairman and Managing Trustees. The 'Samity' is running a number of educational institutions one of which is Singhania Institute of Law Management and Science. This institution was approved by the Govt. of Rajasthan by a notification dated 29.03.2008 in the name of "Singhania University". Therefore, the "Samity" is the creator of Singhania University. Shri D.C Singhania is the "Settlor" of the assessee trust. Based on the above facts, it was noted by the AO that the "Samity" was the interested person within the meaning of Section 13(3) of the IT Act. The AO noted that the fund so transferred of Rs.22,83,087/- from the 'Trust' to the 'Samity' was for the mutual benefit, as both the assessee 'Trust' & 'Samity' were claiming exemption u/s 11 on income of Rs.22,83,087/-. Therefore, the AO observed that the assessee is not entitled to the benefit of tax exemption u/s 11.

The AO after going through the records furnished by assessee concluded that the transactions between assessee 'Trust' and the 'Samity', which have been claimed by the assessee as application of its current year's income are held not bona fide. Also, there was clear falsification in the written submission as submitted by assessee. There was clear violation of the provision u/s

13(1)(c). There was also no legal distinction between Singhania Foundation Education 'Trust' and Singhania Foundation Education 'Samity'. Hence, the AO disallowed the benefit u/s 11 of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Id. CIT(A), who has confirmed the addition made by the AO. We noted that the Id. CIT(A) took a different stand and confirmed the addition made by the AO, that is, denied the exemption U/s 11 of the Act. The stand taken by the Id. CIT(A) was that in assessee's case, the Explanation below sub-section (2) of Section 11 is applicable. The CIT(A) observed that the assessee had made payments to a university approved u/s 10(23C)(vi), thus there cannot be claim of deduction at both ends: that is, i) as application by the assessee and, ii) as income by the recipient. Thus, the Id. CIT(A), did not treat such payment as application of income by relying Explanation below sub section (2) of section 11 of the Act. The CIT(A) noted that by virtue of explanation below sub-section (2) of Section 11 of the Act, such payments should not be treated as application of income and this way, the CIT(A) denied the exemption U/s 11 of the Act.

5. Not being satisfied with the order of Id. CIT(A), the assessee is in appeal before us. The Id. Counsel for the assessee has submitted before us that Id. CIT(A) was wrong in denying benefit u/s 11 of the Act by applying Explanation of section 11(2) of the I.T Act. The Id. CIT(A) ignored the fact that the sum of Rs.22,83,087/- has been applied/spent for educational purposes out of current year's income. The Id. Counsel also pointed out that Id. CIT(A) has dealt with the issue which was not the subject matter of the assessment order. Therefore, the Id. CIT(A) passed the order altogether on different footing and on different logic by applying the explanation of section 11(2), which is not acceptable. Whereas, the Id. AO denied the exemption, based on the stand taken by him, that the transactions between assessee 'Trust' and the 'Samity' were not bona fide and there was violation of the provision of 13(1)(c) of the Act. The AO also observed that there was no legal distinction between Singhania Foundation Education 'Trust' and Singhania Foundation Education 'Samity', there were common trustees and they were using the trust funds for personal benefits, that is, Singhania Foundation Education 'Samity', was

the interested person within the meaning of section 13(3) of the I.T. Act, but the Counsel pointed out that the said observation of AO is factually incorrect. The Id. Counsel for the assessee pointed out that assessee made a payment to a university approved u/s 10(23C)(vi) of the Act, which is a donation for charitable purpose and falls in the definition of charitable activities. The assessee trust derived income from property held by the trust which was transferred to Singhania University which is run by Singhania Foundation Education Samity. The counsel stated that the amount of Rs.22,83,087/- have been applied for Charitable purpose viz. educational activities by Singhania Foundation Education Trust, through its service provider LFMS consultants. The said consultant was engaged by Singhania University to manage payment of its vendors, staff and employees payroll etc. The payments had been made through RTGS.

6. On the other hand, the Id. DR for the Revenue has submitted that it is not clear that which is the property from which the Trust had derived rental income. It is also not clear that why the assessee trust used the services of LFMS consultants for this small amount. The assessee trust did not submit the agreement copy with LFMS consultants. The assessee trust also did not submit agreement copy of rental income, that is, from whom the assessee trust is getting rental income. Whether assessee is the owner of rental income, and the property from whom the rental income was derived, had not been proved by the assessee, therefore these basic information was not available on the record of AO, hence order passed by AO should sustain.

7. We have read the rival submissions and perused the materials available on record, we note that Assessing Officer denied the exemption under section 11 of the Act, based on the reason that income of Rs.22,83,087/- of Singhania Foundation Education Trust (in brief 'Trust') was transferred to Singhania Foundation Education Samity (in brief 'Samity') for mutual benefit and both have a common key person namely Shri D.C. Singhania who have substantial interest in both, that is, in 'Trust' as well as in 'Samity'. The AO also noted that facts and circumstances of the case is not coming within the exceptional circumstances provided in the provisions of section 13(1) (c) of the Act. Another stand taken by the Assessing Officer to deny the exemption

under section 11 of the Act was that the said amount of Rs.22,83,087/- was directly deposited in the bank account of the various persons without routing through assessee's Trust accounts, that is, the said money was routed through separate organizations namely, International Legal Consultants Ltd. and Law Firm Management Services Ltd( LFMS).

We note that Id.CIT(A) took a different stand to deny the exemption which was not arising out of the assessment order passed by Assessing Officer under section 143(3)/11 of the Act. The IdCIT(A) held that in case of assessee trust under consideration, the explanation below sub-section (2) of Section 11 are applicable, as the trust made payments to a university approved under section 10(23C)(vi), therefore, there cannot be claim of deduction at both ends, that is, an application by the assessee and as income by the recipient. Therefore, CIT(A) held that such payments should not be treated as application of income as per explanation of section 11(2), and this way, he denied the exemption.

We note that as per submissions of Id DR for the Revenue, the basic information were not available on record such as:

(i)Property from which the rental income of the trust has derived, that is rental agreement and assessee`s Trust entitlement to receive rental income.

(ii) Agreement between Singhania Foundation Education 'Trust' and Singhania Foundation Education 'Samity' about use of services of service providers namely, International Legal Consultants Ltd. and Law Firm Management Services Ltd( LFMS).

Based on the factual position explained above, we are of the view that neither the stand taken by Assessing Officer nor the stand taken by CIT(A) is justifiable as per the provisions of law. We are of the view that donation given by assessee trust to a university approved under section 10(23C)(vi) is for charitable purpose subject to verification of the basic information which were not available on record, as per Ld. DR, such as:(i) Property from which

the rental income of the trust has derived, that is rental agreement and assessee`s Trust entitlement to receive rental income. and (ii) Agreement between Singhania Foundation Education `Trust` and Singhania Foundation Education `Samity` about use of services of service providers namely, International Legal Consultants Ltd. and Law Firm Management Services Ltd( LFMS).

Therefore, we are of the view that this issue requires a fresh examination at the end of the Assessing Officer. Therefore, we set aside the order of the Id. CIT(A) and remand the matter back to the file of AO and direct him to examine the basic information like agreement of rental income and agreement between assessee and service provider, as discussed above, and adjudicate the issue afresh, in accordance with the provisions of law, after giving opportunity to the assessee of being heard.

8. In the result, the appeal filed by the assessee, is allowed for statistical purposes.

Order pronounced in the open court on this **29/11/2017**.

**Sd/-**  
**(A. T. VARKEY)**

**न्यायिक सदस्य / JUDICIAL MEMBER**

कोलकाता /Kolkata; दिनांक

Dated 29/11/2017

RS,SPS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant – Singhania Foundation Education Trust
2. प्रत्यर्थी/ The Respondent-DDIT(Exempt)-1, Kolkata
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.  
सत्यापितप्रति

//True Copy//

**Sd/-**  
**(DR. A.L.SAINI)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

By Order

Senior Private Secretary,  
Head of Office/D.D.O,  
I.T.A.T, Kolkata Benches,  
Kolkata.