IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

I.T.A No. 516/(Asr)/2017
Assessment Year: 2014-15

Langar Committee Hanuman Mandir, Malerkotla. Vs.	Income Tax Officer, (Exemptions) Ward, Jalandhar.
[PAN:AAAAL 2080Q]	
(Appellant)	**(Respondent)**

Appellant by: Sh. Subhash Jain & Kartik Jain (C As)
Respondent by: Sh. S.S. Negi (DR)

Date of hearing: 21.12.2017
Date of pronouncement: 15 .03.2018

ORDER

Per Sanjay Arora, AM

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-4, Ludhiana ('CIT(A)' for short) dated 31.05.2017, dismissing the assessee's appeal contesting its' assessment u/s. 143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for the Assessment Year (AY) 2014-15 vide order dated 30.11.2016.

2. The issue arising in the instant appeal is the determination of the correct income for the current year chargeable to tax under the Act. While the assessee claims the same to be nil, the Revenue has assessed its' income at Rs. 23,84,731/- the 'surplus', i.e., the excess of receipt over payment as per the assessee's accounts, with the assessee. The assessee is a society constituted and registered under the Society Registration Act, 1860 on 11.08.1992 (copy of Registration Certificate on record), with the following aims and objects:

'उदेश्य :–

1. इस संस्था का उदेश्य श्री हनूमान मन्दिर में सुबह का नाशता, दूपहर और रा़त्रि को भोजन और शाम को चाय का प्रबन्ध करता है ।
2. बाहर से आये तीर्थ या़त्रियों के लिए खाने का प्रबन्ध और रात्रि को विश्राम करने का प्रबन्ध करना ।
3. समय अनुसार लोक भलाई के कार्य करना ।
4. वर्ष में कम से कम एक बार विशाल भगवती जागरण करवाना, धार्मिक उपदेश अथवा कथा कीर्तन आदि का प्रबन्ध करना ।'

On being called upon to furnish a certified english translation thereof, the ld. Authorized Representative (AR), the assessee's counsel, would draw our attention to page 5 of the impugned order whereat the same stands transcribed in english as under, further stating that the same represents a fairly accurate translation thereof; that the parties have proceeded on that basis, so that there is no conflict or disagreement *qua* the same:

'1. The objective of this trust is to manage the Breakfast, Lunch & Dinner and also tea in evening at Hanuman Mandir.
2. To manage the eating and halting arrangements for pilgrims from outside.
3. To do public welfare programs from time to time.
4. To manage a vishal Bhagwati jagran, religious speeches and Kirtan at least once in a year.'

We observe no issue *qua* the same and, therefore, the bringing on record of a certified english translation was dispensed with, and the hearing in the matter proceeded with, after obtaining concurrence of the ld. Departmental Representative (DR).

There are three sections under which the donations to the assessee-trust could possibly be considered for tax purposes, none of which is applicable in the instant case, as shall be presently shown, the ld. AR would continue, adverting first to section 2(24)(iia), the first of these sections, the other two being sections 28 and 56:

'2. Definitions
In this Act, unless the context otherwise requires,—
(1) .....
(24) **"income" includes —**
(i) profits and gains;
(ii) dividend;
(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub clause (v) or by an university or other educational institution referred to in sub-clause (iiiad) or sub clause (vi) or by any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via) of clause (23C) of Section 10 or by an electoral trust.

Explanation.- for the purpose of thus sub-clause, " trust" includes any other legal obligation;'

The Assessing Officer (AO) has regarded the assessee as not a charitable trust, for which he took us to page 3 of the assessment order. On a query, however, by the Bench, as to how could the assessee, independent of the AO's observation, not regard itself as the charitable and /or religious trust in view of its' clear objects, the ld. AR would submit that the assessee is indeed a charitable trust.

The ld. DR would at this stage, on being queried by the Bench, clarify that when the AO says that the assessee is not a charitable trust, all he means is that it is not recognized as such for the purpose of the beneficiary provision of the Act, i.e., is not entitled to an exemption of its income on its application under sections 11 and 12 of the Act. Further, he would continue, as a conjoint reading of the assessment and the impugned order, in which the former order merges, would show, the assessee has been denied the benefit of exemption u/s. 11 of the Act in the absence of registration u/s. 12A/12AA of the Act, or even approval u/s. 10(23C). And it is this denial which the bone of contention between the parties. The assessee receiving Rs.94.32 lacs during the year, apparently applied Rs. 70.47 lacs for its various objects, so that its' financial accounts reflect a 'surplus' of

Rs.23.85 lacs, which was claimed exempt u/s. 11 of the Act, and which could not be in view of its non-registration u/s. 12AA of the Act. In fact, even if the assessee was to apply for the said registration now, i.e., at any time after the expiry of the relevant previous year, it could only be granted registration prospectively.

3. We have heard the parties, and perused the material on record.

The purposes for which the assessee society, an incorporated entity, is formed, are clearly charitable and religious in nature. Charity – the selfless and unconditional expenditure of resources, including time and money, in service of another, is the cornerstone, an essential ingredient of all 'dharma', the core of all organized religions. Charity, inclusively defined u/s. 2(15) of the Act, is commonly understood as altruistic thought and action, with a view to benefit others selflessly. It may assume different forms, as, for example, philanthropy. If providing food to people or giving shelter to travelers is not charity, as observed by the Bench during hearing, what, we wonder, is? This, in effect, stands also observed by the Amritsar Bench of the Tribunal recently per its order in *Vishwayatan Yogashram v. CIT(E)* (in ITA No. 428/Asr/2016, dated 13.12.2017), directing registration, similarly, to an institution providing 'Langar' (community kitchen, where people, irrespective of caste, creed and religion prepare and partake food together, promoting the ideals of service of humanity and brotherhood); the cost of the same being met from voluntary contributions by people at large. Further, if organizing religious festivals, including arranging visit/s to a holy shrine, is not religious, what, we wonder, again, is?

The assessee's receipt of Rs.90.41 lacs by way of voluntary contributions - the balance Rs. 3.91 lacs being interest income, for the purpose of its' objects, is thus 'income' within the meaning of sec.2(24)(iia). True, the Revenue has 'allowed' a 'deduction' for Rs.70.47 lacs ostensibly spent by the assessee on its'

objects. The same, however, is only the application of that income, and nothing more, even as observed by the Bench during hearing. It is though only the real income, i.e., net of all expenses incurred in earning the same, for which exemption could validly be claimed and allowed. Application of income is allowed as an exemption for the purpose of determination of total income only in case of a charitable or religious trust/institution, for which the law provides a special/defined procedure, beginning with the registration of such trust with the Revenue u/s. 12A r/w s.12AA of the Act, which the assessee-trust in the instant case has not observed. *How could, then, its' act in bringing the returned 'surplus' of Rs.23.85 lacs to tax as income be impugned*? Rather, the Revenue, by doing so, implicitly allows the assessee exemption u/s. 11 at Rs.70.47 lacs ostensibly applied by the trust on its' objects, while denying same on the amount not similarly 'spent' / applied. The amount being unspent (unapplied) could be no basis for taxing the same in-as-much as the same is only carry forward for being so applied subsequently. It may not be feasible or necessary that the funds received during a particular year (period of time) are applied during the same year (period) itself. The operations of any entity being continuous, it would always have some funds with it at any point of time, which incident would not make it taxable on that count. Then, the institution may be in the process of accumulating funds for application on a particular project/program which it intends to execute/implement. The funds of any trust/institution are to be, after all, applied only for its purposes, which in the instant case, we have found as both charitable and religious in nature. Why, the law, per section 11, clearly provides for accumulation of income for its' application in future (for charitable or religious purposes). The question of observance of that procedure - which requires a notice by the assessee to the AO to that effect (section 11) (refer: *CIT v. Nagpur Hotel Owner's Association* [2001]

247 ITR 201 (SC)), in the present case does not arise as sec.11 itself is not applicable in view of the non-registration of the assessee-trust u/s. 12AA (refer section 12A(1)). The Revenue, thus, by allowing 'credit' / 'exemption' to the assessee *qua* the sum applied by it for its purposes during the year has acted inconsistently and, more importantly, not in accordance with the law; rather, contrary thereto. We use the word 'implicitly' in-as-much as there is no finding or specific allowance of such exemption to the assessee *qua* the sum applied by it for its purposes during the year; with the Revenue rather clearly denying exemption u/s. 11 for want of registration u/s. 12AA.

The assessee's case is equally untenable. True, the amount received by the assessee-society is held by it under trust, a legal obligation by definition, so that the same cannot ordinarily, i.e., going by the common conception of the word, be regarded as 'income' of the recipient trust. However, the same has been regarded as so by the Act per the defining provision itself - s.2(24)(iia), reproduced above. But for the same, even as observed by the Bench during hearing, the same may not fall to be considered as 'income', being an amount received by one from another under an obligation to be applied for a specific purpose/s. Rather, even prior to the insertion of section 2(24)(iia)(inserted by Finance Act, 1972, w.e.f. 01.04.1973) on the statute-book, the Apex Court (in *R.B. Shreeram Religious & Charitable Trust v. CIT* [1998] 233 ITR 53 (SC)), with reference to section 12 of the Act, which it explained is to be read as a whole, clarified that the word 'income' is not exhaustively defined under the Act, and that voluntary contributions received by a public charitable or religious trust, except where received toward its' corpus, is income and, further, deemed as derived from property held under trust. Section 2(24)(iia), it may be noted, makes no exception for a voluntary contribution received towards its' corpus, so that it is income by definition, though exempt u/s.

11 (s. 11(1)(d)). The reliance by the assessee, therefore, on decisions in *CIT v. S.R.M.T. Staff Association* [1996] 221 ITR 234 (AP) and *Shah Nanji Nagsi Employee's Welfare Trust v. ITO* [1986] 19 ITD 535 (Nag), is of no consequence. In these cases, the assessee was not a charitable (or religious) trust, and it was on that basis that the Hon'ble Court and the Tribunal respectively held its receipt as not liable to be regarded as income. The aims and objects of the assessee society, which define the purpose/s of its' formation and existence, are both charitable as well as religious in nature, so that it is a charitable and religious trust. Voluntary contributions, which is what the donations are, received by it for being applied for the said objects, and which it in fact has in a significant part during the relevant year, is only income by definition u/s. 2(24)(iia) and, further, deemed as derived from property held under trust, a form defined u/s.11(4). The same could only be exempt u/s. 11, which however would not apply in the instant case in view of section 12A(1), which provides for registration u/s. 12AA as a precondition for the application of sections 11 and 12. The law, per section 11, as afore-referred, provides a saving for the amount applied by a charitable (or religious) trust or institution for its purposes. Further, as afore-noted, the law also provides for subsequent such application, upon notice to the AO, stating the purpose/s of accumulation, where the retention exceeds 15% of the receipt - regarded thus as a normative carry over. No levy of tax is attracted under such circumstances, as well as where the income could not be applied on account of non receipt of any income.

The assessee's further stand as to the applicability of the principle of mutuality, also argued before us, again, only needs to be stated to be rejected. The assessee is a separate legal entity, i.e., distinct and apart from both its' Management - managing it under a clear set of rules and regulations (copy of which was shown to us during hearing), as well as its' trustees, as well as those

patronizing it, contributing their time and resources for its' various activities. The donations are only the voluntarily contributions referred to in sec. 2(24)(iia) as well as in s.11(1)(a), and form the trust property, to be applied for its' purposes in the manner it deems fit and proper. Likewise, is the interest income arising to it. No argument/s *qua* ss. 28 and 56 was raised, which provisions come into play where the income becomes assessable as business income or from other sources, while the income in the instant case is derived by a charitable/religious institutions from property held under trust and, further, stands brought to tax on account of the benefit of section 11 being not applicable.

Conclusion

4. The assessee, a society with charitable and religious objects, is in receipt of voluntary contributions as well as interest income during the year, both 'income' by definition. Chapter III of the Act (containing sections 10 to 13B), titled 'Incomes which do not form part of the total income', exempts all income derived from a property held under trust arising to a charitable and religious trust/ institution u/s. 11, i.e., on application of its income for its' objects. The same is subject to a satisfaction of the conditions laid down therein, as well as other provisions of the said Chapter. Section 12A(1) stipulates the condition of registration of the trust/institution in receipt of income being registered u/s. 12AA. The assessee is admittedly not registered even subsequent to the completion of assessment, so that the benefit of exemption u/s. 11 shall not apply thereto. Its' claim for exemption u/s. 11 on the 'surplus' reflected by its accounts – its' receipt being by way of voluntary contributions (Rs.90.41 lacs) and interest (Rs.3.91 lacs), i.e., incomes derived from property held under trust, was accordingly denied by the Revenue.

The issue at large is the sustainability in law of the impugned order or the assessment it upholds. We have, for the reasons afore-stated, explained the infirmity attending the assessment, i.e., as to why the assessee's as well as the Revenue's case cannot be accepted. We are conscious that the Revenue is not in appeal, and that the assessee stands allowed relief, ostensibly u/s. 11, contrary to law, in respect of the amount spent (applied) by it for its' objects. There is no basis for allowing exemption to the assessee on its' income u/s. 11 to whatever extent. We may accordingly answer the two aspects of the impugned assessment that we discern as arising for our consideration/adjudication. The voluntary contributions to the assessee-society qualify as income u/s. 2(24)(iia) of the Act, and is therefore, subject to the provisions of the Act, eligible for exemption u/s. 11 on application. Two, the assessee is not entitled to exemption u/s. 11 in-as-much as it is admittedly not registered u/s. 12AA of the Act, which issue stands settled by the decision by the Apex Court in *U.P. Forest Corporation v. Dy. CIT* [2008] 297 ITR 1 (SC). In this regard, it may relevant to state that *it is the correct legal position that is relevant*, and not the view that the parties may take of their rights in the matter (*CIT v. C. Parakh & Co. (India) Ltd.* [1956] 29 ITR 661 (SC))(also refer *Kedarnath Jute Mfg. Co. Ltd. v. CIT* [1971] 82 ITR 363 (SC)). That apart, it may be appreciated that not so holding, i.e., that the assessee is not entitled to any exemption u/s. 11 on account of non-registration u/s. 12AA, on which aspect there is no ambivalence in law (refer section 12A(1)), would render our own order as internally inconsistent, i.e., the same malady that inflicts the orders by the Revenue authorities, besides laying down a wholly unacceptable legal proposition/judicial precedent, inconsistent with the decision in *U.P. Forest Corporation v. Dy. CIT* (supra). We are also, we may add, conscious of the provision of s. 12A(2), which essentially seeks to extend the benefit of sections 11 and 12 to years for which

registration u/s. 12AA is not available subject to the non-change of the objects of the trust during the intervening period, i.e., at the time of grant of registration and that obtaining during the relevant previous year. The same, however, would get triggered only upon grant of registration u/s. 12AA, which has admittedly not even been applied for by the assessee.

We may at this stage also dwell on the powers of the Tribunal, which have, beginning with the decisions by the Apex Court in *Hukumchand Mills Ltd. v. CIT* [1967] 63 ITR 232 (SC) and *CIT v. Mahalakshmi Textile Mills Ltd*. [1967] 66 ITR 710 (SC), been examined, dilated and explained by the Hon'ble Courts of law in considerable detail, with the Hon'ble Apex Court in the cited cases stating that Rules 11 & 27 of the Income Tax (Appellate Tribunal) Rules, 1963 are not exhaustive of the powers of the Tribunal. In *Kapurchand Shrimal v. CIT* [1981] 131 ITR 451 (SC), the Apex Court clarified that an appellate authority is duty bound to correct all errors in the proceedings and issue appropriate directions. In *Ahmedabad Electricity Co. Ltd. v. CIT* [1993] 199 ITR 351 (Bom)(FB), the Hon'ble Court, after an exhaustive review of case law in the matter, explained that the basic purpose of an appeal in an income-tax matter is to ascertain the correct tax liability of the assessee in accordance with law. Both the appellate commissioner as well as the appellate tribunal can, as an appellate authority, consider the proceedings and the material on record before it for the purpose of determining the correct tax liability of the assessee. This, it further explained, is subject to the appellate authorities not travelling to or examining new sources of income. Earlier, in *CIT v. Indian Express (Madurai) (P.) Ltd*. [1983] 140 ITR 705 (Mad), the Hon'ble Court, again after a review of the case law, clarified that the proceedings under the Act are not adversarial in nature, and that the authorities sitting in appeal cannot be considered as deciding a *lis*; their purview being the

correct determination of the assessee's tax liability. The case law in the matter is legion, and toward which we may refer some other decisions, as follows: *CIT v. Assam Travels Shipping Service* [1993] 199 ITR 1 (SC); *CIT v. C.C.C. Holdings* [2003] 260 ITR 433 (Mad); *Thanthi Trust v. Asst. CIT* [1999] 238 ITR 117 (Mad); *Controller of Estate Duty v. R.Brahadeeswaran* [1987] 163 ITR 680 (Mad); *CIT v. Cellulose Products of India Ltd*. [1985] 151 ITR 499 (Guj-FB).

The matter accordingly shall travel back to the file of the AO for adjudication afresh in accordance with law, in light of the foregoing findings/ observations. The assessee shall be allowed deduction *qua* any expenditure incurred, if any, including administrative expenditure, for the purposes of the running the institution or organizing its' activities. We say so, without anything on record to suggest that any such expenditure stands incurred; the assessee accepting and in fact returning a surplus of Rs. 23.85 lacs, i.e., after apparently applying Rs. 70.47 lacs toward the objects of the trust, only in the interest of justice inasmuch as some expenditure would necessarily have been incurred in organizing and execution of its' various activities by the assessee; our purview, as afore-stated, extends to the correctness of the income chargeable under the Act. The burden of proof or the onus to prove the said expenditure would be on the assessee, whose accounts are presumably audited, i.e., under the provisions of its charter read with its' governing law, i.e., Society Registration Act, 1860. A charitable trust, we may though clarify, is to apply its' accounting income, so that the expenditure need not necessarily satisfy the mandate of sec. 37(1) or sec. 57.

We decide accordingly.

5. In the result, the assessee's appeal is disposed on the aforesaid terms.

Order pronounced in the open Court on March 15, 2018

Sd/-	Sd/-
(N. K. Choudhry)	(Sanjay Arora)
Judicial Member	Accountant Member

Dated: 15.03.2018

/PK/ Ps.

Copy of the order forwarded to:

(1) The Appellant: Langar Committee Hanuman Mandir, Malerkotla.
(2) The Respondent: ITO(E), Jalandhar
(3) The CIT(A)-4, Ludhiana
(4) The CIT, concerned.
(5) The SR DR, I.T.A.T.

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By Order