

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री भागचन्द, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 247/JP/2018
निर्धारण वर्ष/Assessment Years : 2012-13.

M/s. Ganga Devi Memorial Charitable Trust, C-21, Chomu House, C-Scheme, Jaipur.	बनाम Vs.	The Income Tax Officer, (Exemptions) Ward-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN NO. AAATG 6134 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Advocate)
राजस्व की ओर से / Revenue by : Smt. Poonam Rai (DCIT)

सुनवाई की तारीख / Date of Hearing : 21.06.2018.
घोषणा की तारीख / Date of Pronouncement : 27/06/2018.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 1st February, 2018 of Id. CIT (A)-3, Jaipur for the assessment year 2012-13. The assessee has raised the following grounds of appeal :-

1. Under the facts and circumstances of the case the assessment order passed by the learned Assessing Officer is unlawful, illegal and unjustified and deserves to be quashed being ab-initio void has been wrongly confirmed by the learned CIT (A).
2. Under the facts and circumstances of the case the learned CIT (A) has erred in confirming the addition of Rs. 17,75,000/- by disallowing exemption u/s 11(1)(a) of the Income Tax Act, 1961 for the amount which were received in earlier years.

3. Under the facts and circumstances of the case the learned CIT (A) has erred in confirming the action of the learned Assessing Officer in making the addition of Rs. 17,75,000/- by alleging that the assessee has violated section 13(1)(d) r.w.s. 11(5) of the Income Tax Act, 1961 without considering the submission of the assessee that the assessee has parked its surplus fund to generate more revenue.
4. The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing.

2. The assessee is a trust established vide Trust Deed dated 23.08.2001 and registered with the Sub Registrar, Jaipur-1, Jaipur. The assessee trust was granted registration under section 12AA of the I.T. Act, 1961. The assessee filed its return of income for the year under consideration on 28th September, 2012 and claimed exemption under section 11(1)(a) of the IT Act. During the course of assessment proceedings, the AO noted that the assessee has given loans and advances of Rs. 17,75,000/- in contravention of provisions of section 13(1)(d) read with section 11(5) of the Act. The AO asked the assessee as to why the exemption claimed under section 11 should not be withdrawn. In response the assessee submitted that during the year the assessee has temporarily given advances of Rs. 17,00,000/- to M/s. Govind Agencies to earn interest income on the surplus fund for a short period of time. The assessee also explained that an interest income of Rs. 1,39,758/- was received by the assessee in the next year which has been utilized for charitable purposes of this Trust. The AO did not accept the contention of the assessee and held that the said amount of Rs. 17,75,000/- being accumulated amount has not been applied by the assessee for charitable purposes and accordingly made an

addition of the said amount. The assessee challenged the action of the AO before the Id. CIT (A) but could not succeed.

3. Before us, the Id. A/R of the assessee has submitted that when the assessee has applied 85% of its income for charitable purposes as per the provisions of section 11(1)(a) of the Act, then the amount of Rs. 17,75,000/- though may not be an investment as per the modes prescribed under section 11(5) of the Act, the same cannot be held as application of income for non-charitable purposes. Thus the Id. A/R has submitted that as per the provisions of section 13(1)(d) only the income on such investment can be taxed and the principal amount cannot be added or charged to tax. In support of his contention he has relied upon the decision of Coordinate Bench of this Tribunal dated 05.11.2014 in case of Santokba Durlabhji Trust Fund, Jaipur vs. ITO in ITA No. 169/JP/2012 as well as the decision of Mumbai Benches of the Tribunal dated 04.02.2016 in case of ACIT (Exemptions) vs. Jamshetjee Tata Trust in ITA No. 3807/Mum/2015. Hence, the Id. A/R has submitted that at the most the interest income earned on such advances/loans can be charged to tax and not the principal amount when the assessee has already complied with the conditions as prescribed under section 11(1)(a) of the Act to the extent of application of 85% of income for charitable purposes.

3.1. On the other hand, the Id. D/R has submitted that this is a clear violation of provisions of section 11(5) as well as section 13(1)(d) of the Act as the assessee has advanced the money to private parties and not invested as per the modes prescribed under section 11(5) of the IT Act. Since the assessee has violated the provisions of section 13(1)(d) of the Act, therefore, the assessee lost the exemption under section

11 of the Act and the entire income of the assessee is liable to be taxed. The Id. D/R has thus submitted that instead of taxing the entire income, the assessee has made the addition only to the extent of Rs. 17,75,000/-. She has relied upon the orders of the authorities below.

4. We have considered the rival submissions as well as the relevant material on record. The assessee is undisputedly granted registration under section 12AA as a charitable/religious trust and, therefore, entitled for exemption under section 11 of the IT Act. The income derived from the property held under the Trust wholly for charitable or religious purposes to the extent of which it is applied for charitable purposes in India is exempt from income tax as the same shall not be included in the total income of the Trust. Thus in order to avail the benefit under section 11 of the Act, the conditions stipulated under sections 11 and 13 of the Act are to be fulfilled. The provisions of section 11 contemplate the conditions of application of income whereas the provisions of section 13 of the Act prescribe the conditions of source of income from the investment of funds of the Trust. In the case in hand, the AO has added a sum of Rs. 17,75,000/- on the ground that the assessee has violated the provisions of section 11(5) read with section 13(1)(d) of the Act. It is pertinent to note that section 11(5) of the Act prescribes certain modes of investment and deposits of the accumulated amount or set apart amount from the income of the Trust. For availing the exemption under section 11(1)(a), there is no such condition of deposit of accumulated amount or set apart amount not in exceed of 15% of the income to be invested or deposited in the manner and modes prescribed under section 11(5) of the Act but has to be applied for charitable

purpose within a period of five years. For ready reference, we reproduce the provisions of section 11(1) as under :-

“ 11. (1) Subject to the provisions of [sections 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—

- ³⁵[(a) income derived from property³³ held under trust wholly³³ for charitable or religious purposes³³, to the extent to which such income³³ is applied³³ to such purposes in India³³; and, where any such income is ³³accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart³⁶ is not in excess of ³⁷[fifteen] per cent of the income from such property;
- (b) income derived from property held under trust in part³⁶ only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income³⁶ is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of ³⁷[fifteen] per cent of the income from such property;
- (c) income ³⁸[derived] from property held under trust—
- (i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India³⁹, and
 - (ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

⁴⁰[(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus⁴¹ of the trust or institution.]

⁴²[⁴³[Explanation 1].—For the purposes of clauses (a) and (b),—

- (1) in computing the ⁴⁴[fifteen] per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in [section 12](#) shall be deemed to be part of the income;
- (2) if, in the previous year, the income applied to charitable or religious purposes in India falls short of ⁴⁵[eighty-five] per cent of the income derived during that year from property held under trust, or, as the case may be, held under trust in part, by any amount—
 - (i) for the reason that the whole or any part of the income has not been received during that year, or
 - (ii) for any other reason,
 then—
 - (a) in the case referred to in sub-clause (i), so much of the income applied to such purposes in India during the previous year in which the income is

received or during the previous year immediately following as does not exceed the said amount, and

- (b) in the case referred to in sub-clause (ii), so much of the income applied to such purposes in India during the previous year immediately following the previous year in which the income was derived as does not exceed the said amount,*

may, at the option of the person in receipt of the income⁴⁶ [(such option to be exercised before the expiry of the time allowed under sub-section (1) of [section 139](#) for furnishing the return of income, in such form and manner as may be prescribed⁴⁷)] be deemed to be income applied to such purposes during the previous year in which the income was derived; and the income so deemed to have been applied shall not be taken into account in calculating the amount of income applied to such purposes, in the case referred to in sub-clause (i), during the previous year in which the income is received or during the previous year immediately following, as the case may be, and, in the case referred to in sub-clause (ii), during the previous year immediately following the previous year in which the income was derived.]

⁴⁸*[Explanation 2.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) read with Explanation 1, to any other trust or institution registered under [section 12AA](#), being contribution with a specific direction that they shall form part of the corpus of the trust or institution, shall not be treated as application of income for charitable or religious purposes.]*

Thus to the extent of the accumulation or set apart not in excess of 15% of the income is permitted under section 11(1)(a) for availing the exemption of the income derived from property held under the Trust. Even as per the Explanation to section 11(1)(a) and (b) a Trust is further allowed to defer the application of income which is even falls short of 85% of the income derived during the year, if the assessee has exercised an option before the due date of filing the return under section 139(1) that the said income will be applied in the immediately following previous year. Hence to the extent of the application of 85% and accumulation of remaining 15%, there is no condition of keeping the said 15% amount as per the modes of investment and deposits prescribed under section 11(5). However, there is a further relaxation even

for application of 85% of income to the extent if such income is accumulated or set apart either in whole or in part for application to such purposes in India subject to the conditions prescribed under sub-section (2) of section 11 of the Act. For ready reference, we quote section 11(2) of the Act as under :-

⁵²“ [(2) ⁵³[Where ⁵⁴[eighty-five] per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—]

- ⁵⁵[(a) such person furnishes a statement in the prescribed form and in the prescribed⁵⁶ manner⁵⁷ to the Assessing Officer, stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years;
- (b) the money so accumulated⁵⁷ or set apart is invested or deposited in the forms or modes specified in sub-section (5);
- (c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of [section 139](#) for furnishing the return of income for the previous year:

Provided that in computing the period of five years referred to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded.]

⁵⁸[Explanation.—Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under [section 12AA](#) or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of [section 10](#), shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.]”

Therefore, a trust would not lose exemption even in case 85% of the income is not applied during the year under consideration but the short fall of 85% either in whole

or in part is accumulated or set apart for application to such purposes in India by giving a notice in writing to the AO and the money so accumulated or set part is invested or deposited in the form or modes specified in sub-section (5) of section 11.

The modes as prescribed under sub-section (5) of section 11 are as under :-

⁷¹ “ [(5) *The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely :—*

- (i) *investment in savings certificates as defined in clause (c) of [section 2](#)⁷² of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;*
- (ii) *deposit in any account with the Post Office Savings Bank;*
- (iii) *deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).*

Explanation.—In this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under [section 3](#) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under [section 3](#) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

- (iv) *investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);*
- (v) *investment in any security for money created and issued by the Central Government or a State Government;*
- (vi) *investment in debentures issued by, or on behalf of, any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;*
- (vii) *investment or deposit⁷³ in any ⁷⁴[public sector company]:*

⁷⁵**[Provided** that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector company,—

- (A) *such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of three years from the date on which such public sector company ceases to be a public sector company;*
- (B) *such other investment or deposit shall be deemed to be an investment or deposit made under this clause for the period up to the date on which such*

investment or deposit becomes repayable by such company;]

- (viii) *deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and ⁷⁶[which is eligible for deduction under clause (viii) of sub-section (1) of [section 36](#)];*
- (ix) *deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and ⁷⁶[which is eligible for deduction under clause (viii) of sub-section (1) of [section 36](#)];*
- ⁷⁷*[(ixa) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India.*

Explanation.—For the purposes of this clause,—

- (a) *"long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;*
- (b) *"public company" shall have the meaning assigned to it in [section 3⁷⁸](#) of the Companies Act, 1956 (1 of 1956);*
- (c) *"urban infrastructure" means a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, roads, bridges and flyovers or urban transport;]*
- (x) *investment in immovable property.*

Explanation.—"Immovable property" does not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to, or permanently fastened to, anything attached to the earth;]

- ⁷⁹*[(xi) deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964);]*

- ⁸⁰*[(xii) any other form or mode of investment or deposit as may be prescribed. ⁸¹]"*

Therefore, the condition of investment or deposit in the manner and modes prescribed under section 11(5) is to be fulfilled only in case the Trust has not applied its income during the year to the extent of 85% and as per section 11(2) has set apart or accumulated the short fall portion to be applied for specific purposes, then the said amount of short fall has to be kept in the investment or deposits as

prescribed under section 11(5) of the Act. Hence in case the Trust has complied with the conditions of application of 85% of the income during the year under consideration, then there is no pre-condition for the balance income accumulated not exceeding 15% to be kept in the deposits or investment as prescribed under section 11(5) of the Act for availing the exemption under section 11(1)(a) of the IT Act.

5. As regards the issue of violation of the conditions as prescribed under section 13(1)(d), there is no dispute that the investment being the advances/loans given to the persons and not in conformity with the provisions of section 11(5), the income from such investment would not be eligible for exemption under section 11 of the Act due to the reason of not fulfilling the conditions prescribed under section 13(1)(d) of the Act. For ready reference, we quote section 13(1)(d) as under :-

“ 13. (1) Nothing contained in [section 11](#)³³[or [section 12](#)] shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

- (a) XXXX XXXXX
- (b) XXXXX XXXXX
- (bb) ³⁵[***] XXXXX
- (c) XXXX XX
- ³⁷[(d) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year—
 - (i) any funds³⁸ of the trust or institution are invested or deposited³⁸ after the 28th day of February, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of [section 11](#); or
 - (ii) any funds of the trust or institution invested or deposited³⁸ before the 1st day of March, 1983 otherwise than in any one or more of the forms or modes specified in sub-section (5) of [section 11](#) continue to remain so invested or deposited after the 30th day of November, 1983; or
 - ³⁹[(iii) any shares in a company, other than—

- (A) shares in a public sector company ;
- (B) shares prescribed as a form or mode of investment under clause (xii) of sub-section (5) of [section 11](#),

are held by the trust or institution after the 30th day of November, 1983:]

Provided that nothing in this clause shall apply in relation to—

- (i) any assets held by the trust or institution where such assets form part of the corpus of the trust or institution as on the 1st day of June, 1973 ⁴⁰[***];
- ⁴¹[(ia) any accretion to the shares, forming part of the corpus mentioned in clause (i), by way of bonus shares allotted to the trust or institution;]
- (ii) any assets (being debentures issued by, or on behalf of, any company or corporation) acquired by the trust or institution before the 1st day of March, 1983;
- ⁴²[(iia) any asset, not being an investment or deposit in any of the forms or modes specified in sub-section (5) of [section 11](#), where such asset is not held by the trust or institution, otherwise than in any of the forms or modes specified in sub-section (5) of [section 11](#), after the expiry of one year from the end of the previous year in which such asset is acquired or the 31st day of March, ⁴³[1993], whichever is later;]
- (iii) any funds representing the profits and gains of business, being profits and gains of any previous year relevant to the assessment year commencing on the 1st day of April, 1984 or any subsequent assessment year.

Explanation.—Where the trust or institution has any other income in addition to profits and gains of business, the provisions of clause (iii) of this proviso shall not apply unless the trust or institution maintains separate books of account in respect of such business.]

⁴—⁴[*Explanation.*—For the purposes of sub-clause (ii) of clause (c), in determining whether any part of the income or any property of any trust or institution is during the previous year used or applied, directly or indirectly, for the benefit of any person referred to in sub-section (3), in so far as such use or application relates to any period before the 1st day of July, 1972, no regard shall be had to the amendments made to this section by section 7 [other than sub-clause (ii) of clause (a) thereof] of the Finance Act, 1972.]”

Thus section 13(1)(d) provides the investment/deposits as prescribed under section 11(5) of the Act and non-fulfillment of the said conditions would not deprive a Trust the exemption in respect of other income so long the assessee is granted registration under section 12AA of the Act. Accordingly, the provisions of section

164(2) for bringing the income to tax at maximum marginal rate which is not eligible for exemption due to non-satisfaction of the conditions of investment as prescribed under section 11(5) of the Act. Hence only the income from such investment which is made in violation of provisions of section 11(5) will be taxed in terms of the provisions of section 164(2) and not the investment itself has to be taxed when the assessee has complied with the conditions of section 11(1)(c) of the Act. The Coordinate Bench of this Tribunal in case of Santokba Durlabhji Trust Fund vs. ITO (supra) held in para 4.7 and 5.1 as under :-

"4.7 We find merit in the contention of Id. Counsel for the assessee that the proposition of apportionment of income eligible for benefits u/s 11 and 12 between exempted or non exempted income is upheld by Hon'ble Supreme Court in Dawoodi Bohra Trust (supra). Thus Hon'ble Supreme court has rationally dealt with this situation and instead of denying the entire benefits of sec 11 and 12 even for a technical, venial or smaller breach a sound and reasonable proposition has been laid down. In view of the foregoings we have no hesitation to hold that the entire benefits of sec. 11 and 12 cannot be forfeited from the trust and the corresponding dividend income from TISCO shares will not be eligible for Benefits of sec. 11 and 12.

5.1 Now we advert to the assessee's contention that income not eligible for benefits of sec 11 and 12 is to be subjected to other provisions of the IT Act and thereafter the taxable income is to be subjected to maximum marginal rate. We find force in this argument. As per the scheme of the Act, first the trust income is to be worked out, thereafter, benefits of provision of secs. 11 and 12 are to be applied. Remainder income is than to be treated with regular provisions of the Act and resultant income i.e. taxable income is to be subjected to maximum marginal rates. Applying

this scheme of the I T Act to assessee case the non-beneficial income is in the form of dividend income from TISCO shares. There is no dispute between the parties about the nature of income being dividend and quantum thereof. In the backdrop of these facts the dividend income being exempt from income by express provisions of sec 10(34), the dividend income is exempt from Income Tax. This being so, in the result there remains no tax liability on the trust. Consequently we hold accordingly and delete the additions in this behalf. Our judgment is fortified by the judgments cited by the assessee's counsel (supra) which deal with the issue before us with precision and which we respectfully follow. Apropos the case laws cited by Id DR – They have been considered by above judicial precedents to arrive at the above conclusion, which we are respectfully following. We may hasten to add that even department has not been taking any particular stand and allowing the benefits of sec 11 and 12 in some of the years, then rethinking and refusing the benefits by reopening the assessments. Thus even the department has its own share of interpretations, leading to repetitive proceedings. In consideration of all the foregoing, we allow the appeal filed by the assessee.”

Hence, in view of the above facts and circumstances of the case as well as following the decision of Coordinate Bench of the Tribunal, we hold that when the assessee has already applied 85% of the income for charitable purposes then the investment in question in violation of provisions of section 11(5) read with section 13(1)(d) would attract the provisions of section 164(2) only in respect of the income on such investment. The assessee has earned the income on such investment in the subsequent year and, therefore, no addition is called for for the year under consideration either on the investment or income from such investment.

Consequently, we set aside the orders of the authorities below and delete the addition made by the AO.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 27/06/2018.

Sd/-

(भागचन्द)
(BHAGCHAND)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 27/06/2018.

das/

Sd/-

(विजय पाल राँव)
(VIJAY PAL RAO)

न्यायिक सदस्य / Judicial Member

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

1. अपीलार्थी / The Appellant-Ganga Devi Memorial Charitable Trust, Jaipur.
2. प्रत्यर्थी / The Respondent-The ITO (Exemptions), Ward-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 247/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar