



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER  
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.253 & 254 /CTK/2017**  
Assessment Years : 2010-2011 & 2011-2012

Adhikar , Plot No.113/2524, Khandagiri Vihar, Khandagiri, Bhubaneswar.	Vs.	Income Tax Officer, Ward- 2(1), Bhubaneswar
PAN/GIR No. AAATA 3160 D		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri S.C.Bhadra, AR  
Revenue by : Shri Subhendu Datta, DR

**Date of Hearing : 05/09/ 2018**  
**Date of Pronouncement : 24/09/ 2018**

**ORDER**

**Per N.S.Saini, AM**

These are appeal filed by the assessee against the order of the CIT(A)-3, Bhubaneswar dated 29.3.2017 for the assessment year 2010-2011 and 2011-2012, respectively.

2. The common ground of appeal raised by the assessee in both the appeals is that the CIT(A) erred in confirming the order of the Assessing Officer in not allowing exemption u/s.11 & 12 of the Act on the ground that the assessee has violated the provisions of section 13(1)(c) of the Act on account of payment to

Adhikar Micro Finance Ltd., and Adhikar Grameen Products Pvt Ltd., and also the assessee has violated the provisions of section 13(1)(d) of the Act by making payment of remuneration to the Secretary and President of the assessee society.

3. We have heard the rival submissions, perused the orders of lower authorities and materials available on record. The assessee is a charitable trust registered under section 12A of the Act on 21.12.1995. For the assessment year 2010-2011 from the ledger account of the assessee, the Assessing Officer observed that a sum of Rs.1,52,00,000/- was receivable from M/s. Adhikhar Micro Finance (P) Ltd., as on 1.4.2009 and during the year , a sum of Rs.50,00,000/- was advanced by the assessee society as interest free temporary loan on 29.9.2009. The Assessing Officer observed that Mr N. Amin is the President of the assessee society and also Shri Manmath Kumar Bhanjdeo is the trustee of the assessee society. Both have held shares in the company Adhikar Micro Finance Pvt Ltd., Therefore, he held that the assessee has violated the provisions of section 13(1)(c) of the Act. Further, he observed that the assessee has paid salary and consultancy fees to the following persons:

Sl No.	Name of the trustee/relative of trustee	Designation/relationship with the society	Nature of payment	Amount paid (Rs.)
1.	Md N. Amin	President	Salary	6,45,600
2.	Manmath Kr Bhanjdeo	Secretary	Salary	1,63,000
3.	T. Mumtaz	Wife of President	Salary	93,600
4.	Md Aquill	Brother of President	Salary	1,47,900
5.	S.C.Jena	Member	Consultancy	24,500
6.	S.K.Abdul Safique	Member	Education Charity	16,000

Therefore, he held that the assessee has violated the provisions of section 13(1)(d) of the Act.

4. Further, for the assessment year 2011-12, the Assessing Officer observed that the assessee has given interest free advance on various dates aggregating to Rs.3,95,00,000/- to M/s. Adhikar Micro Finance (P) Ltd., and Rs.7,48,851/- to M/s. Adhikar Grameen Products Ltd. The Assessing Officer observed that Mr N. Amin is the President of the assessee society and also Shri Manmath Kumar Bhanjdeo is the trustee of the assessee society. Both have held shares in the company Adhikar Micro Finance Pvt Ltd. and M/s. Adhikar Grameen Products Ltd, thereby violated the provisions of section 13(1)(c) of the Act. The assessee has paid remuneration to the following persons:

Sr. No.	Name	Designation	Project Designation	Purpose	Amount(R s.)
1.	Md N Amin	President	CEO	Salary	1,33,800
2.	Manmath Ku Bhanjadeo	Secretary	Proj.Coordinator	Salary	1,92,000
3.	Subash Chandra Jena	Board Member		Consultancy	36,500
4.	S.K.Abdul Safique	Board Member		-do-	76,000

Therefore, he held that the assessee has violated the provisions of section 13(1)(d) of the Act.

5. During the assessment year 2010-11, the assessee has surplus of Rs.4.85,680/- and for the year 2011-12, the assessee has surplus of Rs.1,17,22,200/-. In view of above, he denied exemption u/s.11 & 12 of the Act to the assessee society on the ground that the assessee has violated the provisions of section 13(1)(c) and 13(1)(d) of the Act. Therefore, he levied tax at maximum marginal rate on the entire income of the trust.

6. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

7. Before us, Id A.R. submitted that for the assessment year 2010-11, there was opening receivables of Rs.1,52,00,000/- as on 1.4.2009 and during the year, the assessee has further paid

Rs.50,00,000/- to the said company M/s. Adhikar Micro Finance (P) Ltd., but the assessee has also received Rs.4,72,25,113/- during the year from the said company and at the end of the year, the assessee has received Rs.2,70,25,113/- in excess from the said company, which was the liability of the assessee trust to the said company.

8. Similarly, during the assessment year 2011-12, the assessee has paid Rs.2,33,94,176/- and there was balance at the end of the year of Rs.36,30,937/- in excess from the said company, which was the liability of the assessee trust to the said company.

9. Moreover, no material has been brought on record by the lower authorities to show that any provision referred to in section 13(3) of the Act, the trustee had substantial interest in the said company. We find that Hon'ble Allahabad High Court in the case of CIT vs. Kamla Town Trust, 279 ITR 089 (All) has held as under:

"For ready reference cls. (a) & (c) of sub-s. (1) of s. 13, cl. (b) of sub-s. (2) of s. 13, cls. (a), (b), (c), (cc) (d), and (e) of sub-s. (3) of s. 13 & cls. (i) & (ii) of Expln. 3 to s. 13 of the Act are reproduced below :

"13. (1) Nothing contained in s. 11 or s. 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

(a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;

(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;

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust or institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in sub-s. (3):

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-cl. (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-s. (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution :

Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-cl. (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-s. (3), insofar as such use or application relates to any period before the 1st day of June, 1970;

(2) Without prejudice to the generality of the provisions of cl. (c) of sub-s. (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-s. (3),—

(a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-s. (3) for any period during the previous year without either adequate security or adequate interest or both;

(b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-s. (3), for any period during the previous year without charging adequate rent or other compensation;

(3) The persons referred to in cl. (c) of sub-s. (1) and sub-s. (2) are the following, namely :

(a) the author of the trust or the founder of the institution;

(b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution upto the end of the relevant previous year exceeds five thousand rupees;

(c) where such author, founder or person is an HUF, a member of the family;

(cc) any trustee of the trust or manager (by whatever name called) of the institution;

(d) any relative of any such author, founder, person, member, trustee or manager as aforesaid;

(e) any concern in which any of the persons referred to in cls. (a), (b), (c), (cc) and (d) has a substantial interest.....

Explanation 3.—For the purposes of this section, a person shall be deemed to have a substantial interest in a concern,—

(i) in a case where the concern is a company, if its shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than twenty per cent of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other persons referred to in sub-s. (3);

(ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-s. (3) are entitled in the aggregate, at any time during the

previous year, to not less than twenty per cent of the profits of such concern."

11. From a bare reading of the aforesaid provisions, it will be seen that for applicability of cl. (c) of sub-s. (1) r/w cl. (b) of sub-s. (2) of s. 13 of the Act, conditions mentioned in sub-s. (3) r/w Explan. 3 have to be fulfilled. The exemption can be denied only where all the conditions mentioned in the aforesaid provisions are fulfilled. In the present case, there is nothing on record to show that in the institutions/companies to which land was let out or funds were invested, the voting power of not less than twenty per cent was held by the beneficiaries. The Tribunal as a matter of fact has recorded the following findings which had remained unchallenged/uncontroverted by the Revenue and, therefore, they are binding upon this Court in reference proceedings :

"The Department has to be specific about the name of the beneficiary and thereafter, has to place facts on record to establish that such a person falls in the category of prohibited persons. No such attempt has been made by the Departmental authorities. One has not even cared to find out the number of shares of M/s J.K. Synthetics which might be held by the trustees or settlor or both of them combined together and whether the said holding would bring M/s J.K. Synthetics within the provisions of s. 13(3)."

12. It may be remembered that s. 13 carves out an exception to the general exemption granted under ss. 11 and 12 of the Act to incomes derived by trusts/charitable institutions. The onus lies on the Revenue to bring on record, cogent material/evidence to establish that the trust/charitable institution is hit by the provisions of s. 13 of the Act. In the present case, we find that as held by the Tribunal from the passage reproduced above, the Revenue has miserably failed to bring any material on record to establish that the trust in question fell within the prohibited category enumerated in s. 13 of the Act. In our considered opinion, therefore, the Tribunal was justified in holding that the aforesaid provisions were not attracted.

13. In view of the foregoing discussions, we answer the question referred to us in the affirmative, i.e., in favour of the assessee and against the Revenue. However, there shall be no order as to costs."

10. In the instant case also no material has been brought on record before us by the department to show that according to the

provisions referred to in section 13(1)(c) of the Act, the trustee has substantial interest either singly or jointly in M/s. Adhikar Micro Finance Pvt Ltd and M/s. Adhikar Grameen Products Ltd. Therefore, respectfully following the above decision, the allegation of the department of violation of provisions of section 13(1)(c) is not sustainable .

11. Further, on a bare perusal of provisions of section 13(1)(d) of the Act show that to attract these provisions, it is not enough that remuneration has been paid to trustees but it has to be also shown that the remuneration paid is excessive or unreasonable as compared to the services rendered by those persons.

12. In the instant case, nowhere the Assessing Officer has even alleged that the remuneration paid to four persons stated above were excessive or unreasonable. The Assessing Officer proceeded on the assumption that section 13(1)(d) of the Act is attracted merely on making of payment of remuneration to the trustees whereas the legal position is not such. In absence of any material brought before us by the revenue to show that the remuneration paid to the four persons in question were excessive or unreasonable having regard to the services rendered by them, in our considered view, the allegation of the Assessing Officer that there was violation of provisions of section 13(1)(d) is also



unsustainable. We, therefore, set aside the orders of lower authorities and direct the Assessing Officer to allow exemption u/s.11 & 12 of the Act to the assessee as per law.

13. In the result, appeals of the assessee are allowed.

Order pronounced on 24/09/2018.

Sd/-

sd/-

**(Pavan Kumar Gadale)**  
**JUDICIALMEMBER**

**(N.S Saini)**  
**ACCOUNTANT MEMBER**

Cuttack; Dated 24/09/2018  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Revenue: ITO, Ward 2(1), Bhubaneswar.
2. The Assessee: Adhikar, Bhubaneswar.
3. The CIT(A)-3, Bhubaneswar
4. Pr.CIT-3, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

**Sr. Pvt. Secretary,  
ITAT, Cuttack**