

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 416/Ahd/2020
Assessment Year 2016-17**

The ACIT(Exemption) Circle-1, Ahmedabad (Appellant)	Vs	Adarsh Foundation C/O, SAL Hospital And Medical Institution, Opp. Doordarshan Tower, Drive-in-Road, Thaltej, Ahmedabad PAN No: AAATA2111J (Respondent)
---	----	--

**Appellant by : Shri Parin Shah, A.R.
Respondent by : Shri V.K. Singh, Sr.D.R.**

Date of hearing : 18-07-2022
Date of pronouncement : 20-07-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

The present appeal has been filed by the Revenue against the order dated 13.03.2020 passed by the Commissioner of Income Tax (Appeals)-9, Ahmedabad, as against the Assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2016-17.

2. Registry has noted that there is a delay of 24 days in filing appeals by the assessee before the Tribunal. The appeal is filed before the Tribunal on 17.07.2020 whereas the appeals ought to have been filed on or before 23.06.2020 This period falls under COVID-Pandemic situation, thus following Hon'ble Supreme Court judgment dated 23.3.2020 in suo moto Writ Petition (Civil) No.3 of 2020, vide Hon'ble Supreme Court has extended time limit for filing appeals w.e.f. 15.3.2020. Thus, there is no delay in filing the above appeal. Delay accordingly condoned, and take the appeals of the assessee for adjudication on merit.

2.1. The Grounds of Appeal raised by the Revenue reads as under:

1. *Whether, the Ld.CIT(A) has erred in the law and on facts in allowing the exemption u/s. 11 of the Act and directing to re-compute the income.*
2. *The Id. CIT(A) ought to have upheld the order of the AO, when the AO has clearly brought out the facts that the assessee has violated the provisions of section 13(l)(c), 13(2)(b), 13(2)(d) and 13(2)(g) of the Act*
3. *The Revenue craves to add, alter amend modify, substitute delete and /or rescind all or any Grounds of appeal on or before the final hearing if necessary so arises.*

3. The brief facts of the case is that the assessee trust is carrying out medical & educational, establishment and maintenance or support of schools, colleges, vidyapiths, university and other institution for imparting education and training of student. The assessee is registered trust u/s. 12A(a) of the Act from 06.10.1995. The Trust is running Hospital in the name of SAL Hospital. The

assessee trust is having two subunits in the name of Kesar SAL Medical College and Research Institute and SAL Hospital and Medical Institute (SHMI). The assessee trust entered into an agreement on 01.04.2008 with SAL Care Pvt. Ltd. (SCPL) for handing over the operations and management of SAL Hospital in the hands of SCPL.

3.1. The SCPL is one of the business entities of M/s. Shah Alloys Ltd., group to which the assessee trust also belongs. Shri Karan R. Shah, the key Management Personnel and Director of SCPL, is the son of Shri Rajendra V. Shah, the Managing Trustee of the Trust. By virtue of this fact, the SCPL is covered under the definition of the person as per provisions of Section 13(3)(e) read with explanation 1 & 3 of the Act. By entering into the referred agreement with SCPL, the eligibility conditions for claiming deduction u/s. 11 of the Act, as laid down in sections 13(1)(c)(ii), 13(2)(b), 13(2)(d) and 13(2)(g) of the Act have been violated by the assessee trust. Therefore the income of the Trust is treated as Association of Person "AOP" and only expenditure incurred was allowed and thereby assessed the total income as Rs. 4,54,85,017/-.

4. Aggrieved against this order, the assessee challenged the same before the Ld. CIT(A)-9, Ahmedabad. The ld. CIT(A) following the order passed by the Co-ordinate Bench of this Tribunal in assessee's own case for the Assessment Year 2009-10 in ITA NO. 1858/Ahd/2013 dated 20.09.2019 allowed the appeal filed by the

assessee in cancelling the assessment made on the income of the assessee as AOP and directed to grant exemption u/s. 11 & 12 of the Act. The ld. Counsel for the assessee submitted a copy of the order passed by the Co-ordinate Bench in assessee's own case wherein the Department appeal filed in ITA No. 1858/Ahd/2013 held as follows:

6. *Being, aggrieved the assessee filed this appeal before the Tribunal. The Ld. Sr. DR has took as per the assessment order and findings of the AO. The Ld. Sr. DR contended that as per agreement, the SCPL will pay management fees amounting to Rs. 1 crore or 40% of the net profit before tax (which is higher) in lieu of takeover of the trust. However, there is no rational has been provided for arriving at such a funding. The assessee has failed to furnish any reasonable justification whatsoever. Therefore, the agreement entered into by the assessee violate the provisions of Sec. 13(3) of the Act. In view of these facts the Ld. CIT(A) was not justified in deleting the disallowance of deduction u/s. 11(1)(a) of the Act.*

7. *Per contra, the ld. Counsel for the assessee submitted that the assessee trust was continued to run the Kesar Sal Medical College and Research Institute (KSMC) as reflected in the balance sheet as on 31.03.2009 placed at Paper Book Page 20 and the assessee was running the said college. However, with a view to corporatize the hospital the management of the charitable activity was handed over to SCPL which as per the agreement will enable it to effectively carried on operational management of business of SCPL. The trust was running huge loss, therefore to safe-guard the trust's activities and its assets, the assessee trust has taken a pertinent decision whereby all the liabilities can be discharged adequately and income is assured for its objects at the same it is granting image and immovable property remained unaffected. The Ld. Counsel referring Page 57 of the Paper book [which is agreement between the trust and SCPL] submitted that the object of the transfer to SER Hospital for operational management on mutually agreeable terms. The Ld.*

Counsel referred the Clause 2 of the agreement which clearly demonstrate that the trust has granted SCPL the operational management rights to the business with effect from the transfer date. Further, it was submitted that the SCPL has taken over all immovable assets namely plant and equipments movable machinery elaborated equipments etc. on the basis of valuation done by the Government approve valuer or book value whichever is higher. The Ld. Counsel submitted that the Government valuation done at higher it is reflected at Page 78 of the Paper Book which comes to 7.30 crore. The Ld. Counsel further referred the profit sharing composition Clause 4.1 of the agreement by which it was agreed that the trust shall be paid during the terms of agreement a sum equivalent to 40% of the profit before tax or minimum profit or compensation of Rs. 1 crore whichever is higher. The basis for calculation of 40% net profit for the purpose of Clause 4.1 of the agreement shall be annual audited accounts of SCPL. Accordingly, the assessee has received 1.63 crore during the year from SCPL as management fees which have been duly reflected at Paper Book Page 11 in the Income and Expenditure account of the trust. The Ld. Counsel further submitted that the amount of Rs. 5.43 crore was not loan and advances but it was the reimbursement of expenses. Therefore, relying upon the finding of the CIT(A) the Ld. Counsel submitted that the CIT(A) elaborately discussed all aspects and given his finding in accordance with law and same required to be sustained.

8. *We have heard the rival submissions and perused the relevant material on record. We have gone through the findings of the AO as well as CIT(A) part of which are reproduced above in this part of the order. We find that the CIT(A) has arrived on the basic fact that agreement was entered with the company was to secure trust is interest and nor to indulge in the losses and for the purpose of reimburse the expenditure of Kesar Sal Hospital. The object of the transfer agreement with SCPL was to ensure that the hospital is managed professional, and in doing so the purpose of charity is not violated as a reputed hospital of such huge size requires professionally handling. We are also observed that the agreement was not entered into to derive profit from transfer of movable to*

SCPL but to counter the huge losses incurred in running two big hospitals. Therefore, the CIT(A) has correctly held that the activity of the trust to carried on in accordance with its objects and in the best interest of charity, therefore, the exemption u/s. 11(1)(a) has rightly allowed by the Ld. CIT(A). Similarly, the CIT(A) has clearly held that the Sec. 13((1)(c)(ii) can apply only if any part of the charitable income of the trust has been used or applied for the benefits of the said persons during the previous year. But, since no portion of the income of the assessee has been applied for said person, therefore, the case of the assessee falls outside the scope of this section. Further, the trust is in receipt of income by way of management charges from SCPL and also all of its liabilities have been taken over by the same therefore there is a fact that there is no undue benefits of the use of trust property have been taken by any other persons. Similarly, there is no diversion of income of the trust as per Explanation of Sec. 13(2)(d) and 13(2)(g) of the Act as the trust has been benefitted greatly and its deficit of trust duly reduced to a great extent. We also observed that some erroneous presentation of Form No. 10B report does not disentitle the trust for claiming exemption u/s. 11 of the Act. Similarly, the amount of advance of Rs. 54,35,71,980/- in favour of SCPL appearing in the balance sheet was not advance but the reimbursement of the expenses. In the light of the aforesaid facts and circumstances, we are of the considered opinion that the CIT(A) has analyzed the facts correctly and given a judicious finding which does not call for any interference from outside. Accordingly, the same is upheld. Consequently, Ground No. (i) to (iii) of the appeal of the Revenue are therefore dismissed.

5. The ld. D.R. Shri V.K. Singh appearing for the Revenue could not contravene the above order passed by the Tribunal and fairly accepted that it is covered for the present Assessment Year also.

6. Considering the submissions of both sides and following Co-ordinate Bench decision in assessee's own case, the grounds of appeal are hereby rejected and the appeal is hereby dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 20 -07-2022

Sd/-
(WASEEM AHMED)
ACCOUNTGANT MEMBER True Copy
Ahmedabad : Dated 20/07/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद