

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'B' BENCH, CHENNAI
श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.84 & 85/Chny/2022
(निर्धारणवर्ष / Assessment Years:2016-17 & 2017-18)

M/s.Adinath Jain Trust 21, V.V.Koil Street, Choolai, Chennai-600 112.	Vs	The Income Tax Officer, Exemptions Ward-2, Chennai.
PAN: AAATA 6919J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. D.Anand, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. N.Sanjay Gandhi, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	14.09.2022
घोषणाकीतारीख /Date of Pronouncement	:	14 .09.2022

आदेश / ORDER

These two appeals filed by the assessee are directed against order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 03.12.2021 and relevant to assessment years 2016-17 & 2017-18. Since, facts are identical and issues are common, for the sake of convenience, these appeals are heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less filed common grounds of appeal for both assessment years, therefore, for the sake of brevity, grounds of appeal filed for the assessment year 2016-17 are reproduced as under:-

“i) The order of the learned CIT(A) -National Faceless Appeals Centre is arbitrary, based on surmises, against the provisions of law and contrary to the facts of the case and is therefore unsustainable.

ii) The order of the learned CIT(A) is against the provisions of the Income Tax Act, 1961 and binding decisions of Hon'ble Supreme Court and the Hon'ble Jurisdictional Madras High Court.

iii) The learned CIT(A) erred in sustaining addition of notional income of estimated possible interest of Rs.3,30,000/- when there is no provision in the Income Tax Act to assess such Notional income.

iv) The learned CIT(A) erred in sustaining the addition of estimated notional income in violation of binding decision of the Hon'ble Jurisdictional Madras High Court in the case of Commissioner of Income-tax, Madurai v. J. Chelladurai [2012] 17 taxmann.com 73 (Mad.) wherein it was held that no Notional Income can be added when there is no specific provision in the Income Tax Act for making such an addition.

v) The learned CIT(A) erred in sustaining the addition of estimated notional income in violation of the decisions of the Hon'ble Supreme Court in Commissioner of Income-tax, Mangalore v. Fr. Mullers Charitable Institutions [2014] 51 taxmann.com 378 and [2015] Director of Income-tax, Chennai v. Working Women's Forum 63 taxmann.com 324.

vi) The learned CIT(A) erred in not passing a speaking order on the denial of exemption u/s 11, even though when it was held in the order "that the same (property Advance) could not be held as investment or deposit as stated in section 13(1)(d) of

the Act". The learned CIT(A) had held that there is was no violation of section 13(1)(d) but arbitrarily dismissed the other grounds raised by the assessee trust with respect denial of exemption.

For the grounds stated above and the grounds which may be permitted to be adduced at the time of hearing of the appeal it is prayed that additions made be deleted and justice rendered."

3. Brief facts of the case are that the assessee is a trust registered as public charitable trust and recognized u/s.12AA of the Income Tax Act, 1961. The assessee filed its return of income for both the assessment years declaring Nil total income, after claiming exemption u/s.11 of the Income Tax Act, 1961. The case was selected for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that the assessee had shown an amount of Rs.27,50,000/- (Rs.10,00,000/- & Rs.17,50,000/-) as advance for purchase of land- I & II respectively under the head 'loans, advances & deposits'. The Assessing Officer called upon the assessee to produce necessary details for advance for land, but the assessee could not produce any evidences. Therefore, the Assessing Officer treated loans & advances of Rs.27,50,000/- as violation of section 13(1) (d) of the Act, and thus, rejected

exemption claimed u/s.11 of the Income Tax Act, 1961, for both the assessment years. The Assessing Officer had also imputed notional interest @ 12% on sum of Rs.27,50,000/- and made addition of Rs.3,30,000/- for both the assessment years.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee contended that loans & advances shown in balance sheet are advance given for purchase of land way back in the year 2003-04. Further, purchase deed for purchase of land did not materialize and thus, advance paid for purchase of land is still lying with seller. The Assessing Officer without appreciating above facts held that loans & advances is investment in violation of section 13(1)(d) of the Act, and hence rejected exemption claimed u/s.11 of the Income Tax Act, 1961. The assessee further contended that if at all, there is violation u/s.13(1)(d) of the Act, then tax could be levied on the amount of violation referred to u/s.13(1)(d) of the Act, as held by Hon'ble High Court of Madras in the case of DIT Vs. Working Women's Forum (2015) 63 taxmann.com 324. The assessee had also agitated notional interest imputed on loans &

advances. The learned CIT(A), after considering relevant submissions of the assessee and also taken note of various facts held that the assessee has violated provisions of section 13(1)(d) by advancing loans & advances in violation of provisions of section 11(5) of the Act, and thus, opined that the Assessing Officer is right in rejection of exemption u/s.11 of the Act. The learned CIT(A) has also distinguished case law cited by the assessee and held that facts of said case is altogether different from facts of the present case and therefore, cannot give benefit to the facts of the assessee's case. The learned CIT(A) has also upheld imputation of interest @ 12% on notional interest. Aggrieved by the learned CIT(A) order, the assessee is in appeal before me.

5. The learned A.R. for the assessee submitted that the learned CIT(A) erred in sustaining rejection of exemption u/s.11 of the Income Tax Act, 1961, without appreciating fact that advance paid for purchase of land cannot be investment referred to u/s.11(5) of the Act, and thus, it cannot be held that there is violation of provisions of section 13(1)(d) of the Act to reject exemption u/s.11 of the Income Tax Act, 1961.

6. The learned AR for the assessee further submitted that the learned CIT(A) has also erred in sustaining additions made by the Assessing Officer towards notional interest on loans & advances. The learned AR further submitted that if at all, there is violation u/s.13(1)(d), then tax can be levied on the income, which is violative of provisions of section 13(1)(d) of the Act, but tax cannot be levied on the total income of the assessee. The learned AR relied upon the decision of the Hon'ble High Court of Madras in the case of DIT Vs. Working Women's Forum (2015) 63 taxmann.com 324.

7. The learned D.R., on the other hand, supporting order of the learned CIT(A) submitted that although, the assessee claims to have been paid advance for land, but could not file any evidences to justify its case. Therefore, the Assessing Officer has rightly held that loans & advances is in the nature of investment in the mode other than mode as specified u/s.11(5) of the Act and further, even there is violation of section 13(1)(d) of the Act. The learned CIT(A), after considering relevant facts has rightly upheld findings of the Assessing Officer and their orders should be upheld.

8. I have heard both the parties, perused material available on record and gone through orders of the authorities below. The facts with regard to impugned dispute are that the assessee is a public charitable trust registered u/s.12AA of the Act, has claimed exemption u/s.11 of the Income Tax Act, 1961. The Assessing Officer denied exemption u/s.11 of the Act, for both the assessment years on the ground that the assessee has made investments in the mode other than mode as specified u/s.11(5) of the Act, and further, there is violation provisions of section 13(1)(d) of the Act.

9. I have gone through reasons given by the Assessing Officer in light of arguments advanced by the learned counsel for the assessee and I find that the Assessing Officer has treated advance paid for purchase of land of Rs.27,50,000/- as investments in the mode other than mode as specified u/s.11(5) of the Act, and thus, opined that there is violation of provisions of section 13(1)(d) of the Income Tax Act, 1961. It was explanation of the assessee before the Assessing Officer as well as before me that loans & advances shown in the balance sheet under the head 'advances for purchase of land - I & II' is

paid as advance way back in the year 2003-04 and same is continued in the books of account of the assessee, because land deal could not be materialized, however, advance paid by the assessee is still lying with the seller of the land. Therefore, same cannot be considered as investment in the mode other than mode as specified u/s.11(5) of the Act. I find merit in the arguments of the assessee that if at all, the assessee has paid advance for purchase of land for the purpose of objects of the trust, then same cannot be considered as investments in the mode other than mode as specified u/s.11(5) of the Act. However, the assessee could not file any evidences before the Assessing Officer to justify its claim. Even before me, the assessee could not file any evidence. Therefore, I am of the considered view that unless the assessee proves its claim with evidence, arguments of the counsel for the assessee cannot be accepted. Therefore, I set aside the issue to file of the Assessing Officer with a direction to re-examine claim of the assessee that loans & advances shown in the balance sheet is for purchase of land. In case, the assessee files necessary evidence to prove its claim, then the Assessing Officer is directed to allow benefit of exemption claimed u/s.11 of the

Income Tax Act, 1961, for both the assessment years. In case, the assessee is unable to prove its case with necessary evidence, then the Assessing Officer is right in denying benefit of exemption u/s.11 of the Act, for both the assessment years. However, fact of the matter is that even if, there is violation referred to u/s. 13(1)(c) / 13(1)(d) of the Act, then tax can be levied only on the income which is in violation of provisions of section 13(1)(d) of the Act, as held by the Hon'ble High Court of Madras in the case of DIT Vs. Working Women's Forum (2015) 63 taxmann.com 324. In case, there is violation as referred to u/s.13(1)(d) of the Act, then the Assessing Officer is directed to tax income which is in violation of provisions of section 13(1)(d) of the Income Tax Act, 1961 for both the assessment years.

10. Coming back to additions made on notional interest on loans & advances. The Assessing Officer has imputed notional interest @ 12% on loans & advances for both the assessment years. According to the Assessing Officer, had this money was invested in banks, the assessee would have earned interest @ 12%, therefore, imputed interest @ 12% on loans & advances for both the assessment years. First of all, concept of notional

interest on loans & advances does not arise, because it is not case of the assessee that loans & advances were given by the assessee to third party. Even if it is a loan, then also question of imputing notional interest does not arise, because there is no contractual obligation between the assessee and third party. Therefore, the Assessing Officer has completely erred in imputing notional interest on loans & advances. Further, it was the argument of the assessee that said loans & advances paid for purchase of land. In case, the assessee succeeds in its argument on this ground also, question of imputing notional interest does not arise. To sum up on both counts, additions made by the Assessing Officer towards notional interest on loans & advances cannot survive. Hence, I direct the Assessing Officer to delete additions made towards notional interest on loans & advances for both the assessment years.

11. In the result, appeals filed by the assessee for both the assessment years are allowed for statistical purposes.

Order pronounced in the open court on 14th September, 2022

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 14th September, 2022

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.