

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

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
Dr. S. SEETHALAKSHMI, JUDICIAL MEMBER**

**ITA No. 189/Jodh/2019
(ASSESSMENT YEAR- 2014-15)**

M/s. Gopal Goverdhan Goshala Pathmeda, Taluka Sanchore, District- Jalore (Raj)	Vs	The DCIT Circle-Exemption, Jodhpur
(Appellant)		(Respondent)
PAN NO. AAATG 0739 J		

Assessee By	Shri Vardhman Jain, CA
Revenue By	Shri Sanjeev Kumar Dev, CIT-DR
Date of hearing	18/01/2023
Date of Pronouncement	20/01/2023

ORDER

PER: B. R. BASKARAN, AM

The assessee has filed this appeal challenging the order dated 28-03-2019 passed by the Ld. CIT(A)-2, Jodhpur for the assessment year 2014-15. The grounds of appeal raised by the assessee read as under:-

‘1. The Ld. CI(A) has erred on the facts and in law in confirming the denial of the benefit u/s 11 and 12 on the ground that the appellant has violated the provision of Section 13(1)(c),

13(1)(d) by – (a) holding of shares of Rs.11,200/- in a company called M/s. Parthvimedha Panchgavy Utpad Pvt. Ltd. (b) investing Rs.36,10,000/- in land in the names of the trustee/ employees.

2. The Ld. CIT(A) has a sequel, erred in law and on fact in confirming an addition of Rs.45,39,689/- u/s 40(A)(3) of the Income Tax Act.

3. The Ld. CIT(A) has erred in law and on facts in confirming an addition of Rs.4,33,200/- on account of notional interest on amount of investment in land of Rs.36,10,000/- in names other than that of the trust.

4. Without prejudice to Ground No. 1, the Ld. CIT(A) has erred in not restricting the addition to income to the extent of violation of the provisions of 13(1)(d) and 13(1)(c) of the Income Tax Act, 1961 and as a sequel of not granting pro-rata benefit u/s 11 of the Income Tax Act, 1961.”

2. The facts relating to the case are stated in brief. The assessee herein is a charitable trust registered u/s 12AA of the Act. The object of the assessee trust is to save the Govvansh and to provide medical relief to sick Govvansh. The assessee filed its return of income showing excess application of income of Rs.4.11 crores. The AO, however, noticed following points, which were considered by him as violation of the provisions of the Act:-

(a) The assessee has made investment of Rs.11,200/- in share capital of M/s. Prithivimedha Panchgavya Utpad Pvt Ltd. (for short ‘PPUPL) as on 31-03-2014, which is in violation of Section 13(1)(d)(iii) of the Act.

(b) The assessee has shown investment of Rs.56.00 lacs towards purchase of an agricultural land. It was noticed that the agricultural

land has been purchased in the name of individuals who are either employees of the trust or trustees of the assessee. Hence, the AO took the view that there is a violation of Section 13(1)(d) of the Act, since it is not one of the modes of investment prescribed u/s 11(5) of the Act.

In view of the above said violations, the AO rejected the claim for exemption u/s 11 of the Act.

3. Since the exemption was denied to the assessee, the AO proceeded to compute the total income as per normal provisions of the Act. In this connection he made following additions:-

(a) Since investment has been made in the name of individuals, the AO imputed interest on it @ 12% and accordingly added Rs.6.72 lacs.

(d) The AO also noticed that there was violation of Section 40A(3) of the Act and accordingly added a sum of Rs.33.94 crores.

The AO accordingly computed total income of the assessee at Rs.29.91 crores. The appeal filed by the assessee was partly allowed by the Id. CIT(A).

4. With regard to the investment made in shares, the Id. AR further submitted that the above said shares in PPUGL was not purchased by the assessee, but it was received as gift from a donor. With regard to the

investment made in the agricultural lands in the name of employees and trustees, the ld. AR submitted that there were legal impediments in purchasing the said agricultural land in the name of the assessee. Hence it was purchased in the names of employees and other persons. He submitted that those persons are only name lenders and the beneficial ownership is vested with the assessee, which is proved by the fact that the assessee has shown purchase of agricultural land as its own investment in the Books of accounts/Balance sheet. He further submitted that the purchase of an immovable property is one of the modes prescribed u/s 11(5) of the Act and hence, as such, there was no violation of provisions of section 11(5) of the Act. He also submitted the requirement of making investment in the modes prescribed in section 11(5) shall be applicable only to the income accumulated u/s 11(2)(b) of the Act.

5. The ld A.R further submitted that, if at all the AO considers these investments as in violation of provisions of the Act, he could not have rejected the exemption u/s 11 in toto, i.e., he could have levied tax on the income which fall under the alleged violation of the provisions and for the remaining amount of income, the AO should not have granted exemption u/s 11 of the Act. In support of this contention, the ld AR placed reliance following case laws.

1. CIT vs (Exemption), Pune vs Audyogik Shikshan Mandal (ITA No. 764 of 2016 dated 18th Dec. 2018), Bombay High Court.
2. Director of Income Tax vs Agrim Charan Foundation, 253 ITR 593 (Del.)

The ld. AR submitted that the addition of notional interest and addition made u/s 40A(3), shall be liable to be deleted, once the assessee is granted exemption u/s 11 of the Act.

6. On the other hand, the ld. DR submitted that the assessee is making new contentions and hence they require examination by tax authorities.

7. We heard the rival contentions and perused the record. We noticed that the AO has denied exemption u/s 11 of the Act by observing that there is violation of provisions of Section 13(1)(c) and 13(1)(d) of the Act. The submission of the assessee is that there is no such violation of provisions of the Act as alleged by the AO. It was submitted that there is no violation of Section 11(5) of the Act, as making investment in immovable property is one of the modes prescribed under the Act and further, the investment in agricultural land, though made in the name of his employees and others, yet the assessee is actually the beneficial owner of the land. It was also contended that the income that is falling within the violations of Act alone could be subjected to tax instead of rejecting the claim for exemption in respect of entire income of the assessee. It is also the contention of the assessee that the addition made by the AO with regard to notional interest and addition made u/s 40A(3) of the Act are liable to be deleted, once the assessee is held to be eligible for exemption u/s 11 of the Act. However, it is the contention of the ld. DR that various submissions and contentions raised by the Ld A.R require fresh examination.

8. In the rejoinder to the submissions made by Ld D.R, the counsel of the assessee agreed that all the matters may be restored to the file of Ld CIT(A), as they involve examination of legal and factual aspects. Accordingly, we set aside the order passed by the ld. CIT(A) in respect of the addition confirmed by him and restore all those issues to his file for adjudicating them afresh. The assessee should be provided adequate opportunity of being heard.

9. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on 20 /01/2023

Sd/-
(Dr. S. SEETHALAKSHMI)
JUDICIAL MEMBER

Sd/-
(B. R. BASKARAN)
ACCOUNTANT MEMBER

Dated : 20 /01/2023

**Mishra*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Asstt. Registrar

Jodhpur Bench