

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 98/JP/2023
निर्धारण वर्ष/Assessment Year : 2016-17

M/s. Golden India Foundation AA-13, Jay Ambey Nagar, Opp. Old Jaipur Hospital, Tonk Road, Jaipur	बनाम Vs.	The ITO Exemption- Ward Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABTG 3675 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri C.L. Yadav, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 11/07/2023
उद्घोषणा की तारीख / Date of Pronouncement: 29 /09/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

The assessee has filed an appeal against the order of the Id. CIT(A) dated 05-01-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2016-17 wherein the assessee has raised the following grounds of appeal.

"1. The Id. CIT(A) has erred in law as well as facts in upholding the order of the AO of not allowing the repayment of unsecured loan of Rs.14,25,00,000/- as application of income.

2. The Id. CIT(A) has erred in law as well as facts in upholding the addition made by the AO, ignoring the fact that the cost of land purchased out of loan was not allowed as application of income earlier, then the repayment of loan ought to have been allowed as application of income.

3. The Id. CIT(A) has erred in law as well as facts in confirming the addition on the basis of an observation made in the audit report by the auditors (which was a typographical error) and completely ignoring the balance sheet and its annexures.

4. That the authorities below failed to appreciate that the cost of land amounting to Rs.2,06,74,961/- shown in the annexure to the balance sheet included the professional fees of Rs.49,50,000/- for allotment and development work.

2.1 During the course of hearing, the Id. AR of the assessee has submitted the additional evidence under Rule 29 of Income Tax (Appellate Tribunal) Rules 1963, the contents of which are reproduced as under:-

“Your honours, that we are submitting copy of agreement between Golden Foundation, M/s.Arihant Infrastructure & Development Co. and Mr. Rakesh Sharma, as additional evidences of appeal for your kind perusal and consideration. The evidences and documents being produced are relevant document to assist in matter to be decided by the Hon’ble Tribunal. It is therefore requested that the Tribunal may kindly permit the appellant to adduce additional evidence and consider the same as the documents have a direct bearing on the case.”

2.2 On the other hand, the ld. DR objected to the filing of additional evidence made by the ld. AR of the assessee and submitted that the same were not submitted before the lower authorities.

2.3 After hearing both the parties and perusing the materials available on record, the Bench observed that with a view to providing justice to the assessee, the Bench has no constrain to allow the additional evidence. Hence, the additional ground raised by the assessee is allowed.

3.1 Apropos Ground Nos. 1 to 4, the facts as emerges from the order of the ld. CIT(A) are as under:-

“8. DECISION:

8.1. I have carefully gone through AO's findings and the written submissions filed by the assessee during these appellate proceedings.

8.1. Perusal of the assessment order clearly shows that the AO had clearly observed that cost of land at Pratap Nagar was claimed at a substantially higher figure of Rs. 2,06,74,961/-, while as per AO's working the said cost could not have exceed in any case from Rs.1,66,32,125/-. The AO has worked out the said cost by taking purchase cost, the stamp duty paid as well as the total lease amount paid on yearly basis. Besides, AO also observed that as per the auditor report, the opening balances of any fixed assets or current liabilities was "NIL" and the noting of the auditor further revealed that the payments for fixed assets were paid directly by the money lender.

8.2. The assessee had justified the application of income of Rs 14,25,000/-, claimed on capital account, which was actually repayment of loan to the lender OAC Rugs, on the basis that the loan

taken from the lender OAC Rugs was utilized for paying for land acquired by the trust, which was claimed to be overall costing Rs.2,06,74,961/- However, the assessee has not furnished absolutely any kind of documentary evidences to establish the above claims of costs incurred to acquire the said land. It is interesting to observe that the assessee has claimed to have incurred Rs. 49,50,000/- to two persons Arihant Infrastructure and Development Co. and Rakesh Sharma as contract fees, however absolutely no documentary evidences have been submitted to establish the said claim. The following submissions have been made by "the assessee without filing any documentary evidences, hence not acceptable.

..... The trust appointed an agency Ms Arihant Infrastructure & development Co. and a consultant Mr. Rakesh Sharma on contract basis for allotment of land for developing ayurvedic Centre from the Rajasthan Housing Board, Jaipur. The Agency and consultant provided their services for allotment of land including applying to housing board, presentation before committee of housing board, preparing of paper work, correspondence with department, follow the allotment procedure, measuring the land and passion procedure, all permissions from various Govt, departments etc. The Agency M/s Arihant Infrastructure & development Co. charged of Rs. 40,00,000/- in lumpsum amount for its services. The Consultant Mr. Rakesh Sharma charged Rs. 9,50,000/- in lumpsum amount for his services. The Trust had taken interest free unsecured loan from Trustees and other related persons to pay this liability of the agency and consultant....."

8.3. Besides, the assessee has also not been able to counter the other findings of AO that as per the auditor report, the opening balances of any fixed assets or current liabilities was "NIL" and the noting of the auditor further revealed that the payments for fixed assets were paid directly by the money lender. So much so that the assessee has not even uploaded the requisite auditor report from which such observations were made by AO. The following submissions have been made by the assessee which in fact an admission by the assessee that the AO's observations were correct, though the assessee has said sorry for this mistake.

...Notes of accounts specially mentioned that neither there was any opening balances of any fixed assets nor current liabilities

The Ld. AO marked on Notes of Accounts, in which mentioned that there were no opening balances of any fixed assets or current liabilities, this was a typing and clerical mistake on part of the trust. Fixed asset's balance is carrying forward from 2008-09 when it acquired by trust. So, we are saying sorry for this mistake.... ""

8.4. The above facts clearly establish that the assessee has not been able to counter the findings of AO that the loans shown to have taken from the lender OAC Rugs were utilized for some other purposes other than it was being claimed eg. acquisition of the said land. The facts clearly indicate that the said loans taken from the lender OAC Rugs were not utilized for carrying out the objects of the trust. Therefore, keeping in view of all of the above facts and circumstances of the case, AO's action is completely justified, of not allowing the repayment of loan of Rs 14,25,000/- to the lender OAC Rug, as application of income on capital account. The Ground of appeal is dismissed.

9. In the result, the appeal is DISMISSED.”

3.2 During the course of hearing, the ld AR of the assessee submitted that the ld. CIT(A) without considering the facts and submissions erroneously relied upon the finding of the AO and thus sustained the impugned addition in total income of the assessee trust for which detailed written submissions are reproduced as under:-

“The brief synopsis in support of my arguments of dated 11/07/2023-

1. That the trust was formed on 05/01/1999 and got approval u/s 12AA of the Income tax Act, 1961 vide certificate No.- 18/10 dated 25/10/2011.
2. In the year 2007-08, a piece of the land at Pratap Nagar, Jaipur was allotted to the Trust by the Rajasthan Housing Board .

3. That the process of acquisition of the land, in all respect was completed by the F.Y.- 2009-10 related to the A.Y.-2010-11 and total cost of **acquisition** on land including payment to consultants was incorporated by the appellant assessee trust in the books of account and same was reflected in the financial statements of F.Y. 2009-10. The total cost of the **acquisition** of the land at **Pratap Nagar, Jaipur** was **Rs. 2,06,74,961.00** and same was shown under **Schedule -2 – Fixed Assets** of the **Balance Sheet** - (Page no.- 41 of the paper book). Further that the head wise details of the cost of acquisition of the impugned Land was incorporated in written submission , submitted to the Id. CIT(A) and same was reproduced by the CIT(A) in order of appeal. **(Page No.-4 and 5 of CIT(A) order)**

4. That the appellant assessee arranged funds to acquire the land and construction there on, from the trustees and their respective concerns etc.. During the financial year 2009-10 related to A.Y. -2010-11, the assessee received unsecured loans of Rs. 4,24,40,425.00 . Party wise details of unsecured loans at **Page no- 41 of paper book under Schedule -1: Unsecured loan of Balance sheet of F.Y.-2009-10**. The whole of the amount of unsecured loans bonafidely, prudentially and diligently utilized either for acquisition of the impugned land at Pratap Nagar, Jaipur or construction of the building and boundry wall or boring or capital advance or for the object of the appellant assessee trust. There were no divergent of fund in contravention of the object of the appellant assessee trust.

5. That the appellant assessee trust applied for registration of the appellant trust u/s 12AA of the income tax Act, 1961 and proper verification and examination of the facts, and satisfaction, the office of the Commissioner of Income-tax, Jaipur-2nd, issued registration certificate No.- 48/10 dated 25-10-201, u/s 12AA .The appellant trust submitted complete details with Audited Balance Sheet and other supporting documents, papers of impugned land acquisition and other capital expenditures and responded all the queries raised by the CIT(Jaipur-2nd).

6. That during the A.Y.-2016-17 the appellant assessee trust, partly repaid Rs. 14,25,000.00 on a/c outstanding loan amount of M/s OAC Rugs by proper banking channel and the same amount of Rs. 14,25,000.00 claimed as “Application of fund” u/s 11 of the Income –tax Act, 1961. **(Copy of the confirmation ledger a/c of M/s OAC Rugs at page No.-73 of the paper book) . The Id. AO** during the assessment proceeding on baseless assumption the repayment of impugned loan of Rs. 14,25,000.00 not considered as “Application of Funds” u/s 11 of the act and by disallowed the impugned amount as exemption and added in total income of the appellant assessee trust and created a tax demand. **Further that the finding of the AO baseless, unjustifiable and without application of mind. The AO unnecessarily, without having valid jurisdiction, travel to the preceding financial year 2009-10,**

without valid reason to enquire the “total cost of the acquisition of the land”. Further also that the disallowance of “application of fund” for repayment of old borrowings was also against settled principle of the law, CBDT circular and without issuing ‘Show Cause Notice’ on the particulars issue, to the appellant assessee trust and so that against the “principle of the natural justice”.

It is also pertinent to mention that, the Ld. CIT(A) without considering the facts and submission, erroneously relied upon the finding of the AO and sustain the impugned addition in total income of the appellant assessee, trust. As per settled principles of law, the repayment of loans or borrowing for acquisition of capital assets are “application of funds” in the year of repayment of the loan. Your honour, it is humbly prayed that in view of the above facts, written submission and the case laws submitted on 30-05-2023, paper book submitted on 26-05-2023, the CBDT circular, the addition made by the AO and confirmed by the CIT(A), may kindly be deleted and the return income be accepted.”

3.3 On the other hand, the ld. DR relied upon the order of the ld. CIT(A).

3.4 The Bench heard both the parties and perused the materials available on record including the additional raised during the course of hearing. Brief facts of the case are that the assessee filed the return for the assessment year 2016-17 declaring NIL total income and the ITR was filed in the status of AOP (Trust). From the assessment order, it is noted that the trust is registered under section 12AA of the Act whose objects are charitable in nature. It is noted that AO had presumed that the loan, the repayment of which has been claimed as application of income, has been utilized for some other purpose and not for the objects of the trust. He has placed strong reliance on a note in the Audit report stating - There were no opening balances of any fixed assets or current liabilities. The above note was an inadvertent mistake on the part of the auditor, which resulted from a cut paste exercise by the clerical staff. Initially, this remark was made by the auditors

in Audit report (SIGNIFICANT ACCOUNTING POLICIES & NOTES FORMING PART OF THE BALANCE SHEET AND THE INCOME & EXPENDITURE ACCOUNT) for FY 1999-2000, at the time when the trust had no assets. The same notes kept recurring year after year even after acquisition of assets by the Trust in FY 2007-08. It is noteworthy to mention that had the AO bothered to see the balance sheet or the annexure to the Balance sheet of the Trust property, he would not have made such a remark. However, during the appellate proceedings before the CIT(A), explanations were provided by the assessee but the Ld.CIT(A) did not consider the same and harped on the very same reasoning given by the AO, to confirm the addition. It is an undisputed fact that the Trust was allotted a land admeasuring 5000 sq mts. by Rajasthan Housing Board (RHB), Jaipur during FY 2007-08 through the concerted efforts of M/s Arihant Infrastructure & Development Company and Shri Rakesh Sharma for which copy of agreement is placed on record being additional evidence. It is also noted from the copy of agreement (being additional evidence) that the above consultants played a vital role in getting the land allotted to the Trust from Housing Board prime location at concessional rates. They provided their expertise and services starting from filing an application for allotment, followed by presentation before Committee (RHB), entire paper work, project report, follow up with various authorities and seeking their permission and other miscellaneous work and finally

getting the land allotted. For rendering these services, they charges Rs 49,50,000/- (as per agreement para 2 produced as additional evidence) which was debited to Land account during FY 2007-08 itself, i.e. even before the land was allotted. Thus, the consultancy charges have been debited to Land A/c and the trust is continuously showing it in its audited accounts since FY 2009-10. It is noted from the record that the land was got registered in the name of the Trust by incurring the necessary expenditure i.e. leveling of land and construction of boundary wall. Simultaneously, the construction of the building also started, for which advances were given to the contractors and consultants. The fixed assets in the form of Land and Buildings and the corresponding unsecured loans taken for the purpose were duly shown in the Balance sheet and details thereof were mentioned in the annexure forming part of the balance sheet of the trust, on year to year basis and yearwise bifurcation of cost of land building is also mentioned supra. It is noted from the submissions of the Id. AR of the assessee that whatever information was sought by the AO, the same was provided to him for which the AO drew adverse inference regarding repayment of unsecured loan of Rs.14,25,000/- Had the AO sought further clarification as to the utilization of the loan being repaid, the same would have been made available to him. However, he chose to make addition without providing an opportunity and seeking further clarification by issuing a show cause notice of the proposed addition. As prayed by the Id. AR supra, the

trust was not having funds to purchase land and construct building thereon, it borrowed funds from the trustees. Interest free unsecured loans were obtained, out of which land was purchased and building to be used as Ayurveda Wellness center was got constructed. The entire borrowings were utilized for furtherance of the objects of the trust. The year wise position of unsecured loans and fixed assets (Land and Buildings+Capital Advances) is tabulated below.

S.N.	Balance as on	Financial year	Land	Building & Capital advances	Unsecured loans
1	31-03-2010	2009-10	2,06,74,961	1,82,09,523	4,24,40,425
2	31-03-2011	2010-11	2,06,74,961	1,72,43,325	4,19,74,550
3	31-03-2012	2011-12	2,06,74,961	1,88,30,125	3,89,74,550
4	31-03-2013	2012-13	2,06,74,961	1,91,14,835	3,97,89,796
5	31-03-2014	2013-14	2,06,74,961	1,91,14,835	4,21,74,550
6	31-03-2015	2014-15	2,06,74,961	1,91,14,835	4,24,24,550
7	31-03-2016	2015-16	2,06,74,961	2,07,79,135	4,26,63,850

It is also noted that major portion of unsecured loans has been obtained from OAC Rugs which is a proprietary concern of the Chairman trustee, Mohd. Naeem Ansari

which can be seen at PB page 16 (Annexure unsecured loan). The initial investments by the trust in land and buildings were financed by Mohd. Naeem Ansari (PB page 41). Even during the relevant year one journal entry on opening dated 01-04-2015 was passed for amount of Rs.16,64,300/- (PB Page 73) towards construction resulting into addition to building has been made by OAC Rugs directly to Leuman Housing & Development Pvt. Ltd. on behalf of the assessee trust. The confirmation by OAC Rugs clearly shows that Rs. 14,25,000/- net off of Rs. (17,75,000 minus 3,50,000) has been repaid by the trust, which has been rightly claimed as application of income. (Copy of the OAC Rugs a/c at Page no-73 of the Paper Book). It is also noted that some of the main objects of the Trust are - To run, maintain or assist any Medical institution, Primary Health Center, Ayurvedic dispensaries, Unani dispensaries and hospitals or dispensaries or clinics or to grant assistance to needy and indigent persons for meeting the cost of medical treatment; to provide relief to poor patients free of cost and at minimum possible charges to others, without any profit motive whatsoever, to acquire, purchase or otherwise own or take on lease or hire as temporarily or permanently, any movable or immovable property necessary or convenient for furtherance of the Trust. In furtherance of its above objectives, the trust purchased a land at Pratap Nagar, Jaipur, for setting up an Ayurvedic Centre, for which it obtained interest free loan from OAC Rugs (a proprietary concern of Chairman trustee). The initial payment

of Rs.52,49,000/- made in the FY 2007-08, to M/s Arihant Infrastructure & Development Company and Shri Rakesh Sharma, was on account of Consultancy charges in advance for getting the land allotted, which was financed out of funds provided by OAC Rugs. Thereafter, money has been borrowed from time to time and utilized for making payment towards acquisition of land and construction of building. As a matter of fact, the payment towards the cost of land and construction of building was directly made to the concerned parties by OAC Rugs on behalf of the Trust. The part repayment of Rs. 14,25,000/- has been made towards this unsecured loan, which was fully utilized for the purpose of the Trust. The AO disallowed this repayment without calling for details and audited accounts of relevant earlier years. It is also noted that the Ld.CIT(A) also ignored these facts and on the very same reason and finding propounded by the AO, confirmed the addition. It is also noted that the unsecured loan were obtained from trustees in order to construct the building and creation of infrastructure for Ayurvedic Wellness center. The Wellness center is being run on self financing basis and no Government funds were used to create the infrastructure. Hence, it was necessary to raise loan from trustees to partly fund the initial cost. The loans taken and the fixed assets created out of it were shown in the Balance sheet on year to year basis. Payment towards all capital expenditure related to purchase of land, its development, consultation and liaison, construction of building, etc. was directly

made to the parties by the trustees. No depreciation has been claimed under 85% utilization. The repayment of loan has been taken as utilization of funds in the year of repayment thereof since it resulted in reduction of liability of the Trust. Hence, it is clear that the assessee has not claimed depreciation as application of income. Fresh loan taken during the year has resulted into corresponding accretion to fixed assets. The repayment of unsecured loans obtained for the purposes of the trust amounts to Application of income. Reference in this regard is made by the assessee vide Circular: No. 100 [F No. 195/1/72-IT (A-1)], dated 24-1-1973, which reads as under:-

162. Repayment of debt incurred for purposes of trust/loans advanced by educational trusts to students for higher studies. Whether amounts to application of income

1. Section 11 requires 100 per cent of the income of a charitable and religious trust to be applied for religious and charitable purposes to be entitled to the exemption under the said section. Two questions have been considered regarding the application of income:

1. Where a trust incurs a debt for the purposes of the trust, whether the repayment of the debt would amount to an application of the income for the purposes of the trust, and

2. Whether loans advanced by an educational trust to students for higher studies would be treated as application of income for charitable purposes.

2. The Board has decided that repayment of the loan originally taken to fulfill one of the objects of the trust will amount to an application of the income for charitable and religious purposes. As regards the loans

advanced for higher studies, if the only object of the trust is to give interest-bearing loans for higher studies, it will amount to carrying on of money-lending business. If, however, the object of the trust is advancement of education and granting of scholarship loans as only one of the activities carried on for the fulfillment of the objectives of the trust, granting of loans, even if interest-bearing, will amount to the application of income for charitable purposes. As and when the loan is returned to the trust, it will be treated as income of that year.''

It is also noteworthy to mention that the 1d AR of the assessee relied upon the following cases that repayment of loan is to be considered as application of income:

a. The Madras High Court in the case of CIT vs. Kannika Parameswari Devasthanam & Charities [1982] 133 ITR 779 held that if the expenditure is on capital account on objects(s) contained in the object clause, the expenditure will amount to application of income

b. The Kerala High Court in CIT v. St. George Forana Church [1988] 170 ITR 62, held that construction of building would amount to application of income under Section 11 of the Income-tax Act.

c. Repayment of a debt incurred for charitable purposes by a charitable trust and loans advanced by educational trusts are application of income: Repayment of loan taken for construction of a building by the assessee for the purpose of augmenting its funds shall qualify as income applied for charitable purposes CIT vs Janamabhoomi Press Trust [2000] 242 ITR 703 (Kar)

d. In the case of CIT vs. Maharana Mewar Charitable Foundation reported in 164 ITR page 439 (Raj) their Lordships have held that the anomaly which has arisen that if the Trust takes a loan for the purposes of incurring expenditure for charitable and religious purposes in a particular year and the said loan is repaid out of the income of the subsequent year, the said repayment would be entitled to the exemption from tax u/s. 11(1)

e. Director Income-tax (Exemption) v. Govindu Naicker Estate (2009) 315 ITR 237 (Mad). Relevant Section-11, During the assessment under

section 143(3) of the Act, the Assessing Officer noted that the trust had made part repayment of a loan taken from the bank for constructing a multi-storied building. The Assessing Officer opined that the multi-storied commercial complex was not one of the objects of the trust and the expenditure incurred for the construction of the building could not be treated as charitable in nature, that the repayment of loan could not be regarded as application of income towards the charitable objects of the trust and rejected the claim of the assessee. The Commissioner (Appeals) allowed the appeal on the ground that the property of the trust was in a Odilapidated condition and fresh construction had to be undertaken by obtaining a loan. The subsequent letting out of the property was connected with the carrying out of the object of the trust and hence, the repayment of loan ought to have been treated as eligible application. The finding of the Commissioner (Appeals) was confirmed by the Tribunal. The High Court held that the Tribunal was right in holding that the repayment of loan taken from the bank for construction of commercial complex was application of income for charitable purposes and the assessee trust was eligible for exemption under section 11 of the Act. Even though the expenditure incurred is capital in nature, if the expenditure is incurred for the purpose of promoting the object of the trust, it could be considered as application of the income for the purpose of the trust. If the application of the income resulted in the maintenance of the property held under trust for charitable purposes, is for the purpose of augmenting income in order to pursue the objects of the trust that would amount to application of income for the purpose of the trust. Hence repayment of loan taken for construction of college building amounted to augmentation of income of society in future years and to pursue the objects of the society.

f.DCIT (Exemption) vs. Ram Asra Goyal Education & Research Society in ITA No.1578/Chd/18 and ITA No.869/Chd/19

g. Dr. Chandrashekhar Foundation vs. CIT(Exemption) in ITA No.1281/Bang/2016

Hence, in view of the above facts, circumstances and the case laws cited supra, the Bench does not concur with the findings of the Id. CIT(A) and the same is directed to be deleted and the appeal of the assessee is allowed.

4.0 In the result, the appeal of the assessee is allowed

Order pronounced in the open court on 29 / 09/2023.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 29 /09/2023

*Mishra

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

1. The Appellant- M/s. Goden India Foundation, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO (Exemption) Ward, Ajmer
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 98/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar