

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'A', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
DR KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No. **823/CHD/2019**

निर्धारण वर्ष / Assessment Years : 2015-16

M/s Aryans Educational and Charitable Trust, # 2129, Phase-10, Mohali	Vs. बनाम	The DCIT, Circle-1 (Exemptions), Chandigarh
स्थायी लेखा सं./PAN No: AABTA7550L		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

निर्धारिती की ओर से/Assessee by : Sh. Tej Mohan, Singh, Advocate

राजस्व की ओर से/ Revenue by : Shri Rohit Sharma, CIT DR

सुनवाई की तारीख/Date of Hearing : 19.06.2024

उदघोषणा की तारीख/Date of Pronouncement : 25.07.2024

आदेश/Order

Per Dr. Krinwant Sahay, A.M.:

Appeal in this case has been filed by the Assessee against the order dated 05.03.2019 of the Id. Commissioner of Income Tax (Appeals)-2, Chandigarh, [herein referred to as "CIT(A)"].

2. Grounds of appeal are as under: -

1. *That the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the addition of*

Rs.6,58,13,702/- treating the entire surplus to be taxable invoking the provisions of Section 13(1)(c) and 13(1)(d) r.w.s 13(3) of the Act which is arbitrary and unjustified.

- 2. That the Ld. Commissioner of Income Tax (Appeals) has failed to consider the submissions placed before him in respect of the imprest account maintained by the Chairman which has been the sole basis for invoking the provisions of Section 13(1)(c) and 13(1)(d) r.w.s 13(3) of the Act which is arbitrary and unjustified.*
- 3. Without prejudice to the above and without any concession conceding, the benefit of exemption could at the most be denied only to the extent of alleged benefit provided which though has not been provided to the Chairman in the facts of the case.*
- 4. That the order of the Ld. Commissioner of Income Tax (Appeals) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable.*

3. In fact, grounds of appeal Nos. 1, 2 and 3 are connected and it is against upholding of addition of Rs. 6,58,13,702/- treating the entire surplus over expenditure to be taxable invoking the provisions of Section 13(1)(c) and 13(1)(d) r.w.s. 13(3) of the Income Tax Act, 1961 (in short 'the Act').

4. Brief facts of the case, as enumerated in the order of the CIT(A) are as under:-

“6.1 Brief facts of the ease are that the assessee trust is registered u/s 12AA of the Income Tax Act, 1961 with the Commissioner of Income Tax, Chandigarh-II, vide order dated 31.07.2006. Assessing Officer, on perusal of balance sheet of the assessee noticed that the assessee had shown an amount of Rs. 13,46,927/- to Sh. Anshu Kataria (Chairman of assessee trust) as imprest. During the assessment proceeding nature of this account and purpose of the same was asked from the assessee. In response, the assessee filed his reply which was considered by the AO. On perusal of the same, AO held that Sh. Anshu Kataria, Chairman of the society had taken undue benefit of property of the society and had retained an amount of Rs. 13,46,927/- without any specific purpose. The reply of the assessee that it was repayment of loan was not accepted by the AO as the assessee had filed contradictory statements. Earlier it was stated as advance given to Sh. Kataria and subsequently it was submitted that it was repayment of loan. The opening balance of imprest for the year was Rs. 11,32,302/-. During the year there was addition of Rs. 2,14,625/- to the imprest account and closing balance was Rs. 13,46,927/- loan. The assessee has failed to justify the transaction and assessee had also failed to justify the reasonability of this transaction and purpose of the same. The assessee had provided undue benefit to the chairman of the society. Since Sh. Anshu Kataria was chairman of the society, he fell under the category of persons as defined in Sec. 13(3)(c) of the I.T. Act, 1961. Assessee had shown payments to its chairman as advance. This amount was fund of the assessee, which should have been part of the corpus / capital and should have been deposited in modes u/s 11(5) of the Act. As the assessee has shown it as advance & it was not deposited as per prescribed modes u/s 11(5), the AO invoked provisions of section 13(l)(d) of the Act. As the assessee had made payments to its Chairman without

any interest or security, which was not reasonable & amounted to undue benefit accorded to the chairman of the society. So assessee's claim of exemption was denied u/s 13(l)(c) and u/s 13(l)(d) of I.T. Act, 1961 & surplus was taxed by treating AOP.”

5. During the appellate proceedings before the Id. CIT(A), the Counsel of the Assessee submitted the written submissions and the same were produced in proceedings before us. The submission of the Assessee are as under: -

“An addition of Rs. 6.58 Crores being entire surplus of the Income and Expenditure account of the society. This addition has been made by invoking the provisions of section 13(l)(c) and section 13(l)(d) of the Income Tax Act. These provisions have been invoked because there was an advance account balance of Rs. 13.46 Lakhs in the name of Chairman of the society.

This majority of advance is previous years balance and during the year only a nominal amount of Rs. 2 lakhs has been added. It was mostly on account of out of fee collection in cash of students on his tour to remote states like Orissa, Bihar & Jammu & Kashmir etc. he kept in his account against his interest free loan of more than Rs. 50 lakhs. As such adequate interest free security existed against the imprest account. This does not relate to the current year. It represent last year balance.

Respectfully; we wish to submit that Sh. Anshu Kataria has given a loan of Rs. 50 Lacs to the Society. In addition to this loan other bank loans were also raised by the society for building colleges. The banks have

made a stipulation in the loan documents that during the tenure of their loans. No repayment of the unsecured loan to the member of the society shall be undertaken. The society was during the year looking for availment of more loans from the bank. The society could not afford to debunk the old loan conditions while asking for new loans. So they could not repay the loans taken from Sh Anshu Kataria. So indirectly, when Sh Anshu Kataria needed the funds out of the loan given by him, instead he was asked to keep the college funds available in his account against the previous balance of Rs. 50 lakhs. So it was actually his own funds which were kept by him in the imprest accounts.

As per above facts your Honour will realize that the amount of Rs. 13.46 was not imprest but adjustment of account against his interest free credit balance of Rs. 50 lakhs. No interest was paid or charged on the two balances. As such the imprest account was not application of college funds by the Chairman within the meaning of section 13(l)(c) or section 13(l)(d) of the Income Tax Act. The learned AO has erred in law and facts in treating the imprest account of Chairman of the society as diversion of funds of the society and consequently disallowing the exemption by invoking the provisions of section 13(l)(c) or section 13(l)(d) of the Income Tax Act. In fact there was no diversion of funds to give any advantage to Sh. Anshu Kataria. During the year there was not any payment made in this imprest account and this imprest account stands Nil as of date.

As per our above explanation, your Honour; will find that there is no diversion of funds during the year to the interested person so as to attract the provisions of section 13(l)(c) or section 13(l)(d) of the Income Tax Act and as such the addition of Rs. 6.58 crores as made is highly unjust & factually not correct.

Without prejudice to above; even the addition as made by the learned AO is arbitrary and highly exorbitant. The maximum addition that could have been made u/s 13 is the amount that has been diverted for the benefit of the interested persons and not the entire surplus as has been made by the learned Assessing officer. In case of (A) ACIT v. Indicula Trust Society [2012] 21 taxmann.com 144/52 SOT 1 (Delhi - Trib.) it was held that where the Trust provides benefit directly or indirectly, to specified persons mentioned u/s 13(3) the benefit of exemption u/s 11 will not be available to that extent. The issue was whether the trust will lose exemption on its entire income, if it is found that the specified person has been benefited directly or indirectly by the trust in respect of a part of income, or whether only that part of income which goes to the benefit of specified person will only lose the exemption. The ITAT felt that of section 13(l)(g)(ii) of the benefit of exemption should be denied only to the extent of the benefit provided.”

6. The Id. CIT(A) considered the findings of the Assessing Officer and the submissions filed by the Counsel of the Assessee and he has given his findings, which in brief are as under:-

“6.3 I have considered the relevant portion of AO's order and submission of the appellant. During assessment proceedings, the AO noticed that the assessee had shown an amount of Rs. 13,46,927/- to Sh. Anshu Kataria (Chairman of assessee trust), as imprest. The assessee failed to justify the reasonability & purpose of retaining the said amount, which led the AO to infer that the assessee trust was providing undue benefits to the

Chairman of the society and held that assessee had acted in violation of provisions of section 13(l)(d) of the Act & treated the entire surplus as income of assessee. In response, the AR of the assessee during appellate proceedings submitted that the majority of advance was previous year balance and during the year only a nominal amount of Rs. 2 lakhs approx. has been added. The AR further submitted that the imprest was mostly out of fee collected by Sh. Anshu Kataria, in cash from students, while on tour to remote states like Orissa, Bihar & Jammu 8B Kashmir etc. which he kept in his account against interest free loan of more than 50 lakhs given to college. In this regard, the counsel stated that the assessee had availed credit facility from banks and it was condition of banks that during the tenure of loans, no repayment of unsecured loans to members of society shall be undertaken. The counsel further contested that the addition of entire surplus to its income made by AO is arbitrary and relied on various judgements apart from placing reliance on CBDT Circular no. 384 dated 06.07.1984.

6.3.1 The submission of the assessee that imprest was out of fees collected in cash from students of remote states like Orissa, Bihar and J&K by the Chairman on his tour is not tenable in the light of fact that as per MOA of the assessee, it was not duty of the Chairman to travel across states collecting fees. Apart from this, in today's digital world where banking facilities are available every where and every body has hold on mobile internet facilities, the said plea of assessee is not acceptable. The plea that the money could not be deposited in the trust's account is also highly preposterous. Coming to the issue of retaining Rs. 13.46 lakhs by Chairman of assessee institution, the counsel contentions, that it was method adopted by the assessee to pay back the Chairman, the unsecured loans received from him, goes against the

condition laid by the banks before advancing loans. This clearly depicts that the assessee had given indirect benefit to Chairman of assessee trust who is covered u/s 13(3) of the Act. The Act contains very stringent provisions barring the use of either the property or the income of a charitable or religious trust or institution in any manner whatsoever for the benefit of the author, founder, trustee, manager, a substantial contributor, or even & relative, rigour of the provisions guiding forfeiture of exemption needs to be well understood by assessee seeking exemption. Similar issue of advancing undue benefit to managing trustee covered u/s 13(3) of the Act was before Kerala High Court in case of **Agappa Child Centre vs. CIT [1997] 092 Taxmann 327 dated 08.08.1996**, wherein the court held that property of trust used for benefit of a prohibited person mentioned u/s 13(3), would result in cancellation of exemption of trust. It is also the case that the trust has attempted to by pass the restriction placed upon by the bank that the unsecured loans from the trustee shall not diminish till the pendency of the secured loan from the bank. These also tantamount to not reflecting truly, the income arising from the property vested in trust for charitable purposes. What has happened in reality is non disclosure of the exact amount that would be eligible for income arising from charitable activities. To that extent the quantum mandated for expenditure on charitable purposes has also been constricted. It is also possible that to that extent the assessee would not have been able to spend 85% of its income mandated to qualify for exemption u/s 11 & 12. It's also clear that the method adopted was a clear infraction of the conditions laid down by the banks. These tantamount, not only to attempts at bypassing the bank authorities but also to a nonchalant treatment of what would have been public money. It needs to be remembered that trusts wearing the badge of altruism deal in public money and such public bodies are not

meant to be bled in order to favour its functionaries/office bearers. In that light and also infractions pointed earlier including the issue of anonymous donations (unsubstantiated donations) the AO is right in denying the exemption claimed by the assessee and taxing the surplus amount. The assessee has clearly deviated not only from its objects by opening up its conduits for bogus, unsubstantiated and anonymous donations but also acted to benefit its Chairperson directly. The plea that during the year only 2 lakhs had been added to the imprest account does not take away anything from the severe visitation of denial of exemption account of benefitting any person covered u/s 13 of the Act.”

7. Aggrieved with the findings of the Id. CIT(A) and his decision, this appeal has been filed before us.

8. During the appellate proceedings, the Id. counsel of the Assessee repeated and reproduced the same written submissions which were produced and submitted during the appellate proceeding before the Id. CIT(A).

9. The Id. DR also relied on the finding given by the Assessing Officer and the Id. CIT(A).

10. In his rejoinder, the Id. Counsel of the Assessee submitted that the amount deposited by the students for fee in the personal bank account of Mr. Anshu Kataria in such states where they were not able to deposit their fee into the Trust account should not be taken otherwise. The Id.

Counsel further submitted that Mr. Anshu Kataria had given interest free loan to the Assessee trust to the tune of Rs. 81,03,813/- and in fact Mr. Kataria was not getting benefitted of fee in his personal account as the same was transferred to that bank account of Mr. Aryan Educational and Charitable Trust. Soon thereafter. The ld. counsel finally submitted that the case of the Revenue was that since a portion of the fee collected by Mr. Anshu Kataria in backward regions was not deposited in the bank account of the trust thereby the trust had provided some sort of benefit to Mr. Anshu Kataria that is why the Revenue has invoked the provisions of section 13(1)(c) and 13(1)(d) read with section 13(3) of the I.T. Act in this case. In such a situation, the Counsel of the Assessee submitted that strictly as an alternative, the addition is to be made / restricted to the alleged violation committed by Mr. Anshu Kataria / the Trust.

11. We have considered the discussion of the Assessing Officer in the assessment order and the findings given by the ld. CIT(A) in his appeal order. We have also considered the arguments put forward by the ld. Counsel of the Assessee and the written submissions filed by him before us during the appellate proceedings. Simultaneously, we have considered the arguments of the ld. DR who vehemently argued in favour of invoking the provisions of section 13(1)(c) and 13(1)(d) r.w.s. 13(3) of

the Act in this case because of the alleged violation made by Shri Anshu Katartia and the trust (to provide benefit to the Chairman of the Society) and, therefore, the ld. DR argued in favour of denying the exemption u/s 13(1)(c) and 13(1)d) to the trust and argued to treating it as AOP sustaining the additions confirmed by the ld. CIT(A).

12. We find that the ld. CIT(A) has based his findings on the basis of a case laws in the case of ‘Agappa Child Centre vs. CIT’, [1997] 092 Taxmann 327 (Kerala High Court). In its order, in that case, the Hon'ble Kerala High Court had held that property of trust used of benefit of a prohibited person mentioned u/s 13(3), would result in cancellation of exemption of trust on the basis of this finding by the Hon'ble High Court, the ld. CIT(A) confirmed the action of the Assessing Officer in invoking section 13(1)(c) and 13(1)(d) read with section 13(3) of the Act. During the proceedings before us, the ld. Counsel for the Assessee also brought on record different case laws in his favour, which are as under: -

1. *CIT(A) Manglore Vs. Fr. Mullers Charitable Institutions* [2014] 363 ITR 230 (Karnataka)
2. *SLP in [2014] 51 Taxmann.com 378 (SC) / [2014] 227 Taxman 369 (SC)*
3. *[2024] 161 Taxmann.com 394 (Raipur – Trib) St. Francis Educational Society v ACIT*
4. *[2021] 130 taxmann.com 225 (Chennai – Trib) Jaya Educational Trust vs. DCIT*

13. During the proceedings before us, the Counsel of the Assessee has brought it on record as under: -

“Without prejudice to above; even the addition as made by the learned AO is arbitrary and highly exorbitant. The maximum addition that could have been made u/s 13 is the amount that has been diverted for the benefit of the interested persons and not the entire surplus as has been made by the learned Assessing officer. In case of (A) ACIT v. Indicula Trust Society [2012] 21 taxmann.com 144/52 SOT 1 (Delhi - Trib.) it was held that where the Trust provides benefit directly or indirectly, to specified persons mentioned u/s 13(3) the benefit of exemption u/s 11 will not be available to that extent. The issue was whether the trust will lose exemption on its entire income, if it is found that the specified person has been benefited directly or indirectly by the trust in respect of a part of income, or whether only that part of income which goes to the benefit of specified person will only lose the exemption. The ITAT felt that of section 13 (l)(c) (ii) of the benefit of exemption should be denied only to the extent of the benefit provided.

(B) LOKMANYA TIKAK JANKALYAN SHIKSHAN
SANSTHA, NAGPUR VS. ACIT, CIRCLE-2,
NAGPUR, ITA No. 384/NAG/2012.

“We are of the considered opinion that the Assessee in this case does not deserve under section 11. Only the amount which has not been utilized for the objects of the trust but has been advanced to the related persons should be subjected to denial of exemption and taxation thereof. The Assessing Officer is directed to disallow interest at the market rate on the sums advanced to the above persons.”

(C) CIT V. INDICULA TRUST SOCIETY [2012] 21
TAXMANN. COM 144 (DELHI -TRIB)

Restriction is applicable only to those amounts which have been applied directly or indirectly for the benefits of interested person referred to in section 13(3) and it will nowhere lead to any conclusion that the assessee would lose its charity status. In other words, if a small amount is to be disallowed that would not disqualify to enjoy the status of charity. Further, may I take the liberty of drawing your Honour's kind attention to CBDT Circular no. 384 dated 06.07.1984 wherein it is clearly mentioned "in other word, where such a trust contravenes the provisions of section 13(l)(c) or (d) of the Act, the maximum marginal rate of income tax will apply only to that part of the income which was forfeited exemption under the said provisions."

14. All these case laws pertain to 2012 while the Id. CIT(A) has relied on the case laws of 1997. Therefore, keeping in view the latest position and case laws on this issue, and the case laws brought on record by the Counsel of the Assessee, we are of the considered view that there is nothing as such in the terms and conditions of the trust deed which debars the Chairman of the Society to go to remote places and collect fee from the students directly where banking facilities is not properly available. So, the action of Mr Anshu Kataria, Chairman of the Society of his visiting the remote places of the states like Bihar, Orissa, Jammu & Kashmir etc. for the collection of fee from the student cannot be questioned and making deposit of such collection of fee in those remote

area in his personal account may not be considered as a major violation of the terms and conditions of the Trust so long as the amounts so collected were immediately transferred to the account of the trust, the movement he returned back to the Headquarter. However, keeping a portion of the fee so collected in his personal account may definitely be treated as violation. No matter, Mr. Anshu Kataria, Chairman has given interest free loan to the Assessee to the tune of Rs. 81,03,813/-Therefore, we are of the considered view that the amount retained by the Chairman of the Trust in his personal account to the tune of Rs. 13,46,927/- without any specific purpose cannot be allowed.

15. Accordingly, we restrict the addition confirmed by the Id. CIT(A) to the tune of Rs. 13,46,927/- only. Thus, the appeal of the Assessee on this Ground is partly allowed.

16. Ground No.4 is general in nature.

17. In the result, the appeal of the Assessee is partly allowed.

Order pronounced on 25.07.2024

Sd/-
(A.D. JAIN)
Vice President

“आर.के.”

Sd/-
(DR KRINWANT SAHAY)
Accountant Member

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar