

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. 821/CHD/2019

निर्धारण वर्ष / Assessment Years : 2013-14

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
उद्घोषणा 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 ld. Commissioner of Income Tax (Appeals)-2, Chandigarh, [herein referred to as "CIT(A)"] on the following Grounds: -

1. *That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the addition of Rs. 1,63,73,648/- made by the*

assessing officer applying the provisions of Section 115BBC and Section 68 which is illegal, arbitrary and unjustified.

2. *That the Ld. Commissioner of Income Tax (Appeals) has failed to consider the evidence placed before him in the form of affidavits showing that the donations received are not anonymous and as such the provisions of Section 115BC and Section 68 are not attracted which renders the order illegal, arbitrary and unjustified.*
3. *That the Ld. Commissioner of Income Tax(Appeals) has further erred in upholding the addition of Rs.4,83,16,171/- 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.*
4. *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.*
5. *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.*

6. *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.*

2. Appeal on Ground Nos. 1 and 2 are against the addition of Rs. 1,63,73,648/- made by the Assessing Officer applying the provisions of section 115BBC and Section 68 of the Income Tax Act, 1961 (in short 'the Act') and that the ld. CIT(A) has failed to consider the evidence placed before him in the form of affidavits showing that donations received are not anonymous and as such provisions of section 115BBC and Section 68 of the Act are not attracted.

3. In this case, the ld. CIT(A) has given his findings as under:

“On perusal of assessment order it is seen that the AO has conducted detailed enquiries as per section 133(6) & 131 of the Act, in order to verify the claims of assessee of having received corpus donation amounting to Rs. 1,63,73,648/- from students of its institutions. The detailed enquiries conducted by the AO led him to conclude that no such donations were made by students of assessee institution as claimed by the assessee. Further, there is no evidence of any specific direction regarding the donation being made for corpus of the assessee trust. Even if it is presumed, that the donations were received by the assessee as such, they were clearly in contravention of regulations guiding educational institutions particularly, the technical institutions. The assessee

has not furnished any evidence that the donations in excess of allowed fees were allowed by the regulating authorities. Judiciary at the highest level has frowned upon at the concept of donations from students and if the claims are accepted that would surely impinge on the charitable intent of the entity and take away the exemption status in light of its emphasis on profiteering from students. It is also the case that corpus donations defined in section 11(1)(d) of the Act necessitates presence of specific direction to that effect. Corpus fund as is commonly understood is a non diminishable fund that cannot be utilized in any other way except it adding to the capabilities of the trust to earn income that would go on to augment the redemption of the charitable functions. Further, throughout the appellate proceedings, the assessee has never put across any evidence as to from where the claimed corpus donations were received. The assessee's subsequent claims that the corpus donations were made by the students by producing affidavits (not registered by the prescribed authorities) that they had made the donations, are nothing but self-serving proclamations not borne out by any permission from the regulating/affiliating authorities that the institutions had been authorized to collect such donations from the students. The affidavits are also an afterthought which may have the footprints of the students being cazoled to backtrack on their sworn statements under statutory provisions of the Act. The students in this case, who under oath conceded before the I.T authorities that they had not made any donations, are a hapless lot before the college authorities given the fact that their degrees and career were at stake.

They simultaneously run the risk of their act partaking the characteristics of perjury.

The AO's finding about anonymous donations (that partake actually the character of bogus & uncorroborated donations) would have a serious implication on the charitable character of the assessee particularly in light of Supreme Court's decision in the case of CIT (Exemptions) vs. Jagannath Gupta Family Trust in Civil appeal no. 1381 of 2019, wherein Apex Court overruled the decision of Kolkata High Court, holding it to be erroneous and contrary to plain language of section 12AA(3) of the Act. The Apex Court has held that even a single instance of bogus donation would dent the claims of being charitable. This judgment also negates the assessee's plea that only sample of students were covered in the verification process by the department.”

4. Brief facts of the case are that the Assessee society is registered u/s 12AA of the Income Tax Act, 1961 with the Commissioner of income Tax, Chandigarh-II vide No. CIT-II/CHD/TECH/1799/1522 dated 31.07.2006 as Society under the Societies Registration Act (XXI of 1860) against the registration No. 1564 of 2004-05, dated 09.03.2005. During the assessment proceedings, it is seen from the balance sheet of the assessee that assessee has made addition of Rs. 2,31,73,648/- in corpus donation, in which amount of Rs.

1,63,73,648/- was received from the students of the assessee's institutions. The additions in corpus had been verified from these students u/s 133 (6) and 131 of the I.T. Act, 1961. During the verification, it was found that these corpus donations transactions were not genuine. Students name and address had been verified during the verification and found true but during the verification it was noticed that these students had not paid any amount to the assessee as voluntary contribution or donations as corpus or normal donation. In the above, facts transactions related with the corpus donations were not found genuine attracted the provisions of Section 115BBC of the I.T. Act, 1961 as unanimous donations and section 68 of the I.T. Act, 1961.

5. During the proceedings before us, the ld. Counsel for the Assessee filed a paper book which contains the names and addresses of students from whom the Society had received so called donations. The ld. Counsel also wanted to emphasize that such donations are not anonymous donations or contributions within the meaning of section 115BBC of the Income Tax Act, 1961. The ld. counsel also filed a copy of letter dated 14.3.2016 regarding receipt of Rs.

1,63,73,648/- received from students / parents for corpus of the Trust in details with reference to names, addresses and amounts received of all the students / parents along with confirmations from some of the students. The Id. Counsel further submitted that the additional evidence in the form of affidavits were filed before the Id. CIT(A) which he forwarded to the Assessing Officer for comments but no remand report in this regard was filed before the CIT(A) on the additional evidence filed. Regarding statements recorded during the assessment proceedings, the Counsel of the Assessee submitted that the Assessee was not allowed to cross examine the witnesses by adjudicating authority though the statements of those witnesses were made the basis of the assessment order. In support of his arguments, the Id. Counsel of the Assessee cited many case laws some of which are as under: -

1. Geetanjali Educational Society [2008] 174 Taxman 440 (Rajasthan)
 2. Anadaman Timber Industries 281 CTR 141 (SC)
6. The Id. DR relied mostly on the orders of the authorities below. Moreover, he argued vehemently that the affidavits filed by the Assessee are after thought and since the students have their carrier in

the hands of the Institutions, therefore, they cannot go against the wishes of the administration of the institution. It is because of this reason that they have signed such affidavits. The ld. Counsel of the Assessee submitted that students whose statements were recorded by the Assessing Officer while passing the assessment order were not produced for cross examination by the Assessee and statements given by the students were taken as sacrosanct and additions were made by the Assessing Officer and later confirmed by the CIT(A).

7. We have considered the facts narrated by the Assessing Officer in the assessment order and the findings given by the ld. CIT(A) on this issue in his appeal order and we have also considered the arguments put forward by the ld. Counsel of the Assessee during the proceedings and we have also considered the arguments of the ld. DR on this issue. In our considered view, it is always desirable to allow the Assessee to cross examine the witnesses whose statements are being used to make basis for any addition in the assessment order. Here, in this case, it has not been done. Similarly, when additional evidence was filed before the ld. CIT(A) in the form of affidavits filed by the students, which were sent to the A.O. for his comments, the

Assessing Officer did not make any comment on such affidavits and as such the ld. CIT(A) has passed order without taking into consideration the affidavit filed by the Assessee during the appellate proceedings. From the facts of the case it has also emerged that statements of only seven students out of 1500 students were recorded by the Assessing Officer and such statements were made basis for disallowance of the entire amount of Rs. 1,73,73,648/- by applying the provisions of section 115BBC and section 68 of the Act treating corpus donations received from students to be anonymous donations.

8. We find that the not considering the evidence filed by the Assessee during the appellate proceedings before the ld. CIT(A) is not justified on the part of the ld. CIT(A). In fact, the case laws relied upon by the ld. CIT(A) on the decision of 'CIT (E) vs. Jagannath Gupta Family Trust', reported in 411 ITR 235 is also not appropriate. It is because in Jagannath Gupta Family Trust's case (supra), the matter was relating to the money laundering in lieu of cash, such is not the factual position in this case. Further, even the statements of students recorded by the Assessing Officer for payment of donation to the institutions were not produced for cross examination by the Assessee.

Therefore, without giving any opportunity to the Assessee to cross examine the students who had given statements against the Institutions, i.e., payment of donation and also not taking into consideration the affidavits filed by the Assessee, such act on the part of the CIT(A) is not justified. Therefore, the additions confirmed by the Id. CIT(A) on this ground cannot be sustained. Accordingly, appeal on ground Nos. 1 and 2 of the Assessee is allowed.

9. Appeal on Ground Nos. 3 to 5 are against upholding of addition of Rs. 4,83,16,171/- 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 Act. The Id. CIT(A) has given his finding bringing out on record the facts discussed by the Assessing Officer in the assessment order as under:-

“7.1 Brief facts of the case are that on perusal of balance sheet of the assessee, A.O. noticed that the assessee had shown an amount of Rs. 11,33,022/- to Sh. Anshu Kataria (Chairman of assessee trust) as imprest. During the assessment proceedings, the nature of this account and purpose of the same were asked from the assessee. In response, the assessee filed a copy of account of imprest with Sh. Anshu Kataria and bank statement of the same. On perusal of

the same, AO observed that there were some cash deposits and transfer entries in the bank account of assessee, regarding which the assessee stated that the deposits were on account of fees received from students and the assessee had shown closing balance of the same as imprest in the hands of Sh. Anshu Kataria. On perusal of copy of account of the same it was seen that there were total deposits of Rs. 18,78,722/- but assessee had transferred only Rs. 7,45,700/- and retained the remaining amount of Rs. 11,33,022/- as imprest without any purpose. All these facts led the Assessing Officer to conclude that Sh. Anshu Kataria, Chairman of the society was taking undue benefit of the property of the society as Sh. Anshu Kataria, Chairman had retained the amount of Rs. 11,33,022/- without any specific purpose. The assessee was confronted regarding the nature & genuineness of the transactions. In response, AR of the assessee submitted that the balance in the Anshu Kataria's imprest account represented fees deposited by students of states, where they were unable to deposit the same into Trust's account, in the personal account of Sh. Anshu Kataria. On perusal of the said reply, it was seen that assessee had failed to justify the reasonability of the said 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, 196. Assessee had shown payments to its chairman as imprest. This amount was fund of the assessee, which should have been part of the unutilized income of the entity and deposited in modes u/s 11(5) 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.”

10. The Counsel of the Assessee also argued on the line of his reply filed before the ld. CIT(A), which is as under:-

"This imprest was mostly out of fee collection in cash of students on his tour to remote states like Orissa, Bihar & Jammu & Kashmir etc. Out of the total such fee collection of Rs. 18.78 lakhs; Rs.7.46 lakhs were remitted from his account to the college account. The balance amount of Rs. 11.33 lakhs; he kept in his account against his interest free loan of more than Rs. 50 lakhs given to college. As such adequate interest free security existed against the imprest account.

Sh. Anshual 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 use the college funds available in his account. So it was actually *his own funds which were kept by him in the imprest accounts not any college funds.*

*As per above facts your Honour will realize that **the amount of Rs. 11.33 lakhs 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(1)(c) or section 13(2)(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(1)(c) or section 13(1)(d) of the Income Tax Act. In fact there was no diversion of funds to give any advantage to Sh. Anshu Kataria.*

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 for not the entire surplus as has been made by the learned Assessing officer. In case of (A) ACIT Indicula Trust Society [2012] 21 taxmann.com 144/52 SOT 1 (Delhi – Trib.) was held that where the Trust provides benefit directly or indirectly, to be 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 IT AT felt that of section 13(1)(c) (ii) of the benefit of exemption should be denied only to the extent of the benefit provided.”

11. The Id. DR relied mostly on the authorities below.

12. The Id. CIT(A) in his order has given his findings on this issue as under:-

“7.3.1 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 everywhere 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. 11.33 lakhs out of total fees of Rs. 18.78 lakhs collected 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 a relative, rigour of the provisions guiding forfeiture of exemption needs to be well understood by assessee seeking exemption.”

13. We have considered the findings of the Assessing Officer and the findings of the Id. CIT(A) on this issue. We have also considered the submissions filed by the Id. Counsel and Id. DR and the argument put during the proceedings before us. We find that there is no denying that as per the MOA, it was not necessary for the Chairman to go to remote states like Orrisa, Bihar and Jammu & Kashmir and collect fee from students in remote places of these States, as discussed by the Id. CIT(A). But at the same time, we find there is no bar for the Chairman to visit such remote places and collect fee from students in remote places for the Institutions. The Id. CIT(A)'s finding is that in today's digital world where banking facilities are available everywhere and everybody has hold on mobile internet facility, the said plea of the assessee is not acceptable.

14. We find that Id. CIT(A) in such findings may be correct and true in big place and bigger cities but still in remote places where internet

facilities even today are not available all the time, the action of the Chairman of collecting fee from students in such remote areas may not be treated as violation of any clause for the trust. Therefore, the action of collecting fee from the students and depositing in the Chairman's personal account may not be treated as such a big crime so that section 13(1)(c) and 13 (1)(d) read with section 13(3) could be invoked. However, as filed in the written submissions by the Counsel of the Assessee as per the findings of the Delhi Bench of the Tribunal in the case of 'ACIT Indicula Trust Society', (2012) 21 taxmann.com 144 / 52 SOT 1 (Delhi – Trib.) is as under:-

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 for not the entire surplus as has been made by the learned Assessing officer.

In case of (A) ACIT 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 the 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 held that of section 13 (l)(c) (ii) of the benefit of exemption should be denied only to the extent of the benefit provided.

15. We hold that the amount of Rs. 11,33,022/- kept by the Chairman of the assessee Trust Shri Anshu Kataria in his own bank account is to be disallowed. Accordingly, from the confirmed addition of Rs. 4,83,16,171/- addition of Rs. 11,33,022/- only is sustained. Thus, Assessee's appeal on this ground is partly allowed.

16. Ground No. 6 is general in nature.

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

Order pronounced on 25. 07. 2024.

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

Sd/-
(DR KRINWANT SAHAY)
Accountant Member

“आर.के.”

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