

आयकर अपीलीय अधिकरण  
कोलकाता 'बी' पीठ, कोलकाता में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य  
एवं  
श्री संजय अवस्थी, लेखा सदस्य  
के समक्ष  
Before

**SRI SANJAY GARG, JUDICIAL MEMBER  
&  
SRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No.: 1326/KOL/2023  
Assessment Year: 2014-15**

***Shree Hanuman Welfare Trust.....Appellant  
[PAN: AABTS 6357 F]***

**Vs.**

***DCIT, Circle-2, Exemption, Kolkata.....Respondent***

**Appearances:**

***Assessee represented by: None.***

***Department represented by: P.P. Barman, Addl. CIT, Sr. DR.***

Date of concluding the hearing : September 24<sup>th</sup>, 2024

Date of pronouncing the order : October 16<sup>th</sup>, 2024

**ORDER**

**Per Sanjay Awasthi, Accountant Member:**

Right at the outset, it deserves to be mentioned that this case has been fixed as many as seven times since the filing of appeal on 08.12.2023. On all but one occasion (On hearing date of 30<sup>th</sup> May, 2024, when the DR sought adjournment) when this appeal has been adjourned either on the request of appellant or a further date has been given due to non-attendance by ld. AR of the assessee, or on account of any written request from the appellant's side. This is especially true of last 3 dates of hearing: 11.07.2024, 13.08.2024 and 24.09.2024. Accordingly, we do not deem it fit to keep this matter pending any longer. This matter is accordingly, disposed of on the basis of facts already on record.

2. In this case, the appellant Trust was seen to have advanced loans amounting to Rs. 63,92,400/- to three companies where most of the directors were also trustees in the appellant Trust. The ld. AO added this amount u/s 13(2)(a) and 13(1)(c) of the Income Tax Act, 1961 (in short the 'Act') through the following findings:

*“I have carefully perused the submission made the by the assessee and from the facts of the case it is clearly proved that the assessee has failed to prove the economic rational of extending loan to its own managing trustee and now want to give it a colour of genuine transactions related to purchase of land to escape from the rigours of section 13(2)(a). The assessee could not prove the genuineness of the transactions with valid documents as per law. As per the said proviso, if any part of the income or property of the trust is or continues to be, lent to any person referred to sub-section (3) for any period during the previous year without either adequate security or adequate interest or both. In this case this specified people are Mr. Sanjiv Kumar Tulsian and Kusum Tulsian, both them being the managing trustee as well as the directors having substantial interest in all the three private limited companies. Therefore, as per section is 13(2)(a) and 13(1)(c) of the Act, the assets of the trust are diverted for personal use by the trust for the benefit of the trustees by providing loan and not deposited the accumulated 15% portion in 11(5)(d) mode of investment and if a trust does this than the "contaminated amount" is taxed @ MMR u/s 164 of the Act. While in this case, it is clearly established that the assets of the trust/ society is diverted for the personal benefits of the Managing Director cum trustee, since the said loan & advances were never forwarded for land purchase agreement. Therefore, an amount of Rs. 63,92,400/; is taxed at MMR u/s 164 of the Act r.w.s 13(2)(a) and 13(1)(c) of the Act. Penalty proceeding is also initiated u/s 271(1)(c) of the IT Act for concealment of income and providing inaccurate particulars of income.”*

2.1. In light of this action, the appellant approached the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as ld. 'CIT(A)'] where also the action of ld. AO was confirmed with the following findings:

*“7.0 Having considered the submission of the appellant and the assessment order, I find that although the appellant has admitted that the loan and advances were given for purchase of property however no documentary evidence has been furnished in support of the argument. No registered deed for the property has been furnished although the loans and advances are lying for last six years. No agreement between the parties has also been furnished either before the AO or during the appeal proceedings. This clearly shows that the appellant has failed to substantiate its contention with supporting evidence. Thus, Ld AO is correct in holding that as per section 13(2)(a) and 13(1)(c) of the Act, the assets of the trust are diverted for*

*personal use of the trustee by providing loans and advance to the companies in which directors of the companies are also trustee of the trust. The Ld AO is further correct in holding that these sums cannot be said to be held for accumulation as per provisions of section 11(5) of the Act. In view of the fact and circumstances, I uphold the addition made by the Ld AO. The Ground of the appellant is dismissed.”*

2.2. Aggrieved with this action, the assessee is in appeal before the ITAT through 3 grounds of appeal, out of which the first ground challenges the addition of Rs. 63,92,400/- added u/s 13(3) of the Act and the second ground protests the charging of interest u/s 234A/B/C of the Act. The third ground is general and will not be adjudicated.

3. Before us, the ld. AO and ld. CIT(A)'s orders were gone through with the help of ld. DR who pointed out that before the ld. AO, this appellant could not establish the justification for advancing loans to a category of persons mentioned in Section 13(3) of the Act.

3.1. On a consideration of the facts of this case, it is clear that there was a clear onus cast on the assessee to prove that the transactions with companies in which the trustees were directors, would not be hit by the provisions of Section 13(2)/13(3) of the Act. It is clear that the appellant has not been able to establish any fact in his favour. Accordingly, the actions of both the ld. AO and ld. CIT(A) are upheld and ground no. 1 is dismissed.

3.2. Ground no. 2 regarding charging of interest is consequential and ground no. 3 is not adjudicated as it is general in nature.

4. In the result, in light of discussions made above, this appeal is dismissed.

**Order pronounced in the open Court on 16<sup>th</sup> October, 2024.**

Sd/-  
**[Sanjay Garg]**  
Judicial Member

Sd/-  
**[Sanjay Awasthi]**  
Accountant Member

Dated: 16.10.2024

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. **Shree Hanuman Welfare Trust, 3B Lal Bazer Street, Sir RNM House, Dalhousie, Kolkata, West Bengal, 700001.**
2. **DCIT, Circle-2, Exemption, Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

*//True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata