

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.83/Chny/2022  
निर्धारणवर्ष/Assessment Year: 2011-12

M/s.J Sikile Foundation, Plot No.1025, Street No.44, TVS Colony, Anna Nagar West Extn., Chennai-600 101.	<b>v.</b>	The DCIT, Exemption-III, Chennai.
<b>[PAN: AAATS 1630 C]</b>		
<b>(अपीलार्थी/Appellant)</b>		<b>(प्रत्यर्थी/Respondent)</b>
अपीलार्थी की ओर से/ Appellant by	:	Shri A.S.Sriraman, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri ARV Sreenivasan, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	18.07.2024
घोषणाकीतारीख /Date of Pronouncement	:	09.10.2024

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee foundation against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 06.01.2022 for the Assessment Year (hereinafter in short "AY") 2011-12.

**2.** The main grievance of the assessee-foundation is against the action of the Ld.CIT(A) confirming the action of the AO denying exemption u/s.11 of the Income Tax Act, 1961 (hereinafter in short "the Act"). The



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assessee is a Public Charitable Trust registered u/s.12AA of the Act and for relevant AY 2011-12, the case of assessee was selected for scrutiny and he noted in the assessment order that assessee was running a Secondary School affiliated to CBSE under the name & style of "J. Sikile School" at Narsapuram, [a Town at Andhra Pradesh] and another Secondary School affiliated to State Board under the name & style of "J. Sikile Academy" at the same location. The AO from perusal of the balance-sheet of the assessee under the schedule "current assets, loans and advances" noted that there was outstanding dues from M/s. Sands-India Pvt. Ltd. (hereinafter in short 'M/s.SIPL'), a concern, in which, the Trustee of assessee holds substantial interest as follows:-

- i) as on 31.03.2011 – Rs.95,15,470/-
- ii) as on 31.03.2010 - Rs.75,54,470/-

**3.** The AO asked the assessee to furnish the ledger extracts of M/s. SIPL; and noted from perusal of the ledger that the loan recoverable /outstanding as on 31.03.2011 was to the tune of Rs.95,15,469/- from M/s.SIPL. And the AO asked the assessee to explain the aforesaid transaction with M/s.SIPL, and simultaneously, show-caused 'as to why' the exemption u/s.11 of the Act should not be denied since there was *per-se* violation of sec.13(1)(c) of the Act. And pursuant thereto, the assessee replied that M/s.SIPL was incorporated in the year 1982 as a Non-Banking Finance Co., registered with RBI and the assessee came into existence in the year 1983 as a Public Charitable Trust with the object of



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promoting educational projects in the rural areas of Andhra Pradesh. It was pointed out that Shri M.J. Sikile who was the promoter of M/s.SIPL is also the trustee of assessee Public Charitable Trust; and that during the initial/formative years, M/s.SIPL used to support the assessee-foundation to establish the Educational Institutions which fact is corroborated/reflected in the ledger account of the said company (M/s.SIPL) in the books of the assessee right from 1984-85. It was submitted that it was maintaining running-account between them [assessee-foundation and M/s.SIPL] and pleaded before the AO that in the back-drop of the aforesaid relevant facts, there was no diversion of the assessee's fund. It was also pointed out that the Hon'ble Madras High Court in OP No.305/1997 permitted nomination of the representatives of the company (M/s.SIPL) in the board of the assessee Trust which proves the close-nexus between the two entities and therefore, it was asserted that provisions of Sec.13(1)(c) of the Act, is not attracted. However, the AO noted that loans have been extended to the founder/trustee of the assessee-Trust and therefore, he held that assessee violated sec.11(5) as well as Sec.13(1)(c)/13(1)(d) of the Act and therefore, he denied the exemption u/s.11 of the Act and the assessee's income was treated like from a business enterprise in the status of AoP and assessed the income at Rs.1,77,32,382/- in place of NIL returned by the assessee as under:

<b>+ / -</b>	<b>Particulars</b>	<b>Amount (Rs.)</b>
	Excess of income over expenditure	1,46,59,512



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Add:	Depreciation		22,13,086
Add:	Special Fee Fund		7,347
Add:	Interest on balance outstanding of Rs.95,15,469/-@12%		11,41,856
			1,80,21,801
Less:	Depreciation relating to assets acquired during the year		2,89,419
	<b>Assessed income</b>		<b>1,77,32,382</b>
	Tax thereon @30%		53,19,715
	Education Cess		1,59,591
	Total tax		54,79,306
Add:	Interest u/s. 234B	19,61,352	
Add:	Interest u/s 234D	3,380	
Add:	244A interest already issued	2,652	19,67,384
	<b>Tax payable</b>		<b>74,46,690</b>

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who confirmed the action of the AO by holding as under:

2.3 I have gone through the submission of the assessee and perused the assessment order. As per the above facts, the appellant has alleged that AO has failed to appreciate the transactions between assessee and M/s Sands India Private Limited and he has overlooked the history of connection between the appellant and the said company. AO's action in applying the provisions of section 13(1)(c)/13(1)(d) are vitiated. Provision of Sec. 13(1)(c) were mechanically applied and without proper examination of facts and without appreciating that the running account of assessee with M/s.Sands India Private Limited was in operation for last 30 years.

The submission put forth by the appellant cannot be accepted. The appellant is a public charitable trust and it has to observe provisions of Act relating to public charitable trusts, in order to be eligible for exemption u/s.11 and u/s.12. Appellant has violated two provisions in this regard. First is that no investment can be made in a mode other than those permitted u/s 11(5). Appellant has advanced money to M/s Sands India Private Limited which is not a mode of investment listed in 11(5). Secondly the trustee of the assessee is holding substantial interest in M/s Sands India Private Limited and as per Sec. 13 of any part of the property of a public charitable trust has been put to non-charitable purpose or for the benefit of trustee or a person who has made substantial contribution to the trust, then the charitable trust is not eligible to avail exemption u/s 11 or 12.

The fact that assessee has been advancing money to M/s Sands India Private Limited in past also, will not make the case valid for exemption. The appeal is dismissed and income assessed by the AO is sustained.

5. Aggrieved, the assessee is in appeal before this Tribunal.



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**6.** Assailing the action of the Ld.CIT(A), the Ld.AR submitted that even if there is a violation of Sec.13(1)(c)/(d) of the Act as alleged by the AO [*i.e. the action of the assessee giving loan to M/s.SIPL, to the tune of Rs.95,15,469/- without adequate interest from M/s.SIPL*], according to the Ld.AR, since the interest has been levied by the AO @12% to the tune of Rs.11,41,856/- (on the loan amount of Rs.95,15,469/-), according to the Ld.AR, the AO ought not to have denied tax exemption u/s.11 of the Act by taxing the excess income over expenditure and for such a preposition firstly cited the CBDT Circular No.387 dated 06.07.1984 as under:-

**FINANCE ACT, 1984**

28.6 It may be noted that new sub-section (1A) inserted in section 161 of the Income-tax Act, which provides for taxation of the entire income received by trusts at the maximum marginal rate is applicable only in the case of private trusts having profits and gains of business. So far as the public charitable and religious trusts are concerned, their business profits are not exempt from tax, except in the cases falling under clause (a) or clause (b) of section 11(4A) of the Income-tax Act. As the maximum marginal rate of tax under the new proviso to section 164(2) applies to the whole or a part of the relevant income of a charitable or religious trust which forfeits exemption by virtue of the provisions of the Income-tax Act in regard to investment pattern or use of the trust property for the benefit of the settlor, etc., contained in section 13(1)(c) and (d) of that Act, the said rate will not apply to the business profits of such trusts which are otherwise chargeable to tax. In other words, where such a trust contravenes the provisions of section 13(1)(c) or (d) of the Act, the maximum marginal rate of income-tax will apply only to that part of the income which has forfeited exemption under the said provisions.

**7.** The Ld.AR also submitted that the Hon'ble Madras High Court in the case of CIT v. Working Women's Forum reported in 365 ITR 353 has referred to the aforesaid Circular while deciding similar question framed by it u/s.13(1)(d) of the Act, which is reproduced as under:-



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1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the denial of exemption should only be to the extent of the income which is violative of section 13(1)(d) and not the total denial of exemption under section 11?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in dismissing the appeal of the Revenue, when the assessee-trust made the investment in MIOT Hospitals Ltd. consciously and thereby contravened the provisions of section 11(5) 13(1)(d) of the Act?"

**8.** And the Hon'ble Madras High Court answered the above question as under:-

4. We do not agree with the said submission of the learned counsel for the Revenue. We may at the outset point out herein that the decision relied on by the Commissioner of Income-tax (Appeals) in the case of Tuluva Velfala Association (supra), is relatable to the decision of this court in T. C. No. 477 of 1989 and has no relevance of the issue on hand. Leaving that aside, as far as the decision of the Bombay High Court in Sheth Mafallal Gagalbhai Foundation Trust (supra) is concerned, it is a similar line, which was applied by the Tribunal. The assessee therein was brought under section 164 to be assessed at the maximum marginal rate of tax on account of contravention of section 13(1)(d). The Bombay High Court held that violation of section 11(5), read with section 13(1)(d) by the assessee would result in the maximum marginal rate of tax only on the dividend income on shares, which was not the recognized mode of investment and that the assessee would not be vested with marginal rate of tax on the entire income. Therefore, the income other than dividend income has to be taxed only to the extent to which the violation was found by the Assessing Officer. In so considering, the Bombay High Court held as follows (page 537):

"Under section 161(1A), which begins with a non-obstante clause, it is provided that where any income in respect of which a person is liable as a representative assessee consists of profits of business, then tax shall be charged on the whole of the income in respect of which such person is so liable at the maximum marginal rate. Therefore, reading the above two phrases show that the Legislature has clearly indicated its mind in the proviso to section 164(2) when it categorically refers to forfeiture of exemption for breach of section 13(1)(d), resulting in levy of maximum marginal rate of tax only to that part of the income which has forfeited exemption. It does not refer to the entire income being subjected to maximum marginal rate of tax. This interpretation of ours is also supported by Circular No. 387, dated July 6, 1984 (see [1985] 152 ITR (St) 1). Vide the said circular, it has been laid down in para. 28.6 that, where a trust contravenes section 13(1)(d) of the Act, the maximum marginal rate of income-tax will apply only to that part of the income which has forfeited exemption under the said provision and not to the entire income. We may also add that in law, there is a vital difference between eligibility for exemption and withdrawal of exemption/forfeiture of exemption for contravention of the provisions of law. These two concepts are different. They



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have different consequences. It is interesting to note that although the Legislature withdrew section 164(2) by the Direct Tax Laws (Amendment) Act, 1987, which provision was reintroduced by the Direct Tax Laws (Amendment) Act, 1989, the Legislature did not touch the proviso to section 164(2) which has been on the statute book right from April 1, 1995. The said proviso was inserted by the Finance Act, 1984. The proviso specifically refers to violation of section 13(1)(d) and its consequences.”

5. We are in entire agreement with the statement of law by the Bombay High Court in the decision referred to above. Respectfully following the said decision, we confirm the order of the Tribunal, thereby reject the Revenue's appeals. (emphasized).

**9.** The Ld.AR also referred to the decision of the decision of the Co-ordinate Bench of this Tribunal in the case of M/s.Jaya Educational Trust reported in 130 Taxmann.com 225, wherein, the Tribunal has observed as under:-

14. The provisions of section 13(1)(c) imposed certain restriction on utilization of income of the trust which claims exemption u/s 11 of the Act. As per clause (c) of sub.sec (1) of section 13, if any part of income or any property of the trust or the institution, is used or applied directly or indirectly for the benefit of any person referred in sub. Section (3), then the trust is not entitled to exemption u/s 11 of the Income Tax Act, 1961. The specified persons has been referred to u/s 13(3) of the Act, and as per said section the persons specified are the 'author' or 'founder' of the trust, their relatives, any trustee of the trust or manager by whatever name called. The provisions of sec. 164(2) of the Act, states that in a case, where the whole or any part of the relevant income is not exempt u/s 11 or sec. 12 by virtue of the provisions contained in clause (c) or clause (d) of sub.sec. (1) of section 13 of the Act, tax shall be charged on the relevant income or part of relevant income at the maximum marginal rate. Therefore, if the trust allows any benefit to interested persons, then only that part of the income which is in violation of section 13(1)(c) is chargeable to tax at the maximum marginal rate of tax; but not whole income of the trust. This proposition is supported by the decision of the Hon'ble Bombay High Court in the case of DIT (Exemption) v Sheth Mafatlal Gagalbhai Foundation Trust [2001] 249 ITR 533/114 Taxman 19 and also the decision of the Hon'ble Karnataka High Court in the case of CIT v Fr. Mullers Charitable Institutions [2014] 363 ITR 230/44 taxmann.com 275/[2015] 228 Taxman 319. We further observe that the Hon'ble Supreme Court has dismissed the Special Leave Petition filed by the revenue against the order of the Hon'ble Karnataka High Court, in the case of CIT v Fr, Mullers Charitable Institutions [2014] 51 taxmann.com 378/227 Taxman 369 (SC). In view of the clear provisions of the Act, and also the decision of the Hon'ble Supreme Court in the case, cited supra, it is clear that in case there is violation referred to under section 13(1)(c), then tax can be charged on such income which violates the provisions of section 13(1)(c); but not whole income of the Trust. This position is



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further strengthened by the decision of Hon'ble Jurisdictional High Court of Madras in the case of CIT v. Working Women's Forum (supra), where it was held that denial of exemption u/s.11 should be restricted to the extent of income, which is in violation of section 13(1)(c) & 13(1)(d) of the Act. The Hon'ble Supreme Court had dismissed the SLP filed by the Revenue and affirmed the findings of the Hon'ble Jurisdictional High Court of Madras. In this case, the AO has levied tax on total income of the Trust at maximum marginal rate, contrary to settled position of law. We, therefore, are of the considered view that the AO as well as the Id. CIT (A) were erred in rejecting exemption claimed u/s 11 to total income of the trust.

**10.** In the light of the aforesaid submissions, the Ld.AR submitted that even if the amount given by assessee as loan to M/s.SIPL was for the benefit of person referred to in sub-section (3) of section 13 of the Act, [in violation of section 13(1)(c)/(d)] the AO having added interest on the outstanding loan of Rs.95,15,469/- @12% i.e. Rs.11,41,856/-, should have restricted his addition to that extend; and erred in proceeding further to deny the exemption u/s.11 of the Act to the whole income of the assessee. Therefore, pleaded part-relief to the balance amount being exempt.

**11.** Per contra, the Ld.DR submitted that Trustee of the assessee Foundation/Trust was holding substantial interest in M/s.SIPL and as per sec.13 of the Act, if any part of the property of the assessee Trust has been used for the benefit of the trustee, then, the Charitable Trust is not eligible to avail exemption u/s.11 or 12 of the Act and since the assessee violated Sec.13(1)(c) & Sec.13(1)(d) of the Act (since investments have been made in violation of sec.11(5) of the Act), the action of the authorities below can't be found to be erroneous. Therefore, he wants us to confirm the action of the Ld.CIT(A).



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**12.** We have heard both the parties and perused the material available on record. We note that the assessee-Trust is enjoying registration u/s.12AA of the Act and is a registered Public Charitable Trust and is running two Schools as noted supra. The AO noted that assessee had advanced loans to the tune of Rs.95,15,469/- to M/s.SIPL, Chennai, which was outstanding as on 31.03.2011 and found that this action of the assessee was in violation of sec.11(5) of the Act, which means that investment was not in the mode other than prescribed in sec.11(5) of the Act, which action of the assessee, according to the AO, violates Sec.13(1)(d) of the Act as well as section 13(1)(c) of the Act [since the amount lent was for the benefit of person referred to in Sec.13(3) of the Act] and thereby, the AO added interest on the outstanding loan of Rs.95,15,469/- @12% i.e. Rs.11,41,856/- and proceeded further and denied the benefit of exemption sec.11 & 12 of the Act and computed the taxable income treating the assessee as a business enterprise in the status of AoP and computed the income at Rs.1,77,32,382/- as noted supra. Before us, the Ld.AR fairly admitted that assessee has lent the amount (Rs.95,15,469/-) to M/s.SIPL which is per-se for the benefit of person referred to in Sec.13(3) of the Act and therefore, there is violation of Sec.13(1)(c)/(d) of the Act and therefore, he is not contesting the addition of interest on the outstanding loan of Rs.95,15,469/- @ 12%



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i.e. Rs.11,41,856/- and therefore, this part of the order of the AO as confirmed by the Ld.CIT(A) stands confirmed.

**13.** However, the only grievance of the assessee is that having made the addition of Rs.11,41,856/- (12% of Rs.95,15,469/-), the AO ought not have denied the benefit of exemption u/s.11 of the Act by taxing the whole income i.e. excess income over expenditure and for such a proposition has referred to the aforesaid decisions of the Hon'ble Madras High Court decision in the case of CIT v. Working Women's Forum reported in 365 ITR 353 (Madras) as well as the Hon'ble Bombay High Court in the case of Sheth Mafatlal Gagalbhai Foundation Trust 249 ITR 533 (Bom). The Ld.AR also cited the CBDT Circular No.387 dated 06.07.1984 to contend that the AO ought to have taxed only to the extent to which the violation was found by the AO u/s.13(1)(c) & 13(1)(d) of the Act and not denied the exemption on the part of the income which didn't fall in the teeth of violations stated in section 13 of the Act.

**14.** We find force in the submissions of the Ld.AR, in the light of the decision of the Hon'ble Jurisdictional High Court in the case of Working Women's Forum (supra) as well as the Hon'ble Bombay High Court decision in Sheth Mafatlal Gagalbhai Foundation Trust (supra) and CBDT Circular (supra), and also take notice of the recent amendment brought in through Finance Act, 2022 w.e.f. 01.04.2023, wherein, the amendment



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was brought in clause (c) of sub-sec.(1) of sec.13, which recognizes the ratio laid in the judicial precedents cited supra, which reads as follows:

s.13(1)(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof-

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3): **such part of income as referred to in sub-clauses (i) and (ii)**

**15.** It would be gainful to refer to the memorandum of the Finance Act, 2022 explaining the aforesaid provision (relevant only) which reads as under:

Clause 8 seeks to amend section 13 of the Income-tax Act relating to section 11 not to apply in certain cases.

Sub-section (1) of section 13 provides for cases wherein the provisions of section 11 or section 12 shall cease to operate, so as to exclude from the total income of the previous year of the trusts or institutions in receipt of such income.

Clause (c) of said sub-section provides that provisions of section 11 or section 12 shall cease to operate where certain benefits have been passed on by the trust or institution to specified persons.

It is proposed to amend the said clause (c) so as to provide that the part of income, as referred to in said clause, which enures or is used or applied directly or indirectly for the benefit of any person referred to in sub-section (3) of the said section, such part of income shall not be excluded from the total income of the trust or institution in receipt of such income.

Clause (d) of said sub-section provides that the provisions of section 11 or section 12 shall cease to operate unless the funds of the trust or institution are invested or deposited in specified modes.

It is further proposed to amend the said clause (d) so as to provide that, in case any funds of the trust or institution are invested or deposited in any one or more forms other than specified modes, then income to the extent of such deposits or investments, shall not be excluded from the total income of the trust or institution in receipt of such income.



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**16.** And the Memorandum Explaining the Provisions in Finance Bill, 2022 [relevant portion only], which is extracted below:

**5.2 Taxation of certain income of the trusts or institutions under both the regimes at special rate**

Following incomes of the trusts or institutions are chargeable to tax, under different provisions of the Act:-

(a) The trusts or institutions under the first or second regime are required not to pass on any unreasonable benefit to the trustee or any other specified person. For the trusts or institutions under the second regime, clause (c) of sub-section (1) of section 13 of the Act provides that the entire exemption shall be denied to the trust irrespective of the amount of benefit passed on. For trusts or institutions under the first regime similar provisions is proposed by way of insertion of twentieth proviso to clause (23C) of section 10 of the Act.

(b) It is mandatory for any trust or institution under the first regime, to keep their funds in the specified modes. Third proviso of clause (23C) of section 10 of the Act specifically provides that the funds of such trusts or institutions shall be maintained in these specified modes. For the trusts or institutions under the second regime, clause (d) of sub-section (1) of section 13 of the Act provides that the exemption shall be denied to the trust irrespective of the amount of investment in non-specified modes.

(c) Further, the trusts or institutions under both the regimes are required to apply at least 85% of their income during the year. Where the trust is not able to apply 85% of the income, it may accumulate such income for maximum 5 years. Sub-section (3) of section 11 of the Act specifically provides for the trusts or institutions under the second regime that such accumulated income, which could not be applied within the period of accumulation (maximum 5 years), shall be deemed to be the income of the trust. Similarly, for the trusts or institutions under the second regime, there is a specific provision under clause (2) of Explanation 1 to sub-section (1) of section 11 of the Act providing for the accumulation of income for a period of one year. Sub-section (1B) of section 11 of the Act provides that if the income accumulated under clause (2) of Explanation 1 to sub-section (1) of section 11 of the Act could not be applied within the time allowed; it shall be deemed to be the income of the trust.

(d) The trusts or institutions under the first regime are also required to apply at least 85% of their income during the year. Where such trust is not able to apply 85% of its income during the year and does not accumulate such income, entire income of such trust shall be subjected to tax where the trust is approved under the second proviso to clause (23C) of section 10 of the Act since third proviso to clause (23C) of section 10 of the Act mandates minimum 85% application of income unless such income is accumulated.

Denying exemption to the trust, for small amount of income applied in violation to the provisions referred in clause (a) and (b) above creates difficulties to the trusts or institutions under both the regimes as there is



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ambiguity about the manner of taxation of such income. Further, there is need for special provision to ensure that the income applied in violation is taxed at special rate without deduction. Accordingly, in order to rationalise the provisions, the following amendments are proposed:-

(a) It is proposed to amend clause (c) of sub-section (1) of section 13 of the Act to provide that only that part of income which has been applied in violation to the provisions of the said clause shall be liable to be included in total income.

(b) It is also proposed to insert twenty first proviso in clause (23C) of section 10 to specifically provide that where the income of any trust under the first regime, or any part of the such income or property, has been applied directly or indirectly for the benefit of any person referred to in sub-section (3) of section 13, such income or part of income or property shall be deemed to be income of such person of the previous year in which it is so applied. The provisions of sub-section (2), (4) and (6) of section 13 of the Act shall also apply to it.

(c) It is proposed to amend clause (d) of sub-section (1) of section 13 of the Act to provide that only the that part of income which has been invested in violation to the provisions of the said clause shall be liable to be included in total income.

(d) It is proposed to insert Explanation 4 in third proviso to clause (23C) of section 10 of the Act to specifically provide that income accumulated which is not utilised for the purpose for which it is so accumulated or set apart shall be deemed to be the income of such person of the previous year being the last previous year of the period, for which the income is accumulated or set apart.

(e) All the above income are also required to be taxed at special rate. Hence, it is proposed to insert new section 115BBI in the Act providing that where the total income of any assessee being a trust under the first or second regime, includes any income by way of any specified income, the income-tax payable shall be the aggregate of— (i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of specified income; and (ii) the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the aggregate of specified income referred to in clause (i).

(f) The sub-section (2) of this new section seeks to provide that no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provision of the Act in computing specified income.

(g) Explanation to the proposed section defines "specified income" to mean:-

(i) income accumulated or set apart in excess of fifteen percent of the income where such accumulation is not allowed under any specific provisions of the Act; or



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(ii) deemed income referred to in Explanation 4 to third proviso to clause (23C) of section 10 or sub-section (3) of section 11 or sub-section (1B) of section 11; or

(iii) any income which is not exempt under clause (23C) of section 10 on account of violation of the provisions of clause (b) of third proviso of clause (23C) of section 10 or not to be excluded from total income under the provisions of clause (d) of sub-section (1) of section 13; or

(iv) any income which is deemed to be income under the twenty first proviso to clause (23C) of section 10 or which is not excluded from total income under clause (c) of sub-section (1) of section 13; or

(v) any income which is not excluded from total income under clause (c) of sub-section (1) of section 11.

These amendments will take effect from 1st April, 2023 and will accordingly apply in relation to the assessment year 2023-24 and subsequent assessment years.

Please Note- Trust exemption regimes are as follows:-

(1) Regime for any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 (hereinafter referred to as trust or institution under first regime); and (1) Regime for the trusts registered under section 12AA/12AB (hereinafter referred to as trust or institution under the second regime).

**17.** Taking note of the amendment brought *albeit* through Finance Act, 2022 w.e.f. 01.04.2023; and the CBDT Circular No.387 dated 06.07.1984 (supra), which has been considered by the Hon'ble Madras High Court in Working Womens (supra) and from the aforesaid discussion, in the present case, we note that there is a violation of sec.13(1)(c) of the Act by giving loan to M/s.SIPL to the tune of Rs.95,15,469/- without levying adequate interest. The AO having found the violation has levied interest @ 12% on the amount lent to the tune of Rs.95,15,469/- which comes to Rs.11,41,856/- which part will not enjoy the exemption u/s.11 of the Act and tax shall be charged at the maximum marginal rate. But, the AO



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erred in rejecting exemption claimed by assessee on the other part of the income of the Trust by taxing the whole income at maximum marginal rate contrary to the settled position of law as laid down by the Hon'ble Jurisdictional High Court in the case of CIT v. Working Women's Forum (supra) and the Hon'ble Bombay High Court in the case of Sheth Mafatlal Gagalbhai Foundation Trust & CBDT Circular (supra). In the light of the discussion, we hold that if the Trust allows any benefit to interested persons (*persons specified u/s.13(3) of the Act i.e. author or founder of the Trust, their relatives in trustee of the trust or manager by whatever name called*), then only that part of income which is in violation of sec.13(1)(c)/(d) of the Act is chargeable to tax at the maximum marginal rate of tax, but not the whole income of the Trust. This proposition is also supported by the decision of the Hon'ble Karnataka High Court in the case of CIT v Fr. Mullers Charitable Institutions [2014] 363 ITR 230/44 taxmann.com 275/[2015] 228 Taxman 319. We further observe that the Hon'ble Supreme Court has dismissed the Special Leave Petition filed by the Revenue against the order of the Hon'ble Karnataka High Court, in the case of CIT v Fr, Mullers Charitable Institutions [2014] 51 taxmann.com 378/227 Taxman 369 (SC). And since, in the present case as noted (supra), the levy of interest @ 12% of Rs.95,15,469/-, [which amount was advanced by the assessee to M/s.SIPL] is confirmed and the same i.e, Rs.11,41,856/- will be chargeable to tax at the maximum marginal



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rate of tax but not the whole income of the Trust and assessee is entitled to exemption on the other part of income which doesn't fall in the teeth of sec.13 of the Act. Thus, we partly allow the appeal and direct the AO to give necessary relief to the assessee in accordance to law.

**18.** In the result, appeal filed by the assessee is partly allowed.

Order pronounced on the 09<sup>th</sup> day of October, 2024, in Chennai.

**Sd/-**  
(जगदीश)  
(JAGADISH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**  
(एबी टी. वर्की)  
(ABY T. VARKEY)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 09<sup>th</sup> October, 2024.

**TLN, Sr.PS**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF