

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1216/Ahd/2024
(Assessment Year: 2017-18)

Deputy Commissioner of Income Tax, Circle-1(E), Ahmedabad	Vs.	Adarsh Foundation, C/o. Sal Hospital & Medical Institute, Opp. Doordarshan Tower, Drive-in-Road, Thaltej, Ahmedabad-380015
[PAN No.AAATA2111J]		
(Appellant)	..	(Respondent)

Appellant by :	Shri S. N. Soparkar, Sr. Adv. & Shri Parin Shah, A.R.
Respondent by:	Shri Rignesh Das, Sr. DR
Date of Hearing	20.11.2024
Date of Pronouncement	26.12.2024

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals), (in short “Ld. CIT(A)”), National Faceless Appeal Centre (in short “NFAC”), Delhi vide order dated 21.04.2024 passed for A.Y. 2017-18.

2. The Revenue has raised the following grounds of appeal:

“1. Whether the Ld.CIT(A) has erred in law and on facts in allowing the exemption/s. 11 of the Act and directing to re-compute the income.

2. The Ld. CIT(A) ought to have upheld the order of the AO, when the AO has clearly brought out the facts that the assessee has violated the provisions of section 13(1)(c), 13(2)(b), 13(2)(d), 13(2)(g) and 13(3)(e) read with explanation 1 & 3 of the Act.

3. The revenue craves to add, alter amend modify, substitute, delete and/or rescind all or any ground of appeal on or before the final hearing, if necessary so arises.”

3. The brief facts of the case are that the assessee, Adarsh Foundation Trust, is registered under section 12A(a) of the Income Tax Act and operates various charitable institutions, including SAL Hospital and Medical Institute (SHMI) and Kesar SAL Medical College and Research Institute (KSMC). In an effort to address financial difficulties faced by the assessee, particularly due to significant losses at KSMC and mounting liabilities, the assessee Trust entered into an agreement on April 1, 2008, with SAL Care Pvt. Ltd. (SCPL). The agreement involved the transfer of the operations, management, and movable assets of SHMI to SCPL. In return, the assessee Trust would receive either a fixed amount of Rs. 1 crore or 40% of SCPL's profit, whichever was higher, as management fees. The assessee Trust had incurred heavy debts, including both secured and unsecured loans, and faced a negative net worth as of 2007-08. The agreement was seen as a means to ensure the assessee Trust's survival and continued charitable activities, as SCPL took over the hospital's operations and liabilities. However, during the assessment proceedings for the assessment year 2009-10, the Assessing Officer (A.O.) scrutinized the agreement and found that it violated the basic principles of charity for which the Trust had been granted its registration under section 12AA of the Act. The A.O. was of the view that the agreement resulted in undue benefits to SCPL and violated section 13 of the Income Tax Act, which prohibits trusts from using their income for the benefit of related parties. Consequently, the Trust's claim for tax exemptions under sections 11 and 12 was denied. In response, the assessee Trust submitted a detailed explanation before the Assessing Officer, defending the agreement. The assessee

submitted that the agreement was made in the best interest of the Trust, considering its dire financial situation. The Trust submitted the necessity of transferring the liabilities and assets to SCPL in order to prevent the closure of its institutions and to continue fulfilling its charitable objectives. The Trust also pointed out that the agreement was structured to ensure reasonable compensation, with SCPL agreeing to cover all expenses of Kesar SAL Medical College and provide technical and financial support for running the Kesar SAL Hospital. The Trust further argued that the transfer of assets and liabilities was legitimate and was not intended to provide undue benefit to related parties, as SCPL was a separate corporate entity formed specifically to take over the hospital's operations. The Trust also placed reliance on the favorable decisions by the Commissioner of Income Tax (Appeals) for the assessment years 2009-10, 2011-12, 2012-13, and 2013-14, which held that the Trust had not violated section 13 of the Income Tax Act. Additionally, the assessee placed reliance on a ruling from the Income Tax Appellate Tribunal (ITAT) that dismissed the Department's appeal for the assessment year 2009-10, further supporting its position. Despite these submissions, the A.O. rejected the Trust's explanation, on the ground that the agreement constituted a violation of the charitable trust's purpose and allowed for undue benefits to SCPL, a related party. In response, the assessee Trust also pointed out that the Income Tax Appellate Tribunal had upheld the decisions of the Commissioner of Income Tax (Appeals) in favour of the assessee Trust for previous years and that there was no violation of section 13, and the income should be exempt under sections 11 and 12 of the Act. The A.O. however noted that SCPL was

incorporated just two months before the agreement, which caused serious concerns about the intentions and qualifications of SCPL. Furthermore, the A.O. pointed out that the remuneration paid to the Trust under the agreement appeared disproportionate to market rates, particularly since SCPL lacked experience in the medical field at the time of the agreement. As a result, the A.O. reclassified the Trust's income as that of an Association of Persons (AOP), which would only be allowed to deduct its expenditures, and disallowed the exemptions under sections 11 and 12 of the Act.

4. In appeal, Ld. CIT(Appeals) allowed the appeal of the assessee. Before Ld.CIT(A), the assessee relied on several previous decisions in its favour, which were reviewed by Ld. CIT(Appeals) in detail. The decisions include those from the CIT(A)-9, Ahmedabad for Assessment Years (AY) 2015-16 and 2016-17, as well as the Hon'ble ITAT Ahmedabad C Bench for AY 2009-10. The assessee submitted that all these orders were in favour of the assessee and addressed similar issues. **The specific case for AY 2009-10 in ITA No. 1858/AHD/2013, was cited where the ITAT had agreed with the decision of the previous CIT(A), which had upheld the claim of the assessee regarding the applicability of certain exemptions under the Income Tax Act. The ITAT's decision was based on the finding that the agreement entered into by the assessee with SCPL was for the purpose of securing the trust's interest and not for generating profits from the transfer of movable property.** The objective was to counterbalance the significant losses incurred in running two large hospitals and to ensure professional management, which aligned with the charitable purpose of the trust. Furthermore, in

the earlier orders it was held that provisions of Section 13(1)(c)(ii) of the Act were not applicable as no part of the charitable income was used for the benefit of any specific individuals, as no such income was applied for that purpose during the relevant period. Ld. CIT(Appeals) observed that the earlier orders of the CIT(A) for AY 2015-16 and AY 2016-17, including appeal before the ITAT for AY 2015-16, indicated that similar issues had been dealt with in favour of the assessee in prior years. The CIT(A) had earlier ruled that the provisions of Sections 13(1)(c)(ii), 13(2)(b), 13(2)(d), and 13(2)(g) were not violated by the assessee, and thus, the AO's decision to assess the trust's income under the provisions of Sections 28-44 of the Act was unjustified. In line with these prior rulings, the appeal for the assessment year, AY 2017-18, was decided by applying the same principles and following the ITAT Ahmedabad's order in the assessee's own case for AY 2009-10 and the decision of the Hon'ble Bombay High Court in the case of Thana Electricity, the appeal was decided in favor of the assessee by Ld. CIT(Appeals).

5. The Department is in appeal before us against the order passed by Ld. CIT(Appeals) allowing the appeal of the assessee. The Ld. DR placed reliance on the observed made by the Assessing Officer in the assessment order. In response, the Counsel for the assessee submitted that the issue is covered in favour of the assessee in view of earlier year's decisions as cited by Ld. CIT(Appeals) and also by the decision of ITAT Ahmedabad in the assessee's own case for assessment year 2016-17 as well, wherein on identical set of facts, the ITAT for assessment year 2016-17 decided the issue in favour of the assessee in ITA No. 416/Ahd/2020, vide order dated 20-07-2022.

6. We have heard the rival contentions and perused the material on record. We observe that the issue under consideration has been decided by ITAT in favour of the assessee in earlier year's orders and also by the recent order passed by ITAT Ahmedabad in the assessee's own case for assessment year 2016-17 in ITA No. 416/Ahd/2020 vide order dated 20-07-2022. It would be useful to reproduce the relevant extracts of the order for ready reference:

“3.1. The SCPL is one of the business entities of M/s. Shah Alloys Ltd., group to which the assessee trust also belongs. Shri Karan R. Shah, the key Management Personnel and Director of SCPL, is the son of Shri Rajendra V. Shah, the Managing Trustee of the Trust. By virtue of this fact, the SCPL is covered under the definition of the person as per provisions of Section 13(3)(e) read with explanation 1 & 3 of the Act. By entering into the referred agreement with SCPL, the eligibility conditions for claiming deduction u/s. 11 of the Act, as laid down in sections 13(1)(c)(ii), 13(2)(b), 13(2)(d) and 13(2)(g) of the Act have been violated by the assessee trust. Therefore the income of the Trust is treated as Association of Person “AOP” and only expenditure incurred was allowed and thereby assessed the total income as Rs. 4,54,85,017/-.

4. Aggrieved against this order, the assessee challenged the same before the Ld. CIT(A)-9, Ahmedabad. The ld. CIT(A) following the order passed by the Co-ordinate Bench of this Tribunal in assessee's own case for the Assessment Year 2009-10 in ITA NO. 1858/Ahd/2013 dated 20.09.2019 allowed the appeal filed by the assessee in cancelling the assessment made on the income of the assessee as AOP and directed to grant exemption u/s. 11 & 12 of the Act. The ld. Counsel for the assessee submitted a copy of the order passed by the Co-ordinate Bench in assessee's own case wherein the Department appeal filed in ITA No. 1858/Ahd/2013 held as follows:

6. Being, aggrieved the assessee filed this appeal before the Tribunal. The Ld. Sr. DR has took as per the assessment order and findings of the AO. The Ld. Sr. DR contended that as per agreement, the SCPL will pay management fees amounting to Rs. 1 crore or 40% of the net profit before tax (which is higher) in lieu of takeover of the trust. However, there is no rational has been provided for arriving at such a funding. The assessee has failed to furnish any reasonable justification whatsoever. Therefore, the agreement entered into by the assessee violate the provisions of Sec. 13(3) of the Act. In view of these facts the Ld. CIT(A) was not justified in deleting the disallowance of deduction u/s. 11(1)(a) of the Act.

7. Per contra, the ld. Counsel for the assessee submitted that the assessee trust was continued to run the Kesar Sal Medical College and Research

Institute (KSMC) as reflected in the balance sheet as on 31.03.2009 placed at Paper Book Page 20 and the assessee was running the said college. However, with a view to corporatize the hospital the management of the charitable activity was handed over to SCPL which as per the agreement will enable it to effectively carried on operational management of business of SCPL. The trust was running huge loss, therefore to safe-guard the trust's activities and its assets, the assessee trust has taken a pertinent decision whereby all the liabilities can be discharged adequately and income is assured for its objects at the same it is granting image and immovable property remained unaffected. The Ld. Counsel referring Page 57 of the Paper book [which is agreement between the trust and SCPL] submitted that the object of the transfer to SER Hospital for operational management on mutually agreeable terms. The Ld. Counsel referred the Clause 2 of the agreement which clearly demonstrate that the trust has granted SCPL the operational management rights to the business with effect from the transfer date. Further, it was submitted that the SCPL has taken over all immovable assets namely plant and equipments movable machinery elaborated equipments etc. on the basis of valuation done by the Government approve valuer or book value whichever is higher. The Ld. Counsel submitted that the Government valuation done at higher it is reflected at Page 78 of the Paper Book which comes to 7.30 crore. The Ld. Counsel further referred the profit sharing composition Clause 4.1 of the agreement by which it was agreed that the trust shall be paid during the terms of agreement a sum equivalent to 40% of the profit before tax or minimum profit or compensation of Rs. 1 crore whichever is higher. The basis for calculation of 40% net profit for the purpose of Clause 4.1 of the agreement shall be annual audited accounts of SCPL. Accordingly, the assessee has received 1.63 crore during the year from SCPL as management fees which have been duly reflected at Paper Book Page 11 in the Income and Expenditure account of the trust. The Ld. Counsel further submitted that the amount of Rs. 5.43 crore was not loan and advances but it was the reimbursement of expenses. Therefore, relying upon the finding of the CIT(A) the Ld. Counsel submitted that the CIT(A) elaborately discussed all aspects and given his finding in accordance with law and same required to be sustained.

8. We have heard the rival submissions and perused the relevant material on record. We have gone through the findings of the AO as well as CIT(A) part of which are reproduced above in this part of the order. We find that the CIT(A) has arrived on the basic fact that agreement was entered with the company was to secure trust is interest and nor to indulge in the losses and for the purpose of reimburse the expenditure of Kesar Sal Hospital. The object of the transfer agreement with SCPL was to ensure that the hospital is managed professional, and in doing so the purpose of charity is not violated as a reputed hospital of such huge size requires professionally handling. We are also observed that the agreement was not entered into to derive profit from transfer of movable to SCPL but to counter the huge losses incurred in running two big hospitals. Therefore, the CIT(A) has correctly held that the activity of the trust to carried on in accordance with its objects and in the best interest of charity, therefore, the exemption u/s. 11(1)(a) has rightly allowed by

the Ld. CIT(A). Similarly, the CIT(A) has clearly held that the Sec. 13(1)(c)(ii) can apply only if any part of the charitable income of the trust has been used or applied for the benefits of the said persons during the previous year. But, since no portion of the income of the assessee has been applied for said person, therefore, the case of the assessee falls outside the scope of this section. Further, the trust is in receipt of income by way of management charges from SCPL and also all of its liabilities have been taken over by the same therefore there is a fact that there is no undue benefits of the use of trust property have been taken by any other persons. Similarly, there is no diversion of income of the trust as per Explanation of Sec. 13(2)(d) and 13(2)(g) of the Act as the trust has been benefitted greatly and its deficit of trust duly reduced to a great extent. We also observed that some erroneous presentation of Form No. 10B report does not disentitle the trust for claiming exemption u/s. 11 of the Act. Similarly, the amount of advance of Rs. 54,35,71,980/- in favour of SCPL appearing in the balance sheet was not advance but the reimbursement of the expenses. In the light of the aforesaid facts and circumstances, we are of the considered opinion that the CIT(A) has analyzed the facts correctly and given a judicious finding which does not call for any interference from outside. Accordingly, the same is upheld. Consequently, Ground No. (i) to (iii) of the appeal of the Revenue are therefore dismissed.

5. *The ld. D.R. Shri V.K. Singh appearing for the Revenue could not contravene the above order passed by the Tribunal and fairly accepted that it is covered for the present Assessment Year also.*

6. *Considering the submissions of both sides and following Coordinate Bench decision in assessee's own case, the grounds of appeal are hereby rejected and the appeal is hereby dismissed. 7. In the result, the appeal filed by the Revenue is dismissed."*

7. Accordingly, in view of the above, we find no infirmity in the order of Ld. CIT(Appeals) so as to call for any interference.

8. In the result, the appeal of the Department is dismissed.

This Order pronounced in Open Court on

26/12/2024

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 26/12/2024

TANMAY, Sr. PS

Sd/-

**(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER**

TRUE COPY

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad