

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER
AND SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 352/MUM/2014
(Assessment Year : 2003-04)

M/s. Free Trade Unions Multipurpose –
Project Trust,
C/o. M/s. Engineering Mazdoor Sabha,
Kennedy House, 4th Floor,
Goregaonkar Road, Mumbai 400 007
PAN: AAATF000E
Vs.

.... Appellant

The ACIT, Central Cir.43,
6th Floor, Aaykar Bhavan,
MK Road, Mumbai 400 020.

.... Respondent

ITA NO.1336/MUM/2014
(Assessment Year 2003-04)

The ACIT, Central Cir.43,
6th Floor, Aaykar Bhavan,
MK Road, Mumbai 400 020.

..... Appellant

Vs.
M/s. Free Trade Unions Multipurpose –
Project Trust,
C/o. M/s. Engineering Mazdoor Sabha,
Kennedy House, 4th Floor,
Goregaonkar Road, Mumbai 400 007

..... Respondent

Assessee by : Shri N.K.Agarwal
Revenue by : Shri Vivek Batra

Date of hearing : 10/12/2015
Date of pronouncement : 16/12/2015

ORDER**PER N.K.BILLAIYA,AM:**

ITA No.352/Mum/2014 & 1336/Mum/2014 are cross appeals by the assessee and the Revenue against the very same order of the CIT(A)-37, Mumbai dated 20/12/2013 for the assessment year 2003-04. As both these appeals have common grievance relating to the same set of facts in issue, therefore, they were heard together and disposed of by this common order for the sake of convenience.

2. As a registered Trust, assessee is engaged in various philanthropic activities as per Trust Deed. Pursuance to a search and seizure operation carried out against Chandbibi group on 20/08/2009, assessee's case was re-opened by issuing notice under section 148 of the Income Tax Act, 1961 (in short 'the Act'). The reasons for reopening the assessment and the satisfaction note alongwith approval of the Commissioner were handed over to the assessee. Vide a letter dated 7/4/2010 assessee requested to treat the earlier income as returned in compliance to the notice.

3. While scrutinizing the return of income the Assessing Officer noticed that as per Trust Deed there were five Trustees; Mr. J.N.Guzdar, Mr.R.J.Mehta, Ms. Chand Bibi Zaidi, Mr.Naterwalla and Mr. Asif Mulla. The Assessing Officer further found that the assessee has lent money to two trade unions namely, Engineering Mazdoor Sabha – Rs.37,71,019/- and Mumbai Mazdoor Sabha- Rs.29,42,169/-, totaling to Rs.67,13,187/-. On further probe, the Assessing Officer found that

the money has been siphoned to the ultimate beneficiary who also happens to be Trustees. The following chart will explain the position:-

Source	Conduit/ Intermediate concern	Amount transferred by source(Rs.)	Final beneficiaries	Amount transferred by conduit (Rs.)	Qualifying amount (Rs.)
	Engineering Mazdoor Sabha(EMS)	37,71,019	Chandbibi Zaidi	1,10,75,000	37,71,019/-
			R.J.Mehta	6,39,000/-	
	Mumbai Mazdoor Sabha (MMS)	29,42,169/-	Chandbibi Zaidi	9,80,000/-	29,42,169/-
			R.J.Mehta	10,015/-	
			Asif Mulla(Through Mulla Associates)	85,00,000/-	
Total qualifying amount					67,13,187/-

Drawing support from the provisions of Section -11 r.w.s. 13(3) of the Act, the Assessing Officer was convinced that the assessee is not entitled for the benefit of exemption under section 11 of the Act.

3.1 The Assessing Officer further found that the Trust has incurred expenditure on non-existent repairs through known aid of the Trustees by way of book entry. Finding huge sums being spent on such repairs of a building, which was not owned by the assessee, the Assessing Officer added back the entire expenditure of Rs.30,71,330/-. Since the exemption under section 11 was denied, the corpus donation of Rs.30,49,279/- was also added back.

3.2 Aggrieved by this, the assessee carried the matter before the CIT(A) and vehemently submitted that the assessee is very much entitled for the claim of exemption and it is an erroneous assumption that the assessee is hit by the provisions of section 13(3) of the Act. It

was stated before the CIT(A) that the assessee has not violated any conditions of Section 11 r.w.s. 13 of the Act and, therefore, denial of exemption is bad in law. After considering the facts and the submissions, the CIT(A) called for a remand report and in his remand report the Assessing Officer reiterated what has been stated in the assessment order.

3.3 On the issue of siphoning of the funds, it was brought to the notice of the CIT(A) that the Assessing Officer has incorrectly stated that Rs.33,71,019/- was paid to the Engineering Mazdoor Sabha. In fact only Rs.17,47,662/- was paid during the year. It was further stated that only Rs.8.00 lacs was given to Chandbivi as a loan, which was refundable. No funds were given to the Trustees. It was further mentioned that an advance of Rs.16,96,065/- was given for repairs and maintenance expenditure and this was not debited to P&L Account and was never claimed as expenditure. The CIT(A) after considering the entire facts in the light of remand report and the written submissions made by the assessee at para 5.4 held as under:-

"5.14 The above computation of AO is not as per law. The expenditure on trust activities of Rs.30,71,330/- cannot be added to the receipts. These expenses do not include amount advanced to Shankar Gaddam. Similarly, the amount of loan to EMS/MMS of Rs.67,13,187/- again is not an expenditure and cannot be added to income."

Aggrieved by this, both assessee and the Revenue are before us.

4. Ld. Counsel for the assessee reiterated what has been stated before the lower authorities. Drawing our attention to the Trust Deed, it was pointed out that two trade unions namely, Engineering Mazdoor Sabha and Mumbai Mazdoor Sabha were affiliates of the assessee,

therefore, money given to these unions were as per the objects of the Trust. Ld. Counsel for the assessee vehemently stated that even if the assessee has violated the provisions of Section -13, then the correct section is Section 13(1)(d) and not 13(1)(c) of the Act and, therefore, only income from such investment or deposit made in violation of Section 11(5) is liable to be taxed and that violation under section 13(1)(d) of the Act does not tantamount to denial of exemption under section 11 of the Act on total income of the assessee and since the assessee has not received any interest from the loans given to two Mazdoor Sabhas, there is no income liable to be taxed. Reliance was placed on the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Fr. Mullers Charitable Institutions, 363 ITR 230(Kar). For similar proposition reliance was also placed on the decision of Hon'ble Bombay High Court in the case DIT vs. Sheth Mafatlal Gagalbhai, 249 ITR 533(Bom).

5. Per contra, the Ld. DR strongly opposing to the submissions made by Ld. Counsel for the assessee stated that the assessee has clearly violated the conditions laid down under section 13(1)(c) r.w.s. 13(3) of the Act, therefore, there is no question of taking shelter behind the provisions of section 13(1)(d) of the Act. Drawing our attention to the various clauses of the Trust Deed, the Ld. DR pointed out that the Trust Deed does not authorize the Trust to lend money to anyone. Thus, the assessee has violated its own Trust Deed. Ld. DR strongly relied upon the findings of the Assessing Officer.

6. We have given a thoughtful consideration to the rival submissions. We have also gone through the orders of the authorities

below and the relevant documentary evidences and have considered the judicial decisions relied upon. There is no denial that the assessee has given loan to two Mazdoor Sabhas. There is also no denial that the Trustees of the assessee happen to be the final beneficiaries as mentioned at Para-3. Let us see the conduct of the assessee in the light of the provisions of section 13(1)(c) r.w.s. 13(3) of the Act, which are as under:-

Section 13(1)(c)

(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):

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution:

Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3) in so far as such use or application relates to any period before the 1st day of June, 1970 ;

Section 13(3):

“(3) The persons referred to in clause (c) of sub- section (1) and sub- section (2) are the following, namely:-

(a) the author of the trust or the founder of the institution;

(b) any person who has made a substantial contribution to the trust or institution,² that is to say, any person whose total contribution up to the end of the¹ relevant previous year exceeds³fifty] thousand rupees];

(c) where such author, founder or person is a Hindu undivided family, a member of the family;

(CC)⁴ any trustee of the trust or manager (by whatever name called) of the institution;]

(d) any relative of any such author, founder, person,⁵ member, trustee or manager] as aforesaid;

(e) any concern in which any of the persons refer- red to in clauses (a), (b), (c)⁶ , (cc)] and (d) has a substantial interest.”

A perusal of this section, qua the chart exhibited elsewhere clearly show that the Trustees have been benefited directly or indirectly clearly violating the conditions.

6.1 The claim of the Ld. Counsel is that it is covered by the provisions of section 13(1)(d) of the Act. The relevant portion of the said section read as under:-

Section-13(1)(d):-

“ (d)¹ in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof, if for any period during the previous year-

(i) any funds of the trust or institution are invested or deposited after the 28th day of February, 1983 otherwise than in any one or more of the forms or modes specified in sub- section (5) of section 11; or

(ii) any funds of the trust or institution invested or deposited before the 1st day of March, 1983 otherwise than in any one or more of the forms or modes specified in sub- section (5) of section 11 continue to remain so invested or deposited after the 30th day of November, 1983 ; or”

These clauses referred to the amount invested or deposited otherwise, than the modes specified in section 11(5) of the Act. We fail to understand how a loan amount given to two Mazdoor Sabhas fit into the category of making investment or deposit as per provisions of section 11(5) of the Act, wherein investment have been referred to the investment in saving certificates of the Government as defined in clause (c) of section -2 of the Government Saving Certificate Act and deposits have been referred to being deposit in Post Office Saving Bank account or in Schedule Bank. Thus, it can be safely concluded that the assessee is not covered by the provisions of section 13(1)(d) of the Act. Therefore, the decisions relied upon by the assessee as mentioned elsewhere do not support.

6.2 As mentioned elsewhere the assessee has clearly violated the provisions of section 13(1)(c) r.w.s. 13(3) of the Act. Hence, the assessee is not eligible for the benefit of exemption under section 11 of the Act. The denial of exemption is confirmed.

7. In so far as the taxability of the corpus fund is concerned, we direct the Assessing Officer to decide the issue afresh as per the provisions of the law. In so far as the claim of expenditure is concerned the Assessing Officer is directed to verify whether the amount is given as advance or charged to the P&L Account, after giving a reasonable opportunity of being heard to the assessee and decide this issue as per the provisions of the law.

8. Before closing, we find that the assessee has also raised an additional ground by which it has challenged the validity of the

reopening of the assessment. However, at the time of hearing, Ld. Counsel did not argue this additional ground; therefore, we do not find it necessary to decide this issue.

9. The appeal filed by the assessee is dismissed and since the denial of exemption has been upheld by us, the appeal filed by the Revenue is treated as allowed.

Order pronounced in the open court on 16th December, 2015.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER
Mumbai, Dated 16/12/2015

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

Vm, Sr. PS

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai