

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No.299 of 2011
Date of decision: 16.11.2015**

**The Commissioner of Income Tax, Jalandhar II, Jalandhar
.....Appellant**

**M/s Sadhu Singh Hamdard Trust, Nehru Garden Road, Jalandhar.
.....Respondent**

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Vivek Sethi, Advocate for the appellant-revenue.

None for the respondent-assessee.

Ajay Kumar Mittal,J.

1. This appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 13.6.2011, Annexure A.3 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar in ITA No.344(ASR)/2010 for the assessment year 2007-08 claiming following substantial question of law:-

“Whether, the Tribunal was right in law in allowing the benefit under Section 11 of the Income Tax Act, 1961 without

appreciating that the object of the trust was not within the ambit of section 2(15) and there was violation of section 11(4A) as well as section 13(3) of the Income Tax Act, 1961?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The assessee filed its return of income for the assessment year 2007-08 declaring nil income after claiming exemption under Section 11 of the Act. The assessment was completed by the Assessing Officer under Section 143(3) of the Act on 8.12.2009, Annexure A.1 at a total income of ₹ 2,87,32,760/- claimed as deduction under Section 11 of the Act by the assessee. Aggrieved by the order, the assessee filed appeal before the Commissioner of Income Tax (Appeals) Jalandhar [CIT(A)]. Vide order dated 28.5.2010, Annexure A.2, the CIT(A) allowed the appeal. The department went in appeal before the Tribunal. Vide order dated 13.6.2011, Annexure A.3, the Tribunal dismissed the appeal holding that the assessee is entitled to exemption under Section 11 of the Act, relying upon its own order in the assessee's case for the assessments years 1993-94 to 1995-96 in ITA No.184 to 186 (ASR)/2001.

3. We have heard learned counsel for the appellant-revenue.

4. A perusal of the order passed by the Tribunal dated 13.6.2011 shows that on identical issue, the Tribunal by relying upon its own order in the assessee's case for the assessment years 1993-94 to 1995-96 in ITA Nos. 184 to 186 (ASR)/2001 has decided the matter in favour of the assessee against which ITA Nos.75 to 77 of 2004 had been filed in this Court. Vide order dated 26.7.2012, these appeals were disposed of with the following observations:-

“25. Adverting to second issue, we may examine the relevant

provisions of the Act which are material. [Section 11\(1\)\(a\)](#) of the Act excludes income derived from property held under trust for charitable purposes from the computation of taxable income. [Section 11\(1\)\(a\)](#) of the Act provides that the income derived from the property held in trust wholly for charitable or religious purpose will be exempt to the extent it is applied to such purposes. The provision at the relevant time reads thus:-

"11 (1). Subject to the provisions of [sections 60](#) to [63](#), the following income shall not be included in the total income of the previous year of the person in receipt of the income-

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty five per cent of the income from such property."

26. The Hon'ble Apex Court dealing with the case of a Trust whether it was covered by the definition of charitable purpose, in *Thanthi Trust's case* (supra) analyzed the provisions of [Section 11\(1\) \(a\)](#) of the Act as under:-

"23. Sub-section (1)(a) of [Section 11](#) says that income derived from property held under trust only for charitable or religious purposes, to the extent it is used in the manner indicated therein, shall not be included in the total income of the previous year of the trust. Sub-section (4) defines the words property held under trust for the purposes of [Section 11](#) to include a business held under trust. Sub-section(4A) restricts the benefit under [Section 11](#) so that it is not available for income derived from business unless

(a) the business is carried on by a trust only for public religious purposes and it is of printing and publishing books or any other notified kind or (b) it is carried on by an

institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution, provided, in both cases, that separate books of account are maintained by the trust or the institution in respect of such business. Trusts and institutions are separately dealt with in the Act ([Section 11](#) itself and [Sections 12, 12A and 13](#), for example). The expressions refer to entities differently constituted. It is thus clear that the newspaper business that is carried on by the Trust does not fall within sub-section (4A). The Trust is not only for public religious purposes so it does not fall within clause (a). It is a trust not an institution, so it does not fall within clause (b). It must, therefore, be held that for the assessment years in question the Trust was not entitled to the exemption contained in [Section 11](#) in respect of the income of its newspaper.

27. Sub-section (4) of [Section 11](#) of the Act defines the words "Property held under Trust" for the purposes of that section to include a business held under trust. Sub-section (4) of [Section 11](#) is in the following terms:-

"11(4). For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes."

28. [Section 11\(4A\)](#) of the Act was introduced into the Act with effect from 1st April, 1984. [Section 11\(4A\)](#) was substituted with

effect from 1st April, 1992 as under:-

"(4A). Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business."

29. It was interpreted by the Hon'ble Apex Court in the aforesaid judgment as under:-

"The substituted sub-section(4A) states that the income derived from a business held under trust wholly for charitable or religious purposes shall not be included in the total income of the previous year of the trust or institution if the business is incidental to the attainment of the objective of the trust or, as the case may be, institution and separate books of account are maintained in respect of such business. Clearly, the scope of sub-section (4A) is more beneficial to a trust or institution than was the scope of sub-section (4A) as originally enacted. In fact, it seems to us that the substituted sub-section (4A) gives a trust or institution a greater benefit than was given by [Section 13\(1\)\(bb\)](#). If the object of Parliament was to give trusts and institutions no more benefit than that given by [Section 13\(1\)\(bb\)](#), the language of [Section 13\(1\)\(bb\)](#) would have been employed in the substituted sub-section (4A). As it stands, all that it requires for the business income of a trust or institution to be exempt is that the business should be incidental to the attainment of the objectives of the trust or institution. A business whose income is utilized by the trust or the institution for the purposes of achieving the objectives of the trust or the institution is, surely, a business which is incidental to the attainment of the objectives of the trust. In any event, if there be any ambiguity in the language employed, the

provision must be construed in a manner that benefits the assessee. The Trust, therefore, is entitled to the benefit of [Section 11](#) for the Assessment Year 1992-93 and thereafter. It is, we should add, not in dispute that the income of its newspaper business has been employed to achieve its objectives of education and relief to the poor and that it has maintained separate books of account in respect thereof.

30. Under [Section 11\(1\)\(a\)](#) of the Act, the income derived from property held under trust only for charitable or religious purpose is exempt to the extent of its utilization for that purpose. However, wherever there is accumulation or setting aside for application to such purposes in India, the accumulation or setting apart is not to be in excess of twenty five per cent of the income from such property. However, this has been reduced to fifteen per cent by [Finance Act](#), 2002 with effect from 1.4.2003. According to [Section 11\(4A\)](#) of the Act, an exemption is permissible where the activities are incidental to the attainment of the objectives of the trust and separate books of account are maintained by the trust or the institution in respect of such business. The Tribunal recorded that the only activity of the assessee was running newspaper to attain the main object of promoting Punjab, Punjabi and Punjabi and the conditions of [Section 11\(4A\)](#), thus, automatically stood satisfied. However, the CIT(A) had recorded that there was net income of Rs.22,99,905/- from publication of newspaper and there was nothing to show that this amount had been utilized for charitable purpose for claiming exemption under [Section 11](#) of the Act. The Tribunal while allowing the appeal of the assessee had not adverted to this aspect with reference to any material on record.

31. Now, we would delve into the objection relating to non-compliance of provisions of [Section 13\(1\)\(c\)](#) read with [Section 13\(3\)](#) of the Act. It would be expedient to reproduce the relevant portion of the aforesaid provisions, which reads thus:-

"13(1) Nothing contained in [section 11](#) or [section 12](#) shall operate so as to exclude from the total income of the previous year of the person in receipt thereof-

(a) XX XX XX

(b) XX XX XX

(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 of the institution (whenever created or published) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3).

XX XX XX

XX XX XX

(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 that is to say, any person whose total contribution upto the end of the relevant previous year exceeds twenty five thousand rupees;

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

(cc) any trustee of the trust or manager by whatever name called of the institution;

- (d) any relative of any such author, founder, person, member, trustee or manager as aforesaid;
- (e) any concern in which of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest.

XX XX XX

XX XX XX"

32. According to these provisions, wherever, any part of income or any property of the trust or the institution is applied directly or indirectly for the benefit of any person referred to in sub-section (3) of [Section 13](#), the provisions of [Section 11](#) shall not operate granting benefit of exemption to the trust. The Assessing Officer had recorded that certain payments were made to Bibi Parkash Kaur (trustee), S.

Barjinder Singh and also to Smt. Sadjit Kaur wife of S. Barjinder Singh which were made to persons as defined in [Section 13\(3\)](#) of the Act and as such were inadmissible. These findings were affirmed by the CIT(A) on appeal. However, the Tribunal had reversed these findings primarily on the ground that there is no finding that these were excessive. However, the Tribunal while reversing these findings had not recorded any definite and clear finding relating to violation of the provisions of [Section 13\(3\)](#) of the Act. The matter, thus, requires to be remanded to the Tribunal to re-adjudicate the claim of the assessee for exemption of income under [Section 11](#) of the Act with reference to provisions of [Section 13\(3\)](#) of the Act in the light of the observations made hereinbefore.

33. The substantial questions of law are answered accordingly. In view of the above, the case is remanded to the Tribunal to re-adjudicate the issue relating to exemption claimed under [Section 11](#) with reference to provisions of [Section 11\(1\)\(a\)](#) of the Act and also to examine the question of admissibility of deduction in respect of payments made to certain persons in terms of [Section 13\(1\)\(c\)](#) read with [Section 13\(3\)](#) of the Act.

34. The appeals are disposed of in the above terms.”

5. In view of the above, the appeal is disposed of in the same terms as in ITA Nos.75 to 77 of 2004 decided on 26.7.2012 (reported as [(2013) 263 CTR (P&H) 61]).

(Ajay Kumar Mittal)
Judge

November 16, 2015
'gs'

(Ramendra Jain)
Judge