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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 454/2018**
THE COMMISSIONER OF INCOME TAX –EXEMPTION..... Appellant
Through: Mr.Ruchir Bhatia, Advocate.

versus

IILM FOUNDATION Respondent
Through: Mr.Rohit Jain with Mr.Kunal,
Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

ORDER
13.05.2019

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1. This is an appeal by the Revenue against an order dated 8th November 2017 passed by the Income Tax Appellate ('ITAT') in ITA No.1214/Del/2011 of the Assessment Year (AY) 2007-08.

2. The question sought to be urged by the Revenue was whether the interest-free loan advanced by the Assessee in the sum of Rs.2.19 crores to the Ram Krishan & Sons Charitable Trust ('RKSCT') constituted a violation of Section 13(3) of Income Tax Act, 1951 ('Act')?

3. The facts in brief are that the Respondent Assessee Foundation came into existence due to the change in the name of the erstwhile Ramakrishna Kulwant Rai Charitable Trust ('RKKRCT') by amending the trust deed for constituting the above trust dated 26th July 2007. The latter trust has been

registered under Section 12A of the Act by an order dated 1st February 2001.

4. For the AY in question the Assessee filed its return of income on 31st October 2005 declaring NIL income. The return was picked up for scrutiny. In the assessment order passed under Section 143(3) of the Act on 16th November 2009, the Assessing Officer ('AO') held that inasmuch as the Assessee had advanced loan to another charitable trust it had violated Section 13(1)(c)(ii) of the Act. In other words, it was impermissible for the Assessee to have advanced a loan to another charitable trust.

5. The Assessee filed an appeal before the Commissioner of Income Tax ['CIT (A)'] who held that RKSCT was itself registered under Section 12A of the Act and that the advancing of a loan by one charitable trust to another should be treated as application of income towards the objects of the trust.

6. Aggrieved by the above decision, the Revenue filed an appeal before the ITAT. The ITAT accepted the plea of the Assessee that the AO had mixed up two independent separate transactions. One concerned the payment made by the Assessee to the WBHIDCO Calcutta in the sum of Rs.2.72 crores for acquisition of land in the name of IILM Academy of Higher Learning being run by another trust i.e. RKSCT. It was noticed that the sum had in fact been advanced for acquisition of land by the Assessee itself and not for any other trust.

7. There arose a separate issue as regards advancing for an interest-free loan of Rs.2.19 crores to RKSCT. The ITAT held that this advancing of loan to

another trust did not violate either Section 13(1)(c) or 13(2)(g) of the Act.

8. Learned counsel for the Revenue seeks to take exception to the observation of the ITA(T) that ‘there is no bar for one charitable trust donating or advancing loan to another charitable trust registered under Section 12A.’ He refers to the explanation under Section 11(2) of the Act which reads as under:

“Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to 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, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.”

9. It is noticed that this was inserted in the Act with effect from 2003. The issue appears to be no longer *res integra*. In ***CIT v. Shri Ram Memorial Foundation (2004) 269 ITR 35(Del)*** the donation of income to another charitable trust was held to be in consonance with the objects of the trust. This was subsequently relied upon by this Court in ***Director of Income Tax (Exemption) v. Bagri Foundation (2010) 233 CTR 538***. After considering the above explanation under Section 11(2) the Court noted as under:

“9. What follows is that the amount accumulated cannot be donated to another trust. However, the said explanation does not place a total embargo on donations by one trust to another. It does not prohibit the trust from donating its entire

income in a relevant year to another trust, as is the law as noticed in the Division Bench judgment in Shri Ram Memorial Foundation (supra). The embargo is only on the income of the trust not applied in the relevant year but accumulated or set apart being donated to another trust. The question which arises is whether such prohibition/embargo is only on the accumulations in excess of 15% with which Section 11(2) deals or extends even to accumulation to the extent of 15% under Section 11(1)(a).”

10. It is further held in para 15 as under:

“15. The "explanation" appended after Section 11(2) is nothing but an additional condition attached to accumulation in excess of 15% permitted under Section 11(2). We are unable to hold it as a condition on accumulation up to 15% as provided for in Section 11(1)(a) also. We are unable to find any rational classification for imposing the restriction as contained in the "explanation" to the accumulation of up to 15% also when there is no such restriction to donating the entire income of a year to another charitable trust. If the legislature intended to completely ban/discourage inter se donation between trusts, it would have changed the position as existing in law as noticed in the Division Bench judgment of this Court in Shri Ram Memorial Foundation aforesaid. The legislature did not do so. Even after the insertion of the "explanation", if a trust donates its entire income for a year to another charitable trust, it would still be entitled to exemption under Section 11(1)(a). It defies logic as to why such donations cannot be permitted out of 15% accumulation permitted under Section 11(1)(a) itself. There is however rationale for imposing the restriction as contained in the "explanation" (supra) to accumulations in excess of 15%. Such accumulations, but for the conditions imposed in Section 11(2) and in the explanation aforesaid, would have been eligible to be taxed. One of the conditions in Section 11(2)(a) is that the purpose for which accumulation in excess

of 15% is being made is to be notified; another condition is of the accumulation being permitted for a period not exceeding 10 years; yet another condition is as to the modes in which the accumulation can be invested. There are no such restrictions on accumulation under Section 11(1)(a). The scheme of the section indicates that the additional condition by way of the aforesaid "explanation" is also intended to apply only to accumulations in excess of 15% under Section 11(2) and not to accumulations upto 15% under Section 11(1)(a). The explanation is not found to be intended to take away something from the accumulation upto 15% permitted without any conditions whatsoever under Section 11(1)(a)."

11. Subsequently, in *Director of Income-Tax v. ACME Educational Society (2010) 326 ITR 146 (Del)* this Court again upheld the advancing of a loan by one charitable trust to the other. The Court referred to an earlier decision of *Director of Income-Tax v. Pariwar Sewa Sansthan (2002) 254 ITR 268 (Del)* in this regard.

12. In view of the decision in *Director of Income Tax (Exemption) v. Bagri Foundation* (supra), which has considered the above explanation to Section 11(2) of the Act the Court, the Court finds that no substantial question of law arises in this appeal. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 13, 2019

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