



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 828/2010

DIRECTOR OF INCOME TAX Appellant
Through: Mrs. Prem Lata Bansal, Adv.

versus

HELP AGE INDIA Respondent
Through: None

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

% **ORDER**
13.07.2010

The present appeal under Section 260A of the Income Tax Act, 1961 (for short 'the Act') is directed against the order dated 19.6.2009 passed by the Income Tax Appellate Tribunal (for short 'the tribunal') in ITA No. 585/Del/2009 for the assessment year 2005-06 whereby the tribunal has confirmed the order passed by the CIT(A).

It is worth noting that the revenue has framed the following questions as the substantial questions of law:

“(a) Whether the ITAT was correct in law in granting exemption u/s 11(1)(a) of the Act to the assessee?



- (b) Whether ITAT was correct in law in granting exemption to the assessee ignoring the material fact that the assessee had violated provisions of Section 13(1)(d)(iii) of the Act?
- (c) Whether the term “held” in Section 13(1)(d)(iii) would imply de jure ownership of the assessee or it would cover within its ambit beneficial ownership?
- (d) Whether order passed by ITAT is perverse in law when it ignored the material fact that some of the shares were transferred in the name of assessee and the income from such shares was also brought to tax in the hands of assessee?”

3. To appreciate the controversy involved, it is necessary to refer to the facts in brief. The assessee-respondent filed a return on 29.10.2005 as per letter dated 27.6.2006. Along with the return, the assessee filed a copy of the audit report dated 26.10.2005 under Section 12A(b) of the Act. The return was processed under Section 143(1) of the Act on 15.5.2006 and thereafter, when the case was selected for scrutiny, notice was issued to the assessee. The assessee filed its response to the notice and the assessing officer came to hold that the assessee had held equity shares donated in kind



in various companies other than as mentioned in (A) & (B) of Section -- and, therefore, the provisions of Sections 11 and 12 would not be applicable so as to exclude any income of the institution from its total income as a result of which no exemption would be admissible. The assessing officer, however, noted that the explanation offered by the assessee was not acceptable as it has held shares in a company after 30.11.1983 and Section 13(1)(d)(iii) of the Act does not exempt the cases of shares received in donation. The assessing officer further took note of the fact that a sum of Rs.27,58,364/- was deducted by the assessee from the total income in the Income and Expenditure Account on account of grants utilized for acquisition of capital assets and as the exemption under Sections 11 and 12 of the Act is not admissible, the same is also to be added to the net taxable income. The donation of Rs.6,28,000/- which was received was added to the corpus fund directly in the balance sheet and, accordingly, the same was also not entitled to exemption. Being of this view, the assessing officer added the said sums to the taxable income. He further opined that as the assessee had concealed the particulars of the income and furnished inaccurate particulars, a penalty proceeding under Section 271(1)(c) of the Act deserved to be initiated and, accordingly, he so directed.



4. Being dissatisfied with the aforesaid order, the assessee preferred --- appeal before the CIT(A). Before the appellate authority, it was contended that the assessee had received certain shares and bonds as donation in kind and no monetary transaction had taken place and, therefore, the same was not taken into books of account but only the cost incurred on transfer of some shares was recorded in the books of account; that the donor had given the shares and bonds for the causes for which the assessee-society was established / constituted as early as 20.04.1978 and the said declaration was made vide para 7 of the schedule 14 attached to the balance sheet on 31.3.2005; that most of the shares were not actively traded while the share certificates of many others were not available and some shares were held in the demat form as per the legal requirement; and that there was no violation of Section 11(5) of the Act so as to invite the rigours of Section 31(1)(d)(iii) of the Act considering the true spirit and intent of the legislature behind the said enactment. It was further averred that the sole purpose of Section 11(5) of the Act was to regulate the accumulated funds of the trust and not any other type of funds and in the cases where a trust had applied the minimum prescribed percentage of its income on charitable objects, the legislative intention is met with; that the shares received in specie can never be part of



the funds in charity until they are converted into money and, hence, it v...
incorrect to allege both as part of the funds of the charitable institution; that
from the very inception, Section 11(5) of the Act was applicable with respect
to investing or depositing money accumulated or set apart by the trust and
Section 13(1)(d)(iii) was made applicable only to such investments but it
was not to cover shares received in specie by way of donation; that such
shares can only be converted into funds by selling and that too when a buyer
is available for the same, otherwise till then, those are nothing but paper with
no realizable value; that despite the best efforts by the appellant, no buyer
was available and, therefore, the specie remained with the appellant as those
were not convertible into money and, hence, even there was no occasion for
minimum utilization of income obtained from the said source; that no funds
had ever been sought to be accumulated or set apart for future use by the
assessee nor had it carried on any business and, therefore, there was no
reason to suspect any misuse of its funds at the hands of the trustees; that the
shares and bonds were received as donation by the appellant in the financial
year 1997-98 but the same were not entered in the books of account as no
monetary transaction had taken place and thus, the value thereof had not
become a part of the funds in the hands of the assessee. It is also urged that



the interpretation placed by the assessing officer on Section 13(1)(d)(iii) -- not correct as the language employed therein clearly refers to any share in a company not being a Government company or a Central/State Government Corporation as held by charitable institution after 30.11.1983 and the intention of the legislature, if ascertained, would convey that the impugned shares were acquired by application of the accumulated funds of the charity or otherwise; that the truthful disclosure of the facts of shares registered in the name of the appellant without utilization of its funds cannot make the assessee liable under the Act; that the total value of the said shares and bonds was only Rs.2,50,260/- as against the receipt of liquid funds of Rs.30,08,57,495/- during the year and it did not really matter to the appellant to convert the said shares and bonds into liquid funds during the year for its object because the realization from those shares would have been insignificant. Even if there is infringement, it is highly technical in nature which does not warrant such a harsh treatment at the hands of the assessing officer and, therefore, the denial of exemption under Sections 11 and 12 of the Act alleging contravention of the provision of Section 13(1)(d)(iii) of the Act was unjustified and deserved to be dislodged.



5. The appellate authority took note of the submissions and came to hold that it is the undisputed fact that the assessee never invested any part of its funds to acquire the shares and securities but they were received by it in kind; that it was not possible to liquidate the said shares as and when desired, particularly when the same were in odd lots with small quantities and further, the assessee did not have the same in its possession, physical or in any other manner, so that an effort to sell those could be made by it; that as and when any part of the same was realized by sale, it was taken as income in the books of account by the appellant; that the intention of the assessee was not to acquire the said security which were given to it by some donors and normally in such situations, the donee encashes the same but the same is not possible when there are no buyers in the share market which is not in the hands of the donee trust; that the situation is a different and difficult one beyond the control of the assessee and that in the case at hand, when two opinions are possible, the benefit should go in favour of the assessee; that admittedly, the funds of the assessee are used for charitable purpose and the value of the securities is very meagre compared to the donation received by the appellant; that there has been no infringement of Sections 11 to 13 of the Act solely because it has received some securities as



donation in kind; that the entire charitable activities of the appellants... amounted to Rs.30.9 crores whereas the holding of securities was Rs.2.5 lacs and, hence, the order of the assessing officer is vulnerable and that the denial of other admissible exemptions was based on infringement of the provision of Section 13(1)(d)(iii) of the Act and when the said finding is dislodged, the appeal deserved to be allowed and, accordingly, the appellate authority allowed the appeal.

6. We have heard Mrs. Prem Lata Bansal, learned counsel for the revenue. It is urged by her that when the assessee had violated the conditions engrafted under Section 13(1)(d)(iii) of the Act, it was improper on the part of the CIT(A) as well as the tribunal to confer the benefit. To appreciate the said submission, we have bestowed our anxious consideration and perused the impugned orders. On a studied scrutiny of the same, it is perceptible that both the parties have taken note of the fact that the shares and bonds belonged to deceased intimates which normally would have gone to their legal heirs who were not traceable and that is why the assessee had not entered the shares in the books and further the bonds and shares were not immediately saleable. Under these circumstances, the tribunal has opined that the assessee could not be treated to be the de jure owner of the shares.



The tribunal has also held that the term 'held' could imply ownership of the assessee to the exclusion of all others but the factual matrix does not indicate the same in the case at hand. Because of the said analysis, as is manifest, the tribunal has held that the denial of exemption under Section 11(1)(a) on the ground that the shares were held by the assessee could go against the spirit of the provision. The principle applied by the tribunal in the facts of the case, we are disposed to think, cannot be found fault with and, accordingly, we concur with the same.

7. In the result, the appeal being sans merit stands dismissed in limine.


CHIEF JUSTICE


MANMOHAN, J.

JULY 13, 2010
Pk/dk