



§ 3 & 4

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

+ ITA Nos. 12/2012 & 18/2012

DIRECTOR OF INCOME TAX

..... Appellant

Through Mr. Abhishek Maratha, Sr.
Standing Counsel with Ms.
Anshul Sharma, Adv.

versus

SOCIETY FOR DEVELOPMENT ALTERNATIVES Respondent
Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE R.V.EASWAR

ORDER

13.01.2012

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Grounds of appeal read as under:-

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- a) Because impugned order passed by ITAT is perverse in law, as has been passed without the proper application of mind.
- b) Because ITAT has grossly erred in the eyes of law, in confirming the order of CIT (A), when there is clear infringement of the provisions provided u/s 13 (1) (c) of the act by the assessee i.e. the income and assets of the assessee society were used for the benefit of the individual/person specified u/s 13(3) of the Act.
- c) Because ITAT has grossly erred in law in passing the impugned order ignoring that the assessee has not maintained the separate books of accounts for each donor agency during the assessment year under consideration.
- d) Because the ITAT has grossly erred in passing the impugned order in view of the fact that the



procedure of account adopted by the assessee was incorrect as in contravention of the provisions of Section 12 of the Act, as has been held by the Hon'ble Supreme Court in the case of *Motilal Padampur Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh (1979) 118 ITR 326.*"

2. Decision of the Supreme Court in *Motilal Padampur Sugar Mills Co. Ltd. (supra)* is not shown to be applicable to the facts of the present case. Learned counsel for the appellant-Revenue submits that the order of the Income Tax Appellate Tribunal (tribunal, for short) raises substantial question of law as the respondent-society had permitted/pledged the FDRs with a bank in order to enable some other societies to obtain loan from a bank. He submits that this had resulted in violation of Section 13(1) (c) (ii) read with Section 13(3) and Explanation 3 (ii) of the Income Tax Act, 1961 (Act, for short). Secondly, it is submitted that the respondent-society had not utilized the grants and a sum of Rs.16,92,50,496/- and Rs.24,42,82,067/- had remained unspent as on 31st March, 2006 and 31st March 2007 respectively.

3. The respondent is a society, which is registered under Section 12A and Section 80G of the Act. It is undertaking activities relating to research, development and dissemination of (i) Technologies for fulfillment of basic needs of rural households (ii) Solutions for regeneration of natural resources and the environment and (iii)



Community based institution strengthening methods to improve access to for the poor. These activities include projects on development of alternatives like low cost building material, smoke free cook stoves, water supply and purification, sanitation, organic farming, adaptation to climate change and issue based awareness creation programmes.

4. The assessee had FDRs of Rs.12,00,000/-, which were placed as collateral security for allowing credit facility to two societies, namely, Tara Nirman Kendra and Society for Technology and Action for Rural Advancement. These two societies are also carrying on charitable work. As per the findings recorded by the tribunal, some members of the management committee of the respondent society and these two societies are common. The tribunal has recorded that interest on the FDRs was paid to the respondent-society and on maturity date, the pledged FDRs were encashed and the principal amount along with interest was paid to the respondent-assessee. This factual position is not disputed.

5. For violation of Section 13(1)(c)(ii), requirements of Section 13(3) have to be satisfied. Section 13(3) defines a person, who is treated as having indirect or direct benefit which results in violation of Section 13(1)(c)(ii) of the Act. Learned counsel for the appellant has relied upon Explanation 3(ii). For the sake of convenience, Section 13(3) along with Explanation 3(ii) are reproduced below:-



“Section 13. Section 11 not to apply in certain cases

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(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 up to the end of the relevant previous year exceeds ₹[fifty 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 any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest.

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Explanation 3.—For the purposes of this section, a person shall be deemed to have a substantial interest in a concern,—

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- (ii) in the case of any other concern, if such person is entitled, or such person and one or more of the other persons referred to in sub-section (3) are entitled in the aggregate, at any time during the previous year, to not less than twenty per cent of the profits of such concern.”

6. Learned counsel for the appellant-Revenue was asked to point out whether the Assessing Officer has recorded any finding that the



persons in control of the management of the three societies had, at ar point of time, not less than 20% shares in the profits of such concern. He has not been able to point out any such finding in the order passed by the Assessing Officer. This being the position, invocation of Section 13(1) (c) (ii) has to fail and is accordingly rejected.

7. With regard to the second contention, the findings recorded by the tribunal are that the respondent-assessee had received grants for specific purposes/projects from the government, non-government, foreign institutions etc. These grants were to be spent as per the terms and conditions of the project grant. The amount, which remained unspent at the end of the year, got spilled over to the next year and was treated as unspent grant. The Commissioner of Income Tax (Appeals) while deleting the said addition had observed as under:-

“I have considered the assessment order and submissions of the appellant along with evidences placed on record. On perusal of the evidences regarding the project grants placed on record, it is seen that the said amounts are received/sanctioned for a specific purpose/project to be utilized over a particular period. The utilization of the said grants is monitored by the funding agencies who send persons for inspection and also appoint independent auditors to verify the utilization of funds as settled terms. The appellant has to submit inter/final progress/work completion reports along with evidences to the funding agencies from time to time. These agreements also include a term that separate audits accounts for the project will be maintained. The unutilized amount has to be refunded back to the funding agencies in most of



the cases. All the terms and conditions are simultaneously complied with otherwise the grants are withdrawn. The appellant has to utilize the funds as per the terms and conditions of the grant. If the appellant fails to utilize the grants for the purpose for which grant is sanctioned, the amount is recovered by the funding agency. On the basis of the evidences placed on record, it is seen that the appellant is not free to use the funds voluntarily as per its sweet will and, thus, these are not voluntary contribution as per Section 12 of the Act. These are tied up grants where the appellant acts as a custodian of the funds given by the funding agency to channelize the same in a particular direction.

In case of voluntary contribution, the appellant is free to use the money as per its will and neither have to render the account of the same to the donor nor the same is monitored by the donor. The said amount becomes income of the appellant and has to be used for charitable purposes as per its objects. However, in case of specific tied up grants, money is received for specific purposes and is to be utilized for the same.”

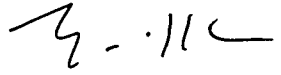
8. The Commissioner of Income Tax (Appeals) has also referred to the judgment of the Rajasthan High Court in *Sukhdeo Charity Estate Vs. CIT (1984) 149 ITR 470 (Raj.)*.


9. In view of the aforesaid factual position, the tribunal has upheld the order passed by the Commissioner of Income Tax (Appeals) and has not accepted the appeal filed by the Revenue.

10. In view of the aforesaid factual position, we are not inclined to entertain the present appeals on the second aspect.



11. The appeals are accordingly dismissed without, any order as to costs.


SANJIV KHANNA, J.


R.V.EASWAR, J.

JANUARY 13, 2012

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