



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Income Tax Appeal No. 62/2020

Commissioner of Income Tax (Exemptions), 3 Rd Floor, Kailash Heights, Lal Kothi, Tonk Road, Jaipur.

----Appellant

Versus

M/s Shri Ramdoot Prasad Sewa Samiti, Trust, V/p Ghata Mehandipur Balaji, Tehsil Todhabhim, Distt. Karauli.

----Respondent



For Appellant(s) : Mr. Anuroop Singhi through VC

For Respondent(s) : Mr. Siddharth Ranka through VC

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

08/02/2022

1. This appeal is filed by the revenue to challenge the order of the Income Tax Appellate Tribunal. Following questions are presented for our consideration:-

"(i) Whether on the facts and in the circumstances of the case and in law the Hon'ble ITAT was correct in allowing exemption u/s 11 of the I.T.Act, 1961 to the assessee without appreciating the fact that AO has given detailed reason in assessment order to establish that activities of the assessee are not charitable in view of amended provisions of section 2(15) of the I.T.Act, 1961?

(ii) Whether the ITAT was justified in law in not considering that intent for carrying out activities is not relevant if activities are commercial in nature despite the fact that in this case assessee has been selling/preparing ladoos/Prasad etc for which charges are taken from devotees?

(iii) Whether the ITAT was justified in law in allowing exemptions u/s 11 of the I.T.Act, 1961 to the assessee without appreciating the fact that the trust has made purchase of Rs.9,00,46,104/- from M/s Pawansut



Trading Company Pvt. Ltd., New Delhi which is a specified person u/s 13(3) of the I.T.Act, 1961 and thus provisions of section 13(1)(c)(ii) r.w.s. 13(2)(g) of the I.T.Act, 1961 are attracted in this issue?

(iv) Whether the ITAT was justified in law in allowing exemption u/s 11 of the I.T.Act, 1961 to the assessee without appreciating the fact that the purchases from specified person i.e. M/s Pawansut Trading Company Pvt. Ltd., New Delhi were not reported by the Auditor in the audit report furnished u/s 12A(1)(b) in form No.10B?

(v) Whether the ITAT was justified in law in allowing exemption u/s 11 of the I.T.Act, 1961 to the assessee without appreciating the fact that the entities i.e. M/s Pawansut Trading Company Pvt. Ltd. and M/s Maruti Traders from where maximum purchases were made, have shown a very meager income of Rs.9,71,880/- and Rs.19,357/- respectively which leads to doubts about the genuineness of these purchases from these concerns?

(vi) Any other question of law as deemed fit in the facts and circumstances of the case may also be framed by the Hon'ble Court in the interests of justice."

2. Though multiple questions are framed, the principal issue on which strenuous arguments were made by the counsel for the revenue was with respect to the decision of the Tribunal regarding the purchases of Rs.9 crores (rounded off) made by the assessee from one Pawansut Trading Company Pvt. Ltd. which was a specified person under Section 13(3) of the Income Tax Act, 1961 ('Act' for short). According to revenue this transaction would be covered within the mischief of Section 13(2)(g) of the Act. Remaining questions would not require elaborate reference or reasons for not accepting since essentially they are pure questions of facts duly considered by the Tribunal.

3. Coming to the sole surviving issue of purchases made by the assessee from the related person, brief facts are that respondent- assessee is a trust registered under Section 12AA of the Act and



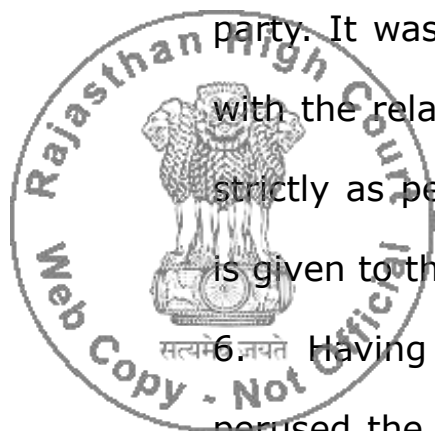
had claimed exemption under the Act for assessment year 2012-13. The return filed by the assessee-trust was taken under scrutiny by the assessing officer. During such assessment the assessing officer noticed that the assessee had made total purchases of raw materials worth Rs.12.24 crores (rounded off) out of which purchases of Rs.9 crores were made from M/s Pawansut Trading Company Pvt. Ltd. Upon further scrutiny it was found that the one Kishorepuri Ji Maharaj was the main trustee of the assessee trust and also the director of the said company and from whom purchases worth 75% were made. The assessing officer was of the opinion that such substantial purchases made from a related party had to be at arm's length. The assessing officer thereupon referred to Section 13 of the Act and without any further discussion concluded as under:-

"6.4 In view of aforementioned discussion and the entire material available on record it is established that the assessee trust has made purchases on unreasonable rates from M/s Pawansut Trading Pvt. Ltd. New Delhi who is person specified u/s 13(3). As such, I hold that the management of the trust has used the property of the trust for their personal benefits without justification which attracts provisions of sec. 13(1)(c) (ii)r.w. 13(2)(g) of the Act as such the assessee is not eligible to claim exemption u/s 11 and 12 of the Act."

4. The assessee carried the matter in appeal. The commissioner called for remand report and thereafter deleted the disallowance by observing that the rates of purchase by the assessee from the related party were same as with unrelated party. Further, there were no findings in the assessment order on the basis of which additions were made except that purchases have been made from the related party. The appellant has also proved that such purchases were made at the same rate as paid to unrelated party.



5. The department carried the matter in appeal before the Tribunal. The Tribunal confirmed the view of CIT (Appeals) observing that assessing officer has not come to the conclusion that purchases made from the related party were on payment of excess amount. There was no allegation that assessee had paid higher price to the related party as compared to the unrelated party. It was observed that merely because a transaction is done with the related party the same cannot be disallowed if it is done strictly as per normal terms and conditions and no undue benefit is given to the unrelated party.



6. Having heard learned counsel for the parties and having perused the documents on record we do not see any error in the view of the Commissioner of Appeals and the Tribunal. As is well known Section 11 of the Act pertains to income from property held for charitable and religious purposes. Section 13 on the other hand pertains to cases where Section 11 would have no application. Sub-section (1) of Section 13 provides that 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 under specified circumstances. Sub-section (2) of Section 13 provides that without prejudice to the generality of the provisions of clause (c) and clause (d) of sub-section (1), the income or the property of the trust or institution or any part thereof shall for the purposes of that clause would be deemed to have been used or applied for the benefit of a person referred to in sub-section (3), as provided in clauses (a) to (h) of sub-section (2). We are concerned with clause (g) which reads as under:-

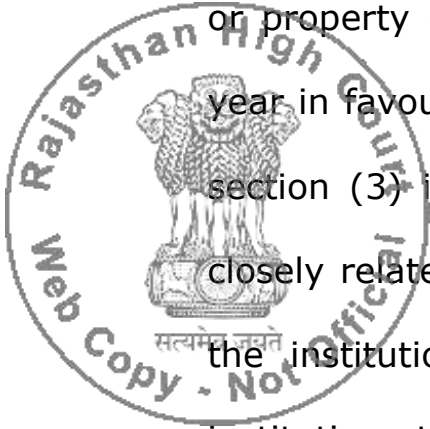


"(g) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3):

Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed one thousand rupees;"

7. Clause (g) would be applicable in a case where any income or property of a trust or institution is diverted during previous year in favour of any person referred to in sub-section (3). Sub-section (3) in turn relates to persons or institutions which are closely related such as the author of the trust or the founder of the institution, any trustee of the trust or manager of the institution etc. It is not in dispute that the assessee and the M/s Pawansut Trading Company Pvt. Ltd. are entities covered under sub-section (3) of Section 13. However the question is merely because such sale and purchase transaction took place between two such persons, clause (g) of sub-section (2) of Section 13 would automatically kick in? The answer has to be in the negative. Clause (g) would apply where any income or property of the trust or institution is 'diverted' during the previous year in favour of any person referred to in sub-section (3). The crux of this provision is diversion of income. Mere transaction of sale and purchase between two related persons would not be covered under the expression 'diversion' of income. Diversion of income would arise when transaction is not at arm's length and the sale or purchase price is artificially inflated so as to cause undue advantage to other person and divert the income.

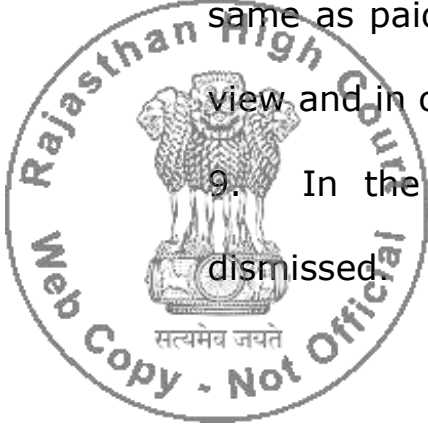
8. As noted in the present case, the assessing officer never examined whether the transactions between the assessee and





the said company were at arm's length. He merely referred to statutory provisions and without further discussion came to the conclusion that disallowance had to be made. CIT (Appeals) not only criticised this approach of the assessing officer but also independently examined whether the transaction was at arm's length. It was found that the rate paid to the related person was same as paid to the unrelated party. The tribunal confirmed this view and in our opinion correctly so.

9. In the result no question of law arises. The appeal is dismissed.



(SUDESH BANSAL),J

(AKIL KURESHI),CJ

KAMLESH KUMAR /54