

AO couldn't hold that repayment of loan to trustee was in violation of sec. 11 without bringing any relevant facts

Summary – The High Court of Calcutta in a recent case of Devi Kamal Trust Estate., (the Assessee) held that where assessee, a charitable trust, made repayment of loan to its trustee, Assessing Officer without bringing any relevant material on record, could not draw an adverse inference that it was a case of transfer of funds to trustee in violation of provisions of section 13(1)(c)

Facts

- The assessee was a trust duly registered under the Act, and its objects were charitable in nature. During relevant year, assessee made payments to a trustee and her heirs towards repayment of loan. It filed return claiming exemption of income under section 11.
- The Assessing Officer took a view that the assessee had failed to submit the details relating to receipts of the loans since it was simply said that the loans were received during the period from 1956 to 1993 which was vague and without any basis. According to him this was nothing but transfer of trust funds to the trustees or their relatives in the pretext of repayments of loan in violation of the provisions contained in section 13(1)(c). Accordingly, assessee's claim for exemption of income was rejected.
- The Tribunal concurred with the Assessing Officer on the disallowance made based on the inability of the assessee to furnish evidence to prove borrowing.
- On appeal:

Held

- In this case the application of facts is based only on the evidence furnished by the assessee. It is not a case where the assessee did not disclose the identities of the persons who had given the loan and had received the repayments as claimed. The fact that the books and bank account of the assessee stood seized in the relevant period cannot be lost sight of in adjudicating whether the assessee had *prima facie* proved its claims. The Assessing Officer, however, had come to a finding that this was really transfer of trust funds to the trustees or their relatives, for their benefit, and hit by the mischief of section 13(1)(c).
- This was an adverse finding against the assessee. The Assessing Officer being an investigator and adjudicator, when coming to an adverse finding against the assessee, was required to record such finding adequately as duly supported by material and evidence taking into account that principles of preponderance of probabilities. He did not discharge his role of investigator by relying upon any material or evidence to support his adverse finding. Therefore, the matter is remanded back to the Assessing Officer for fresh adjudication.