

Only interest income & not entire investment was to taxed if trust had given loans from its surplus funds

Summary – The Jaipur ITAT in a recent case of Ganga Devi Memorial Charitable Trust., (the Assessee) held that where assessee, a charitable trust, had given loans and advances to earn interest income on its surplus fund, only interest income from such investment which was made in violation of section 11(5) would be taxed in terms of provisions of section 164(2) and not investment itself

Facts

- The assessee trust, registration under section 12AA, filed its return and claimed exemption under section 11(1)(a). During the year, the assessee had temporarily given loans and advances to one, MGA to earn interest income on the surplus fund for a short period of time. An interest income was received by the assessee in the next year which was utilized for charitable purposes of this Trust.
- The Assessing Officer held that the said amount being accumulated amount had not been applied by the assessee for charitable purposes and, accordingly, made an addition of the said amount.
- On appeal, the Commissioner (Appeals) also upheld the order passed by the Assessing Officer.
- In instant appeal the assessee contended that when the assessee had applied 85 percent of its income for charitable purposes as per the provisions of section 11(1)(a), then the amount in question though might not be an investment as per the modes prescribed under section 11(5), the same could not be held as application of income for non-charitable purposes. Thus, the assessee had submitted that as per the provisions of section 13(1)(d) only the income on such investment could not be taxed and the principal amount could not be added or charged to tax. Hence, the assessee had submitted that at the most the interest income earned on such advances/loans could be charged to tax and not the principal amount when the assessee has already complied with the conditions as prescribed under section 11(1)(a) to the extent of application of 85 percent of income for charitable purposes.

Held

- The assessee is undisputedly granted registration under section 12AA as a charitable/religious trust and, therefore, entitled for exemption under section 11. The income derived from the property held under the trust wholly for charitable or religious purposes to the extent of which it is applied for charitable purposes in India is exempt from income tax as the same shall not be included in the total income of the trust. Thus, in order to avail the benefit under section 11, the conditions stipulated under sections 11 and 13 are to be fulfilled. The provisions of section 11 contemplate the conditions of application of income whereas the provisions of section 13 prescribe the conditions of source of income from the investment of funds of the trust. In the case in hand, the Assessing Officer has added a sum on the ground that the assessee has violated the provisions of section 11(5) read with section 13(1)(d). It is pertinent to note that section 11(5) prescribes certain modes of investment

and deposits of the accumulated amount or set apart amount from the income of the Trust. For availing the exemption under section 11(1)(a), there is no such condition of deposit of accumulated amount or set apart amount not in exceed of 15 percent of the income to be invested or deposited in the manner and modes prescribed under section 11(5) but has to be applied for charitable purpose within a period of five years. Thus, to the extent of the accumulation or set apart not in excess of 15 percent of the income is permitted under section 11(1)(a) for availing the exemption of the income derived from property held under the Trust. Even as per the *Explanation* to section 11(1)(a) and (b) a Trust is further allowed to defer the application of income which is even falls short of 85 percent of the income derived during the year, if the assessee has exercised an option before the due date of filing the return under section 139(1) that the said income will be applied in the immediately following previous year. Hence, to the extent of the application of 85 percent and accumulation of remaining 15 per cent, there is no condition of keeping the said 15 percent amount as per the modes of investment and deposits prescribed under section 11(5). However, there is a further relaxation even for application of 85 percent of income to the extent if such income is accumulated or set apart either in whole or in part for application to such purposes in India subject to the conditions prescribed under sub-section (2) of section 11. Therefore, a trust would not loose exemption even in case 85 percent of the income is not applied during the year under consideration but the short fall of 85 per cent either in whole or in part is accumulated or set apart for application to such purposes in India by giving a notice in writing to the Assessing Officer and the money so accumulated or set part is invested or deposited in the form or modes specified in sub-section (5) of section 11. Therefore, the condition of investment or deposit in the manner and modes prescribed under section 11(5) is to be fulfilled only in case the trust has not applied its income during the year to the extent of 85 percent and as per section 11(2) has set apart or accumulated the short fall portion to be applied for specific purposes, then the said amount of short fall has to be kept in the investment or deposits as prescribed under section 11(5). Hence, in case the trust has complied with the conditions of application of 85 per cent of the income during the year under consideration, then there is no pre-condition for the balance income accumulated not exceeding 15 percent to be kept in the deposits or investment as prescribed under section 11(5) for availing the exemption under section 11(1)(a).

- As regards the issue of violation of the conditions as prescribed under section 13(1)(d), there is no dispute that the investment being the advances/loans given to the persons and not in conformity with the provisions of section 11(5), the income from such investment would not be eligible for exemption under section 11 due to the reason of not fulfilling the conditions prescribed under section 13(1)(d).
- Thus, section 13(1)(d) provides the investment/deposits as prescribed under section 11(5) and non-fulfillment of the said conditions would not deprive a trust the exemption in respect of other income so long the assessee is granted registration under section 12AA. Accordingly, the provisions of section 164(2) for bringing the income to tax at maximum marginal rate which is not eligible for

exemption due to non-satisfaction of the conditions of investment as prescribed under section 11(5). Hence, only the income from such investment which is made in violation of provisions of section 11(5) will be taxed in terms of the provisions of section 164(2) and not the investment itself has to be taxed when the assessee has complied with the conditions of section 11(1)(c). Hence, in view of the above facts and circumstances of the case when the assessee has already applied 85 percent of the income for charitable purposes then the investment in question in violation of provisions of section 11(5) read with section 13(1)(d) would attract the provisions of section 164(2) only in respect of the income on such investment. The assessee has earned the income on such investment in the subsequent year and, therefore, no addition is called for the year under consideration either on the investment or income from such investment.