
(2001) 118 TAXMAN 556

Calcutta High Court

Case No: IT Reference No. 47 of 1994 12 June 2001

Commissioner of
Income Tax

APPELLANT

Vs

Rai Bahadur
Biseswarlal Motilal
Halwasiya Trust

RESPONDENT

Date of Decision: June 12, 2001

Acts Referred:

- Income Tax Act, 1961 - Section 13

Citation: (2001) 118 TAXMAN 556

Hon'ble Judges: Y.R. Meena, J; Meena, J; Malay Kumar Basu, J

Bench: Full Bench

Advocate: Mr. Khaitan, for the Revenue, for the Appellant;

Judgement

@JUDGMENTTAG-ORDER

On an application u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), this court has directed to refer the following question for our opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that there was no violation of any of the provisions of section 13 of the Income Tax Act, 1961 by the assessee-trust in advancing money amounting to Rs. 98,000 to the two employers to warrant denial of the benefit of section 11 ?"

2. In compliance of direction of this court the aforesaid question has been referred for our opinion.

3. The assessee is a charitable trust. During the course of assessment and on examination of the accounts the Income Tax Officer found that a sum of Rs. 98,000 has been shown as refundable aids in the assets side of the balance sheet. On further

scrutiny of details filed during the course of the hearing, the assessing officer further found that the said sum of Rs. 98,000 was paid to one Sri N.K. Kothari and K.D. Soni. Rs. 63,000 was paid to N.K. Kothari and Rs. 38,000 was paid to K.D. Soni as loan. The assessing officer has taken the view that as Sri Kothari was manager in the trust, therefore, the advance of loan of Rs. 60,000 to him is in direct accommodation to a person referred to in section 13(3) of the Act. Therefore, it is hit by the mischief of the provisions of section 13(1)(c) and 13(2)(a).

4. In appeal before the Commissioner (Appeals), the Commissioner (Appeals) found that the appellant-trust cannot be said to have used any part of its income directly or indirectly for the benefit of any person referred to in section 13(3). Therefore, the provision of section 13(1)(c) is not applicable. In appeal of the revenue before the Tribunal, the Tribunal has also confirmed the view taken by Commissioner (Appeals) that the assessee is a trust and not an institution. Therefore, the loan advanced to Mr. Kothari cannot be treated as benefit to the person who falls within the provision of section 13(3).

5. The learned counsel for the revenue submits that when there is no dispute that money has been advanced to manager of the trust, the manager falls within the provision of section 13(3).

6. Mr. Khaitan, the learned counsel for the revenue, brought to our notice that the Apex Court in the case of Asstt. CIT v. Thanthi Trust has considered one of the questions that whether the word and phrase "trust" and the "institution" referred to entities differently constituted.

7. Sub-section (3) of section 13, clause (cc), provides that any trustee of the trust or manager (by whatever name called) of the institution comes within the persons referred in clause (cc) of sub-section (1) and subsection (2) for the purpose of exemption provided u/s 11 of the Act but the pertinent question is whether a manager of the trust can be treated as manager of the institution referred to in clause (cc) of sub-section (3) of section 13. Their Lordships in the case of Thanthi Trust (supra) at page 795 observed as under :

"Trusts and institutions are separately dealt within the Act (section 11 itself and sections 12, 12A and 13, for example). The expressions refer to entities differently constituted. It is, thus, clear that the newspaper business that is carried on by the trust does not fall within sub-section (4A). The trust is not only for public religious purposes, so it does not fall within clause (a). It is a trust not an institution, so it does not fall within clause (b). It must, therefore, be held that for the assessment years in question the trust was not entitled to the exemption contained in section 11 in respect of the income of its newspaper."

8. The trust and institution referred in section 13 are not one and the same thing and they are different entities. Clause (cc) of sub-section (3) of section 13 refers to the manager of the institution and not the manager of the trust and in the case at hand the advance has

been given to the manager of the trust and not to the manager of the institution. In view of these admitted facts, no interference is called for in the order of the Tribunal.

9. In the result, we answer the question in the affirmative, i.e., in favour of the assessee and against the revenue.

10. The reference so made stands disposed of.