(2010) 07 DEL CK 0371

Delhi High Court

Case No: ITA 888 of 2010

Director of Income Tax (Exemption)		APPELLANT
	Vs	
ACME Educational Society		RESPONDENT

Date of Decision: July 28, 2010

Acts Referred:

- Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 - Section 3
- Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 - Section 3
- Companies Act, 1956 - Section 3
- Finance Act, 1983 - Section 11, 11(2), 12, 13(1)
- Government Savings Certificate Act, 1959 - Section 2
- Income Tax Act, 1961 - Section 11, 11(5), 12, 12A, 13(1)
- Unit Trust of India Act, 1963 - Section 36(1)

Citation: (2010) 326 ITR 146

Hon'ble Judges: Dipak Misra, C.J; Manmohan, J

Bench: Division Bench

Advocate: Prem Lata Bansal, for the Appellant; Piyush Kaushik, for the Respondent

Final Decision: Dismissed

Judgement

Manmohan, J.
With consent of the parties, matter was taken up for hearing and final disposal. After extensively hearing both the parties, the Judgment was reserved in the matter on 19th July, 2010.

2. The present appeal has been filed u/s 260A of Income Tax Act, 1961 (for brevity "Act, 1961") challenging the order dated 23rd April, 2009 passed by the Income Tax Appellate Tribunal (in short "ITAT") in ITA No. 625/Del/2009, for the assessment year 2005-2006.

3. Briefly stated the relevant facts of the present case are that on 27th October, 2005 assessee-society filed a return declaring nil income and claiming benefit u/s 11 of Act, 1961. During the assessment proceedings, the assessing officer noticed that the assessee-society had in the assessment year 2005-2006 given a loan of Rs. 90,50,000/- to another educational society, namely, Nav Bharti Educational Society. It is pertinent to mention that the President of Nav Bharti Educational Society was the brother of the President of assessee-society. The assessing officer held that there was violation of Section 13(1)(d) read with Section 11(5) of Act, 1961 and accordingly, he denied benefit of Section 11 of Act, 1961 to the assessee-society.

4. On an appeal filed by the assessee-society, Commissioner of Income Tax (Appeals) [in short "CIT(A)] deleted the addition and held that there was no violation of Section 13(1)(d) read with Section 11(5) of Act, 1961 as both the societies had similar objects. CIT(A) further held that the assessing officer had not brought anything on record to show that the transaction of loan was a "deposit" or "investment".

5. ITAT dismissed the appeal filed by the Revenue after holding that there was no infringement of Sections 13(1)(d) read with 11(5) of Act, 1961.

6. Ms. Prem Lata Bansal, Learned Counsel for Revenue submitted that ITAT had erred in law in granting benefit of Sections 11 and 12 of Act, 1961 to assessee-society. According to her, both the CIT(A) and ITAT had erred in law in holding that advance of Rs. 90,50,000/- as temporary loan by the assessee-society to Nav Bharti Educational Society was neither an "investment" nor a "deposit". She laid emphasis on the fact that Nav Bharti Educational Society had been found to be engaged in an entry scam by the Investigation Wing. Ms. Bansal stated that upon Nav Bharti"s assessment proceedings being reopened, huge monetary demand had been raised against the said society.

7. Mr. Piyush Kaushik, Learned Counsel who appeared on behalf of respondent/assessee-society pointed out that the Nav Bharti Educational Society to whom loan had been given was not only registered u/s 12A of Act, 1961 but it also had objects similar to that of the assessee-society. He further pointed out that the loan amount had been returned to the assessee-society in the assessment year 2007-2008 and the assessee-society had received no income either by way of interest or otherwise on account of such loan being advanced by it.

8. Mr. Kaushik vehemently denied the allegation that Nav Bharti Educational Society was engaged in an entry scam. He submitted that the said allegation was without any basis and substance. Mr. Kaushik further pointed out that the alleged addition on account of accommodation entries had been deleted by the CIT(A) by way of a detailed order wherein CIT(A) had concluded that the said society had entered into genuine transactions. Since, Mr. Kaushik laid considerable emphasis upon the order passed by the CIT(A) in the case of Nav Bharti Educational Society for the assessment year 2003-2004, the relevant portion of the said order is reproduced hereinbelow:

I have gone through the assessment order and the arguments of the Ld. AR. It is a fact that the AO did not consider the documents filed by the appellant. He has also not mentioned any reason in the assessment order for making the addition. Nothing is available from the assessment order as to how the donation remains unexplained in spite of all the documentary evidences filed by the appellant. The evidences filed by the appellant clearly indicate the name and address of the donors, amount of donations, cheque Nos. along with date, name and address of the banks, confirmation from the donors, PAN of the donors, there Income Tax jurisdiction, copy of their bank account indicating the availability of fund and acknowledgement of IT returns indicating quantum of income. All these evidences clearly prove the genuineness of transactions as well as the identity and the creditworthiness of the donors. Therefore, it is held that the donations are fully explained and hence the addition of Rs. 32,00,000 is hereby deleted in view of the decision of Hon''ble Delhi High Court in case of Keshav Charitable Trust.

9. Mr. Kaushik also pointed out that the CIT(A) had similarly deleted addition on account of the alleged accommodation entries in the case of Nav Bharti Educational Society for the next assessment year 2004-2005.

10. Having heard both the parties at length, we are of the view that the issue that arises for consideration in the present case is whether advancing of an interest free temporary loan by one society to another society having similar objects is an "investment" or a "deposit" and whether the assessee-society had violated the provisions of Section 13(1)(d) read with Section 11(5) of Act, 1961?

11. Sections 11(5) and 13(1)(d) Act, 1961 are reproduced hereinbelow:

11. Income from property held for charitable or religious purposes

xxx xxx xxx

(5) The forms and modes of investing or depositing the money referred to in Clause (b) of Sub-section (2) shall be the following, namely:

(i) investment in savings certificates as defined in Clause (c) of Section 2 of the Government Savings Certificates Act, 1959 (46 of 1959), and any other securities or certificates issued by the Central Government under the Small Savings Schemes of that Government;

(ii) deposit in any account with the Post Office Savings Bank;

(iii) deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).

Explanation.--In this clause, "scheduled bank" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted u/s 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or u/s 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

(iv) investment in units of the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963);

(v) investment in any security for money created and issued by the Central Government or a State Government;

(vi) investment in debentures issued by, or on behalf of, any company or corporation both the principle whereof and the interest whereon are fully and unconditionally guaranteed by the Central Government or by a State Government;

(vii) investment or deposit in any [public sector company]:

[Provided that where an investment or deposit in any public sector company has been made and such public sector company ceases to be a public sector company,

(A) such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of three years from the date on which such public sector company ceases to be a public sector company;

(B) such other investment or deposit shall be deemed to be an investment made under this clause for the period up to the date on which such investment or deposit becomes repayable by such company;]

(viii) deposits with or investment in any bonds issued by a financial corporation which is engaged in providing long-term finance for industrial development in India and which is [eligible for deduction under] Clause (viii) of Sub-section (1) of Section 36;

(ix) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is [eligible for deduction under] Clause (viii) of Sub-section (I) of Section 36;

[(ixa) deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India.

Explanation.--For the purposes of this clause,

(a) "long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;

(b) "public company" shall have the meaning assigned to it in Section 3 of the Companies Act, 1956 (1 of 1956);

(c) "urban infrastructure" means a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, roads, bridges and flyovers or urban transport;]

(x) investment in immovable property.

Explanation.--"Immovable property" does not include any machinery or plant (other than machinery or plant installed in a building for the convenient occupation of the building) even though attached to, or permanently fastened to, anything attached to the earth;]

[(xi) deposits with the Industrial Development Bank of India established under the Industrial Development Bank of India Act, 1964 (18 of 1964);]

[(xii) any other form or mode of investment or deposit as may be prescribed.]

12. This Court in the case of The Director of Income Tax (Exemption) Vs. Alarippu, has pointed out that the words "investment", "deposit", and "loan" have different meanings. The relevant observations in the said Judgment are reproduced hereinbelow:

The expressions used in both the provisions quoted above, are "investment" and "deposit". The former expression means to lay out money in business with a view to obtain an income or profit. Deposit, on the other hand, means that which is placed anywhere, as in any one''s hands for safe-keeping, something entrusted to the care of another. These two expressions have been used in a cognate sense and have to be under-stood as such. In order to constitute an investment the amount laid down should be capable of any result of any income, return or profit to the investor and in every case of investment, the intention and positive act on the part of the investor should be to earn such income, returns, profit in order to constitute an investment, the monies shall be laid out in such a manner as to acquire some species of property which would bring in an income to the investor. A loan, on the other hand, is granting temporary use of money, or temporary accommodation. The words "investment", "deposit" and "loan" are certainly different. Section 11(5) refers to pattern of investment by the assessee. Section 11(5) was introduced by the Finance Act, 1983, with effect from April 1, 1983, i.e., for and from assessment year 1983-84. It prescribes the forms and modes of investing and depositing money referred to in Section 11(2)(b). Subsequently, new forms and modes have been added. Section 13(1)(d) as amended by the Finance Act, 1983, provides that the income of any charitable or religious trust or institution will not be entitled to exemption u/s 11 and 12, if certain conditions stipulated therein are not complied with. The word deposit does

not cover transaction of loan which can be more appropriately described as directed bailment. The essence of deposit is that there must be a liability to return it to the party by whom or on whose behalf has been made on fulfillment of certain conditions. In the commercial sense, the term is used to indicate the aforesaid transaction as deposit of money for employment, in business, deposits for value to initiate security for deposit of title deeds, similar documents as security for loan, deposit of money bills in a bank in the ordinary course of business of current account and deposits of a sum at interest at a fixed deposit in a bank.

13. In Baidya Nath Plastic Industries (P) Ltd. and Others Vs. K.L. Anand, Income Tax Officer, a Learned Single Judge of this Court pointed out that the distinction between "loan" and "deposit" is that in the case of the former it is ordinarily the duty of the debtor to seek out the creditor and to repay the money according to the agreement, while in the case of the latter it is generally the duty of the depositor to go to the banker or to the depositee, as the case may be, and make a demand for it.

14. A Division Bench of this Court in case of Director of Income Tax (Exemption) Vs. Pariwar Sewa Sansthan, has held that no question of law arises from the order of ITAT holding that there was no violation of provision Section 13(1)(d) of Act, 1961 where loan had been given by one society to another society having similar objects.

15. Keeping in view the aforesaid exposition of law, we are of the opinion that interest free loan of Rs. 90,50,000/- given by the assessee-society to Nav Bharti Educational Society does not violate Section 13(1)(d) read with Section 11(5) of Act, 1961 as the said loan was neither an "investment" nor a "deposit". This is more so as both the societies had similar objects and were registered u/s 12A of Act, 1961 and had approvals u/s 80G of the Act, 1961. The fact that the loan was interest free and had been subsequently returned is also significant. In view of the order passed by the CIT(A) in the case of Nav Bharati Educational Society, Ms. Bansal''s allegation with regard to "entry scam" also does not survive. Consequently, there is no substantial question of law involved in the present appeal and accordingly, appeal is dismissed but with no order as to costs.