

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ "डी" अहमदाबाद।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD**

**श्री मुकुल कुमार श्रावत, न्यायिक सदस्य एवं श्री एनएस0 सैनी, लेखा सदस्य के समक्ष
BEFORE SHRI MUKUL Kr. SHRAWAT, JUDICIAL MEMBER AND
SHRI N.S. SAINI, ACCOUNTANT MEMBER**

**ITA No. 2729/Ahd/2010
(Assessment Year 2007-08)**

PNR Society for Relief & Rehabilitation of the Disabled Trust, Vidhyanagar, Bhavnagar. PAN: AAAPT1877E	Vs	The DDIT (Exemption), Bhavnagar.
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Revenue by :	Shri Roopchand, Sr. DR
Assessee(s) by :	Shri Tushar Hemani, AR

सुनवाई की तारीख / **Date of Hearing** : **08/08/2014**
घोषणा की तारीख / **Date of Pronouncement**: **14/08/2014**

आदेश/ORDER

PER SHRI N.S. SAINI, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-XXI, Ahmedabad dated 15.07.2010.

2. Ground no. 1 of the appeal reads as under:

- 1.0 The learned CIT (A) has grossly erred in law and on facts in passing a non-speaking order without any reasoning and miserably failed to deal with any of the arguments put forth by the appellant. This action of Id. CIT (A) is in gross

abuse of his powers and in blatant violation of principles of natural justice. The appellant, being a trust, has to approach this Hon'ble Tribunal as Id. CIT(A) failed in his duties. The appellant prays that exemplary cost be awarded to it for having to file this appeal.'

3. At the time of hearing, the Authorized Representative of the assessee submitted that he is not pressing this ground of appeal. Hence, the same is dismissed as not pressed.

4. Ground nos. 2, 3 and 4 read as under:

'2.0 The Id. CIT(A) has erred in law and on facts of the case by confirming the action of the Id. A.O. in disallowing Rs 4,80,000/- on account of remuneration paid to the trustee Shri Anantbhai K. Shah u/s 131(1)(c)/13(3)(cc) of the Act without appreciating the facts that the Appellant Trust has paid adequate remuneration to him against the services provided by him for the object of the Trust only.

3.0 Alternatively and without prejudice, if remuneration is disallowed, the increased income of the trust may kindly be allowed to be accumulated u/s 11(2) of the Act.

4.0 Both the lower authorities have erred in law and on facts in passing the orders without properly appreciating the fact and that he further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of both the authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.'

5. As these grounds of appeal were argued together by the Authorized Representative of the assessee and the facts and issue are inter-connected, they are being disposed together as under.

6. We have heard the rival submissions and perused the orders of lower authorities and material available on record. In the instant case, the assessee is a charitable trust registered u/s. 12AA of the Act. The assessee trust paid remuneration of Rs 4,80,000/- to Shri Anantbhai K. Shah who is a full time secretary and trustee of the assessee trust. The Assessing Officer disallowed the deduction claimed for above payment on the ground that the services rendered by Shri Anantbhai K. Shah were a duty of him as a trustee and the remuneration paid to him being violative of provisions of section 13(1)(c) and 13(3)(cc). The Assessing Officer also opined that remuneration of Rs 4,80,000/- paid to said Shri Anantbhai K. Shah cannot be treated as application towards objects of the trust and therefore he disallowed the entire amount of Rs 4,80,000/- and treated the same as taxable income in the hands of the assessee charitable trust.

7. On appeal, the Commissioner of Income Tax (Appeals) quoted the observations of the Assessing Officer made in the assessment order and submissions of the assessee and thereafter without controverting or dealing with the submissions of the assessee dismissed the appeal of the assessee by stating that "*I am inclined to agree with the Id. Assessing Officer, hence, the assessment order passed by the Id. Assessing Officer is approved as it is.*"

8. Before us, the Authorized Representative of the assessee contended that in view of the provisions of section 13(2)(c), no disallowance of remuneration paid to the trustee which is not more than the fair market value can be made, and therefore, the Revenue was not justified in making arbitrary disallowance. He also pointed out that similar remuneration was paid to the same trustee in earlier years also which was accepted and allowed by the Department.

9. We find that the relevant sections read as under:

Section 13(1)(c)(ii)

- (1) *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-*
- (a)
 - (b)
 - (bb)
- (c) *In the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof-*
- (i)
 - (ii) *if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied.*

Section 13(2)(c)

- (2) *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 of such income or property, shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3)-*
- (a)
 - (b)
- (c) *if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;*

Section 13(2)(c)

- (3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely:-
- (a)
 - (b)
 - (c)
- (cc) any trustee of the trust or manager (by whatever name called) of the institution;

10. The Authorized Representative of the assessee submitted that Shri Anantbhai K. Shah was qualified in B.A. (Sp.) degree in Sociology passed in 1962 from Gujarat University which was the only specialized degree in field of sociology. He has vast experience of over 45 years in the field of social working and developing institutions in this field. He has been awarded with the following awards for his achievements and his noble services in the field of helping handicapped people particularly children:

- Rajiv Gandhi Manav Seva Award – 1998
- Felicitated by former Prime Minister of India Late Shri Morarji Desai
- Nagardas Doshi Smarak Nidhi Trust Award – 1997
- Alpalwala Award – 2007

He has been declared as “Man of the Year” – 2006 by “The Week”. The assessee trust is engaged in various activities for relief and rehabilitation of disabled persons such as prevention and early intervention, polio eradication, corrective surgery polio/cataract/cleft lip congenital heart defect, research, training course, workshop for artificial limbs, aids, technology transfer, physio-occupational therapy centre, AT &T Technological park centre etc. The Authorized Representative of the assessee further submitted that Shri Anantbhai K. Shah was full time secretary in the assessee trust. He was engaged full time in the activities of

the trust. Therefore, by no stretch of imagination it can be held that annual remuneration of Rs 4,80,000/- paid to said Shri Anantbhai K. Shah was more than the fair market value of his services rendered to the assessee trust.

11. We find that the revenue could not bring any material before us to controvert the submissions of the Authorized Representative of the assessee. We find that the total receipts of the assessee trust were to the tune of Rs 443.24 lakhs during the year under consideration and the activity undertaken by the assessee trust was to the tune of Rs 469.87 lakhs. Thus, the remuneration of Rs 4,80,000/- which is about 1% of the total value of activities of the trust for looking after which the same was paid, cannot be said to be excessive or unreasonable.

12. Further, we find that the Departmental Representative could not controvert the submissions of the assessee that the remuneration of Rs 4,80,000/- per year was paid to the said trustee by the trust in earlier years also for rendering similar services which were allowed by the Department since Assessment Year 2003-04. In the above circumstances, in absence of any material brought before us to show that the remuneration of Rs 4,80,000/- paid to Shri Anantbhai K. Shah for actually rendering services as full time secretary of the trust was in excess of the amount which can be reasonably paid for such services, we delete the disallowance of Rs 4,80,000/-. Thus, the grounds of appeal of the assessee are allowed.

13. Ground no. 5 of the appeal of the assessee reads as under:

'5.0 The learned CIT(A) has erred in law and on facts of the case in the confirming action of the Id. AO in levying interest u/s. 234B/C/D of the Act.'

14. At the time of hearing, the assessee made no submission in respect of this ground of appeal. We, therefore, hold that the interest levied u/s. 234B/C/D of the Act is consequential and accordingly dismiss this ground of appeal of the assessee.

15. Ground no. 6 of the appeal reads as under:

'6.0 The learned CIT(A) has erred in law and on facts of the case in initiating penalty proceedings u/s. 271(1)(c) of the Act.'

16. At the time of hearing, the assessee made no submission in respect of this ground of appeal. We, therefore, dismiss this ground of appeal for want of prosecution.

17. In the result, the appeal of the assessee is partly allowed as above.

Order pronounced in the Court on Thursday, the 14th of August, 2014 at Ahmedabad.

Sd/-

(MUKUL Kr. SHRAWAT)
JUDICIAL MEMBER

Sd/-

(N.S. SAINI)
ACCOUNTANT MEMBER

Ahmedabad; Dated 14/08/2014
Ghanshyam Maurya, Sr. P.S.

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-III, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR,
ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad