

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "E" NEW DELHI**

**BEFORE SHRI A.D. JAIN, JM AND
SHRI J.SUDHAKAR REDDY, AM**

**ITA no. 2745/Del/2011
Assessment Year : 2006-07**

ADIT (E)
Inv.Cir. II, Room no.306
3rd floor, Aayakar bhavan
Laxmi Nagar Dist.Centre
New Delhi

(Appellant)

vs. Nutrition Foundation of India
C 13, Qutab Instl.area
New Delhi

PAN: AAATN 4671 Q

(Respondent)

Appellant by:- Sh.Anil Bhala, Adv.
Respondent by:- Sh. Gunjan Prashad, CIT, D.R

ORDER

PER J.SUDHAKAR REDDY, AM

This is an appeal filed by the Revenue directed against the order of the Ld.Commissioner of Income Tax (Appeals)-XXI, New Delhi dated 10.3.2011 pertaining to the A.Y. 2006-07.

2. Facts in brief:- The facts as brought out in the assessment order are extracted for ready reference.

“The assessee is a society registered u/s 12A(a) of the Act vide order dt. 29.4.2004. The assessee society is also notified u/s 80G of the Act for the period from 17.2.2006 to 31.3.2008 vide order dt. 29.8.2006. Nutrition Foundation of India was registered under Society Registration Act vide Certificate of Registration no.S/9610 dt. 22.8.1978.

The main objects of the society are to undertake research in problem of mal nutrition of the country, to analyse and propose solution of specific nutrition problem. The receipts of the assessee are grant from Ministry of Health, Grant from Food and Agriculture Organisation, Rome, grant from Mid Day Meal programme, Donations etc.”

2.1. The assessee filed a nil return of income on 31.10.2006. The AO in his order dt. 29.12.2008 came to a conclusion that the assessee has not carried out any research work. He further came to a conclusion that there was violation of s.13(1)(C) of the Act. Hence he denied exemption claimed by the assessee u/s 11 of the Act.

3. Aggrieved, the assessee carried the matter in appeal before the First Appellate Authority raising the following two issues:

(a) Whether the assessee is rendering professional services and received remuneration in lieu of it;

(b) Whether the President of the Society derives benefits from the funds of the Society resulting in attracting provisions of S.13(1) (c) r.w.s. 13(3) of the Income Tax Act.

3.1. The First Appellate Authority admitted additional evidence under rule 46'A'. He forwarded the additional evidences to the AO and called for a remand report. The AO vide letter dt. 8.10.2010 filed a remand report. After considering all the papers on record, the Ld.CIT(A) held that the assessee was entitled to exemption u/s 11 by holding that Dr.C.Gopalan who was 93 years old, was a scientist of international repute and that he did carry on research work from his office cum residence. He vacated the finding of the AO that the assessee did not carry out any research work and was rendering professional services and received remuneration in lieu of it.

4. On the issue of violation of S.13(1)(c), he held that there is no such violation as Dr.C.Gopalan did all his research work from his office cum residence and that all the work is being conducted for the purpose of the Trust and not for the personal benefit of Dr.Gopalan. He allowed the appeal.

5. Aggrieved the Revenue is in appeal before us on the following grounds.

“1. On the facts and in the circumstances of the case, the Ld.Commissioner of Income Tax (Appeals) has erred in allowing the benefits of exemption u/s 11 and 12 of the Income Tax Act, as the assessee has failed to produce any concrete evidence in support of its claim that it has not violated the provisions of section 13(1)(c) of the Act.

2. The appellant craves leave to add, alter or amend any ground of appeal raised above, at the time of hearing.”

6. The Ld.D.R. Mr.Gunjan Prasad submitted that there is violation of S.13(1)(c) as rent was paid for the premises at B 37, Gulmohar Park, New Delhi which is the house of the President and the Trustee of the Society Dr.C.Gopalan. He referred to pages 5 and 6 of the assessment order and submitted that the Inspector was deputed to the said residence and it was found through local enquiries that no activities of research was carried out from the said premises. He pointed out that the assessee has not given any documentary evidence to demonstrate that research work was done by President Dr.C.Gopalan. He prayed that the order of the AO be upheld on the issue of violation on S.13(1)(c). He further submitted that the Ld.CIT(A) has accepted additional evidences under Rule 46(A)(1)(c) and that an affidavit was accepted from Prema Ramachandran, Director of Nutrition Foundation of India, and that the AO did not have an opportunity to verify the contents of the affidavit or cross examine Prema Ramachandran. He relied on the decision of Hon'ble Delhi High Court in the case of CIT vs. Nova Promoters and Finlease (P) Ltd. in ITA 342/2011, and submitted that the issue should be restored to the file of AO for fresh adjudication.

7. The Ld.Counsel for the assessee Mr.Anil Bhalla on the other hand filed a paper book running into 157 pages and submitted that Dr.C.Gopal is a Padma Vibhushan and is an internationally renowned scientist in the field of Mal nutrition. He pointed out that the admission of additional evidence by the

Ld.CIT(A) and his finding that the Society is a Charitable Organisation, has been accepted by the Revenue and that the only ground taken by Revenue is that there is violation of S.13(1)(c) for the reason that certain expenses were incurred by the assessee Society on the residential accommodation of the President. He submitted that the assessee society drew its inspiration from its Founder Trustee Mr.C.Gopalan and that Mr.C.Gopalan was 93 years old and his movements were restricted and under those circumstances he was conducting research work from his office-cum-residence. He vehemently contended that there is no personal benefit to Dr.C.Gopalan and it was in fact the assessee society that was benefitting from the services of Dr.C.Gopalan and not vice versa. He pointed out that the AO has not doubted the expenses incurred. Alternatively he submitted that the payment of reasonable amounts for obtaining services commensurate with the payment, does not result in violation of S.13(1)(c).

7.1. He relied on the following decisions.

(a) The Hon'ble Allahabad High Court in CIT vs. Foundation for Social Care (2013) 37 taxmann.com 389 (All.) PB 123-126, wherein it was held as follows.

“6.1. Section 13, read with section 11 of the Income Tax Act, 1961 – Charitable or religious trust – Denial of exemption (personal benefits) – Assessment Year 2002-03 – Assessee was a charitable trust – It took office premises on rent in building owned by its President – Assessing Officer denied exemption on grounds that expenses of office rent and electricity bills paid by Trust was for personal benefit of President/Secretary of Trust – However, it was found that President and Secretary of Trust were providing voluntary services to trust for which they did not charge any fee/remuneration and office at same premises of

resident saves expenditure on conveyance – Further, electricity charge was meager – Furthermore, separate ;account had been maintained for paying genuine rent and electricity charges – Whether deduction was to be allowed on said expenditures and exemption was to be granted to trust – Held, yes (para 12) (in favour of assessee).

(b) The Cuttack Tribunal in ITO vs. Human Resource Development & Management Trust (ASBM Trust) 12 taxmann.com 478 (Cck Trib.) PB 127-149, wherein it was held as follows.

Section 13 of the Income Tax Act, 1961 – Charitable or religious trust – Denial of exemption – Assessment Year 2007-08 – Whether provisions contained in S.13(1)(c) do not bar payment of reasonable salary for services rendered by an interested person and, it is only when such payment is found unreasonable or excessive that stipulation of clause (c) of section 13(2) would be attracted – Held, yes (in favour of assessee).

(c) ITAT Delhi Bench in Addl.DIV vs. Manav Bharti Child Institute & Child Psychology, pb 150-157, wherein it was held as under:

Whether there is no prohibition in Act to remunerate interested persons but such remuneration should be commensurate with services rendered by them and so found, it cannot be said that provisions of section 13(1)(c) are attracted so as to deny benefit of exemption. U/s 11 and 12 – Held, yes.

7.2. On the issue of opportunity, the Ld.Counsel submitted that the affidavit was received and forwarded to the AO, who gave a remand report on the same and hence the question of giving one more opportunity does not arise.

8. Rival contentions heard. On a careful consideration of the facts and circumstances of the case and on perusal of the papers on record and orders of the authorities below, case laws cited, we hold as follows.

9. The sole issue before us is whether there is a violation of S.13(1)(c). The assessee paid security charges of Rs.6,167/- rent of Rs.24,000/- (i.e. Rs.2,000/- p.m.) for the year in respect of the premises B-37, Gulmohar Park, New Delhi. Certain expenses were also incurred on telephone, water, electricity and also towards staff welfare. The issue is whether such payments were for the personal benefit of Dr.C.Gopalan. The profile of Dr.C.Gopalan are at pages 79 to 82 of the paper book. He is an internationally renowned Nutritional Scientist who held the position of Director in the “National Institute of Nutrition“ and was Director General of “Indian Council of Medical Research”. He is a Fellow of the Royal Society and has been awarded “Padma Vibhushan”. Dr.C.Gopalan is the guiding force behind the assessee society. Being 93 years of age, the society operated from his office-cum-residence at B-37, Gulmohar Park, New Delhi. On these facts and circumstances we are of the considered opinion that the First Appellate Authority was right in holding that the assessee has not violated provisions of S.13(1)(c) of the Act. The expenses incurred are reasonable. This is not a case whether the Founder Trustee has been remunerated. It is a case where reasonable expenses were incurred for a

furtherance of objectives of the Trust. Hence the order of the First Appellate Authority is upheld, and the Revenue's appeal is dismissed.

10. In the result the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 07th February, 2014.

Sd/-
(A.D. JAIN)
JUDICIAL MEMBER

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 07th February, 2014

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Copy of the Order forwarded to:

1. Appellant; 2.Respondent; 3.CIT; 4.CIT(A); 5.DR; 6.Guard File

By Order

Asst. Registrar