

No sec. 13(1)(c) violation if trustee was exclusively working for trust; sec. 11 exemption allowable

Summary – The Mumbai ITAT in a recent case of *Apne Aap Women Worldwide (India) Trust.*, (the Assessee) held that where Assessing Officer rejected assessee's claim for exemption of income under section 11 on ground that assessee-trust paid salary to one of trustee and, thus, there was violation of provisions of section 13(1)(c), in view of fact that payment of salary was being made since inception of trust and it had not been disputed by revenue in earlier years and, moreover, said trustee was exclusively working for trust, impugned order passed by Assessing Officer was to be set aside

Facts

- The assessee-trust was registered under section 12A. It filed return claiming exemption of income under section 11.
- During assessment proceedings, the Assessing Officer noted that the assessee paid a salary of Rs. 36 lacs to one of the Trustee namely 'R', which in the opinion of Assessing Officer, violated the provisions of section 13(1)(c) & 13(2)(c). Another factor which led to denial of exemption was the fact that the assessee purchased a motor car in the name of the aforesaid trustee, the expenses of which were being borne by the assessee-trust. The Assessing Officer opined that the ownership should be in the name of the assessee and since the title as well as control of ownership was with the trustee, it amounted to violation of section 13(1)(c). Accordingly, the assessee was denied exemption under section 11 for alleged violation of various provisions of section 13.
- On appeal:

Held

- The prime contention of the assessee revolves around the *rule of consistency*. It has been submitted that the assessee has been granted exemption under section 11 since assessment year 2005-06 and the activities & manner of functioning including expenditure incurred by the assessee trust are on similar pattern and the same has been accepted by the revenue over several years in scrutiny assessments under section 143(3). The revenue has controverted the same by submitting that the principle of *resjudicata* does not apply to tax proceedings and each year is independent unit of assessment and therefore, the *rule of consistency* could not absolve the assessee to justify his claim in the impugned assessment year. Nevertheless, the fact that the assessee has been granted exemption under section 11 in earlier years and claimed expenditure on similar pattern remains *un-rebutted*. Nothing on record suggest that there was any change in the activities being carried out by the assessee. The copies of scrutiny assessment orders for assessment years 2010-11 & 2011-12 as placed on record vouch for the fact that the assessee has been granted deduction under section 11 by Assessing Officer and its claim has not been doubted by the revenue.

- There is no reason to deviate from the conclusion that there being no change in material facts or circumstances, the revenue is debarred from taking flickering stands on the same issue taken in assessee's own case in earlier years. In the present case in hand, the revenue is unable to point out any change in facts or circumstances which warrant taking a different view in the impugned assessment year. Therefore, there is force in arguments as made by assessee, in this regard.
- So far as the salary payment to trustee namely *Ruchira Gupta [Payee]* is concerned, it is found that she was the founder trustee of the trust and was being remunerated by the assessee trust for her services regularly since assessment year 2005-06 onwards.
- The assessee is regular in making salary payments to the trustee right from assessment year 2005-06 onwards, which has not been doubted by the revenue until impugned assessment year. It is also undisputed fact that the aforesaid trustee was exclusively working for the trust which is evident from copy of her return for the impugned assessment year as placed on record wherein it is found that major source of income is salary income from the assessee trust. Needless to add that the aforesaid salary has duly been reflected by her in return and due taxes have been paid thereupon.
- This being the case, the payment of salary as aforesaid, could not be a ground to deny the deduction to the assessee.
- The second premise on which the deduction has been denied is that fact that *Motor Car* funded out of assessee trust has been registered in assessee's name and the same is *alleged* to be under the control of the trustee. However, the said car was purchased in the year 2010-11 and this is the third year since purchase of the car. The revenue, except for mere *allegations*, was unable to point out, in any manner, as to how the said car was under personal use of the trustee particularly when she had no other source of income. This being the case, the same, could also not be a ground for denial of deduction to the assessee.
- The last factor which led to denial of deduction is rental payments of Rs. 60,000/- per month stated to be paid by the assessee to use office premises. The said payment translates into rent of approx. Rs. 20 per Square Feet per month against which the assessee has placed on record comparative rental rates of the area as prevailing therein at the relevant point of time and the same are stated to be in the range of 45-107 per Square Feet. However, the aforesaid payments are being made by the assessee pursuant to sub-lease agreement dated 1-4-2010 and the payment is in accordance with the terms of the agreement. The assessee has made the said payment in earlier assessment years also, which has been accepted by the revenue. Keeping in view all these factors, the stand of assessee that the same could not be a ground to deny the deduction of the assessee is correct.
- The above facts, discussion and observations lead to an inevitable conclusion that the denial of exemption under section 11 for alleged violations of section 13 was not justified and, therefore, the stand of first appellate authority, in this regard is reversed.
- In the result, the assessee's appeal is allowed.