

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI O.P. KANT, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.7445/Del./2017
(ASSESSMENT YEAR : 2013-14)**

ITO (E), Ward 2 (3),
New Delhi.

vs. The Inclen Trust International,
F-1/5, 2nd Floor,
Okhla Indl. Area, Phase – 1,
New Delhi – 110 020.

(PAN : AABTT1814A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri K.V.S.R. Krishna, Advocate
REVENUE BY : Shri Prakash Dubey, Senior DR

Date of Hearing : 08.07.2021

Date of Order : 28.07.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, ITO (E), Ward 2 (3), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 06.09.2017 passed by the Commissioner of Income-tax (Appeals)-40, Delhi qua the assessment year 2013-14 on the grounds inter alia that :-

“1. On the facts and in the circumstances of the case whether the Ld. CIT (A) has erred in holding that Sh. N.K. Arora, the Executive Director was not a Manager or a de facto trustee and therefore a specified person within the meaning of section 13 (3) of the Income Tax Act.

2. On the facts and in the circumstances of the case whether the Ld. CIT (A) has erred in holding that Sh. N.K. Arora was not a specified person despite the fact that the assessee itself in audit report in Form 10B for AY 2013-14 had shown him as specified person and reported the transaction with him.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee, M/s. Inclen Trust International, being a trust registered under section 12A of the Income-tax Act, 1961 (for short ‘the Act’) having charitable aims and objective filed return of income declaring nil income. During scrutiny proceedings, Assessing Officer (AO) found the activities of the assessee trust covered u/s 2 (15) of the Act pertaining to the charitable purpose otherwise having been complied with the provisions contained u/s 11/12 of the Act. AO sought justification of salary of Rs.90,00,000/- paid by the assessee trust to Dr. N.K. Arora, Executive Director. However, finding the justification filed by the assessee not tenable, Assessing Officer proceeded to observe that Dr. N.K. Arora, Executive Director of the trust is covered u/s 13(3) of the Act as a Manager on the ground that a trust running for the cause of public good has to be judged from the sacrifices made by the persons running the trust and if the Manager

or Head of the Trust as claimed is drawing salary more than twice his immediate junior, then it forfeits the basic purpose of a trust. AO thereby applied the provisions contained u/s 13(1)(c)(ii) and denied the benefits of section 11 of the Act to the assessee and assessed the total income at Rs.4,80,20,070/-.

3. Assessee carried the matter before the Id. CIT (A) by way of filing an appeal who has partly allowed the appeal. Feeling aggrieved by the order passed by the Id. CIT (A), the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Ld. DR for the Revenue challenging the impugned order contended that Dr. N.K. Arora being Manager of the trust was a “de facto trustee” and has been rightly considered as a specified person by the AO u/s 13(3) of the Act. Ld. CIT DR referred to Item 3 in Part 2 of Audit Report wherein payment of Rs.90,00,000/- as remuneration has been paid to Dr. N.K. Arora, Executive Director for the services rendered by him during the year and as such, he is a specified person u/s 13(3) of the Act. Ld. DR also filed written submissions which are made part of the judicial record.

6. On the other hand, ld. AR for the assessee to repel the arguments addressed by the ld. DR for the Revenue relied upon the order passed by the ld. CIT (A) which is based upon the decisions rendered by **Hon'ble Apex Court in case of ACIT vs. Thanti Trust (2001) 247 ITR 785 (SC)** and **Hon'ble Calcutta High Court in case of CIT vs. Rai Bhadur Biseswarlal Motilal Halwasiya Trust 252 ITR 84** and contended that there is no category of "de facto trustee" under section 13(3) of the Act and that assessee trust cannot be termed as institution.

7. Ld. CIT (A) has partly allowed the appeal of the assessee allowing the exemption u/s 11 of the Act with all consequential benefits by returning following findings :-

"4.1.4 It is evident from the contract(s) for appointment of Dr. Arora and the trust deed, copies of which have been filed during the appellate proceedings, that he is not a trustee of the trust but he has been appointed as the Executive Director with a specific term and subject to certain conditions this emoluments have also been decided by the Board of trustees and mentioned in the contracts of appointment. Section 13(3)(cc) provides that any trustee of the trust or manager (by whatever name called) of the institution comes within the meaning of the persons referred to in clause (c) of sub-sections (1) and (2) of section 13. The language used in the said clause is manager (by whatever name called) of the institution or trustees of the trust. The issue for consideration is whether a manager of the institution can be read as the manager of the trust also. In the case of Asstt. CIT vs. Thanthi Trust [(2001) 247 ITR 785 (SC)] it has been held that both expressions are different in the context of section 13(3). The observation of the Hon'ble Court is as follows:

"Trusts and institutions are separately dealt within the Act (Section 11 itself and Sections 12, 12A and 13, for example). The expressions referred to entities differently constituted."

4.1.5 This finding has also been given by the Hon'ble Calcutta High Court in the case of CIT vs. Rai Bahadur Biseswarlal Motilal Halwasiya Trust (supra), also relied upon by the appellant, in which case the Hon'ble Calcutta High Court have followed the decision of the Hon'ble Supreme Court in the case of Thanthi Trust and have held as under:

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

4.1.6 In view of the decisions of the Hon'ble Supreme Court in Thanthi Trust and Hon'ble Calcutta High Court, I see no justification to accept the conclusion drawn by the Assessing Officer with regard to the applicability of section 13(3) in the case of Dr. Arora. He is not a person who is covered within the meaning of the definition of 'specified person' as given in section 13(3) since he is the Executive Director of the trust which is apparent from his contracts of employment. He is not a trustee which is evident from the copy of the trust deed. As seen from the provisions of section 1.3, there is no concept of de facto trustee, which is what the Assessing Officer has held with respect to Dr. Arora and invoked the provisions of section 13.

4.1.7 Since provisions of "Section 13 are not applicable in the case of Dr. Arora, there is no case for invoking the provisions of section 13(1)(c)(ii) and consequently denying exemption to the assessee. As regards the other contentions of the Assessing Officer, it is clear that the Executive Director is a professional who has been hired by the appellant to manage the affairs of the trust. He is an employee of the trust and not a trustee. His previous credentials are impeccable and no adverse inference has been drawn by the Assessing Officer with regard to his credentials. Therefore, the objection of the Assessing Officer that the salary paid to him is in excess of the normal salary paid to his juniors is not factually and legally sustainable. Further, it is only in the context of section 13 that the Assessing Officer has held that the salary paid is not reasonable and as discussed above, section 13 has no applicability in the case since Dr. Arora is not a specified person.

4.1.8 Since exemption was denied by invoking the provisions of section 13(1)(c)(ii) which has been held to be not applicable in the case of the appellant, exemption under section 11 is

allowed to the assessee with all consequential benefits. Grounds of appeal nos. 1 to 6 are allowed.”

8. To examine the issue as to who is a specified person, we would like to extract the provisions contained u/s 13(3) of the Act as under :-

“13.

(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely :—

(a) the author of the trust or the founder of the institution;

(b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;

(c) where such author, founder or person is a Hindu undivided family, a member of the family;

(cc) any trustee of the trust or manager (by whatever name called) of the institution;

(d) any relative of any such author, founder, person, member, trustee or manager as aforesaid;

(e) any concern in which any of the persons referred to in clauses (a), (b), (c) [(cc)] and (d) has a substantial interest.”

9. Bare perusal of the definition of the “specified person”, extracted above, goes to prove that Dr. N.K. Arora, Executive Director of the trust does not fall under any head of the specified person. AO has used the word that Dr. N.K. Arora is a de facto trustee and there is no such category in the name of de facto trustee under section 13(3) of the Act. When we examine Trust Deed of

the assessee trust, available at pages 1 to 47 of the paper book, it shows at page 7 that the trust shall have the following bodies :-

(i)	The Governing Body
(ii)	The Board of Trustees
(iii)	The Management Committee

10. Again, Dr. N.K. Arora is neither a trustee nor in the Governing Body nor in the Managing Committee of the assessee trust, rather he has been performing duties as per directions of the Trustees and Board of Trustees of the trust. Merely from the designation, we cannot reach to the conclusion that assessee trust is operating only through Dr. N.K. Arora who has been rendering services as per duties assigned to him on the basis of remuneration decided by the assessee trust.

11. AO made an addition of Rs.37,19,000/- being the excessive remuneration paid to Dr. N.K. Arora. On the one hand, he is being considered a specified person as a de facto trustee and on the other hand, he is being admitted as working under the trust and his remuneration found to be excessive. Given the profile of Dr. N.K. Arora who is associated with various search projects being carried out by the Indian Council of Medicine Research (ICMR), Member of National Advisory Group on immunization (NTAGI) - Ministry of Health & Family Welfare, South-East Asia Regional

immunization Technical advisory Group (SEAR ITAG) and he is also Member of the Covid 19 Group, is made to work under the assessee trust as per directions of the 16 Trustees of the Board of Trust. When undoubtedly Dr. N.K. Arora is not an author of the trust nor trustee nor has made substantial contribution to the trust he cannot be treated as a specified person.

12. Hon'ble Supreme Court in case of **ACIT vs. Thanthi Trust** (supra) held that, "*trusts and institutions are separately dealt within the Act (section 11 itself and sections 12, 12A & 13, for example). The expressions referred to entities differently constituted.*"

13. Hon'ble Calcutta High Court in case of **CIT vs. Rai Bahadur Biseswarlal Motilal Halwasiya Trust** (supra) also held that, "*when trusts and institutions are two different entities clause (cc) of sub-section (3) of section 13 refers to the Manager of the Institution and not Manager of the Trust.*"

14. We are of the considered view that when charitable nature of the trust is not in dispute and Dr. N.K. Arora has been working as per directions issued by the Board of Trustees to carry out various research projects as an Executive Director and being paid remuneration by the trustee stated to be commensurate to his functional profile, there is no question of treating him as a

specified person under the garb of self created principle of “de facto trustee” merely on the ground that he is supervising the substantial activities of the trust.

14. In view of what has been discussed above, we are of the considered view that Id. CIT (A) has rightly reached the conclusion that provisions contained u/s 13(1)(cc)(ii) of the Act are not applicable to the case of the assessee trust. So, finding no illegality or perversity in the impugned order, appeal filed by the Revenue is dismissed.

Order pronounced in open court on this 28th day of July, 2021.

**Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 28th day of July, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-40, Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**