

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'SMC' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 382/KOL/ 2014
Assessment year : 2006-2007**

Lakshmi Trust,.....Appellant
90/31, Diamond Harbour Road,
Kolkata-700 038
[PAN : AAATL 2461 L]

-Vs.-

Income Tax Officer (Exemption)-II, Kolkata,.....Respondent
&

**I.T.A. No. 383/KOL/ 2014
Assessment year : 2006-2007**

Kishore Kanti Khandelwal Charity Trust,.....Appellant
90/31, Diamond Harbour Road,
Kolkata-700 038
[PAN : AAATK 7533 JJ]

-Vs.-

Income Tax Officer (Exemption)-II, Kolkata,.....Respondent
&

**I.T.A. No. 384/KOL/ 2014
Assessment year : 2006-2007**

Nawal Kishore Kejriwal Charity Trust,.....Appellant
90/31, Diamond Harbour Road,
Kolkata-700 038
[PAN : AAATN 5888 R]

-Vs.-

Income Tax Officer (Exemption)-II, Kolkata,.....Respondent
&

**I.T.A. No. 385/KOL/ 2014
Assessment year : 2006-2007**

Krishna Charity Trust,.....Appellant
90/31, Diamond Harbour Road,
Kolkata-700 038
[PAN : AAATK 7682 E]

-Vs.-

Income Tax Officer (Exemption)-II, Kolkata,.....Respondent
&

**I.T.A. No. 386/KOL/ 2014
Assessment year : 2006-2007**

Akling Charity Trust,.....Appellant
12/1, Alipore Park Road,
Kolkata-700 027
[PAN : AAATA 4430 C]

-Vs.-

Income Tax Officer (Exemption)-II, Kolkata,.....Respondent
&
I.T.A. No. 396/KOL/ 2014
Assessment year : 2006-2007

Harsh Vardhan Charity Trust,.....Appellant
90/31, Diamond Harbour Road,
Kolkata-700 038
[PAN : AAATH 1762 N]

-Vs.-

Income Tax Officer (Exemption)-II, Kolkata,.....Respondent

Appearances by:

Smt. Nilima Joshi, FCA, for the assesseees

Shri Subhrajoti Bhattacharyay, JCIT, Sr. D.R., for the Department

Date of concluding the hearing : September 10, 2015

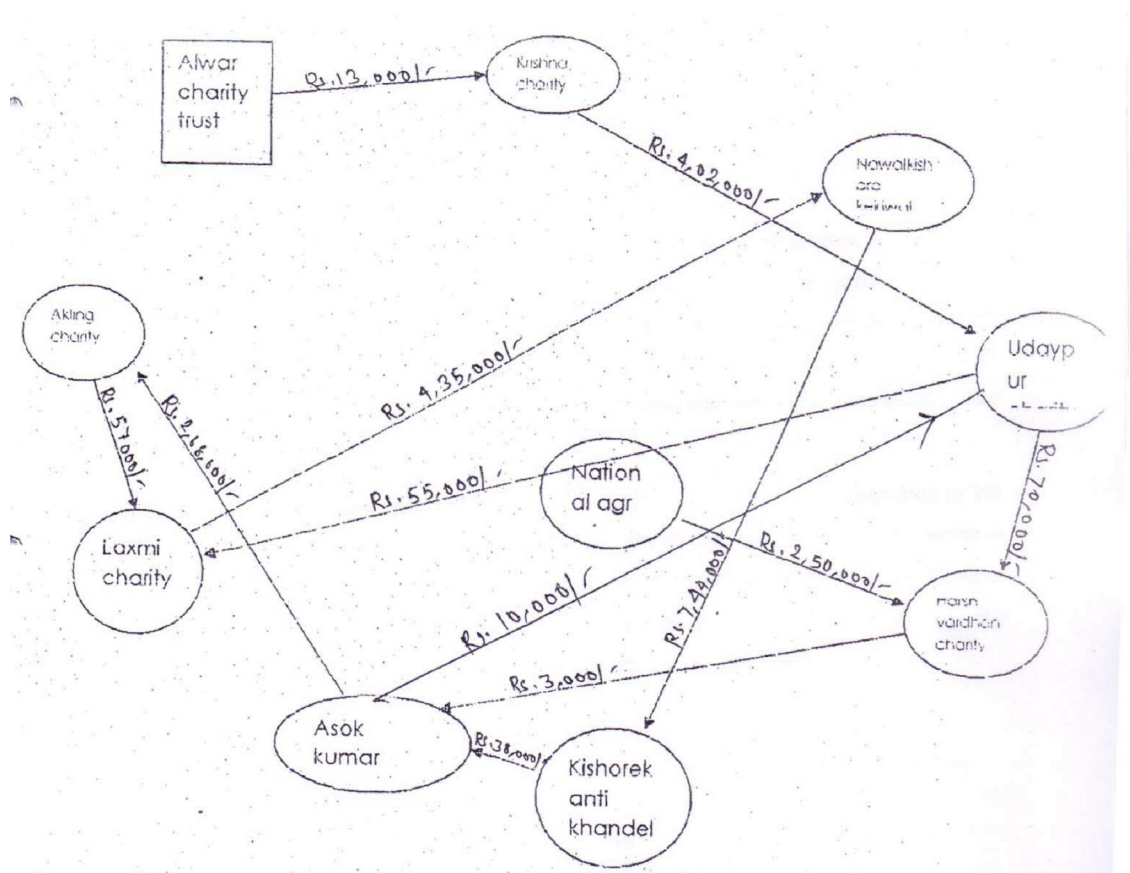
Date of pronouncing the order : September 16, 2015

O R D E R

These six appeals filed by the six assesseees are directed against six separate orders, all dated 02.12.2013 passed by the Id. Commissioner of Income Tax (Appeals)-XIV, Kolkata and since the issues involved therein are similar, the same have been heard together and are being disposed of by a single consolidated order for the sake of convenience.

2. All the six assesseees in the present case are Trusts duly registered under section 12A of the Act. It mainly derives investment income in the form of interest, income from Mutual Fund, etc. The said income is mainly applied for giving donations to certain Institutions, which are stated to be Charitable Trust. After payment of the said donations and incurring administrative expenses, the net surplus is shown in their Income and Expenditure Account. In the returns of income filed for the year under consideration, NIL income was declared by all the six assesseees after

claiming exemption under section 11. In the Survey carried out by the Income Tax Department, it was found that all the six assessee-Trusts as well as four more Trusts were having their Offices at the same premises. It was also noticed on further scrutiny that all the ten Trusts belonged to one Group and they did not carry on any real charitable activities except giving donations to each other. In this regard, a flow chart was prepared by the Assessing Officer showing the transfer of funds by way of donations by all the ten Trusts among themselves as under:-



On the basis of the above flow chart, the Assessing officer arrived at a conclusion that all the ten Trusts including the six Trusts in the present case have only transferred their funds to each other mutually in order to claim the benefit of exemption under section 11 without doing any real charitable work. He noted that although some donations of meagre amounts were given to outside Trusts, it was nothing but an attempt

made by the assessee-Trusts to show genuineness of these activities in order to claim the benefit of section 11. He held that in the absence of any real charitable activity carried on by any of the ten Trusts between whom the funds were transferred by way of donations, the benefit of section 11 was not allowable to any of such Trusts. Accordingly, he denied the benefit of section 11 to all the six assessee- Trusts in the present case and computed their income by adding the corpus donation received and taken directly to the balance-sheets to the gross receipts shown in the income and expenditure account and allowing administrative expenses incurred by the assessee as well as deduction of 15% on account of statutory accumulation. The net income so worked out was brought to tax by the Assessing Officer in the hands of the assesseees for the year under consideration.

3. Aggrieved by the order of the Assessing Officer denying the benefit of section 11, all the six assessee-Trusts preferred their appeals before the Id. CIT(Appeals) and various submissions were made on their behalf during the course of appellate proceedings before the Id. CIT(Appeals), which mainly were as under:-

1. The assessee is a public charitable trust constituted under a deed of trust dated January 19, 1978 and registered under section 12A of the Income Tax Act 1961 (hereinafter referred to as "the Act") with effect from January 24, 1979. The assessee has all along been granted exemption under section 11 of the Act In the assessment made for the assessment year 2006-07 also exemption under section 11 was allowed but the following additions/disallowances were made:-

(i) corpus donation of Rs.13,000/- received by the assessee from Alwar Charity Trust a public charitable trust was subjected to tax;

(If) corpus donation of Rs.4,02,000/- made by the assessee to another public charitable trust viz. Udaipur Charity Trust, was not considered as application of income for, the purpose of section 11; and

(iii) donations aggregating to Rs.14,050/- were disallowed.

2. *The Assessing Officer purported to hold that the assessee and the other trusts belonged to a group of ten trusts which did not have any real charitable activity except inter trust donations made amongst each other. The Assessing Officer further held that his Inspector could not find three 'donees to whom an aggregate sum of Rs.11,050/- had been given. However, he disallowed a sum of Rs.14,050/-.*

3. *It is submitted that the Assessing Officer completely misconceived the facts of the case.*

4. *It is not in dispute that the assessee is a more than 25 year old public charitable trust and has been all along allowed exemption under section 11. The assessment for the assessment year 2006-07 also has been framed on the basis that the assessee is entitled to the exemption under section 11.*

5.1 *It would be seen from the assessee's income and expenditure account for the previous year ended March 31, 2006 (page 19 of the Paper Book) that the assessee was in receipt of investment income of Rs.6,16,667/-, spent Rs.97,324/- on administrative expenses and Rs.4,25,063/- on charities and the surplus of Rs.94,280/- (15%) was transferred to the Trust Fund account. The details of the charities made by the assessee would appear from page 21 of the Paper Book. The corpus donation of Rs.13,000/- received by the assessee from Alwar Charity Trust was credited not to the Income and Expenditure account but to the Trust Fund account in the Balance Sheet (page 18 of the Paper Book). Such corpus donation was made by Alwar Charity Trust also from its current investment income as would be evident from the Income and Expenditure account and details of charity made by Alwar Charity Trust.*

6. *It is not in dispute that the donation made by the assessee was a corpus donation and likewise the donation received by the assessee was a corpus donation. A corpus donation cannot be spent away and only the income therefrom is to be utilised for the purposes of the trust. The accounts of the donor and donee trusts show that corpus donation was made from current year's investment income credited to the income and expenditure account and not from any corpus donation previously received. Further, the corpus donation received by the assessee was added to the Trust Fund account in the Balance Sheet and was not spent away.*

7. *It is submitted that in terms of section 11(l)(d) of the Act; the corpus donation of Rs.13,000/- received by the assessee cannot be subjected to tax.*

8. *The purported finding of the Assessing Officer that corpus donation of income to another charitable trust does not amount to application of income for charitable purposes particularly in a case where the trusts were created by the same group of persons is contrary to the dictum of Hon'ble Gujarat High Court in CIT - vs.-Sarladevi Sarabhai Trust - No. 2), (1988) 172 ITR 698 (Guj.). In the said case, it was held by the Hon'ble High Court that where a public charitable trust donates its income to another public charitable trust, the donor trust will be taken to have complied with the requirement of section 11(1)(a) of application of income for charitable purposes notwithstanding the fact that the donation was subject to the condition that the donee trust will treat it as a corpus donation. At pages 708-709 of the Reports it was held as follows: -*

"... It must, therefore, be held that when a donor trust which is itself a charitable and religious trust donates its income to another trust, the provisions of section 11(1)(a) can be said to have been met by such donor trust and the donor trust can be said to have applied its income for religious and charitable purposes, notwithstanding the fact that the donation is subjected to any conditions that the donee trust will treat the donation as towards its corpus and can only utilise the accruing income from the donated corpus for religious and charitable purposes, and that the question whether the gifted income is to be utilised by the donee trust fully for its religious and charitable purposes or whether the donee trust had to keep intact the corpus of the donation and has to utilise only the income therefrom for its religious and charitable purposes, would not make the slightest difference, so far as entitlement of the donor trust for exemption under section 11(1) goes."

9. *It is submitted that the Assessing Officer was wholly unjustified in disallowing the corpus donation of Rs. 4,02,000/- made by the assessee to another public charitable trust viz. Udaipur Charity Trust.*

10. *The purported finding of the Assessing Officer that the assessee was not engaged in any charitable activity is contrary to the facts. The assessee spent 85% of its income on charities. As submitted hereinbefore, the Assessing Officer was wholly unjustified in not accepting the corpus donation of Rs.4,02,000/- (forming part of the aggregate donations of Rs.4,25,063/-) as amounting to application of income for charitable purposes".*

4. Ld. CIT(Appeals) did not find merit in the submissions made on behalf of the assessee-Trusts. According to him, all the Trusts belonging to the same group were only transferring their funds to each other in order to get the benefit of section 11 without doing any real charitable activities. He noted that the donations were made by each Trust to other Charitable Trusts wherein the trustees were 'related persons' as envisaged in the provisions of section 13(2) of the Income Tax Act. In this regard, he relied on the telling facts brought on record by the Assessing Officer to hold that the relevant transactions of giving donations to other Charitable Trusts actually existed only in form and by invoking the doctrine of over form substance and relying on the various judicial pronouncements, he held that there was no charitable activity in substance carried out by any of the assessee-Trusts in order to be eligible to claim the benefit of section 11. As regards the decision of the Hon'ble Gujarat High Court in the case of CIT -vs.- Sarla Devi Sarabhai Trust [172 ITR 698 (Guj.) relied upon by the assessees, the ld. CIT(Appeals) held that the same was distinguishable on facts, inasmuch as the assessees in the present case were not passing any money to another Charitable Trust for their utilisation for charitable activities, but the money was being rotated among the Trusts belonging to the same group having common trustees merely for the purpose of claiming exemption under section 11. Accordingly, the action of the Assessing Officer in denying the benefit of section 11 to all the six assessee-Trusts was upheld by the ld. CIT(Appeals). Aggrieved by the order of ld. CIT(Appeals), the assessees have preferred these appeals before this Tribunal.

5. I have heard the arguments of both the sides and perused the material available on record. Although there are some minor issues raised in some of these appeals relating to some disallowances made by the Assessing Officer on account of certain expenses, ld. counsel for the assessees at the time of hearing before me has argued only the main two common issues involved in these appeals. The first is relating to application of Trust income for giving the donation to other Charitable

Trusts, which is disallowed by the Assessing Officer by denying the benefit of section 11 and the other is relating to receipt of corpus donation from other Charitable Trusts taken directly to the Balance-sheet which again have been added by the Assessing Officer. On both these issues, ld. counsel for the assessee has mainly reiterated before me the submissions made before the ld. CIT(Appeals) while the ld. D.R. has strongly relied on the orders of the authorities below in support of the revenue's case that there being no real charitable activities carried on by any of the concerned Trusts, transfer of funds by way of donation between these Trusts by itself cannot be treated as a charitable activity for giving benefit under section 11.

6. In so far as the first issue is concerned relating to the benefit claimed by the assessee under section 11 in respect of the donations given to other Trusts as application of their income, the ld. counsel for the assessee at the time of hearing was given an opportunity by me to explain any activity of charitable nature having been carried on by any of the ten Trusts except the transfer of funds between them by way of donation. She, however, has failed to explain or show any activity in the nature of charitable activity having been carried on by any of these Trusts during the year under consideration. The only contention raised by her is that giving donations to other Trusts for charitable purpose by itself is an activity of charitable nature making the assessee eligible for benefit under section 11. I am unable to accept this contention. When none of the ten Trusts has carried on any real charitable activity during the year under consideration as found by the Assessing Officer as well as by the ld. CIT(Appeals) and this finding has not been rebutted or controverted by the ld. counsel for the assessee at the time of hearing despite giving specific opportunity, I am of the view that the benefit of section 11 cannot be allowed to the assessee-Trusts merely on the basis of donations given to other Trusts which admittedly did not carry on any charitable activity. The payment of said donation, therefore, cannot be considered as application of their income by the assessee-Trusts for any charitable purpose in order to make them entitled for benefit under

section 11. I, therefore, find no infirmity in the impugned orders of Id. CIT(Appeals) upholding the action of the Assessing Officer in denying the benefit of section 11 to the assessee-Trusts in respect of donations given by them to other Trusts.

7. As regards the other claim of the assessees for exemption on account of contributions received towards corpus fund, it is observed that the said claim made by the assessees under section 11(1)(d) was denied by the Assessing Officer mainly on the ground that the assessees were not entitled to benefit under section 11 as held by him in respect of application of Trust income for giving contributions/donations to other Trusts. In this regard, it is observed that as per clause (a) of sub-section (1) of section 11, income derived from property held under Trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India, and where such income has accumulated or set apart for application to such purpose in India to the extent to which the income so accumulated or set apart is not in excess of 15% of the income from such property is not liable to be included in the total income of the person in receipt of such income. Although the Assessing Officer has denied the benefit under section 11 to the assessees in respect of application of their income by way of contributions/donations paid to other Trusts, he himself has allowed deduction on account of statutory accumulation of their income by the assessee-Trusts to the extent of 15%. The Assessing Officer thus has not denied the entire benefit claimed by the assessees under section 11 and has actually allowed such benefit partly even under section 11(1)(a) in respect of accumulation of income to the extent of 15% after considering the same independently. In my opinion, the Assessing Officer similarly ought to have considered the claim of the assessees for benefit as given under clause (d) of sub-section (1) of section 11 independently in respect of the income claimed to be received in the form of voluntary contributions made with specific direction that they shall form part of the corpus of the Trust or Institution. Since neither the Assessing Officer nor

the Id. CIT(Appeals) has considered this claim of the assessee under section 11(1)(d) separately and independently, I restore this issue to the file of the Assessing Officer for deciding the same afresh after giving the assessee proper and sufficient opportunity of being heard.

8. In the result, the appeals of the assessee are treated as partly allowed as indicated above.

Order pronounced in the open Court on September 16, 2015.

**Sd/-
(P.M. Jagtap)
Accountant Member**

Kolkata, the 16th day of September, 2015

- Copies to :*
- (1) ***Lakshmi Trust,
90/31, Diamond Harbour Road,
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 - (2) ***Kishore Kanti Khandelwal Charity Trust,
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 - (3) ***Nawal Kishore Kejriwal Charity Trust,
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Kolkata-700 038***
 - (4) ***Krishna Charity Trust,
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Kolkata-700 038***
 - (5) ***Aking Charity Trust,
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 - (6) ***Harsh Vardhan Charity Trust,
90/31, Diamond Harbour Road,
Kolkata-700 038***
 - (7) *Commissioner of Income-tax (Appeals)-XIV, Kolkata*
 - (8) *Commissioner of Income Tax, Kolkata*
 - (9) *The Departmental Representative*
 - (10) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*