

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 75 of 2004

Date of Decision: 26.7.2012

The Commissioner of Income Tax, Jalandhar-II

....Appellant.

Versus

M/s. Sadhu Singh Hamdard Trust

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.**

**PRESENT:** Mr. Yogesh Putney and  
Mr. Vivek Sethi, Advocates for the appellant.

Mr. Pankaj Jain and  
Mr. D.K. Goyal, Advocates for the respondent.

**AJAY KUMAR MITTAL, J.**

1. This order shall dispose of a bunch of ten appeals bearing ITA Nos. 75 to 77 of 2004, 426, 427, 636 of 2005, 495 of 2007, 550, 551 of 2008 and 422 of 2010 as learned counsel for the parties are agreed that the facts and law involved therein are identical. For brevity, the facts are being taken from ITA No. 75 of 2004.

2. This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (in short "the Act") against the order dated 29.9.2003 passed by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (hereinafter referred to as "the Tribunal") in ITA No. 184 (ASR)/2001 for the assessment year 1993-94 claiming the following

substantial question of law:-

“Whether, the Tribunal was right in law in allowing the benefit under section 11 of the Income-tax Act, 1961 without appreciating that the object of the trust was not within the ambit of section 2(15) and there was violation of section 11(4A) as well as Section 13(3) of the Income-tax Act, 1961?”

3. The appeal was admitted on 26.4.2004. An application bearing CM No. 7614-CII of 2009 was filed which was allowed on 1.4.2009 whereby the following substantial questions of law were ordered to be included in the original appeal:-

- (a) Whether in the facts and circumstances of the case, the Ld. ITAT is right in law in holding that the assessee trust is entitled to exemption u/s. 11 to 13 of I.T. Act ignoring the fact that the activities carried out by the trust are not in accordance with the aims and objects of the trust?
- (b) Whether in the facts and circumstances of the case the Ld. ITAT is right in law in concluding that the activities carried out by the assessee trust within the meaning of Section 2(15) of the I.T. Act, 1961?
- (c) Whether in the facts and circumstances of the case the Ld. ITAT is right in holding that the assessee trust is eligible for exemption u/s. 11 to 13 of the I.T. Act, 1961 ignoring the fact that the conditions laid down u/s 11 (4A) of the I.T. Act have not been fulfilled i.e.

the assessee trust did not carry out the activities incidental to the attainment of the objectives of the trust, which is a condition precedent for grant of exemption?

- (d) Whether in the facts and circumstances of the case the Ld. ITAT is right in law as the findings recorded by the Ld. ITAT are perverse and contrary to the evidence/material available on record and duly considered by the Assessing Officer which in turn was confirmed by CIT(A)?

4. Put shortly, the facts necessary for the disposal as narrated in the appeal are that the assessee filed its return of income on 29.10.1993 for the assessment year 1993-94 at 'nil' income. During the assessment proceedings, the Assessing Officer noticed that the assessee had shown income from printing and publishing of newspapers under the name 'Daily Ajit', Tasvir (monthly) and also income from Daily Ajit Printers. The assessee had also shown income from other sources of Rs.77,282/-. The total income computed by the assessee after claiming depreciation to the tune of Rs.3,30,377/- was at Rs.12,64,032/-. The assessee claimed deduction under Section 11 of the Act on the total amount claiming that the nature of the trust was 'Public Charitable Trust' with the objective of promotion of Punjab, Punjabi and Punjabi. The Assessing Officer noticed that for claiming exemption, two conditions should be fulfilled, i.e. (i) purpose of trust must be advancement of object of general public utility and (ii) purpose must not involve carrying on of any activity for profit. The Assessing

Officer observed that the exemption could be allowed on fulfilment of conditions specified in Sections 12, 12A and 13 of the Act as provisions of Section 11 did not have automatic effect. According to him under clause (a) or (b) of Section 11(1), income from property wholly or in part held in trust actually applied or set apart for application for future spending for religious or charitable trust in India was exempt to the extent and under the conditions specified in Sections 11 to 13 of the Act. It was recorded by the Assessing Officer that the assessee had made payments to persons specified under Section 40A(2)(b) of the Act which were covered under Section 13(3) of the Act as the payees were either the trustees or relatives of the author of the trust. It was concluded that the activity of running business of publication of newspapers and journals carried out by the assessee-trust was pervaded by a profit motive and the charitable purpose was, in fact, submerged by profit making motive. The purpose of the trust must be essentially charitable in nature and not cover for carrying on activity which had profit making motive as a predominant object. The trust deed described the objectives as under:-

- Promotion and propagation of Punjab, Punjabi and Punjabiati.
- Establishment of a chair in any University.
- Establishment of Punjab Bhawan.
- Prizes on the best books in Punjabi.
- Holiday homes for writers/poets etc.

5. It was further held that after a lapse of almost 20 years, none of the aforesaid objectives had been partially fulfilled. Even the profit from publication had not been applied for the charitable purposes.

It was also held that the repayment of loans for addition of fixed assets like furniture, camera, scanners, air-conditioner etc. was merely incurred to enhance the commercial prospects of the business and addition to fixed assets under the head 'Building Account' was also accumulation of property for commercial reasons rather than the activity for public utility. According to the Assessing Officer, the objective of public utility, through propagation of Punjab, Punjabi and Punjabi as incorporated in the Trust Deed appeared to be only a convenient cloak to conceal the real and dominant purpose of running a profitable newspaper and publishing business. The Assessing Officer vide order dated 26.3.1996 framed assessment at a total income of Rs.12,64,030/- and disallowed deduction of Rs.11,86,750/- as claimed by the assessee under Section 11 of the Act. Feeling aggrieved, the assessee filed an appeal before the Commissioner of Income-Tax (Appeals) [in short, the CIT(A)] who vide order dated 23.3.2001 dismissed the appeal. Thereafter, the assessee filed an appeal before the Tribunal. The Tribunal vide order dated 29.9.2003 allowed the appeal holding that the assessee was entitled to exemption under Section 11 of the Act. Hence, the present appeal by the revenue.

6. We have heard learned counsel for the parties and have perused the record with their assistance.

7. Learned counsel for the revenue submitted that the Assessing Officer had rightly declined exemption under Section 11 of the Act which was confirmed by the CIT(A). According to the learned counsel, the activity of the trust was a business activity as running the business of publication of newspaper and journals carried out by the

assessee trust was pervaded by a profit motive and could not be considered as activity for charitable purpose within the meaning of 'charitable purpose' defined under Section 2(15) of the Act. It was further contended that Section 11 of the Act was not automatic and other conditions enumerated in Sections 12, 12A and 13 of the Act were required to be fulfilled. It was urged that according to Section 13(1) of the Act, the benefit of Section 11 was not available where any part of the Income or any property of the Trust or the Institution, during the previous year was used or applied directly or indirectly for the benefit of the persons referred in sub-section (3) of Section 13. A perusal of the documents accompanying the return showed that payments were made to the persons specified in Section 40A(2)(b) of the Act which fell within the ambit of Section 13(3), i.e.,

- (i) The author of the trust, to any trustee or the Trust Manager;
- (ii) Any relative of any such author, founder, person, member, trustee or manager as aforesaid.

8. It was argued that no application of income for charitable purposes was made and there was violation of Section 11(1)(a) of the Act as payments have been made to third parties. Referring to the order of the CIT(A), it was submitted that a finding has been recorded by the said authority that as per admission of the assessee itself there was a profit of Rs.2,82,648/- from Daily Ajit and Rs.25,65,199/- from M/s Daily Ajit Printers, whereas after considering a loss of Rs.55,727/- in Tasvir Magazine and loss of ₹ 4,92,215/- of the trust, the net income was Rs.22,99,905/-. Learned counsel further submitted that even the

utilization of the receipts was not for charitable purposes within the meaning of Section 11(1)(a) of the Act and under Section 11(4) of the Act in respect of 'property held under Trust' as the business was relating to an activity which was with profit making motive as a predominant object as profit from publication had not been applied for charitable purposes of promotion of Punjab, Punjabi and Punjabiati. Attention of the Court was also drawn towards the amendment made in Section 11 (4A) of the Act w.e.f. 1.4.1992. Reference was also made to the findings recorded by the Assessing Officer and the CIT(A) that even after a lapse of almost 20 years none of the objectives as described in the Trust Deed had even been partially fulfilled. The Assessing Officer had, thus, assessed the accumulation of property for commercial reasons rather than the activity for public utility which was held to be taxable income.

9. Lastly, it was contended that the Tribunal while upsetting the findings of the Assessing Officer and the CIT(A) had not recorded any clear finding regarding application of income under Section 11(1)(a) of the Act and the findings with regard to Section 13(1)(c) and 13(3) of the Act are contrary to the record and not based thereon. Learned counsel referred to judgments in **Re the Trustees of the Tribune, (1939) 7 ITR 415 (PC) Sole Trustee Loke Shikshana Trust v. Commissioner of Income Tax, Mysore (1975) 101 ITR 234 (SC), Indian Chamber of Commerce v. Commissioner of Income Tax, West Bengal-II, Calcutta (1975) 101 ITR 796 (SC), Commissioner of Income Tax v. Nagpur Hotel Owners Association (2001) 247 ITR 201**

(SC), **Assistant Commissioner of Income Tax v. Thanthi Trust (2001) 247 ITR 785** and of the Madras High Court in **Auroboutique Trust v. Commissioner of Income Tax (2002) 178 CTR 352** and **Commissioner of Income Tax v. Iyya Nadar Charitable Trust (2006) 284 ITR 404** to support his submissions. Much emphasis was put on the judgment of the Kerala High Court in **Ideal Publication Trust v. Commissioner of Income Tax (2008) 305 ITR 143 (Kerala)** to submit that under similar circumstances, the Kerala High Court had adjudicated the matter in favour of the revenue while dismissing the appeal of the assessee against which Special Leave Petition was also dismissed by the Apex Court. It was, thus, prayed that the amended as well as original substantial questions of law be answered in favour of the revenue.

10. Controverting the aforesaid submissions, learned counsel for the respondent also placed reliance upon the judgment of the Privy Council in **Re The Trustees of the Tribune** and Apex Court in **Thanthi Trust's cases (supra)**. Besides judgments in **Commissioner of Income Tax v. Gujarat Maritime Board (2007) 295 ITR 561 (SC)** and **American Hotel and Lodging Association Educational Institute v. Central Board of Direct Taxes and others (2009) 301 ITR 86 (SC)** were also referred to support the order passed by the Tribunal. Learned counsel argued that the newspaper is a very important media and medium to circulate and disseminate important information and ideas to the public at large. Explaining the activities of publication of newspapers, learned counsel for the assessee referred to following

observations of the Hon'ble Apex Court in **Sakal Papers (P) Ltd. v. Union of India AIR 1962 SC 305:-**

“It is not disputed that every newspaper evolves a plan of its own for carrying on its activities. Bearing in mind factors such as the place of publication, the class of the reading public which may be expected to subscribe to the paper, the conditions of labour, the price of material, the availability of advertisements and so on it decides upon its size, the proportion of different kinds of matter published in the newspaper, such as news, comments, views of readers, advertisements etc., and the price to be charged.”

11. It was submitted that the promotion and propagation of Punjab, Punjabi and Punjabiati which is one of the objectives of the Trust forms part of charitable activities and, therefore, the Tribunal had rightly adjudicated the issue in favour of the assessee. It was emphasized that the Commissioner of Income Tax, Jalandhar had passed an order on 12.11.1979 granting registration to the assessee under Section 12A(a) of the Act and from assessment year 1978-79 onwards, the assessee had filed income tax returns along with the enclosures claiming benefit of the registration. It was also submitted that the Commissioner of Income Tax had initiated proceedings under Section 263 of the Act on an earlier occasion but had dropped the same and, therefore, the revenue was not justified in contending that the assessee was not constituted for charitable purposes as the claim of exemption was accepted. It was pointed out that for 15 years for the

assessment years 1978-79 to 1992-93, the assessee was accepted to be charitable institution and income was held to be non-taxable for all these years and, therefore, the revenue was not entitled to adopt different approach from the assessment years 1993-94 onwards in view of following observations of the Apex Court in **Radhasoami Satsang v. CIT (1992) 193 ITR 321 (SC)**:-

“That in the absence of any material change justifying the Department to take a different view from that taken in earlier proceedings, the question of the exemption of the assessee-appellant should not have been reopened.

Strictly speaking, res judicata does not apply to income-tax proceedings. Though, each assessment year being a unit, what was decided in one year might not apply in the following year; where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.”

12. The findings of the Assessing Officer and the CIT(A) were challenged by urging that they were not based on record. It was further submitted that the income was applied by the assessee as required under the statute. The provisions of Sections 11 to 13 had been fully complied with and, therefore, the Tribunal had rightly recorded the

findings in favour of the assessee. It was urged that the books of account were produced before the Assessing Officer which were examined by test-check and Form 10-B as prescribed under Rule 17B of the Income Tax Rules, 1962 had also been filed with the return. On these premises, it was argued that it could not be said that the mandatory provisions for seeking exemption of income for being utilized for charitable purposes was not available and the Tribunal had not correctly adjudicated the matter in favour of the assessee while reversing the findings of the Assessing Officer and the CIT(A).

13. We have given our thoughtful consideration to the respective submissions made by the learned counsel for the parties.

14. On the basis of submissions made by learned counsel for the parties, broadly, the following issues arise for consideration in these appeals:-

(a) Whether the object of the assessee trust is encompassed under the expression 'charitable purpose' falling within the ambit of Section 2(15) of the Act?

(b) Whether in the facts and circumstances, the Tribunal was right in reversing the findings of the Assessing Officer and the CIT(A) relating to compliance of provisions of Section 11(1)(a) and 11(4A) of the Act and regarding violation of the provisions of Section 13(1) (c) and 13(3) of the Act?

15. Taking up first issue, we examine Section 2(15) of the Act. Section 2(15) of the Act refers as to what is included in charitable

purpose. At the relevant time, it reads thus:-

“charitable purpose” includes relief of the poor, education, medical relief and the advancement of any other object of general public utility.”

16. The meaning assigned to the expression “charitable purpose” is inclusive and not exhaustive. According to it, it is classified under four heads:-

- (i) relief of the poor;
- (ii) education;
- (iii) medical relief; and
- (iv) the advancement of any other object of general public utility.

17. In order to examine whether a trust is charitable or not, the purpose or the object of the trust is to be examined which is to be charitable in nature. The exemption from tax is available to the charitable trusts/institutions subject to the conditions enumerated under Sections 11 to 13 of the Act. The object of running a newspaper would not fall under the head 'education' but the primary object to create an organ of educated public opinion would be an object of general public utility. Every newspaper evolves a plan of its own for carrying on its activities. Court must interpret a provision in a manner which would enable the assessee to have the benefit sought to be provided therefrom, subject of course, to permissible restrictions. Where the purpose by analogy falls within the spirit and intendment, it would be “charitable” within the meaning of the statute. But every benevolent purpose may not necessarily be charitable. The Allahabad High Court

in **U.P. Forest Corporation v. Deputy Commissioner of Income Tax 2003(183) CTR 191** had culled out the following propositions:-

“(a) Even if the object or the purpose may not be regarded as charitable in its popular significance as not tending to give relief to the poor or for advancement of education or medical relief, it would still be included in the expression 'charitable purpose', if it advances an object of general public utility.

(b) An object beneficial to a section of public is an object of public utility as distinguished from specified individuals.

(c) The expression of object of general public utility would prima facie include all objects which promote the welfare of general public.

(d) If the main predominant object is of public utility the mere fact that income is also generated by that activity will not nullify or neglect the charitable purpose.

(e) For application of income for the purpose of charity the person or institution can engage itself in commercial activity but with a predominant object of applying it for charitable purpose.”

18. The Privy Council dealing with the case of **The Tribune** in **Re The Trustees of 'The Tribune' case (supra)**, whether the trust in respect of **The Tribune Press** was for charitable purposes and exempt

from income tax had noted as under:-

“They think that the object of the paper may fairly be described as 'the object of supplying the Province with an organ of education public opinion' and that it should prima facie be held to be an object of general public utility. Having regard to the particular circumstances of the time, directions of the testator and the evidence as to the contents of the paper before 1898, their Lordships think that the present case is nearer on its facts to *In re Scowcroft* (supra) than it is to the case of the Bonar Law Memorial Trust (supra) or to the case put by Russell, J., in *In re Tetley* (supra), of a newspaper subsidised for the promotion of particular political or fiscal opinions. They do not think that in these circumstances the case can be regarded as outside the ambit of the exemption clause of the Indian Act.”

19. The Apex Court in **Gujarat Maritime Board's case (supra)** noted the meaning of the expression “any other object of general public utility” in the following terms:-

“The said expression would prima facie include all objects which promote the welfare of the general public. It cannot be said that a purpose would cease to be charitable even if public welfare is intended to be served. If the primary purpose and the predominant object are to promote the welfare of the

general public the purpose would be charitable purpose. When an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the said trade or industry.”

20. The Constitution Bench in **Additional Commissioner of Income Tax, Gujarat, Ahmedabad v. Surat Art Silk Cloth Manufacturers Association, Surat (1980) 121 ITR 1 (SC)**, after considering its earlier judgments in **Sole Trustees, Loke Shikshana Trust** and **Indian Chambers of Commerce's cases (supra)** had held that where the main or primary objects are distributive, each and every object must be charitable in character to enable the trust or the institution to be held to be valid charity. Where the primary and dominant purpose of the trust is charitable, another object which by itself may not be charitable which is in the nature of ancillary or incidental to the primary or dominant purpose, shall not disentitle the trust or the institution to be for charitable purpose. The Hon'ble Apex Court had disapproved the majority view in **Sole Trustee, Loke Shikshana Trust's case (supra)** and had overruled its earlier decision in **Indian Chamber of Commerce's case (supra)**.

21. Wherever, the terms of the trust permit its operation 'for profit' they become, prima facie, evidence of a purpose falling outside the ambit of 'charity'. Ordinarily, profit motive is a normal incident of business activity and if the activity of a trust results in yielding profit, it could be concluded that the object of the trust involves the carrying on

of an activity for profit. Wherever predominant object of the trust is charitable purpose and ancillary business activity results in profit, the profit earned is required to be utilized for the purposes of charity and if it is shown that the 'profits of the business' as per term of the trust are utilized for the purposes of the trust, the factum of activities yielding profit would not alter the charitable character of the trust.

22. We may now examine the factual matrix involved herein. The assessee is engaged in the business of publishing Ajit Punjabi. According to the assessee, this is to propagate Punjab, Punjabi and Punjabiati. The objectives of the trust deed described thereunder are:

- Promotion and propagation of Punjab, Punjabi and Punjabiati.
- Establishment of a chair in any University.
- Establishment of Punjab Bhawan.
- Prizes on the best books in Punjabi.
- Holiday homes for writers/poets etc.

23. In the Trust Deed dated 17.8.1977 which was supplemented on 22.11.1977, 2.5.1978, 17.5.1978 and 6.9.1980, it was mentioned that the properties of the owner were inclusive of all assets of Ajit Newspaper including goodwill and these assets were bequeathed by him to the said trust. The assessee-trust was running a newspaper to promote Punjab, Punjabi and Punjabiati and, thus, the running of newspaper was incidental to the main objective of the trust and would fall as an advancement of any other object of general public utility. For that purpose, the trust was made available by the Founder. Further, the trust was allowed registration as Public Charitable Trust by the Commissioner of Income Tax, Jalandhar on 12.11.1979 under Section

12A(a) of the Act. Still further, the Commissioner of Income Tax had initiated proceedings under Section 263 of the Act but had dropped the same accepting the claim of exemption made by the assessee. The provisions of Section 11 of the Act were, thus, attracted and the Tribunal had rightly held that the assessee was entitled to exemption thereunder.

24. Suffice it to notice that the judgments relied upon by learned counsel for the revenue in **Nagpur Hotel Owners Association,, Auroboutique Trust, P. Iyya Nadar Charitable Trust and Ideal Publication Trust's cases (supra)** being on individual fact situation involved therein, do not advance the case of the revenue.

25. Adverting to second issue, we may examine the relevant provisions of the Act which are material. Section 11(1)(a) of the Act excludes income derived from property held under trust for charitable purposes from the computation of taxable income. Section 11(1)(a) of the Act provides that the income derived from the property held in trust wholly for charitable or religious purpose will be exempt to the extent it is applied to such purposes. The provision at the relevant time reads thus:-

“11 (1). Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income-

- (a) 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 any such

income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty five per cent of the income from such property.”

26. The Hon'ble Apex Court dealing with the case of a Trust whether it was covered by the definition of charitable purpose, in **Thanthi Trust's case (supra)** analyzed the provisions of Section 11(1) (a) of the Act as under:-

“23. Sub-section (1)(a) of Section 11 says that income derived from property held under trust only for charitable or religious purposes, to the extent it is used in the manner indicated therein, shall not be included in the total income of the previous year of the trust. Sub-section (4) defines the words property held under trust for the purposes of Section 11 to include a business held under trust. Sub-section(4A) restricts the benefit under Section 11 so that it is not available for income derived from business unless (a) the business is carried on by a trust only for public religious purposes and it is of printing and publishing books or any other notified kind or (b) it is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution, provided, in both cases, that

separate books of account are maintained by the trust or the institution in respect of such business. Trusts and institutions are separately dealt with in the Act (Section 11 itself and Sections 12, 12A and 13, for example). The expressions refer to entities differently constituted. It is thus clear that the newspaper business that is carried on by the Trust does not fall within sub-section (4A). The Trust is not only for public religious purposes so it does not fall within clause (a). It is a trust not an institution, so it does not fall within clause (b). It must, therefore, be held that for the assessment years in question the Trust was not entitled to the exemption contained in Section 11 in respect of the income of its newspaper.

27. Sub-section (4) of Section 11 of the Act defines the words "Property held under Trust" for the purposes of that section to include a business held under trust. Sub-section (4) of Section 11 is in the following terms:-

"11(4). For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the

provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.”

28. Section 11(4A) of the Act was introduced into the Act with effect from 1st April, 1984. Section 11(4A) was substituted with effect from 1st April, 1992 as under:-

“(4A). Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.”

29. It was interpreted by the Hon'ble Apex Court in the aforesaid judgment as under:-

“The substituted sub-section(4A) states that the income derived from a business held under trust wholly for charitable or religious purposes shall not be included in the total income of the previous year of the trust or institution if the business is incidental to the attainment of the objective of the trust or, as the case may be,

institution and separate books of account are maintained in respect of such business. Clearly, the scope of sub-section (4A) is more beneficial to a trust or institution than was the scope of sub-section (4A) as originally enacted. In fact, it seems to us that the substituted sub-section (4A) gives a trust or institution a greater benefit than was given by Section 13(1)(bb). If the object of Parliament was to give trusts and institutions no more benefit than that given by Section 13(1)(bb), the language of Section 13(1)(bb) would have been employed in the substituted sub-section (4A). As it stands, all that it requires for the business income of a trust or institution to be exempt is that the business should be incidental to the attainment of the objectives of the trust or institution. A business whose income is utilized by the trust or the institution for the purposes of achieving the objectives of the trust or the institution is, surely, a business which is incidental to the attainment of the objectives of the trust. In any event, if there be any ambiguity in the language employed, the provision must be construed in a manner that benefits the assessee. The Trust, therefore, is entitled to the benefit of Section 11 for the Assessment Year 1992-93 and thereafter. It is, we should add, not in dispute that

the income of its newspaper business has been employed to achieve its objectives of education and relief to the poor and that it has maintained separate books of account in respect thereof.

30. Under Section 11(1)(a) of the Act, the income derived from property held under trust only for charitable or religious purpose is exempt to the extent of its utilization for that purpose. However, wherever there is accumulation or setting aside for application to such purposes in India, the accumulation or setting apart is not to be in excess of twenty five per cent of the income from such property. However, this has been reduced to fifteen per cent by Finance Act, 2002 with effect from 1.4.2003. According to Section 11(4A) of the Act, an exemption is permissible where the activities are incidental to the attainment of the objectives of the trust and separate books of account are maintained by the trust or the institution in respect of such business. The Tribunal recorded that the only activity of the assessee was running newspaper to attain the main object of promoting Punjab, Punjabi and Punjabi and the conditions of Section 11(4A), thus, automatically stood satisfied. However, the CIT(A) had recorded that there was net income of Rs.22,99,905/- from publication of newspaper and there was nothing to show that this amount had been utilized for charitable purpose for claiming exemption under Section 11 of the Act. The Tribunal while allowing the appeal of the assessee had not adverted to this aspect with reference to any material on record.

31. Now, we would delve into the objection relating to non-compliance of provisions of Section 13(1)(c) read with Section 13(3) of

the Act. It would be expedient to reproduce the relevant portion of the aforesaid provisions, which reads thus:-

“13(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) XX XX XX

(b) XX XX XX

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof-

(i) If such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust of the institution (whenever created or published) is during the previous year used or applied, directly or indirectly for the benefit of any person referred to in sub-section (3).

XX XX XX

XX XX XX

(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 upto the end of the relevant previous year exceeds twenty five 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 of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest.

XX            XX            XX  
XX            XX            XX”

32. According to these provisions, wherever, any part of income or any property of the trust or the institution is applied directly or indirectly for the benefit of any person referred to in sub-section (3) of Section 13, the provisions of Section 11 shall not operate granting benefit of exemption to the trust. The Assessing Officer had recorded

that certain payments were made to Bibi Parkash Kaur (trustee), S. Barjinder Singh and also to Smt. Sadjit Kaur wife of S. Barjinder Singh which were made to persons as defined in Section 13(3) of the Act and as such were inadmissible. These findings were affirmed by the CIT(A) on appeal. However, the Tribunal had reversed these findings primarily on the ground that there is no finding that these were excessive. However, the Tribunal while reversing these findings had not recorded any definite and clear finding relating to violation of the provisions of Section 13(3) of the Act. The matter, thus, requires to be remanded to the Tribunal to re-adjudicate the claim of the assessee for exemption of income under Section 11 of the Act with reference to provisions of Section 13(3) of the Act in the light of the observations made hereinbefore.

33. The substantial questions of law are answered accordingly. In view of the above, the case is remanded to the Tribunal to re-adjudicate the issue relating to exemption claimed under Section 11 with reference to provisions of Section 11(1)(a) of the Act and also to examine the question of admissibility of deduction in respect of payments made to certain persons in terms of Section 13(1)(c) read with Section 13(3) of the Act.

34. The appeals are disposed of in the above terms.

**(AJAY KUMAR MITTAL)**  
**JUDGE**

**July 26, 2012**  
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**(G.S. SANDHAWALIA)**  
**JUDGE**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 426 of 2005

Date of Decision: .7.2012

The Commissioner of Income Tax, Jalandhar-II

....Appellant.

Versus

M/s. Sadhu Singh Hamdard Trust

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.**

**PRESENT:** Mr. Yogesh Putney and  
Mr. Vivek Sethi, Advocates for the appellant.

Mr. Pankaj Jain and  
Mr. D.K. Goyal, Advocates for the respondent.

**AJAY KUMAR MITTAL, J.** सत्यमेव जयते

For orders, see **ITA No. 75 of 2004 (The Commissioner of  
Income Tax, Jalandhar-II v. M/s Sadhu Singh Hamdard Trust).**

**(AJAY KUMAR MITTAL)  
JUDGE**

**July , 2012  
gbs**

**(G.S. SANDHAWALIA)  
JUDGE**

**ITA No. 75 of 2004**

**-27-**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 427 of 2005

Date of Decision: .7.2012

The Commissioner of Income Tax, Jalandhar-II

....Appellant.

Versus

M/s. Sadhu Singh Hamdard Trust

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.**

**PRESENT: Mr. Yogesh Putney and  
Mr. Vivek Sethi, Advocates for the appellant.**

**Mr. Pankaj Jain and  
Mr. D.K. Goyal, Advocates for the respondent.**

**AJAY KUMAR MITTAL, J.**

**For orders, see ITA No. 75 of 2004 (The Commissioner of  
Income Tax, Jalandhar-II v. M/s Sadhu Singh Hamdard Trust).**

**(AJAY KUMAR MITTAL)  
JUDGE**

**July , 2012  
gbs**

**(G.S. SANDHAWALIA)  
JUDGE**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 636 of 2005

Date of Decision: .7.2012

The Commissioner of Income Tax, Jalandhar-II

....Appellant.

Versus

M/s. Sadhu Singh Hamdard Trust

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.**

**PRESENT:** Mr. Yogesh Putney and  
Mr. Vivek Sethi, Advocates for the appellant.

Mr. Pankaj Jain and  
Mr. D.K. Goyal, Advocates for the respondent.

**AJAY KUMAR MITTAL, J.**

For orders, see **ITA No. 75 of 2004 (The Commissioner of  
Income Tax, Jalandhar-II v. M/s Sadhu Singh Hamdard Trust).**

**(AJAY KUMAR MITTAL)  
JUDGE**

**July , 2012  
gbs**

**(G.S. SANDHAWALIA)  
JUDGE**

**ITA No. 75 of 2004**

**-29-**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 76 of 2004

Date of Decision: .7.2012

The Commissioner of Income Tax, Jalandhar-II

....Appellant.

Versus

M/s. Sadhu Singh Hamdard Trust

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.**

**PRESENT: Mr. Yogesh Putney and  
Mr. Vivek Sethi, Advocates for the appellant.**

**Mr. Pankaj Jain and  
Mr. D.K. Goyal, Advocates for the respondent.**

**AJAY KUMAR MITTAL, J.** सत्यमेव जयते

**For orders, see ITA No. 75 of 2004 (The Commissioner of  
Income Tax, Jalandhar-II v. M/s Sadhu Singh Hamdard Trust).**

**(AJAY KUMAR MITTAL)  
JUDGE**

**July , 2012  
gbs**

**(G.S. SANDHAWALIA)  
JUDGE**

**ITA No. 75 of 2004**

**-30-**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 77 of 2004

Date of Decision: .7.2012

The Commissioner of Income Tax, Jalandhar-II

....Appellant.

Versus

M/s. Sadhu Singh Hamdard Trust

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.**

**PRESENT: Mr. Yogesh Putney and  
Mr. Vivek Sethi, Advocates for the appellant.**

**Mr. Pankaj Jain and  
Mr. D.K. Goyal, Advocates for the respondent.**

**AJAY KUMAR MITTAL, J.**

**For orders, see ITA No. 75 of 2004 (The Commissioner of  
Income Tax, Jalandhar-II v. M/s Sadhu Singh Hamdard Trust).**

**(AJAY KUMAR MITTAL)  
JUDGE**

**July , 2012  
gbs**

**(G.S. SANDHAWALIA)  
JUDGE**

**ITA No. 75 of 2004**

**-31-**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 550 of 2008

Date of Decision: .7.2012

The Commissioner of Income Tax, Jalandhar-II

....Appellant.

Versus

M/s. Sadhu Singh Hamdard Trust

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.**

**PRESENT:** Mr. Yogesh Putney and  
Mr. Vivek Sethi, Advocates for the appellant.

Mr. Pankaj Jain and  
Mr. D.K. Goyal, Advocates for the respondent.

**AJAY KUMAR MITTAL, J.** सत्यमेव जयते

For orders, see **ITA No. 75 of 2004 (The Commissioner of  
Income Tax, Jalandhar-II v. M/s Sadhu Singh Hamdard Trust).**

**(AJAY KUMAR MITTAL)  
JUDGE**

**July , 2012  
gbs**

**(G.S. SANDHAWALIA)  
JUDGE**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 551 of 2008

Date of Decision: .7.2012

The Commissioner of Income Tax, Jalandhar-II

....Appellant.

Versus

M/s. Sadhu Singh Hamdard Trust

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.**

**PRESENT:** Mr. Yogesh Putney and  
Mr. Vivek Sethi, Advocates for the appellant.

Mr. Pankaj Jain and  
Mr. D.K. Goyal, Advocates for the respondent.

**AJAY KUMAR MITTAL, J.**

For orders, see **ITA No. 75 of 2004 (The Commissioner of  
Income Tax, Jalandhar-II v. M/s Sadhu Singh Hamdard Trust).**

**(AJAY KUMAR MITTAL)  
JUDGE**

**July , 2012  
gbs**

**(G.S. SANDHAWALIA)  
JUDGE**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 422 of 2010

Date of Decision: .7.2012

The Commissioner of Income Tax, Jalandhar-II

....Appellant.

Versus

M/s. Sadhu Singh Hamdard Trust

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.**

**PRESENT:** Mr. Yogesh Putney and  
Mr. Vivek Sethi, Advocates for the appellant.

Mr. Pankaj Jain and  
Mr. D.K. Goyal, Advocates for the respondent.

**AJAY KUMAR MITTAL, J.**

For orders, see **ITA No. 75 of 2004 (The Commissioner of  
Income Tax, Jalandhar-II v. M/s Sadhu Singh Hamdard Trust).**

**(AJAY KUMAR MITTAL)  
JUDGE**

**July , 2012  
gbs**

**(G.S. SANDHAWALIA)  
JUDGE**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 495 of 2007

Date of Decision: .7.2012

The Commissioner of Income Tax, Jalandhar-II

....Appellant.

Versus

M/s. Sadhu Singh Hamdard Trust

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.  
HON'BLE MR. JUSTICE G.S. SANDHAWALIA.**

**PRESENT:** Mr. Yogesh Putney and  
Mr. Vivek Sethi, Advocates for the appellant.

Mr. Pankaj Jain and  
Mr. D.K. Goyal, Advocates for the respondent.

**AJAY KUMAR MITTAL, J.**

For orders, see **ITA No. 75 of 2004 (The Commissioner of  
Income Tax, Jalandhar-II v. M/s Sadhu Singh Hamdard Trust).**

**(AJAY KUMAR MITTAL)  
JUDGE**

**July , 2012  
gbs**

**(G.S. SANDHAWALIA)  
JUDGE**