(1993) 01 GUJ CK 0005

In the Gujarat High Court

Case No : Income-tax Reference No. 203 of 1980

Commissioner of Income Tax APPELLANT

Vs

Sahitya Trust RESPONDENT

Date of Decision : 29-01-1993

Acts Referred:
Income Tax Act, 1961 — Section 13(1), 13(2), 13(3)

Citation : (1993) 111 CTR 186 : (1993) 203 ITR 349

Hon'ble Judges : S.M. Soni, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : M.J. Thakore, for the Appellant; D.A. Mehta, for the Respondent

Judgement

G.T. Nanavati. J.

1. The Income Tax Appellate Tribunal has referred the following questions to this court u/s 256(1) of the Income Tax Act, 1961 :

"(1) Whether the Income Tax Appellate Tribunal was right in law in holding that the condition precedent in section 13(2)(h) of the Income Tax Act, 1961, is not fulfilled in this case because that condition requires a positive act on the part of the trustees to invest the funds of the trust in certain concerns in which the persons referred to in section 13(3) have substantial interest and because such funds were not invested in purchasing the shares which were donated to the trust ?

(2) Whether the burden lay on the Revenue to show that the provisions of section 13(1)(c) of the Income Tax Act applied in the case of the assessee in view of Explanation 3 to that section ?

(3) Whether the Income Tax Appellate Tribunal was right in law in holding that the case of the assessee was not hit by the provisions of section 13(2)(h) of the Income Tax Act ?"

2. The point that arises for consideration in this reference is concluded by a

decision of this court in Commissioner of Income Tax Vs. Insaniyat Trust (Now merged with Sarabhai Foundation), wherein it has been held that, where a charitable trust receives as donation shares in a company in which the persons mentioned in section 13(3) have substantial interest, the trust cannot be said to have invested its funds in purchasing the shares in question. In such cases, section 13(2)(h) will have no application. Following that decision, we answer questions Nos. 1, 2, and 3 in the affirmative, that is, against the Revenue and in favour of the assessee. The reference is disposed of accordingly with no order as to costs.

