

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यके समक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.1677/Mds/2015

निर्धारण वर्ष /Assessment year : 2012-2013.

Income Tax Officer,
Exemption Ward-4,
Chennai 600 034.

Vs.

M/s. Sri Thyaga Brahma Gana Sabha,
No.103, G.N. Chetty Road,
T. Nagar,
Chennai 600 017.

(अपीलार्थी/Appellant)

[PAN AABTS 1159B]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. R. Meenakshisundaram,

प्रत्यर्थी की ओर से /Respondent by

: Shri. Durai Pandian, Addl. CIT.

सुनवाई की तारीख/Date of Hearing

: 23-06-2016

घोषणा की तारीख /Date of Pronouncement

: 05-08-2016

आदेश / O R D E R

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the Department is directed against order of the Commissioner of Income-tax (Appeals)-17, Chennai in ITA No.405A/14-15, dated 24.04.2015 for the assessment year 2012-2013

passed u/s.143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The Revenue has raised the following grounds of appeal:-

"2.1 The Id CIT(A) erred in holding that the assessee is eligible for exemption u/s.11 of the Act and the objects qualify as charitable purpose as defined u/s 2(15) of the Act;

2.2 The Id CIT(A) failed to appreciate that the Sabha has generated income through sponsorship, gate collection, organisation of music festivals, etc., which constitute activity in the nature of carrying on of trade.

3.1 On the facts and in the circumstances of the case, the Id CIT(A) erred in holding that selling of daily tickets and season tickets are incidental activities which were the natural off shoot of the dominant activities;

3.2 The Id CIT(A) erred in law and in facts in making this artificial distinction of 'subservient activities' and 'dominant activities' when the Income-tax Act does not recognise such distinction;

4.1 The Id. CIT (A) erred in holding that there is no profit derived from these activities;

4.2 The Id. CIT (A) failed to appreciate that the Trust loses its character of 'charitable purpose', when the receipt exceeds Rs.25 lakhs;

5. The Id. CIT (A) ought to have appreciated that cancellation of Registration u/s 12AA and 80G is not a pre-requisite for denial of exemption u/s 11 of the Act;

6. The Id. CIT (A) failed to appreciate that the assessee has paid service tax;

7. The Id CIT(A) erred in placing reliance on the decision of the Hon'ble Tribunal in the case of *M/s.. Hamsadhwani Vs. DIT(E)* (ITA No.494/Mds/2011 dated 16.01.2012) and *M/s.. Mylapore Fine Arts Club, Chennai vs. DDIT (E)-I* (ITA No.1706/Mds/2010 dated 12.09.2011) which are distinguishable from the

case on hand;

8.1 The Id. CIT (A) erred in deleting the corpus donation of Rs.46.87 lakhs without taking cognizance to the provisions of Section 13(8) of the Act;

8.2 The Id. CIT (A) failed to appreciate that the donations were received from the users of the hall in lieu of the rent;

9. The Id CIT(A) erred in deleting the addition made towards depreciation claimed by the assessee to the extent of Rs. 7.90 lakhs”.

3. The Brief facts of the case are that the assessee is a Society registered under the Societies Registration Act and granted registration u/s.12A (a) of the Act as per proceedings of the Director of Income Tax (Exemptions) Chennai dated 27.05.1994. The assessee filed Return of income on 24.09.2012 admitting Nil income. Subsequently, the case was selected for scrutiny and notice u/s.143(2) of the Act was issued. In compliance to notice, the Id. Authorised Representative of assessee appeared from time to time and filed details. The Id. Assessing Officer is of the opinion that consequent to amended provisions of Sec.2(15) of the Act w.e.f. 01.04.2009, there is a radical departure u/s.2(15) of the Act excluding those trust and institutions with object of general public utility having any activity in the nature of trade or commerce or doing service in relation to trade and commerce. The Id. Assessing Officer in the assessment proceedings, found the activities and objects of the assessee as under:-

- a) "To promote the advancement of music and other form of fine arts;*
- b) To promote artistic and cultural expression through Drama, Dance, Music Conferences and cognate activities;*
- c) To arrange for the exposition of art by competent artistes and to encourage deserving talent;*
- d) To conduct schools called "sri thyaga bramha gana sabha music and dance schools" for imparting instructions in Music and Dance on proper lines and thus afford facilities for wide spread knowledge in Music and Dance;*
- e) To organize social gatherings as would foster comradeship among members;*
- f) To promote the art of dramatics and the purpose to organize a dramatic wing called "sri thyaga brahma gana saba amateurs";*
- g) To do all other things as are incidental or conducive to the attainment of the above mentioned objectives".*

and assessee society generating income through sponsorship, gate collection, organization of music festivals, subscriptions, interest income etc. The Id. Assessing Officer alleged that assessee society owns two halls which are let out on day to day basis to corporates, individuals and other parties and also assessee paying service tax on rental receipts from halls. The Id. Assessing Officer based on the activities of the assessee is of the opinion that the assessee trust was squarely classified as carrying out objects of general public utility having colour of trade, commerce and business and invoked

provisions of Sec. 2(15) of the Act to deny status of charitable purpose and treat as Association of Persons (AOP). The Id. Authorised Representative has filed submissions in assessment proceedings and clarified through letter dated 29.09.2014 that for the assessment year 2010-2011, the Id. Commissioner of Income Tax (Appeals)-VII, dated 14.08.2013 in ITA No.294/12-13 observed that the assessee's society falls within the ambit of residual of Sec. 2(15) of the Act and allowed appeal in favour of the assessee and Id. Authorised Representative also relied on the decisions.

- (i) Mylapore Fine Arts Club in ITA No.1706/Mds/10, dated 12.09.2011.
- (ii) Hamsadhwani in ITA No.494/Mds/2011, dated 16.01.2012.
- (iii) Madras High Court decision in CIT vs. Sri Thyaga Brahma Gana Sabha dated 14.06.1990, in assessee's own case.

The Id. Assessing Officer having not satisfied with the submissions and was of the firm opinion that the activities are not covered under the main limbs of Sec. 2(15) of the Act but covered by the residual clause of advancement of any other object of general public utility. Further, assessee society is in recipient of corpus donations during the financial year and claimed exemption u/s.11(1)(d) of the act. This corpus donations are received from the user of the hall in the form of collections for usage of hall and relied on the provisions of Sec.13(8)

of the Act and assessee has claimed entire cost of asset claimed as application of income in earlier years at the time of purchase. The Id. Assessing Officer has disallowed depreciation claimed on such asset during the year and allowed depreciation only on assets purchased during the year and relied on the following judicial decisions:-

1. Nectar Beverages Limited 314 ITR 314 (SC).
2. J.K. Synthetics Limited (1992) 65 Taxman 420 (SC).
3. Lissie Medical Institutions vs CIT 2012) TIOL 3030 (Ker)
4. DIT vs. M/s. Charanjiv Charitable Trust – Delhi High Court in ITA No.321 to 323/2013, dated 18.03.2014

And made addition of corpus fund, deprecation and passed assessment order u/s.143(3) of the Act dated 10.11.2014 treating assessee as AOP. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative of assessee argued the grounds and explained that the action of the Id. Assessing Officer is bad in law on invoking provisions of Sec. 2(15) and Sec. 12A(a) of the Act. The Id. Commissioner of Income Tax (Appeals) considering the findings of the Id. Assessing Officer, submissions and judicial decisions has discussed elaborately at page 4, 5 & 6 of his order is of the opinion that the apparent activities of the trust are dominant activities confirming to the objects and

second subservient activities are incidental to the dominant activities and discussed elaborately and directed the Assessing Officer to delete the additions by observing at para 4.4 and 4.5 of his order as under:-

“4.4 Even if it is presumed that the AO had rightly found the objects as non-charitable, she should not have resorted to treat the assessee as AOP and treated the entire corpus donations of Rs.46,87,530/- as taxable income, when the society continued to enjoy registration and recognition respectively u/s 12A(a) and 80G of the IT Act, 1961. On the contrary she should have initiated appropriate action to cancel the registration granted to the society u/s 12AA and 80G of the IT Act, 1961 as a pre-requisite before passing the assessment order u/s 143(3) of the IT Act, 1961 on 10.11.2014, whereas the AO has failed to do the same. The Hon'ble ITAT 'C' Bench in its order in 1706 (Mds)/2010 dated 12.09.2011 in the case of M/s. The Mylapore Fine Arts Club, Chennai vs DIT(E)-I, Chennai directed to grant approval u/s 80G of the Act while deciding the identical issue. The Hon'ble ITAT 'D' Bench in its order in ITA No.494/Mds/2011 dated 16.01.2012 in the case of Hamsadhvani vs DIT(E), Chennai decided the issue in favour of the assessee by observing that advancement of music, classical, dance, arts, etc. can never be considered as an activity in the nature of trade, commerce of business. Even if the activity is of general public utility, still it is entitled to exemption u/s 11 of the Act if it does not involve running of an activity for profit.

4.5 Perusal of income and expenditure a/c shows net profit of ₹2,91,528/-. The receipts include interest receipt of Rs.19,81,405/- during the year under consideration. If the interest receipts are taken out, it will result in a loss of more than Rs.15 lakhs. Perusal of expenditure incurred during the year reveals that the entire activities are towards fulfilling objects of the trust and there is no profit derived from these activities. In the circumstances, the view of the AO that the activities are for fees received is unfounded and without any basis when the accounts show loss without the interest receipts. Thus invoking first proviso to sec.2(15) of the Act is not correct and the assessee is entitled to exemption u/s 11 read with sec.2(15) of the Act. In view of all the ratio delineated above the assessment order dated 10.11.2014 of the AO passed u/s 143(3) of the IT Act is not valid, proper, just and maintainable. Since the society is entitled for exemption u/s 11 of the Act as discussed above, the additions on account of corpus donation and depreciation got deleted automatically and no separate adjudication is required on the two issues. The contribution to the CM's relief fund is treated as application of income and hence the addition of the same is also deleted.

Therefore, under the circumstance, I am inclined to allow the appeal dated 09.12.2014 of the assessee. Accordingly, the AO is directed to delete all the additions made and accept the return filed. The levy of interest u/s 234B of the Act is also deleted as it is only

a consequential act”.

Aggrieved by the Commissioner of Income Tax (Appeals) order, the Revenue has assailed an appeal before Tribunal.

5. Before us, the Id. Departmental Representative argued the grounds and reiterated the submissions and explained that the Id.CIT(A) erred in directing the Id. Assessing Officer to delete the addition irrespective of the facts that the activities of the trust are in the nature of carrying on trade and activities with profit motive and the receipts are more than ₹25,00,000/-. The Id. Commissioner of Income Tax (Appeals) has allowed the appeal relying on the decisions of jurisdictional High Court and Tribunal in the case of *M/s. Mylapore Fine Arts Club, Chennai vs. DDIT(E)-I in ITA No.1706/Mds/2010, dated 12.09.2011* and *Hamsadhvani vs. DIT(E) in ITA No. 494/Mds/2011, dated 16.01.2012* held that the advancement of music, classical, dance can never be considered as an activity in the nature of trade, commerce of business. Even if the activity is of general public utility and exemption u/s.11 of the Act does not involve activities with profit motive and prayed for set aside the order of Commissioner of Income Tax (Appeals).

6. Contra, the Id. Authorised Representative relied on the orders of Commissioner of Income Tax (Appeals) and vehemently opposed to the grounds.

7. We heard the rival submissions, perused the material on records and judicial decisions. The Id. Departmental Representative contention that subsequent to amendment on 01.04.2009 , there is a radical departure on the definition of Sec. 2(15) of the Act were the object of general public utility is in the nature of trade, business, commerce or service does not qualify for definition under charitable purpose and exemption u/s.11 to be denied and also the activities of the society were the income is generated through sponsorship, gate collection and music festivals. On the other hand, the Id. Authorised Representative explained the objects and the activities of the trust were music is a predominant objective and to promote advancement of music and fine arts, the assessee trust is complying the requisite conditions from the earlier years and there is no dispute and Revenue has been accepting their accounts, we found similar issue was considered by the Co-ordinate Bench of the Tribunal in the case of *M/s. Hamasadhwani vs. DIT (E) in ITA No.494/Md/2011*, dated 16.01.2012 wherein it was held as under:-

"5. We have perused the order of Id. DIT(E) and heard the rival submissions. There is no dispute that assessee was engaged in the advancement of music and fine arts, which was culturally important in the State of Tamil Nadu. The objects of the assessee as mentioned in its Memorandum of Association placed at paper-book page No.2, read as follows:-

- 1. To promote the advancement of music and other fine arts and traditional arts.*
- 2. In pursuance of the above objects, to hold musical entertainments, discourses, dance recitals, group singing, dramas, exhibitions, lectures, seminars, competitions, etc.*
- 3. To arrange for the exposition of music and other arts by competent artists and to encourage deserving talent.*
- 4. To conduct schools for imparting instructions in the above arts on correct lines and thus afford facilities for the propagation and development of such arts.*
- 5. To do such other things or undertake activities as are incidental and are conducive to the attainment of the above objects.*

As held by the co-ordinate Bench of this Tribunal in the case of Mylapore Fine Arts Club (supra), there cannot be two opinions that in the State of Tamil Nadu, which is a land of music, dance and classical activities promoting the advancement of such arts, can only be construed as a "charitable purpose" coming under Section 2(15) of the Act. However, as per Id. DIT(E) , receipts of the assessee exceeded ₹ 10 lakhs for the years 2007-08 to 2009-10. Such receipts as culled out from para 6 of DIT(E) 's order is reproduced hereunder:-

	2009-10	2008-09	2007-08
	₹	₹	₹
Sponsorship Fees	8,55,305	7,43,250	9,88,069
Sale of Tickets	52,300	91,800	76,750
Fees for Music Coaching	<u>4,25,900</u>	<u>4,16,350</u>	<u>3,90,850</u>
TOTAL	<u>13,33,505</u>	<u>12,51,400</u>	<u>14,55,669</u>

If we have a look at Section 2(15) of the Act which defines “charitable purpose”, it runs as under:-

2 (15) ⁵⁵“charitable purpose”⁵⁶ includes relief of the poor, education⁵⁶, medical relief, ⁵⁷[preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other ⁵⁶object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business⁵⁶, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:]

⁵⁸[**Provided further** that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ^{58a}[ten lakh rupees] or less in the previous year;]

No doubt, it has been specifically provided in the first proviso that advancement of any other object of general public utility shall not be a charitable purpose if it involves any activity in the nature of trade, commerce or business, or rendering any service in connection with trade, for a cess or fee or any other consideration. The third proviso excludes from the restraints imposed by first proviso, where such receipts were less than ₹ 10 lakhs. The question here is whether sponsorship fee, which forms substantial part of the amounts listed above, can be considered as receipt from activity in the nature of trade, commerce and business. In our opinion, advancement of traditional musical culture of Tamil Nadu and conducting music programmes for that purpose, where such music and dance programmes were sponsored by various

persons and sponsorship fee so received, distributed among the artists, can never be considered as an activity in the nature of trade, commerce or business. When a person sponsors a music programme and sponsorship fee is paid to artist concerned, we cannot say that sponsorship fee is a receipt in the hands of the assessee which is in the nature of trade, commerce or business. Similarly, conducting music coaching for the purpose of advancement of various traditional music forms of State of Tamil Nadu, which is an integral part of cultural life of people of Tamil Nadu, cannot also be considered to be an activity in the nature of trade, commerce and business. This can at the best be considered as an educational pursuit. When there are colleges run for coaching music, we cannot say that training imparted in music is not education. In our opinion, the Id. DIT(E) took a very narrow view in this regard and came to a conclusion that the sponsorship fee and music coaching fee received by the assessee were from the activity in the nature of trade, commerce or business. Assessee, in our opinion, was not carrying on any activity in the nature of trade, commerce or business but was carrying on its avowed object of advancement of fine arts and traditional art forms, which cannot be considered as a commercial or business activity. The nature of receipts of the assessee, in our opinion, will not come within the purview of first proviso to Section 2(15) of the Act except for sale of tickets and the receipts from sale of tickets were well below a sum of ₹ 10 lakhs. We also note that the assessee has been registered under Section 12AA of the Act and such registration is still in vogue. In our opinion, assessee was eligible for renewal of approval under Section 80G of the Act without doubt. Order of DIT(E) is quashed and he is directed to grant the assessee renewal of approval under Section 80G of the Act”

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The contention of the Id. Departmental Representative that the activities are not charitable. But denial of exemption treating as Association of Person(AOP) is not appropriate considering the status and objects of this Sabha which is in existence for morethan three decades and rendering services to the society with Music and Arts, we are of the opinion that society is not be affected by the amendment to Sec. 2(15) of the Act effective from 01.04.2009 and on this issue of trade, business and commerce. We rely on the decision of Delhi High Court in the case of *The Institute of Chartered Accountants of India & ANR vs. Director General of Income Tax (Exemptions) & ORS 347 ITR 0099* where it was held that the Director General of IT(Exemptions) was not justified in refusing exemption u/sec. 10(23C) (iv) to the assessee ICAI by a cryptic order on the ground that by imparting education for free, it was engaged in "business" without considering whether it was engaged in "trade, commerce or business" within the meaning of first proviso to Sec. 2(15) and further without considering the plea of assessee that it had not violated Sec. 11(5) or third proviso to Sec. 10 (23C) (iv) of the Act. So, considering the judicial aspects and objectives, we are of the opinion that the activities are within the ambit of charitable purpose and we upheld the order of Commissioner of Income Tax (Appeals)

who has dealt on subject and its implication and grounds viz-a-viz explanations of the assessee and allowed the assessee appeal and we upheld the order of Commissioner of Income Tax (Appeals) and dismiss the grounds of the Revenue.

8. In the result, the appeal of the Department is dismissed.

Order pronounced on Friday, the 5th day of August, 2016, at Chennai.

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-
(जी. पवन कुमार)
(G. PAVAN KUMAR)
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 05.08.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |