

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं श्री जी. पवन कुमार, न्यायिक सदस्य के समक्ष

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

आयकर अपील सं./ITA No. 2271/Mds/2013

निर्धारण वर्ष /Assessment Year : 2010-11

The Deputy Commissioner of
Income-tax (Exemptions)-II,
Chennai.

(अपीलार्थी/Appellant)

v.

M/s. Chennai Kammavar Trust,
No.56, Gangadeeswar Koil
Street, Puraswalkam,
Chennai – 600 084.
PAN AAATC0139Q

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर /Appellant by : Shri A.V.Sreekanth, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri K.R. Raman, FCA

सुनवाई की तारीख/Date of Hearing : 30.03.2017

घोषणा की तारीख/Date of Pronouncement : 11.05.2017

आदेश /O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal by the Revenue is directed against the order
of the Commissioner of Income-tax(Appeals)-VII, chennai dated
03.09.3013.

2. The grievance of the Revenue in this appeal is with regard to granting exemption u/s.11 of the Act by the CIT(Appeals), though the assessee was earning income from letting out of Kalayana Mandapam for marriage and other functions, which are business activities and hit by the amendment of sec.2(15) of the Act.

3. The assessee, herein is a registered charitable trust u/s.12AA of the Act, which is running schools and also running a community hall in Chennai in the name and style called "Chennai Kamawar Kalyana Mahal". The assessee claimed exemption u/s.11 of the Act. The same was denied by the AO, as the assessee was hit by the provisions of sec.2(15) of the Act. Against this, the assessee went in appeal before the CIT(Appeals), who granted exemption u/s.11 of the Act by observed that rent receipt from the marriage hall was only ₹4,70,000/- as against the total receipt of Rs. 1,92,98,410/-. Aggrieved, the Revenue is in appeal before us.

4. The Id. DR relied on the order of the assessing authority.

5. On the other hand, the Id. AR submitted that the objects of the assessee trust are to promote education and to carry on activities of general public utility. The assessee is also letting out a hall for marriage and other functions. According to the Id. AR, letting of hall was to earn income and apply the same to the main objects. Further, the Id. AR, submitted that the income derived from the hall was not business income but property income and provisions of sec.13(1)(bb) are not applicable and, therefore, exemption u/s. 11 of the Act cannot be denied. To support his proposition, he relied on the following decisions :

- i) CIT vs. Samyuktha Gowda Saraswatha Sabah [245 ITR 242(Mad)]
- ii) DIT(Exemption) vs. Samyuktha Gowda Saraswatha Saba [339 ITR 456 (Mad)]
- iii) CIT vs. Sri Rao Bahadur ADK Dharmaraja Educational Charity Trust [300 ITR 365 (Mad)]

5.1 The Id. AR, further submitted that when the main object of the trust and the purpose of the trust is to run educational institution, it will constitute 'charitable purpose' even if it incidentally involves carrying on the commercial activity. According to the Id. AR, fair

reading of sec.2(15) of the Act read with Circular No.11/2008 dated 19.12.2008, the assessee's case falls within the first three limbs of sec.2(15), namely, relief to the poor, education or medical relief and fall within 'charitable purpose' and therefore, the assessee is not hit by the provision 13(1)(bb) of the Act. The Id. AR placed reliance on the judgment of the Gujarat High Court in the case of DIT v. Ahmadabad Mgt. Association, 366 ITR 85 (Guj) and the judgment of the Delhi High Court in the case of ICAI v. DGIT (Exemption), 260 CTR 001 (Del) and DIT(Exemption) vs. Sabarmati Ashram Gaushala Trust [362 ITR 539 (Guj.)] to support his view.

6. We have heard both the parties and perused the material on record. The issue before us is whether, on the facts and circumstances of the case and having regard to the terms of the Trust Deed, it can be said that the activities carried on by the assessee in the form of running of community hall, viz "Chennai Kamawar Kalyana Mahal" was itself held under the Trust. For this purpose it is proper to go through the objects for which assessee-Trust is formed. The objects for which the Trust established are enumerated in Trust Deed in clause 3 which reads as under:-

“3. The Objects of the Trust are:-

- a. *To establish and maintain educational institutions.*
- b. *To grant scholarships, donations and other incentives to benefit students and others in their education pursuits.*
- c. *To establish, maintain and conduct orphanages.*
- d. *To establish and maintain hospital and dispensaries.*
- e. *To establish and maintain homes and institutions for the poor and disabled and physically and mentally handicapped persons.*
- f. *To aid and improve music, dance, drama and other fine arts and other popular arts.*
- g. *To construct a community hall for letting out to all peoples irrespective of casts, creed or religion for a nominal rent without making any point.*
- h. *To encourage and improve handicrafts.*
- i. *To render financial help to already existing institutions with objects similar to those of this trust.*

7. It is to be noted that section 11(1) of the Act grants exemption to the 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. There is no exhaustive definition of the words “property held under trust” in the Act; however, sub-section (4) says that for the purposes of section 11, the words “Property held under trust” “includes a business undertaking so held”. Subsection (4A) as it stands

amended by the Finance (No. 2) Act, 1991, with effect from April 1, 1992, is in the following terms:

“(4A) Sub-section (1) or sub-section (2) or subsection (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.”

8. Thus, if a property is held under trust, and such property is a business, the case would fall u/s. 11(4) and not u/s. 11(4A) of the Act. Section 11(4A) of the Act would apply only to a case where the business is not held under trust. Thus, there is difference between property or business held under trust and business carried on by or on behalf of the trust.

9. This distinction was recognized by the Supreme Court in the case of Addl. CIT vs. Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR 1 wherein it was observed that if a business undertaking is held under trust for a charitable purpose, the income there from would be entitled to the exemption u/s. 11(1) of the Act. In the present case, the finding of the CIT(A) is that running of community Hall was incidental to the object of

the trust, it was not business commenced/carried on by the assessee. Though the business was commenced by the trust and it was carried on by the Trust after its formation, it cannot be said to constitute property held under trust. U/s. 11(4), it is only the business which is held under the trust that would enjoy exemption in respect of its income u/s. 11(1) of the I.T. Act and there is a distinction between the objects of a trust and the powers given to the trustees to effectuate the purpose of the trust. Though the objects of the trust were charitable, they were mere powers conferred upon the trustees to carry on the business and the profits from such business would benefit the charitable objects. The exemption u/s. 11 cannot be granted on the reason that the business itself was not in existence at the time of formation of the trust and the property held under trust at the time of formation of the trust was not spelt out in the Trust Deed of the assessee. The running of "Community Hall" was not at all in existence at the time of formation of the trust so as to say that the business is property held under trust. Thus, the activities relating to running of "Community Hall" was not even in the contemplation of the Trust Deed on the basis of which the

Society is formed and, therefore, could not have been settled upon trust. The business carried on behalf of a trust rather indicates a business which is not held in trust, than a business of the trust run by the assessee. In this case, the activities viz., running of community hall, was carried on by the assessee for and on behalf of the trust and it was not business held under trust. Section 11(1) of the Act confers exemption from tax only where the property is itself held under trust or other legal obligation; it does not apply to cases where a trust or legal obligation is not created on any property but only the income derived for a charitable or religious purpose. Surplus funds of a trust, which was claimed to be exempt on the footing that it was property held under trust within the meaning of sec. 11(1) of the Act, was not property held under trust since the property from which the surplus was generated was itself not held under trust. In other words, merely carrying on business for and on behalf of the trust and applying the profits of the same for the object of the trust does not entitle for exemption u/s. 11(4) of the Act unless the business is incidental to the attainment of the objects of the trust.

10. We now proceed to consider the question whether the said activities carried on by the assessee were incidental to the attainment of the objects of the trust. We fail to see any connection between the activities relating to running of "Community Hall" was carried on and the attainment of the objects of the trust. The mere fact that whole or some part of the income from running of "Community Hall" is used for charitable purposes would not render the business itself being considered as incidental to the attainment of the objects. We are in agreement with the Department that the application of income generated by the business is not relevant consideration and what is relevant is whether the activity is so inextricably connected or linked with the objects of the trust that it could be considered as incidental to those objectives.

11. It was contended by the Ld. AR that the surplus funds generated from the running of "Community Hall" was spent towards charitable activities and therefore, the assessee is entitled for exemption u/s. 11(4) of the I.T. Act. We are unable to accept this contention. Initially, the assessee carried on the business itself which is not at all property held under trust. This

activity is a business activity and the provisions of section 11(4A) of the Act is applicable.

12. It was contended that if the profits of the business carried on by the trust are utilized by the trust for the purposes of achieving the objectives of the trust, then the business should be considered to be incidental to the attainment of the objects of the trust as observed by the Supreme Court in the case of ACIT vs. Thanthi Trust (2001) 247 ITR 785 which is as under:

“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 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 trustIn any event, if there be any ambiguity in the language employed, the provision must be construed in a manner that benefits the assessee”.

13. Prima facie the above observation would appear to support the assessee's case in the sense that even if running of "Community Hall" is held not to constitute a business held under trust, but only as a business carried on by or on behalf of the trust, so long as the profits generated by it are applied for the charitable objects of the trust, the condition imposed u/s. 11(4A)

of the Act should be held to be satisfied, entitling the trust to the tax exemption.

14. In our opinion, these observations have to be understood in the light of the facts before the Supreme Court in the case of *Thanthi Trust (supra)*, wherein the trust carried on the business of a newspaper and that business itself was held under trust. The charitable object of the trust was the imparting of education which falls u/s. 2(15) of the Act. The newspaper business was incidental to the attainment of the object of the trust, namely that of imparting education and the profits of the newspaper business are utilized by the trust for achieving the object of imparting education. In this case, there is no such nexus between the activities carried on and the objects of the assessee that can constitute an activity incidental to the attainment of the objects, namely, to promote cause of charity, mission activities, welfare, employment, diffusion of useful knowledge, upliftment and education and to create an awareness of self-reliance among the members of the public etc. We are therefore, of the opinion that the observations of the Supreme Court must be understood and appreciated in the background of the fact in that case and should

not be extended indiscriminately to all cases. Being so, we are inclined to hold that the assessee is not entitled for any exemption u/s. 11 of the I.T. Act.

15. In this case, it is brought on record by the AO that the assessee collected Rs.11,28,000/- as corpus donation from 93 persons who performed functions at "Chennai Kamawar Kalyana Mahal". In addition to this, Rs.4,70,000/- was rent for utilizing the facilities of "Chennai Kamawar Kalyana Mahal" by 53 persons, totaling is Rs.15,98,000/-. As against this, in guise of corpus donation collected Rs.11,28,000/- from the persons, who have performed the functions in the "Chennai Kamawar Kalyana Mahal". That amount of Rs.11,28,000/- cannot be considered as corpus donation instead it should be a rental income. On enquiry by assessing officer, it was proved that the persons who paid rent of community hall and who paid the corpus donation were same. This is an act of quid pro for hiring the hall and no question of voluntary contribution in this payment. It is also to be noted that the dates exhibited in both cases were same. Being so, the provisions of sec.2(15) of the Act is squarely applicable as total receipts of rent from community

hall exceeds Rs.10 lakhs, and we do not find any infirmity in the order of AO in rejecting the claim of exemption u/s.11 of the Act. Accordingly, the order of Ld.CIT(A) is reversed and the order of AO is restored.

16. In the result, the appeal of Revenue is allowed.

Order pronounced on 11th May, 2017 at Chennai.

Sd/-

(जी. पवन कुमार)

(G. Pavan Kumar)

न्यायिक सदस्य/Judicial Member

sd/-

(चंद्र पूजारी)

(Chandra Poojari)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 11th May, 2017.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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