

आय अधकरण, "ए" ँयायपीठ, चेन्नई
APPELLATE TRIBUNAL 'A' BENCH, CHENNAI

पी चं पूजार, लेखा सदय एवं पी धुवु आर.एल रेडी, ँयायक सदय के सम
Before Shri Chandra Poojari, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I T.A. No.2602/Mds/2016

अधरण वष/Assessment Year:2010-11

The Income Tax Officer[Exemption],
Ward 2, Aayakar Bhawan, Annexe
Building IV Floor, 121, M.G. Road,
Nungambakkam, Chennai 600 034.

M/s. Tamilnadu Advocates Welfare
Fund, Bar Council of Tamilnadu High
Court Campus, Chennai 600 104.
[PAN:AAATT6317K]

(अपीलाथ /Appellant)

(अयथ/Respondent)

अपीलाथ क ओर से / Appellant by : Shri Shiva Srinivas, JCIT

अयथ क ओर से/Respondent by : Shri R. Venkatesh, C.A.

सुनवाई क तारख/ Date of hearing : 22.02.2017

घोषणा क तारख /Date of Pronouncement : 16.05.2017

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals) 17, Chennai dated 30.03.2016 relevant to the assessment year 2010-11, wherein the Revenue has raised the following grounds:

- “1. The order of the learned CIT(A) is contrary to the law and facts of the case.
- 2.1 The Id CIT(A) erred in holding that the assessee is eligible for exemption u/s.11 of the I.T. Act and the provisos of Section 2 (15) of the I.T. Act are not attracted.

to appreciate that the assessee has received an
rores in the form of trading receipts on "sale of
weigare rana stamps" during the period.

- 2.3 *The Id. CIT (A) ought to have appreciated that the above receipts of the assessee are in the nature of "General Public Utility" as per the amended provisions of Sec.2(15) of the I.T. Act.*
- 2.4 *The learned CIT(A) failed to appreciate the fact that when the objects are of general public utility and if the income derived is in the nature of 'trade or business', then the first proviso to Sec.2(15) of the I.T. Act is applicable when the gross receipts exceed Rs.10 lakhs.*
- 2.5 *The Id. CIT (A) failed to observe that the decision of the Hon'ble High Court in the case of M/s. Madras Chamber of Commerce in TCA Nos. 186 to 188 of 1976, which was relied on by him, was rendered for the A.Ys. 1967-68 to 1969-70.*
- 2.6 *The Id. CIT (A) ought to have appreciated that the Finance Act, 2008 w.e.f. 1.4.2009 has made a very fundamental and radical change by excluding a group of trusts from engaging in trade & business related activities.*
3. *For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(Appeals) may be set aside and that of the Assessing Officer may be restored."*

2. The appeal of the Revenue is found to have been filed late by four days before the Tribunal. By referring to the petition for condonation of delay, the Id. DR has submitted that while the appeal papers were processed for filing appeal, it got mixed up with other files and it was traced out on 06.09.2016 after exhaustive search. Thereafter, immediately, the papers for filing appeal before the Tribunal were prepared and the same are submitted after a delay of 4 days. The Id. DR, citing the above reasons requested for condoning the delay and to admit the appeal for hearing. The Id. Counsel for the assessee did not object to the submissions of the Id. DR

the delay of four days in filing the appeal and admit the appeal for hearing.

3. The assessee filed a return of income for the assessment year 2010-11 on 31.10.2011 admitting NIL income. The assessee is Public Charitable Trust registered under section 12AA of the Income Tax Act, 1961 [Act+in short]. The case of the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued on 12.09.2012. Subsequently notice under section 142(1) of the Act was issued on 22.01.2013 calling for specific records and explanation regarding the sources for the receipts in the ITS data. In response thereto, the assessee filed all the details before the Assessing Officer. On perusal of the details filed by the assessee, the Assessing Officer has observed that in the assessment year under consideration, Form No. 10A was filed on 25.02.2011, Registration under section 12AA was granted by the Id. DIT(E) vide his order dated 29.08.2011 i.e., in the financial year 2010-11 relevant to the assessment year 2011-12. Therefore, the Assessing Officer treated the trust as an unregistered AOP for the assessment year 2010-11 and held that the income received by the Trust during the financial year 2009-10 relevant to the assessment year 2010-11 is not eligible for exemption under section 11(1)(a) of the Act and thus assessed the taxable income of the assessee at .1,98,34,990/-.

e matter in appeal before the Id. CIT(A). After considering the submissions of the assessee, the Id. CIT(A) has observed as under:

“The next ground relates to the income out of sale of welfare fund stamps included in the total income of the appellant and subjected to maximum marginal rate of tax by invoking provisos sec. 2(15) raised only for the AY 2010-11. However I am not in agreement with the AO that the activity of the instant appellant relating to the sale of welfare fund stamps to its members or even to the general public would render the activity to be advancement of other object of general public utility in the native of trade, commerce or business with overriding profit motive in terms of the first proviso to sec. 2(15) of the Act. In view of the judgment of the Hon'ble Madras High Court in the case of M/s. Madras Chamber of Commerce & Industry in Tax Case No.186 to 188 wherein it was categorically held that fees received by that assessee for arbitration and issue of certificate of origin are only incidental to the main activity without earning profits thereon being its driving force, and as such, the assessee was eligible for exemption u/s.11. In view of the above, the same is held to be exempt u/s.11 for the instant AY 2010-11 also by virtue of the second proviso to section 12A as already discussed in the foregoing paras. In view of the above, this ground is allowed.”

5. On being aggrieved, the Revenue is in appeal before the Tribunal and the Id. DR has relied on the grounds of appeal. On the other hand, the Id. Counsel for the assessee supported the order passed by the Id. CIT(A). Alternatively, by filing copy of the order of the CBDT passed under section 119(2)(b) of the Act dated 19.07.2016 and by filing copy of the order of the Tribunal in assessee's own case for earlier assessment years vide dated 29.11.2016, the Id. Counsel for the assessee has prayed the appeal be remitted back to the file of the Assessing Officer for considering registration under section 12AA of the Act as per the above order of the CBDT.

es, perused the materials available on record and gone through the orders of authorities below. The moot question raised in the appeal of the Revenue is whether the assessee is eligible for exemption under section 11 of the Act. Against Form 10A of the Act dated 25.02.2011, the assessee trust was registered under section 12AA of the Act. Since the assessee Trust was registered under section 12AA of the Act vide order dated 29.08.2011, the Assessing Officer has held that the assessee is not eligible for claiming exemption under section 11(1)(a) of the Act for the financial year 2009-10 relevant to the assessment year 2010-11. It is evident from the order of the CBDT dated 19.07.2016 that an application was filed by the assessee under section 119(2)(b) of the Act for condonation of delay for the assessment years 2005-06 onward till 24.02.2011 in filing of application for registration under section 12AA of the Act. Against the condonation petition filed by the assessee trust, the CBDT has condoned the delay in filing of application for registration under section 12AA of the Act for the assessment years 2005-06 onwards. However, it was also held that %b shall be open for the authority granting registration under section 12AA of the Act to satisfy itself on the fulfillment of conditions prescribed under the Act, which are necessary for granting such registration. Against the appeals filed by the assessee for the assessment years 2005-06 to 2009-10, the Coordinate Benches of the Tribunal in I.T.A. Nos. 2616 to 2620/Mds/2016 dated 29.12.2016 remitted the matter to the file of the Assessing Officer for

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section 12AA of the Act as per the order under section 119(2)(b) of the Act on fulfilment of the conditions necessary for the grant of registration. Similarly, for the assessment year 2010-11 also, we remit the matter back to the file of the Assessing Officer for granting registration under section 12AA of the Act as per the order under section 119(2)(b) of the Act on fulfilment of the conditions necessary for the grant of registration and thereafter consider for eligibility of exemption under section 11 of the Act.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on the 16th May, 2017 at Chennai.

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 16.05.2017

Vm/-

आदेश क० प्रतिलिपि अपेक्षित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. प्रभागीय प्रत्यक्ष/DR & 6. गाडफ़ाईल/GF.