

**आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई**

IN THE INCOME TAX APPELLATE TRIBUNAL

' B' BENCH : CHENNAI

**श्री अब्राहमपी.जॉर्ज, लेखा सदस्य एवं**

**श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष**

**BEFORE SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER  
AND SHRI GEORGE MATHAN, JUDICIAL MEMBER**

**I.T.A.No.2005/CHNY/2012**

**&**

**C.O. No.60/CHNY/2013**

Assessment year : 2009-10

Deputy Director of Income-Tax  
(Exemptions)-III,  
Ayakar Bhavan Annexe Building,  
III Floor, Chennai-34.

**Vs. M/s.Paramasiva Naidu  
Muthuvel Raj Education Trust,  
Block-V, Mugappair,  
Chennai-600 050.**

**(अपीलार्थी/Appellant)**

**[PAN AAATP 4092 M ]  
(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Mr.R.V.Aroon Prasad, JCIT,D.R  
: Mr.S.Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing

: 09-07-2018

घोषणा की तारीख /Date of Pronouncement

: 09-07-2018

**आदेश / ORDER**

**PER GEORGE MATHAN , JUDICIAL MEMBER**

ITA No.2005/Chny/2012 is an appeal filed by the Revenue against the Order of the Commissioner of Income Tax (Appeals)-XII, Chennai in ITA No.373/2011-12 dated 10.07.2012 for the assessment

year 2009-10 and C.O No.60/Chny/2013 is a Cross-Objection filed by the assessee.

2. Mr.Aroon Prasad represented on behalf of the Revenue and Mr.S.Sridhar represented on behalf of the Assessee.

3. At the time of hearing, it was submitted by Id.A.R that the issue in the Cross Objections was in respect of claiming of depreciation, assessee being a charitable trust registered/s.12AA of the Act. It was a submission that the issue of depreciation was squarely covered by the decision of the Hon'ble Supreme Court in the case of CIT-III, Pune Vs. Rajasthan & Gujarati Charitable Foundation Poona reported in (2018)402 ITR 441(SC).

4. In reply, the Id.D.R vehemently supported the orders of the Id. Assessing Officer and the Ld.CIT(A) on this issue.

5. We have heard both the parties and perused the material on record. As it is noticed that the issue of depreciation in respect of charitable trust is squarely covered by the decision of the Apex Court in the case of Rajasthan & Gujarati Charitable Foundation Poona referred to supra, the Id. Assessing Officer is directed to allow the assessee's claim of depreciation. Accordingly, Cross objections filed by the assessee on this issue stands allowed.

6. In respect of Revenue's appeal, it was submitted by Id.D.R that the assessee is a charitable trust registered u/s.12AA of the Act. It was a submission that in the course of assessment , it is noticed that the assessee had given gifts to another Trust under the name of M/s.PMR Bangaru Subbammal Educational Trust. It was a submission that two types of gifts were given, one gift was immovable property, and the second one was a amount of ₹86,44,540/-. It was a submission that M/s.PMR Bangaru Subbammal Educational Trust was not registered u/s.12AA of the Act during relevant assessment year. It was a submission that consequently the Id. Assessing Officer had denied the assessee the benefit of exemption u/s.11 of the Act in respect of violation made under sections 13(1)(c) and 13(1)(d) of the Act. It was a submission that advertisement expenses in respect of political advertisement had also been made by the assessee in the newspapers. It was a submission that the electricity bill of the Managing Trustees, one Mr.MB Nambiar had also been paid by the assessee-trust. It was a submission that personal expenses of the trustees, and their family members had been incurred by the assessee trust. It was a submission that on appeal, Ld.CIT(A) had held that the gift of 6.5 acres of land by the assessee-trust to M/s.PMR Bangaru Subbammal Educational Trust had been reversed by cancellation of the Gift Deed in subsequent year and M/s.PMR Bangaru Subbammal

Educational Trust was also having similar objects of the assessee trust, consequently, there was no violation of provisions of the sections 13(1)(c) and 13(1)(d) of the Act. In regard to the payment of electricity bills, the Ld.CIT(A) had held that the amounts are very small and insignificant compared to the total volume of transactions and hence, it cannot be viewed as violation of Sec.13(1)(c) of the Act. In regard to advertisement in respect of political parties, the Ld.CIT(A) accepted the contention of the assessee that the expenditure was not a political donation or political advertisement, but an advertisement of the institution in the newspaper 'Dinakaran' on the occasion of visit of a political leader. In consequent, it cannot be said to be violation of Sections 13(1)(c) and 13(1)(d) of the Act. It was a submission that the order of the CIT(Appeals) being clearly in violation of provisions of the sections 13(1)(c) and 13(1)(d) of the Act. It was a submission that the same was liable to reversed on this issue and assessee denied the benefit of exemption u/s.11 of the Act.

7. In reply, Id.A.R vehemently supported the order of Id.CIT(A). The Id.A.R placed before us a copy of decision of the Hon'ble Karnataka High Court in the case of CIT Vs. Fr.Mullers Charitable Institutions reported in [2014] 363 ITR 230(Karnataka) wherein it had been held that only income from investment or deposit which has been made in violation of sec.11(5) of the Act is liable to be taxed and the

violation u/s.13(1)(d) of the Act does not tantamount to denial of exemption u/s.11 on total income of assessee-trust. The Id.A.R also placed reliance upon the judgment of Hon'ble Madras High Court in the case of CIT Vs. Working women's Forum reported in [2014] 365 ITR 353(Mad.) wherein it had been held that the Tribunal was justified in holding that in case of a trust registered u/s.12AA of the Act, only such part of income which is violative of sec.13(1)(d) of the Act can be brought to tax at maximum marginal rate and entirety of income cannot be denied exemption u/s.11 of the Act. It was a submission that the land had been returned by cancelling the Gift Deeds and in respect of the loans, which had been given the maximum that could be disallowed was the notional interest, in view of the decision of Hon'ble Madras High Court in the case of CIT Vs. Working women's Forum reported to supra. It was a further submission that perusal of the calculation of the exemption as given in page-17 of the order of the CIT(Appeals) would show that the actual application during the year being much higher, the disallowance, if any would not make any dent in so far as it would fall within the 15% exemption available to the assessee.

8. We have considered the rival submissions. A perusal of the order of the CIT(Appeals) shows that it is an undisputed fact that electricity bill in respect of trustee has been paid by the assessee-trust.

That it is too small amount compared to total transactions of the assessee is not the issue, as far as the provisions of the section 13 are concerned. It is also an undisputed fact that during relevant assessment year, the land had been made available to M/s.PMR Bangaru Subbammal Educational Trust, which is a Trust that does not have registration u/s.12AA of the Act. It is also an undisputed fact that the assessee trust has given loans, which are interest free to M/s.PMR Bangaru Subbammal Educational Trust, that the objects of the assessee-trust and that of M/s.PMR Bangaru Subbammal Educational Trust are identical, would not make M/s.PMR Bangaru Subbammal Educational Trust as having registration u/s.12AA of the Act. M/s.PMR Bangaru Subbammal Educational Trust must on its own independent status claim and have the registration u/s.12AA of the Act. In the absence of such registration, dealing with such an unregistered trust would affect the exemption available to the assessee. A perusal of provisions of the section 13(2) of the Act shows that without prejudice to the provisions in clause (c) & (d) of sub-section (1) of Section 13, the income of the property of the trust is deemed to have been used for the benefit of a person referred to in sub-section (3), in clause (g), if any income or the property of the Trust or institution is diverted during the previous year in favour of any person referred to in sub-section(3) (regarding electricity bill

payment) and in clause (h), if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year ----- in which a person referred to sub-section(3) has substantial interest ( the loan given to M/s.PMR Bangaru Subbammal Educational Trust where the Managing Trustee is an interested person with substantial interest) and clause (b), if any land --- of the Trust or institution ---- for any period during the previous year without adequate rent or other compensation (regarding gifting of the land, which has subsequently been cancelled, to M/s.PMR Bangaru Subbammal Educational Trust where the Managing trustee of the Trust is an interested person with substantial interest) In such cases, where violation of sub-section (2) of section 13 takes place the benefit, directly or indirectly, to any person referred to sub-section(3) of Section 13, then the First provisions of section 13(1) clearly states that 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, which clearly shows that provisions of the section-11 and section-12 are no more available in such cases. This being so, we are of the view that the Id. Assessing Officer was right in denying the benefit of section-11 in respect of the income of assessee as there has been violation of the provisions of the sections 13(1)(c) and 13(1)(d) read with section 13(2) of the Act. In the circumstances, the order of

the CIT(Appeals) on this issue stands reversed and the order of the Id. Assessing Officer is restored.

9. In the result, the appeal of the Revenue is allowed and the Cross Objections filed by the assessee is allowed.

Order pronounced in the open court after conclusion of hearing on 09<sup>th</sup> July, 2018, at Chennai.

Sd/-

(अब्राहमपी.जॉर्ज)

( ABRAHAM P GEORGE)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

( जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 09<sup>th</sup> July, 2018.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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