

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.587/Chny/2015
निर्धारण वर्ष/Assessment Year: 2011-12

The Deputy Commissioner of
Income Tax (Exemptions), Chennai
Circle, Aayakar Bhavan, Annexe
Building, III Floor, 121, M.G. Road,
Nungambakkam, Chennai 600 034.

Vs. M/s. The Willingdon Charitable Trust,
Rani Seethai Hall, No. 603, Anna Salai,
Chennai 600 006.

[PAN:AAATT0683N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri D. Hema Bhupal, JCIT
प्रत्यर्थी की ओर से/Respondent by : Shri S. Sridhar, Advocate
सुनवाई की तारीख/ Date of hearing : 03.08.2022
घोषणा की तारीख /Date of Pronouncement : 14.10.2022

आदेश / O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order of the Id. Commissioner of Income Tax (Appeals) 17, Chennai, dated 12.12.2014 relevant to the assessment year 2011-12. The Revenue has raised the following grounds:

Ground No.1

1. *The order of the learned CIT (A) is contrary to the law and facts of the case.*

Ground No:2:

2.1 *The Id CIT(A) erred in holding that the assessee is eligible for exemption u/s 11 of the Act and not hit by the amended provisions of Sec.2(15) of the Act, under the object of "General Public Utility".*

2.2 The Id CIT(A) failed to appreciate that the major receipt of the assessee was from Hall Hire Charges (as detailed in the Statement of Facts enclosed), which constitute activity in the nature of "commerce" or "business". It has been so held in CIT v. Halai Nemon Association 243 ITR 439 (Mad.) and also in assessee's own case reported in DIT(E) v. Willington Charitable Trust 330 ITR 24 (MAD).

Ground No:3:

3.1 The Id. CIT (A) erred in holding that the running of working women's hostel amount to "Relief of poor".

3.2 The Id. CIT (A) ought to have appreciated that the running of hostels are also on commercial lines where accommodation is given both with A.C. facilities and non A.C. facilities on collection of exorbitant fees and in the absence of an educational institution attached to such hostels, running of such hostels cannot be termed as "incidental activities" u/s 11 (4A) of the I.T. Act. In any case, the incentive sections of 11 & 12 of the I.T. Act do not apply to this case, as it fails to pass the test of a "charitable" entity in view of application of 1st and 2nd provisos to Sec.2(15) of the I.T. Act, 1961.

Ground No.4:

4.1 The Id. CIT (A) erred in holding that the Service Tax Act has been enacted for a different purpose, whereas, in reality, payment of service tax by the assessee, under the category of "mandap-keeper services", brings it within the ambit of the provisos to Section 2(15) of the I.T. Act, 1961.

Ground No.5:

5.1 The Id. CIT (A) erred in holding that the "predominant activities" of the assessee are "charitable" in nature, whereas in reality, its major activity is pursuing of commercial activities of running kalyana mandapam and working women's hostel.

Ground No.6:

6.1 The Id. CIT (A) erred in observing that "The Hon'ble High Court of Madras in the Appellant's own case reported in 330 ITR 24 had approved the activities pursued and continuously pursued", whereas, at para 10.1 of High Court's order, it is clearly held commercial activities are being carried on. The relevant portion reads as under

Para 10.1 : It is not in dispute that the assessee Trust holds the property in Trust. It is also not in dispute that the commercial activity is being carried on by the assessee by using the building as marriage halls, auditoriums, etc.

6.2 The Id. CIT (A) failed to observe that in the subsequent portion of the said judgement, it was held that if the amount received from such activity is spent towards charity or not may be examined by the Assessing Officer, but such observations would not have any relevance after insertion of two provisos to section 2(15) of the I.T. Act,

1961, w.e.f. 01.04.2009 as the decision in the aforesaid case related to A.Y 1995-96 to A.Y 2005-06.

Ground No.7:

7.1 *The Id. CIT (A) erred in holding that the provisions of Sec.11 (3)(c) do not apply to the accumulated income of Rs.1.25 crore accumulated since A.Y. 2000-01.*

7.2 *The Id. CIT (A) failed to appreciate that as per provisions of Section 11 (3)(d) of the Act, no inter-trust donation can be made out of the accumulated income. This provisions stands introduced by the Finance Act, 2002 and hence, the order of the Id. CIT(A) on this issue is per incuriam and illegal.*

Ground No:8: (Disallowance of Depreciation):

8.1 *The Ld. CIT(A) erred in allowing the claim of depreciation when the entire cost of acquisition of assets were treated as "application of income" for the purpose of claiming exemption u/s. 11 of the Act.*

8.2 *The Id CIT (A) erred in allowing the claim of depreciation, when the cost of acquisition of assets were treated as application of income; as held by the Apex Court / High Courts in the following cases*

- (i) *M/s. Nectar Beverages Limited Vs CIT 314 ITR 314.*
- (ii) *M/s. J.K Synthetics Limited (65 Taxman 420)*
- (iii) *Lissie Medical Institutions Vs CIT 348 ITR 344 (Ker).*
- (iv) *DIT Vs. Ms/. Charanjiv Charitable Trust (2014) 43 taxmann.com 300(Del).*

8.3 *The Ld CIT (A) ought to have placed reliance on the decision of jurisdictional High Court in the case of CIT Vs Rao Bahadur Cunnan Chetty Charities 135 ITR 485 (Mad) in this regard.*

Ground No.9:

9.1 *The Id. CIT (A) ought to have appreciated that when the assessee loses the eligibility for claiming exemption u/s 11, the provision of section 14 comes into play and the amount of Rs.1,25,05,000/- paid as donation and Rs.20,60,384/- debited towards "income tax paid" in the "Income & Expenditure A/c.," requires to be disallowed.*

Ground No.10

10.1 *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.*

2. Facts are, in brief, that the assessee is a trust, registered under section 12AA of the Income Tax Act, 1961 ["Act" in short] dated

10.04.1974. The assessee filed its return of income for the assessment year 2011-12 on 30.09.2011 admitting NIL income and claiming exemption under section 11 of the Act. The case was selected for scrutiny and after following due procedure, the assessment was completed under section 143(3) of the Act dated 30.03.2014 by assessing total income of the assessee at ₹.6,39,92,322/- treating the assessee as AOP. The objects of the trust are extracted as under:

The main objects of the assessee trust are as follows:

- (i) To establish, run or maintain educational, technical or technological institutions of all kinds in India for the benefit of the public.*
- (ii) To institute and maintain or support hospitals, crèches and dispensaries.*
- (iii) To maintain Homes for orphans, to support and educate pupils and students and destitute children.*
- (iv) To award scholarships and stipends for education and to institute Lectureships and arrange lectures and arrange or support cultural activities of a charitable nature ensuring for the benefit of the public and also to establish endowments for such purposes.*
- (v) To provide relief for the poor and the distressed.*
- (vi) To provide for the carrying out of protection or animals useful to mankind and generally to spend amounts for charitable purposes enuring for the benefit of the public.*
- (vii) To collect and maintain a fund to be contributed by voluntary donations and subscriptions for the objects and purposes of the trust.*
- (viii) To accept any gifts or property movable or immovable on such terms and conditions as may be agreed to between the donor or donors and the trust but so as not to incur any liability on the part of the trust or members of the trust Board and provided also that the conditions agreed to are of a charitable nature enuring for the benefit of the public.*
- (ix) To act as trustees and managers of any institution or trust having similar objects in fit and proper cases.*

- (x) *To construct and maintain any buildings or works necessary or convenient for the purpose of the trust.*
- (xi) *To incorporate with itself any institution, society or association having objects wholly or in part, similar to those of the trust and are of a charitable nature enuring for the benefit of the public and to cooperate with any person or body of persons in aid of such object, provided such object is of a charitable nature enuring for the benefit of the public.*
- (xii) *To do such other lawful acts and things as may be necessary or incidental and conducive to the attainment of the above aims and objects or any of them.”*

2.1 In the assessment order, the Assessing Officer has noted that the assessee has not carried out any charitable activity and no activity in respect of the objects were carried and treated the assessee as AOP and assessed entire income for the following reasons:

- (i) The activities carried by the assessee are running two Kalyana Mandapams viz., Rajah Muthiah Hall and Rani Meyyammai Hall utilized for conducting marriages, social functions, corporate meetings and other assemblies.
- (ii) The assessee was running hostels for students and working women, where accommodation is provided both with A/C facilities and non A/C facilities on collection of prescribed fees. The beneficiaries are the students from various economic strata but definitely not the poor.
- (iii) the assessee was receiving receipts by way of rent from letting out the new commercial complex Sigapi Aachi, Indian Bank

Zonal Office, marriage halls and other corporate organizations goes to show that by the exploitation of the above properties exceed the threshold limit as prescribed interest in the 1st and 2nd proviso to section 2(15) of the Act w.e.f. 01.04.2009. Therefore, the amended provisions of section 2(15) of the Act are clearly applicable to the assessee trust rendering the availability of benefits under sections 11 and 12 of the Act being not available to the assessee.

The Assessing Officer also noted that the assessee was not providing any education and not established/maintained and run educational institutions, but, is only applying its income at times in the form of donations to the educational institutions run by the trust coming under the same management of the assessee trust. For the above reasons, the Assessing has held that the assessee is not entitled for section 11 of the Act. For the sake of convenience, the provisos to section 2(15) of the Act are extracted as under:

(15) "charitable purpose" includes relief of the poor, education, yoga, medical relief, 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 object 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 business, 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, unless—

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and*
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;*

3. On appeal, the Id. CIT(A) has observed that the assessee should have source of revenue to achieve its objects and in such process, it has constructed buildings, women's hostel and kalyana mandapams and the same have been let out and the revenue generated out of the same have been utilized for the assessee's charitable objectives/ purposes. After considering the submissions of the assessee and accepting the explanations of the assessee, the Id. CIT(A) reversed the order of the Assessing Officer.

4. Aggrieved, the Revenue is in appeal before the Tribunal. The Id. DR has submitted that the assessee was running kalyana mandapams and women's hostel, letting out building for commercial purposes and submitted that no charitable activity has been carried out by the assessee and not entitled for claiming exemption under section 11 of the Act. He further submitted that the Id. CIT(A), without examining the

objects of the assessee, simply allowed exemption under section 11 of the Act, without considering the assessment order, is not correct and the same has to be reversed.

5. On the other hand, the Id. Counsel for the assessee has strongly supported the order of the Id. CIT(A). He further submitted that the assessee is in existence since 1974 and on that point itself, the assessee is carrying charitable activities and therefore, denying exemption under section 11 of the Act are not correct. He also submitted that providing hostel facilities to poor students, who are coming from village background, is charitable in nature and therefore, the assessee is entitled for exemption under section 11 of the Act.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The objects of the assessee trust are already extracted above. The main activity of the assessee are running two kalayana mandapams, working women's hostel, letting out buildings to various organizations. In the year under consideration, the assessee's receipts are ₹.10,03,98,391/- and the total expenditure is ₹.6,78,79,207/-. So far as running of kalyana mandapams are concerned, the Id. Counsel for the

assessee has not been able to place any material to show that it is running for charitable purposes. So far as running of working women's hostels are concerned, the assessee was charging different rates for room rent and other charges. For the sake of convenience, the relevant details given in page 19 of the assessment order are extracted as under:

<u>Details of fees and other charges collected at Rani Meyyammai Hostel</u>		
S.No.	Description	Amount
1.	Donation	12,000
	i. Students in Rooms with AC/attached bathroom	
	ii. Other Rooms	9,000
2.	Term Fees (June to Sept. – I term; Oct. To May – II term)	
	Establishment Fee	6,000
	Room Rent	
	2 in a room	5,000
	3 in a room	4,000
	4 in a room	3,000
	5 in a room	2,000
	6 in a room	1,750
	7 in a room	1,500
	Rooms with attached bathroom	
	2 in a room	6,000
	3 in a room	5,000
	4 in a room	4,000
	5 in a room	3,500
	Additional charges for AC rooms	3,000
	Mess Fees	
	Vegetarian	9,000
	Non-vegetarian	11,000
	For egg	300

6.1 We find that no charitable activity is involved in running working women's hostel for the reason that the assessee is charging for each and every services and there is nothing on record that the assessee is

providing hostel facility to any poor student. Therefore, the activity cannot be considered as charitable activity.

6.2 So far as rental income received by the assessee is concerned, it cannot be said that it is a charitable activity. Buildings are given on rent to various organization for which the assessee has been receiving rent. Therefore, the above activity of the assessee cannot be said as charitable activity.

6.3 We have gone through each and every objects of the assessee and find that in the objects, no where it is mentioned that running of kalyana mandapams, letting out working women's hostel as an object of the assessee trust and also construction and letting out of building also not the object of the assessee trust. We find that the assessee trust claiming relief for which no object is provided in the assessee trust deed, it means, the activities carried out by the assessee are not in accordance with the trust deed of the assessee. Therefore, we are of the considered opinion that the assessee is not entitled for the benefit of claiming exemption under section 11 of the Act.

6.4 One of the objects needs to be examined for the reason that the Id. Counsel for the assessee has submitted that object No. (x) has

been carried out by the assessee. The object No. (x) is extracted as under:

- (x) *To construct and maintain any buildings or works necessary or convenient for the purpose of the trust.*

This object has to be considered in the light of all other objects. We have examined all other objects and the above object pointed out by the Id. Counsel for the assessee i.e., object No. (x) comes into operation only when the assessee constructs the building for the purpose of educational, technical or technological institutions for the benefit of the public. The building constructed by the assessee was not under use for any educational purposes, to support hospitals, crèches and dispensaries or home for orphans. Therefore, the objects enshrined in the trust deed have not been carried out by the assessee. Therefore, on this count alone, it can be held that the assessee is not entitled for claiming exemption under sections 11 of the Act.

6.5 So far as accumulation of income in the assessment year 2011-12 is concerned, the assessee has not filed Form No. 10. Therefore, it has to be taxed under the year under consideration. Thus, we find no infirmity in the order passed by the Assessing Officer.

6.6 The Id. Counsel for the assessee has submitted that in assessee's own case for the assessment years 2006-07, 2010-11, 2012-13, 2012-13 & 2013-14 in I.T.A. Nos.2984, 2985, 2986, 2987 & 2988/Chny/2016 dated 19.04.2018, the Tribunal has decided the issue in favour of the assessee by considering the decision of the Hon'ble Madras High Court in the case of DIT v. Willington Charitable Trust (2011) 330 ITR 24.

6.7 We have gone through the order passed by the Tribunal in ITA No. 2986/Chny/2016, wherein, the Tribunal has confirmed the order passed by the Id. CIT(A) by observing that the income generated is incidental to the charitable activity. The Tribunal has also noted that the Id. CIT(A), by following the judgement of the Hon'ble Jurisdictional High Court in assessee's own case in DIT v. Willington Charitable Trust (supra), the above finding was given. We have gone through the order passed by the Tribunal and the Tribunal neither examined the objects nor activities carried out by the assessee to come to the conclusion that the activity carried by the assessee is incidental to the charitable activity.

6.8 So far as the judgement of the Hon'ble Madras High Court in the case of DIT v. Willington Charitable Trust (supra) is concerned, the Hon'ble High Court has remitted the matter back to the file of the Assessing Officer and the findings of the Hon'ble High Court are reproduced as under:

“13.8. We are also of the opinion that even though the assessee has produced the relevant records before us, we cannot embark upon the jurisdiction and role of the Assessing Officer by considering the same while exercising the power under section 260A of the Income-tax Act. Further, we are of the opinion that no prejudice would be caused to the assessee by remanding the matter to the Assessing Officer to find out the actual entitlement of exemption by considering the materials placed before him. Therefore, we deem it at to remand all the matters to the file of the Assessing Officer to go through the returns filed by the assessee for the relevant years and then consider the question of exemption under section 11 of the Act, in the light of the observations made above.

14. Accordingly, the substantial questions of law raised are answered in favour of the Revenue. However, in view of our reasoning that a business income if utilized towards the achievement of the object of the assessee trust the same would be incidental to the achievement of the object, we deem it fit to remand the assessment files to the Assessing Officer to decide as to whether such business income is used for the attainment of the object and thereafter proceed in accordance with law. The entire exercise is to be done by the Assessing Officer within a period of three months from the date of receipt of a copy of this order.

In fine, the orders passed by the Tribunal are hereby set aside and these appeals are allowed to the extent indicated above.

6.9 From the above, it is amply clear the Hon'ble Madras High Court has directed the Assessing Officer to examine the income earned by the assessee has used for charitable purposes and also directed the Assessing Officer to examine the business activities incidental to the

charitable activity carried by the assessee. In the present case, the assessee has not carried any charitable activity. That apart, the assessee not at all carried its activities in accordance with the objects. Therefore, the activity carried by the assessee is outside the scope of the objects and it cannot be said that activity carried by the assessee is charitable activity. Therefore, the Assessing Officer has rightly denied the claim of exemption under section 11 of the Act to the assessee.

6.10 We also find that the Tribunal, in assessee's own case in I.T.A. No. 2986/Chny/2016, simply upheld the order of the Id. CIT(A) without considering the judgement of the Hon'ble Jurisdictional High Court. Therefore, the decision of the Coordinate Benches of the Tribunal has no application to the facts of the present case. Apart from that, there is an amendment to section 2(15) of the Act and according to the amendment, the meaning of the charity has been changed and therefore, there is no occasion for the Hon'ble Madras High Court to consider section the amended provisions of section 2(15) of the Act.

6.11 In view of the above, we are of the considered opinion that the Id. CIT(A), without examining the objects and activities carried by the assessee, simply allowed the appeal of the assessee. Without properly

going through the judgement of the Hon'ble Jurisdictional High Court in the case of DIT v. Willington Charitable Trust (supra), the Id. CIT(A) granted relief to the assessee, in fact, the Hon'ble High Court has remitted the matter back to the file of the Assessing Officer to examine the entire activities carried by the assessee and decide the issue in accordance with law.

6.12 We have considered entire facts of the case and so far as assessment year under consideration AY 2011-12, the assessee has not carried out any charitable activities. Therefore, the Assessing Officer denied the claim of exemption under section 11 of the Act to the assessee. No doubt, the assessee was having 12AA registration, however, we find that having 12A registration was not automatic to claim the benefit under section 11 of the Act. The assessee has to prove before the Assessing Officer that the assessee was carried charitable activities and it can claim exemption under section 11 of the Act. In the present case, the assessee has not above to prove that it has carried charitable activities and the business activities was incidental to the charitable activity. Therefore, the order passed by the Id. CIT(A) that the assessee has carried charitable activity is without any basis and any evidence. Thus, we reverse the order passed by the

Id. CIT(A). Accordingly, we restore the assessment order passed by the Assessing Officer and allow the grounds raised by the Revenue.

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

Order pronounced on 14th October, 2022 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 14.10.2022

Vm/-

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.