

**आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

**माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य एवं
माननीय श्री अमिताभ शुक्ला . लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER
AND HON'BLE SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

**आयकरअपील सं./ ITA Nos.943, 944, 945 & 946/Chny/2024
(निर्धारणवर्ष / Assessment Years: 2011-2012, 2013-14, 2015-16 &
2016-2017)**

The Crafts Council of India,
GF Temple Trees,
Venkatnarayanana Road,
T. Nagar, Chennai 600 017.

Vs. The Joint Commissioner of Income
Tax,
(Exemptions)
Chennai.

[PAN: AAATC 1433B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

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

: Shri R. Vijayaraghavan, Advocate
: Ms. Gouthami Manivasagam, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 01.08.2024

घोषणा की तारीख /Date of Pronouncement

: 14.08.2024

आदेश / ORDER

MANU KUMAR GIRI (Judicial Member)

These four appeals filed by the assessee are directed against the separate orders of the Ld. Commissioner of Income Tax(Appeals)(NFAC) Delhi [CIT(A)] dated 08.02.2024 for Assessment Years 2011-12, 2013-14, 2015-16 and 2016-17.

2. First we take up ITA No.943/Chny/2024 for assessment year 2011-12 as lead case for adjudication wherein main issue is denial of exemption u/s 11 of the

Income Tax Act, 1961 ('ACT' in short) in the light of recent judgment of the Hon'ble Supreme Court in the case of ACIT (Exemptions) Vs Ahmedabad Urban Development Authority dated 19.10.2022 [2022] 143 taxmann.com 278 (SC) / 449 ITR 1 SC. Our decision on this issue will equally apply to others appeals being ITA Nos. 944, 945&946/CHNY/2024 also.

3. Brief facts of the case are as under:

"The appellant is a non profit organization registered as a society under Societies (registration) Act with the objects to promote the welfare and causes of craftsmen. The appellant has been registered u/s 12A of the Act being an organization established with the objects of charitable purpose. For the relevant Assessment year, the appellant filed its return of Income disclosing NIL income. During the assessment u/s 143(3) of the Income Tax Act, the Joint Commissioner of Income Tax (JCIT) invoked proviso to section 2(15) in respect of certain income which in herview were in the nature of trade and commerce and by denying the exemption available u/s 11, charged to tax the net surplus for the year aggregating to Rs 5.53.933/- as a chargeable income under the head business, disallowed depreciation claim of Rs 1,09,198/- and further charged to tax the corpus donation amounting to Rs 75,90,000/-. The JCIT also levied interest us 234B amounting to Rs 8.63,9281/- The trust is helping poor craftman who develop their skills and market their ware. The trust is only helping poor craftman and hence the proviso to section 2(15) will not apply. In any event the trust is acting only as the conduit pipe for the poor craft man to

sell their crafts and hence is not in the nature of the business." During the course of appellate proceedings, notices were issued to the appellant through 'ITBA Portal' under faceless scheme 2020 on registered email of the appellant for filing reply as under:-

Sl.No	Notice issued date	Compliance date	Appellant's response
1	07.02.2020	24.02.2020	Appellant not responded
2	12.03.2020	26.03.2020	Appellant not responded
3	09.01.2021	25.01.2021	Appellant not responded
4	17.01.2022	28.01.2022	Appellant not responded
5	31.08.2022	08.09.2022	Appellant not responded
6	20.04.2023	05.05.2023	Appellant not responded
7	19.09.2023	04.10.2023	Appellant not responded
8	17.01.2024	24.01.2021	Last and final opportunity was provided to the assessee

Accordingly, the appeal is being decided on the basis of the information available in records and the older submissions, statement of facts and the grounds of appeal .

4. Aggrieved with the assessment order, appeal has been filed before the Id.CIT(A). The Id.CIT(A) has given several notices of hearing to assessee but assessee failed to appear before him. Further, Id.CIT(A) in the light of the judgment in the case of *Ahemdabad Urban Development Authority (supra)* denied the exemptions of assessee u/s 11 of the Act and made various additions in respective assessment years. Now the assessee is in further appeal before us.

5. Before us, the Id.Counsel for the assessee submitted as under:

The Appellant is a Society registered under Societies Act and has been approved under Section 12A of the Income Tax Act as a Charitable Organization. The main purpose of the Appellant is for the uplift of the Artisans working on traditional craft in India having unique heritage skills which are to be preserved, strengthened and promoted. The aim and object of the Appellant is mainly to provide facilities and opportunities for craftsmen to exhibit their skill to Public and also provide reasonable platforms for marketing their ware, which otherwise would not be available to the craftsmen. The Appellant is also associated with World Crafts Council. The Appellant conducts various Exhibitions and Fairs where Craftsman are permitted to market their products to a wide audience. In such cases the entire sale proceeds of their products is directly received by the Craftsmen/Artisans, who pay a small amount to the Appellant towards their expenses for conducting the Fairs and Exhibitions. The Appellant also provides marketing and branding supports to artisans, helping them to develop promotional materials improved packaging and enhanced product promotion. Apart from the above, the Appellant has opened shops known as Kamala shops at Delhi, Kolkata and Chennai for selling exclusively products made by the Artisans/Craftsmen. Thus the artisans and craftsman will have a wider and upmarket client. Through these shops the Appellant purchases handicrafts made by Artisans and handmade fabrics with uniqueness and sell the same to the Public. The sale price of these products at Kamala shops are priced at cost paid to the artisans for their products plus a small margin to cover the administrative over heads of the appellant. The Financial

results of the Appellant over the years would show that the sale price has resulted in meagre or marginal profits and in some years losses. In case where there are losses the Appellant depends on donation from well-wishers to make good the shortfalls. In this manner for the assessment year 2011-12, the appellant had received total of Rs.75.90 lakhs as donations from various parties (mentioned in page 9 of the paper book) who have no connection with sale or purchase of products of the artisans and which are pure donations, and hence cannot be taken as business profits of the Appellant as done by lower authorities. The Assessing Officer has denied the exemption u/s.11 and has been taxed the excess of income over expenditure (few two items taken from the balance sheet for the assessment year 2015-16). Further, the Assessing officer has rejected the claim for depreciation. On appeal the CIT(A) has examined the issue in the context of the decision of the Supreme Court of India rendered in the case of CIT v Ahmedabad Urban Development Authority (449 ITR 1). CIT(A) has considered various observations of the Apex Court in that decision on various issues dealt with by the Apex Court and has come to the conclusion that the proviso to Section 2(15) would be applicable in the case of the Appellant and for all the years he has held that "sum total of receipts from these activities is clearly more than 20% of the total receipts. Further the Assessee is earning hefty profit from these activities. Accordingly, it is held that the Assessee is not eligible for exemption u/s.11 of the Incometax Act as a GPU (General Public Utility) charity" (see Page 17 of the assessment order for the AY 2011-12 in ITA No 943/Chny/2024). He has held similarly in all the other

years also. While the Appellant is carrying out only activities for the furtherance of its objects viz providing support and helping the artisans and craftsman in marketing their products, it could do so only by purchasing the products to help the cash flow and market the same through the outlets of the appellant. This will help the artisan and craftsman to receive the sale proceeds for the products immediately and not wait for the product to be sold in the public over a period. In achieving the objective to help the Artisans to market their products through the outlets run by the Appellant, the Appellant is collecting a marginal charge to meet their administrative expenses. This has resulted in a marginal profit and for some years has resulted in losses. As explained, the net realisation figure for all the years under appeal is given at page 23 of the paper book. This excludes the donations received in AY 2011-12). Further, while the CIT(A) has attempted to apply the ratio of the Apex Court decision, *supra*, he has omitted to consider a very important part of the decision wherein the Supreme Court has read down/clarified the manner of application of the second proviso to section 2(15). The First proviso to Section 2(15) provides that any business, trade or commerce or for services rendered in connection with business trade or commerce would disentitle the institution from claiming deduction under sec 11 and as per Section 13(8) the income of the institution would be subject to tax. To mitigate the rigors of the above provisions, Second proviso was introduced whereby if the receipts from the commercial activities is less than the amount mentioned in the second proviso for the relevant assessment year (Rs. 10 lakhs from 1.4.2009; Rs.25 lakhs w.e.f 1.4.2012 and

20% w.e.f 1.4.2016 of the total receipts). then the first proviso would not be applicable and the institution will be entitled to deduction/s 11. The CIT(A) has applied this restriction taking the entire receipt of the appellant from these activities and holding that it is more than 20% of the total receipts. However, the Supreme Court in their decision at para 179 171, 172 and 173 (in the decision reported in (329 CTR 297) (at Page 5 of the extracts of the decision submitted) has observed that performance of charitable activities without any consideration is not envisioned under the Act. Apex Court has held that while actually carrying out the objects of the GPU if some profits is generated it can be granted exemption provided the quantitative limit (not exceeding 20% of the total receipts) (or Rs. 10, or Rs.25 lakhs, as the case maybe) under the 2nd proviso to Section 2(15) for receipts from such profits is adhered to. Again in para 172, the Apex Court has stated that for achieving a general public utility object, if the charity involves itself in activities, that entail charging amounts only at cost or marginal mark up over cost, and also derive some profit, the prohibition against carrying on business or service relating to business is not attracted - if the quantum of such profits do not exceed 20% of its overall receipts (or 10lakhs or25 lakhs as the case may be, depending on the Assessment Year). They have also given other examples where Proviso to sec2(15) will not be applicable-like providing low-cost hostels to weaker segments of society, where the fee or charges recovered cover the costs plus nominal mark up; or renting marriage halls for low amounts, again with a fee meant to cover costs; or blood bank services, again with fee to cover costs, are

not activities in the nature of business. Further, while summing up conclusion the Apex Court at para 253 at A.3, has held that "the Court has clarified through illustrations what kind of services or goods provided on cost or nominal basis would normally be excluded from the mischief of trade, commerce, or business, in the body of the judgment. Thus it is clear that the lower authorities have not appreciated and applied the correct ratio of the Apex Court cited supra and they have omitted the important portion of the judgment wherein the Apex Court has accepted and permitted that institution with general public utility even it makes profits in activities in furthering its objects cannot be denied the exemption if the profit is marginal and is mainly charged for covering up the administrative cost. Therefore, it is submitted that the AO may look into the profits made by the various year and decide whether such profits derived from the activities is in excess of the limits prescribed under 2nd proviso to section 2(15) and not take the entire receipts from such activities for determination of complying with the 2nd proviso to section 2(15), as per the decision of the Apex Court. The AO and CIT(A) has disallowed depreciation claimed by the Appellant on the ground that the investments depreciable capital assets have been allowed as deduction in the year of investment and hence granting depreciation on the same assets would amount to double deduction. This issue has been considered by various High Courts and decided in favour of the Assessees. The Supreme Court has held that profits of the Trust should be determined on a commercial basis and depreciation should be allowed as a deduction till amendment to sec11(6) w.e.f.1.4.2015.

6. Per contra, the Id.DR-JCIT relied upon the orders of the lower authorities and prayed for the dismissal of the appeals filed by the assessee.

7. We have heard the rival submissions and perused the records of the appeal files, written notes filed by the Id.Counsel for the assessee, orders of the lower authorities and judgment of the Hon'ble Supreme Court in the case of *Ahemdabad Urban Development Authority (supra)*. We find that the Id.CIT(A) has proceeded ex-parte against the assessee considering for the first time the judgment of the Hon'ble Supreme Court in the case of *Ahemdabad Urban Development Authority (supra)*. in appellate proceedings which is in complete violation of the principles of natural justice. We are of the considered view that the Id.CIT(A) could have remanded the appeals to AO for fresh adjudication in the light of Hon'ble Supreme Court judgment referred supra.

8. In above factual and legal matrix, we accept the prayer of Id.Counsel for the assessee that the AO should consider the claim of exemption u/s 11 of the Act in the light of the Judgment of the Hon'ble Supreme Court in the case of *Ahemdabad Urban Development Authority (supra)*. Hence, accordingly we set aside the all these four appeals to the file of AO to do denovo assessment with respect to the claim of exemption u/s 11 of the Act as per ratio laid down by the Hon'ble Supreme Court in the case of *Ahemdabad Urban Development Authority (supra)*. Consequently, we also set aside the other issues raised viz; issue of TDS, sundry creditors, depreciation, interest u/s 244A and issue of 234B arising in respective appeals to

the file of AO to look into a fresh as per law. Needless to say that AO will do denovo assessment after affording an adequate opportunity of hearing to the assessee. Assessee is also directed to file every possible financial, evidence before the AO to substantiate its claim.

9. In result, the appeals of the assessee in ITA Nos. 943, 944, 945 & 946/Chny/2024 for Assessment Years 2011-2012, 2013-14, 2015-16 & 2016-2017 are allowed for statistical purposes.

Order pronounced in the open court on 14th August, 2024 at Chennai.

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई Chennai:

दिनांक Dated : 14-08-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF