

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2316 & 2317/Mds/2016
निर्धारण वर्ष /Assessment Year: 2008-09 & 2009-10

M/s.Tamil Nadu Urban Development Fund,
No.19 T P Scheme Road,
Raja Street Extension,
Raja Annamalaipuram,
Chennai-600 028. **Vs.** The ITO, Business Ward-II(4), Chennai, New Jurisdiction, ITO – Non-Corporate Ward-2(5), Chennai-34.

[PAN: AAATT 0859 N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Smt. Pushya Sitaraman,
Sr.Adv.
for J.Sree Vidya, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.N.Madhavan, JCIT
सुनवाई की तारीख/Date of Hearing : 30.01.2017
घोषणा की तारीख /Date of Pronouncement : 23.03.2017

आदेश / ORDER

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

These appeals are filed by the assessee against an Order dated 30.03.2016 of Commissioner of Income Tax (Appeals)-2, Chennai, in ITA No.31/CIT(A)-2/2013-14 for the AY 2008-09 and order dated 30.03.2016

of Commissioner of Income Tax (Appeals)-2, Chennai, in ITA No.174/CIT(A)-2/2013-14 for the AY 2009-10.

2.0 All the grounds of appeal are related to exemption of income u/s.61 and 161 of Income Tax Act in the hands of the assessee. The issues raised in these appeals for the AYs 2008-09 & 2009-10 and the grounds of appeal for both the Assessment years are common. Hence both the appeals are heard together and disposed off in common order for the sake of convenience.

3.0 The assessee is a Trust set up by Government of Tamilnadu and constituted a trust deed dated 29/11/2006 and filed it's return of income under the status of AOP (Trust) admitting Nil income on 22.09.2008. The AO taken up the case for scrutiny and completed the assessment u/s.143(3) on total income of Rs.18,50,37,858/-. The assessee is having excess of income over expenditure amounting to Rs.18,34,07,282/- and the assessee has claimed deduction of provisions relating to non performing assets which was disallowed by the AO and computed the Income at Rs.185037858/-. During the assessment proceedings the assessee contended that the provisions of section 61 was applicable to the assessee for the reason that the trust is revocable trust as the Unit capital contributions made by the three financial institutions can called back with accretion at any time after three years and such revocable transfer of unit contribution has to be taxed only in the hands of transferors. The

assessing officer without accepting the contention of the assessee brought the entire income at Maximum Marginal rate in the hands of the assessee.

4.0 Aggrieved by the order of the AO, the assessee went on appeal before the Ld.CIT(A) but not succeeded in appeal. Therefore, the assessee is on appeal before us.

5.0 Appearing for the assessee, Mrs.Pushya Sitaraman, Sr. Advocate submitted that the assessee is a Trust set up by Government of Tamilnadu constituted under Trust Deed on 29.11.1996. The main objective of the Trust is providing infrastructure facilities to the state through local bodies. The initial contribution of Government of Tamil Nadu is only Rs.5,000/-, it has invited ICICI, IL&FS, HDFC as contributors to the Trust with the condition that after three years if they desire, they can take back their contributions and so that they can contribute their share as well as their expertise also in development of infrastructure in the state through extending financial assistance. The objective was totally in public interest and for the development of the state. Though, they could have been a surplus in the transactions, the motive was to enhance the welfare of the public and not the profit. The assessee was constituted for the purpose of financial infrastructure projects which include Water Supply, Solid Waste Management, Sanitation, Roads, Transportation Systems, Sites and Services, Area Development and Other remunerative and non-remunerative urban infrastructure contributing to the improvement of the

living standards of the urban populations excluding power & telecom and plays an advisory role as well. As per the contributors agreement entered into with the contributors i.e. ICICI, HDFC & IL&FS and the Tamil Nadu Urban Infrastructure Financial Services Pvt. Ltd., a Public Limited Company will function as a Fund Manager to manage the trust fund. The contribution agreement set out the terms and conditions agreed with regard to contributions and allied matters under the agreement, the net income received by the Trust except the initial settlements will be distributed to the contributors in proportionate to their respective financial assistances in respect of projects of public importance. On the above set of facts, the Ld.AR of the assessee claimed that the surplus derived by the assessee does not constitute income in its hands and the provisions Sec.61 of Income Tax Act would be applicable to the surplus derived. The assessee also submitted that all the members are identifiable and assessed to tax. The income related to the AY 2008-09 received by the beneficiaries was offered to tax in the respective hands and assessed by the Income Tax Department. Therefore, he argued that taxing the same income again in the hands of the assessee would amount to double taxation of the same. The Ld.AR of the assessee also relied on the following decisions:

1. *DCIT v. India Advantage Fund-VII (2014) 036 ITR (Trib) 0304.*
2. *ITO v. India Advantage Fund-I (2015) 43 CCH 0459 BangTrib.*
3. *Jyotendrasinghji v. S.I.Tripathi & Ors. (1993) 201 ITR 0611 (SC).*
4. *CIT v. T.A.V.Trust (2003) 264 ITR 52 (Ker).*

6.0 The Ld.AR taken us to the Trust Deed Page No.5, 23, 22, 43 and 78 for referring the meaning of projects, investments, revocable trust, distribution of profits and supplementary deed for grants of Government of Tamil Nadu and explained that the Trust is not carrying on any business activity, the shares of the beneficiaries are determined and hence the trust is a revocable Trust. The Ld.AR argued that Sec.61 is applicable in the assessee's case and Sec.161(1A) has no application in the assessee's case. On the other hand, the Ld.DR relied on the lower authorities orders.

7.0 We heard the rival submissions and perused the material placed on record and we have also gone through the provisions of Sec.61 of Income Tax Act and the various clauses of Trust Deed and the contributors agreement referred by the Ld.AR. For ready reference, we reproduce Sec.61 of Income Tax Act hereunder:

Revocable transfer of assets.

61. *All income arising to any person by virtue of a revocable transfer⁸⁶ of assets shall be chargeable to income-tax as the income of the transferor and shall be included in his total income.*

From the plain reading of the Sec.61 it is clear that all the income arising to any person shall be chargeable to tax as income in the hands of the transferor and shall be included in his total income. Sec.62 of IT Act deals with the 'irrevocable for a specified period' and Sec.63 deals with the transfer definition of transfer and revocable transfer which is extracted as under:

Transfer" and "revocable transfer" defined.

⁸ ~~7~~ **63.** For the purposes of [sections 60, 61 and 62](#) and of this section,—

- (a) a transfer⁸⁸ shall be deemed to be revocable if—
- (i) it contains any provision for the re-transfer directly or indirectly⁸⁹ of the whole or any part of the income or assets to the transferor, or
 - (ii) it, in any way, gives the transferor a right to re-assume power directly or indirectly over the whole or any part of the income or assets ;
- (b) "transfer"⁸⁸ includes any settlement, trust, covenant, agreement or arrangement⁸⁸

8.0 The Ld.AR of the assessee referring to the Paper Book Page No.23 Clause No.6.03 to 6.06 of contribution agreement between the Tamilnadu Urban Infrastructure Ltd and the Tamilnadu Urban Infrastructure Financial Services Ltd (Fund Manager) dated 18/11/1996 argued that the contributors are free to cancel the units held by them. The clauses of contributor's agreement are extracted as under for ready reference:

6.03 At the end of (3) three years from the date hereof, each Contributor is entitled to call upon the TRUSTEE to cancel all or part of the Units held by it and return the nominal value thereof of such cancelled Units. The pro-rata share of that Contributor in the accumulated undistributed Net Income or Net Loss, if any, of the Trust for all the Accrual Periods and part periods, if any, will be paid to it or deducted from the payment as the case may be, on cancellation of units.

6.04 On being called upon to cancel the Units by any of the Contributors, TRUSTEE shall instruct the FUND MANAGER to so cancel the Units and refund the nominal value thereof as provided herein.

6.05 At the end of the Trust Period all the un-cancelled Units will be cancelled and the face value thereof together with the accumulated, share of undistributed Net income or after deducting the Net Loss of the Trust Fund will be paid to the respective Contributors.

If the Trust is extinguished even before the end of the Trust Period, all Unite shall be cancelled and amount paid as above.

6.06 Any Contributor wishing to call upon the TRUSTEE to cancel its Units, as above, shall give a written notice and surrender the Units held by it. The TRUSTEE shall endeavour to cancel the Unite as soon as possible, but not later than 6 (six) months of receipt of notice.

From the clauses of 6.03 to 6.04 referred above, it is evident that after three years the contributors are free to call upon the trustees to cancel any unit held by them and return whatever remains un-cancelled

will be cancelled at the Trust period and the money is returned to the contributors.

9.0 The Ld.AR also taken our attention to the Page No.43 of Paper Book wherein the objects of the Trust are defined as under:

- i. To give financial assistance to Urban Local Bodies, Statutory Boards, Public Sector Undertakings and Private Investors, for setting up Infrastructure projects in the State of Tamil Nadu. The Trust may also provide sub-ordinate loan or take equity position in the Infrastructure Projects sponsored by Private Investors on a commercial basis when the Infrastructure Projects are considered strategically important. The ultimate goal of the Trust is to become financially self sustainable and to mobilize sources to finance urban Infrastructure development. The Trust will only invest in Infrastructure Projects that at the time of the investment comply with all relevant state and central government legislation regarding environmental and social protection.*
- ii. To borrow or raise moneys or loans or receive grants or accept Contributions for the above purpose in such manner and on such terms, conditions and securities as the TRUSTEE in their discretion deem fit from time to time.*
- iii. To guarantee the performance of any contract or obligations and the payment or money or dividends and interest on any stocks, shares, or securities of any company, corporation, firm or person in any case in which such guarantee may be considered directly or indirectly to further the main objects of the Trust.*
- iv. To subscribe for, underwrite, acquire, hold and dispose of shares, stocks, debentures, debenture stocks, bonds, mortgages, obligations, securities of any kind issued or guaranteed by any company (body corporate or undertaking) of whatever nature and industry, government, trust, municipal, local authority or body of whatever nature as may be conducive to the objects of the Trust.*
- v. To invest any money of the Trust no immediately required, in any investments as may be thought proper and as may be necessary.*
- vi. To do all other things necessary and conducive to the attainment of all these objects.*

The objects of the Trust clearly indicate the public utility and improvement of infrastructure facilities for the betterment of the Urban Area and not carried on for the purpose of business.

10.0 The assessee also invited our attention to Page No.6 of the paper book for the definition of investments which is re-produced hereunder:

"Investments" means monies lent/to be lent by the TRUST only for Infrastructure Projects and includes monies placed by the Trust in instruments such as Government Promissory Notes or other Government Security as defined in Sec.2 of the Public Debt Act, 1944, stock or shares in any banking company or other public company, or stocks, funds, shares debenture, debenture stock, commercial papers, financial papers, short term or long - term corporate deposits, securitized debt, mortgage, bonds, obligations and securities of any description whatsoever.

From the above extracts of the Paper Book, which are extracted from the Trust Deed and the contributor's agreement, it is evident that the assessee is not carrying on any business with commercial motive. The beneficiaries of the trust are identifiable and the shares are determined by contributor's agreement and the contributors are free to call upon the Trust to cancel any units held by them and return the value. Therefore, the trust is revocable trust and squarely covered by section 61 of Income tax act. Accordingly, we hold that Trust is a revocable Trust and the income derived by the assessee required to be taxed in the hands of the beneficiaries in accordance with the provisions of section 61 and 161(1) of income tax act. This view is supported by the decision of the Co-ordinate Bench in the case of DCIT v. India Advantage Fund-VII cited supra relied upon by the assessee. The assessee also filed evidence regarding the admission of income by the beneficiaries in Page Nos.81 to 83 from the contributors ICICI Bank, IL&FS and the HDFC. Therefore, the appeals of the assessee for the A.Ys 2008-09 and 2009-10 are allowed and the orders of the lower authorities are set-aside.

11.0 In the result, the appeals of the assessee are allowed.

Order pronounced in the Open Court on 23rd March, 2017, at
Chennai.

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. GANESAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S.SUNDER SINGH)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 23rd March, 2017.

TLN

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