

आयकर अपीलीय अधिकरण, "डी" न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

' D' BENCH : CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं श्री

जी. पवन कुमार न्यायिक सदस्य के समक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G.PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.2172/Mds./2014

निर्धारण वर्ष /Assessment year :2010-11

M/s.Suguna Charitable Trust,
5-A,Sathyamoorthy Road,
Ram Nagar, Coimbatore 641 009.

[PAN AACTS 0371 C]

(अपीलार्थी/Appellant)

Vs Income Tax Officer,
Company Ward-I,
Coimbatore

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.R.Meenakshi Sundaram,Advocate
प्रत्यर्थी की ओर से /Respondent by : Mr.Durai Pandian,ACIT DR

सुनवाई की तारीख/Date of Hearing : 22-06-2016

घोषणा की तारीख /Date of Pronouncement : 29-06-2016

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal of the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-I, Coimbatore dated 02.06.2014 pertaining to assessment year 2010-11.

2. Appeal of the assessee is delayed by 7 days for which a condonation petition has been filed. Reasons shown are justifiable and hence delay is condoned and appeal admitted.

2.1 The grievance of the assessee in this appeal is with regard to treatment of income earned from auditorium as business income instead of treating the same as income exempted u/s.11 of the Act.

3. The facts of the case are that the assessee is a charitable trust whose income is exempt u/s.11 of the Act. The assessee trust was formed with the main objective of alleviating human suffering, eradication of literacy and poverty and imparting of sound education with opportunities for research. The assessee filed its return of income on 13.10.2010 for assessment year 2010-11 returning a taxable income of ₹Nil and claimed exemption u/s.11 of the Act, which is denied by the Revenue Authorities.

3.1. The issue in the grounds of appeal is regarding the treatment of excess receipt over expenditure on the auditorium owned by the assessee. The A.R submitted that it is an educational institution claiming exemption u/s.11 to 13 of the Act. The AO having accepted the assessee trust's predominant objective as educational in nature should have appreciated the fact that its excess income over expenditure will not attract the proviso to sec.2(15) of the Act. The main objective of assessee trust is charitable purpose, which enables the proviso to sec.2(15) of the Act and therefore, the excess of income over expenditure is not liable to tax as per the provisions of the Act. The AO treated the income generated from the auditorium as a

separate business of the trust and the excess income over expenditure was attracted by the proviso to sec.2(15) of the Act. Aggrieved, the assessee carried the appeal before the Ld.CIT(A).

3.2 On appeal, the Ld.CIT(A) observed that examining the facts of the case clearly shows that the assessee was giving the 'Suguna Auditorium Hall' on rent for different commercial activities like marriage function, exhibitions etc. The Assessing Officer held that the income from the auditorium is directly hit by the provisions of Section 11(4A) and also Section 2(15) of the Act. In the case of the appellant Trust, the predominant objective are educational in nature. Running an Auditorium in the name of "Community Hall" is in no way incidental to the objects of educational, medical and relief to the-poor. It is a fact that the surplus of income from the "Community Hall" is used for the objectives of the Trust. However, running of the "Community Hall" on commercial principles of business which is not incidental to the objectives of the Trust does not qualify for the advancement of any other public utility.

3.3 As per the provisions of Section 2(15) of the Income Tax Act, 1961, 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 or running services 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. Provided further, that the first proviso shall

not apply if the aggregate value of the receipts from the activities referred to therein is Rs. 10 Lakhs or less in the previous year. Thus, provisions of sec.2(15) are abundantly clear and does not require any interpretation. The AO has rightly treated the receipts from the running of 'community hall' as income and brought to tax. The addition made by the AO is confirmed. Aggrieved with the order of the Ld.CIT(A), the assessee is in appeal before us.

4. The Id. AR submitted that the AO treated the receipts from letting out of "Suguna Auditorium Hall" as business income and thereby invoked the provisions of sec.2(15) of the Act. It was also submitted that the assessee trust has multiple objects and none of them has profit motive or general public utility involving any activity in the nature of trade, commerce or business. It was further submitted that the AO invoked sec.13(8) and made sections 11 & 12 not applicable. It was also stated that the main objects of the Trust mentioned in Clause 2(a),(b) and (c) are educational in nature and mentioned in Clause 2(d) is medical relief to poor.

4.1 The Id. AR contended that the AO erred in treating the receipts of "Suguna Auditorium Hall" as business income and denied exemption u/s 11(4A) of the Act. The Id. AR also contended that registration u/s 12AA of the Act was granted to the assessee several years ago and there has been no question of the society indulging in any trade or commerce activities till date. The Id. AR further contended that the objects of the society are mainly education and not general public utility and as such

the proviso to sec.2(15) of the Act would not be applicable to it consequently making sec.11 & 12 of the Act inoperative was erroneous and beyond the intention of the legislation. The Id. AR was also contended that the receipt from letting were used towards educational activities, medical relief and relief to the poor which amply provides that such activity has been carried out to accomplish the primary purpose of the society.

4.2. The Id. AR argued that the question as to whether a particular activity is in the nature of business or not has to be decided on a case to case basis. He further argued that the major activity of the trust is running of the educational institution, as the quantum of receipts show. It was also argued that the rates charged for "Suguna Auditorium Hall" not a commercial rate of fees charged for Auditorium of similar dimensions. It was emphasized that the Trust has been running the educational institution simultaneously with the medical relief to poor. The surplus from the other activities was only going to meet the shortfall in the income of the educational institution. The other activities are not run on commercial lines with the objective of earning a profit and hence the surplus from these activities should be exempted from tax. It was urged that sec.2(15) of the Act has no application in the case of the assessee and plea was made to delete the additions made. He submitted that the assessee being a registered Trust, having constructed an Auditorium on the land owned by the assessee trust for the said purpose and letting out the same for social and charitable activities collecting only nominal rent as per agreed terms of grant, it sufficiently satisfied the

charitable object and, therefore, assessee's claim of exemption u/s.11 could not be rejected more so, when registration under sec.12A was granted to the assessee. He has also filed written submissions and he relied on CBDT Circular No.11/2008 dated 19th December, 2008.

5. On the other hand, the Id. DR relied on the orders of the lower authorities.

6. We have heard both the parties and perused the material on record. The issue before us is whether, on the facts and circumstances of the case and having regard to the terms of the Trust Deed, it can be said that the activities carried on by the assessee in the form of running of community hall, "Suguna Auditorium Hall" was itself held under the Trust. For this purpose it is proper to go through the objects for which assessee-Trust is formed. The objects for which the Trust established are :

"a. To spread education and for achieving the said object to establish, maintain, run, develop and improve extend, grant donations in cash or in kind and assist in the establishment, maintenance, running, development, improvement and extension of schools, colleges, workshops, industrial and technical schools, institutions for the promotions of agriculture, hostels for the benefit of students, maintain agricultural farms for the benefit of the poor..

b. To establish, maintain or acquire library or libraries for the benefit of students community.

c. To institute and award scholarships in India, for the study, research and apprenticeship for all or any of the aforesaid educational purposes.

d. To establish, maintain, run, develop, improve, extend, grant donations for and to aid and assist in the establishment, maintenance, running, development, improvement and extension of hospitals, clinics, X-ray plants, dispensaries, maternity houses, recreation centres and all similar institutions, as well afford treatment, cure, rest, recuperation and other advantages calculated to alleviate human sufferings.

e. To conduct poor feeding and generally give ailment to the poor, needy and disabled persons and to afford relief to people in distress due to natural calamities, accident, earthquake, flood, famine, epidemic and conduct or grant donations for the support of orphanages and welfare institutions.

7. It is to be noted that section 11(1) of the Act grants exemption to the income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India. There is no exhaustive definition of the words "property held under trust" in the Act; however, sub-section (4) says that for the purposes of section 11, the words "Property held under trust" "includes a business undertaking so held". Subsection (4A) as it stands amended by the Finance (No. 2) Act, 1991, with effect from April 1, 1992, is in the following terms:

“(4A) Sub-section (1) or sub-section (2) or subsection (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.”

8. Thus, if a property is held under trust, and such property is a business, the case would fall u/s. 11(4) and not u/s. 11(4A) of the Act. Section 11(4A) of the Act would apply only to a case where the business is not held under trust. Thus, there is difference between property or business held under trust and business carried on by or on behalf of the trust.

9. This distinction was recognized by the Supreme Court in the case of Addl. CIT vs. Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR 1 wherein it was observed that if a business undertaking is held under trust for a charitable purpose, the income therefrom would be entitled to the exemption u/s. 11(1) of the Act. In the present case, the finding of the CIT(A) is that running of "Suguna Auditorium Hall" was not held under trust, but it was business commenced/carried on by the Society, subsequent to the formation of trust. Though the business was commenced by the Society and it was carried on by the Trust after its formation, it cannot be said to constitute property held under trust. U/s. 11(4), it is only the business

which is held under the trust that would enjoy exemption in respect of its income u/s. 11(1) of the I.T. Act and there is a distinction between the objects of a trust and the powers given to the trustees to effectuate the purpose of the trust. Though the objects of the trust were charitable, they were mere powers conferred upon the trustees to carry on the business and the profits from such business would benefit the charitable objects. The exemption u/s. 11 cannot be granted on the reason that the business itself was not in existence at the time of formation of the trust and the property held under trust at the time of formation of the trust was not spelt out in the Memorandum of Association of the assessee. The running of "Suguna Auditorium Hall" was not at all in existence at the time of formation of the trust so as to say that the business is property held under trust. Thus, the activities relating to running of "Suguna Auditorium Hall" was not even in the contemplation of the Memorandum of Association on the basis of which the Society is formed and, therefore, could not have been settled upon trust. The business carried on behalf of a trust rather indicates a business which is not held in trust, than a business of the trust run by the assessee. In this case, the activities viz., running of community hall, was carried on by the assessee for and on behalf of the trust and it was not business held under trust. Section 11(1) of the Act confers exemption from tax only where the property is itself held under trust or other legal obligation; it does not apply to cases where a

trust or legal obligation is not created on any property but only the income derived for a charitable or religious purpose. Surplus funds of a trust, which was claimed to be exempt on the footing that it was property held under trust within the meaning of sec. 11(1) of the Act, was not property held under trust since the property from which the surplus was generated was itself not held under trust. In other words, merely carrying on business for and on behalf of the trust and applying the profits of the same for the object of the trust does not entitle for exemption u/s. 11(4) of the Act unless the business is incidental to the attainment of the objects of the trust.

10. We now proceed to consider the question whether the said activities carried on by the assessee were incidental to the attainment of the objects of the trust. We fail to see any connection between the activities relating to running of "Suguna Auditorium Hall" was carried on and the attainment of the objects of the trust. The mere fact that whole or some part of the income from running of "Suguna Auditorium Hall" is used for charitable purposes would not render the business itself being considered as incidental to the attainment of the objects. We are in agreement with the Department that the application of income generated by the business is not relevant consideration and what is relevant is whether the activity is so inextricably connected or linked with the objects of the trust that it could be considered as incidental to those objectives.

11. It was contended by the Ld. AR that the surplus funds generated from the running of "Suguna Auditorium Hall" was spent towards charitable activities and therefore, the assessee is entitled for exemption u/s. 11(4) of the I.T. Act. We are unable to accept this contention. Initially, the assessee carried on the business itself which is not at all property held under trust. This activity is a business activity and the provisions of section 11(4A) of the Act is applicable.

12. It was contended that if the profits of the business carried on by the trust are utilized by the trust for the purposes of achieving the objectives of the trust, then the business should be considered to be incidental to the attainment of the objects of the trust as observed by the Supreme Court in the case of ACIT vs. Thanthi Trust (2001) 247 ITR 785 which is as under:

"As it stands, all that it requires for the business income of a trust or institution to be exempt is that the business should be incidental to the attainment of objectives of the trust or institution. A business whose income is utilized by the trust or the institution for the purposes of achieving the objectives of the trustIn any event, if there be any ambiguity in the language employed, the provision must be construed in a manner that benefits the assessee".

13. Prima facie the above observation would appear to support the assessee's case in the sense that even if running of "Suguna Auditorium Hall" is held not to constitute a business held under trust, but only as a business carried on by or on behalf of the trust, so long

as the profits generated by it are applied for the charitable objects of the trust, the condition imposed u/s. 11(4A) of the Act should be held to be satisfied, entitling the trust to the tax exemption.

14. In our opinion, these observations have to be understood in the light of the facts before the Supreme Court in the case of Thanthi Trust (supra), wherein the trust carried on the business of a newspaper and that business itself was held under trust. The charitable object of the trust was the imparting of education which falls u/s. 2(15) of the Act. The newspaper business was incidental to the attainment of the object of the trust, namely that of imparting education and the profits of the newspaper business are utilized by the trust for achieving the object of imparting education. In this case, there is no such nexus between the activities carried on and the objects of the assessee that can constitute an activity incidental to the attainment of the objects, namely, to promote cause of charity, mission activities, welfare, employment, diffusion of useful knowledge, upliftment and education and to create an awareness of self-reliance among the members of the public etc. We are therefore, of the opinion that the observations of the Supreme Court must be understood and appreciated in the background of the fact in that case and should not be extended indiscriminately to all cases. Being so, we are inclined to hold that the assessee is not entitled for any exemption u/s. 11 of the I.T. Act.

15. Further, the assessee is not entitled for depreciation on the opening balance of written down value of the assets in the asst. year

under consideration, which were purchased in earlier years and the cost of those assets have already considered as application of income in earlier asst. year while granting exemption u/s.11 of the Act. In our opinion, this issue is squarely covered by the decision of the Tribunal in the case of M/s. Kongunadu Arts & Science College CoubnCIL in ITA No.2097/Mds/2014 dated 26.6.2015, wherein it was held as under:

"5. We have considered the rival submissions on either side and also perused the material available on record. We have also gone through the provisions of section 32 of the Act which provides for depreciation. Depreciation has to be allowed on the cost of the asset. In this case, the cost of the asset was allowed u/s 11 of the Act as application income since the assessee is a charitable institution entitled for exemption u/s 11. Therefore, the cost of the asset becomes NIL. When the cost of the asset becomes NIL, there is no question of allowing any depreciation. If the depreciation is allowed then it would amount to double deduction. The income of the charitable institution has to be computed on commercial principle in case the assessee is not claiming exemption u/s 11 of the Act. The assessee can also claim depreciation in case the exemption u/s 11 was denied by the Assessing Officer. Whatever may be the reasons, since the cost of the asset is NIL as the cost was already allowed as application of income, this Tribunal is of the considered opinion that the assessee is not entitled for depreciation. Section 32 of the Act falls in Chapter IV under computation of business income, however, section 11 falls in Chapter III which provides for incomes which do not form part of the total income. Therefore, this

Tribunal is of the considered pinion that provisions of section 11 of the Act will override section 32. In other words, if the assessee claims exemption u/s 11 under Chapter III of the Act, it cannot claim depreciation u/s 32 of the Act. Therefore, we are unable to uphold the order of the CIT(A). Accordingly, the order of the CIT(A) is set aside and that of the Assessing Officer is restored."

Accordingly, this issue is also against assessee.

16. In the result, the appeal of the assessee is dismissed.

Order pronounced on 29th June, 2016, at Chennai.

Sd/-

(जी. पवन कुमार)

(G.PAVAN KUMAR)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 29th June, 2016

K S Sundaram

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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