

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC – A” BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA Nos.1483 & 1484/Bang/2013
Assessment year : 2009-10 & 2010-11

M/s. Dakshina Kannada Koota Brahmanara Mitra Mandali, # 12, Bull Temple Road, Basavangudi, Bangalore – 560 004. PAN: AAATD 0670K	Vs.	The Assistant Director of Income Tax, Circle 17(1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Suresh Muthukrishnan
Respondent by	:	Smt. Swapa Das, Jt. CIT(DR)

Date of hearing	:	28.06.2016
Date of Pronouncement	:	26.08.2016

ORDER

Per Sunil Kumar Yadav, Judicial Member

These are appeals preferred by the assessee against the separate orders of the CIT(Appeals)-V, Bangalore dated 02.08.2013 for the assessment years 2009-10 & 2010-11. They were heard together and are disposed of by this consolidated order. Common grounds of appeal are raised by the assessee in these appeals, for the sake of reference, the grounds raised in ITA No.1483/Bang/2013 are extracted hereunder:-

“1. The order of the learned CIT[A] in so far as sustaining the additions and dismissing the appeal is opposed to law, equity, weight of evidence, facts and circumstances of the appellant's case.

2. The learned CIT[A] failed to appreciate that the society was formed to promote welfare, amenity, contact, mutual help, co-operation, social and cultural development among Koota Brahmin Communities of 14 Villages and to construct Kalyan Mantap and other infrastructure facilities for their religious necessity besides rendering assistance and facility to promote education among the poor students of 'the' community and therefore, the main object in constructing the kalyan mantap is not to construct and operate the kalyan mantap on commercial lines and mere realization of some income from such buildings without anything more done or efforts made in an organized and systematic manner to earn any such income and the same is essentially to help poor and would not imprint such receipts with the character of receipts from an activity in the nature of business, commerce or trade and therefore, the construction placed on fourth limb of definition "charitable purpose" as enshrined u/s.2[15] of the Act, disentitling the appellant from the benefits of section 11 of the Act, is misconceived and consequential finding is on erroneous appreciation of facts and law and requires to be vacated.

3. The learned CIT[A] failed to appreciate the income derived by the appellant is accidental and is not from any activity in the nature of business and the building was constructed as a matter of providing relief to the poor, which are per se charitable and is never exploited towards the advancement of any other object of general public utility involving carrying on any activity in the nature of trade, business or commerce and accordingly, the finding of the A.O. is vitiated and requires to be set-aside.

4. Without prejudice to the above, the Hon'ble DIT [E] having cancelled the registration w. e. f. the assessment year 2009-10 and not for the assessment year 2009-10, the CIT[A] ought to have granted the benefits of Section 11 of the Act, for the assessment year 2009-10.

5. The Hon'ble DIT [E] having held that the appellant is deriving income from non-charitable purposes and is not entitled to exemption u/s.11 of the Act, has lost jurisdiction over the appellant and consequently, the learned A.O. also lost jurisdiction on the appellant to assess the appellant any further and consequently, the order passed requires to be cancelled, as one passed without any jurisdiction.

6. Without prejudice to the right to seek waiver with the Hon'ble CCIT /DG, the appellant denies itself liable to be charged to interest u/s 234-B, 234-C and 234-D of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

7. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

2. The facts in brief borne out from the record are that during the course of assessment proceedings, the Assessing Officer has noted from the accounts for the year ending 31.3.2009 that there was total receipt of Rs.37,45,915 from kalyana mantapa hire charges, Rs.3,51,334 from Samskritha Mandira and Rs.1,75,500 from generator hire charges. Having noted that there is no element of charity or providing services free of cost and that assessee has earned Rs.30,72,028 net surplus for the AY 2009-10, the AO has made a proposal to the CIT for cancellation of registration earlier granted u/s. 12AA of the Act and thereafter the DIT(E), Bangalore has cancelled the registration u/s. 12AA vide order dated 21.12.2011 w.e.f. AY 2009-10. Having noted that the registration was cancelled, the AO has not allowed any exemption u/s. 11 of the Act and computed the income of

the assessee in the status of AOP. An appeal was preferred before the CIT(Appeals).

3. During the pendency of the appeal before the CIT(Appeals), an appeal was filed by the assessee before the Tribunal against the order of cancellation of registration granted u/s. 12AA of the Act and the Tribunal vide its order dated 4.1.2013 allowed the appeal of the assessee against the order u/s. 12AA(3) cancelling the registration to the assessee. It was argued before the CIT(Appeals) that since the Tribunal has taken into account all the relevant facts while allowing the appeal of the assessee and set aside the order of DIT(E) cancelling registration to the assessee, no contrary view can be taken in this appeal and the assessee be allowed the exemption from the activities undertaken by it.

4. The CIT(Appeals) re-examined the entire claim of the assessee and the definition of 'charitable purpose' as defined in section 2(15) of the act in the light of the amendments and has come to the conclusion that the amendment to section 2(15) by the Finance Act, 2008 is applicable w.e.f. 1.4.2009 relevant to AY 2009-10 in the light of Notes on Clauses to the Finance Bill, 2008. The CIT(Appeals) has also examined the nature of activities undertaken by the assessee and having noted that major activities of the assessee is hiring of kalyana mantapa and earning income therefrom, the CIT(Appeals) has confirmed the order of the AO denying the benefit of exemption u/s. 11 of the Act. The relevant observations of the

CIT(Appeals) in this regard are extracted hereunder for the sake of reference:-

“8. I have carefully considered the above written and oral submission by the Ld. AR the appellant and gone through the case laws relied upon in support of the grounds and arguments. I have also considered the Hon'ble ITAT Bangalore order dated 4.01.2013 in assessee's case (ITA No. 78/Bang/2012) allowing the appeal against order u/s 12AA(3) cancelling the registration to the assessee. Perusal of Form 10(Rule 17) dated 23.7.2009 shows that an amount of Rs.19,29,9601- has been accumulated and set apart u/s 11 (2) for the purpose of construction of building for kalyan mandir and reading room, office room and Room for students, to be utilized before 31.03.2014. The assessee has also paid advance tax of Rs. 800,000/-.

8.2 The Assessing Officer in the light of amendment to S. 2(15) by the Finance Act, 2008, as explained in CBDT Circular No.11/2008 dated 19.12.2008 has held the assessee to be engaged in pursuing an object of public utility, and that most of the objects of the Mandali would fall under any other objects of general public utility", except the object of rendering the assistance and facilities to promote education for poor students, which will fall under the limb 'relief to the poor' as no formal education is imparted by the Mandali It has also been held by Assessing Officer that during AY 2009-10 this object was not pursued as no activity of rendering any assistance or providing facilities to promote education for the poor student of the community was carried out in Bangalore or elsewhere, and no expenditure was incurred towards this end. The Assessing Officer also rebutted the contention of the assessee that after cancellation of registration u/s 12AA by the DIT(E), Bangalore, the Assessing Officer had no jurisdiction over the appellant, by referring to the CBDT notification dated 14.09.2001 granting jurisdiction to the DIT(E) Bangalore.

FACTS OF THE CASE:-

9. As per the Memorandum of association of assessee society, it has been formed by fourteen villages of South Kanara for friendly contact, social development and other objects mentioned below-

- (a) to construct buildings for religious activities and marriage halls with the close friendship and support of Koota Brahmana Society and to maintain the same properly,
- (b) to collect the funds and help the poor students to get education and to extend all other necessary help and support to them,
- (c) to undertake and maintain cultural, social and religious activities of the society,
- (d) to utilize the properties and funds collected in the name of the societies as charities, for the improvement and development of the society,
- (e) to maintain good friendship and integrity among the members of the society.

9.2 As per the bye-laws the membership of the society is limited to Koota Brahmins residing within the Bangalore Mahanagar Palike and other places.

9.3 As per the income and expenditure account of the appellant society for the year ended on 31.3.2009, it received Rs. 38,06,530/- from hiring of Kalyan Mandapa (marriage halls), Rs. 527,250/- from the Samskritha Mandir, Rs.692,190/- from Vaidhika Mandir, Rs. 19,86,752/- as interest on FDs, Rs.163,500/- from hiring of generator set, besides other receipts totaling to Rs.76,32,756/- during the relevant previous year. The net surplus is Rs. 23,76,478/- (excluding depreciation amount of Rs.677,078/-).

The balance sheet shows kalyan mantap, Vydhika Mandir (Vitthal nagar) and Samskritha Mandir as buildings, besides generator, vessels, etc as other assets. The assessee had fixed deposits with banks of Rs.242,55,569/- as on 31.3,2009. The assessee collected RS.52.51 lakhs as rent advance (towards letting of the mandaps and associated assets) and adjusted RS.52.79 lakhs towards such rent and other charges . Capital (?) Fund of Rs.304,75,535/- has been shown on liability side which includes surplus of Rs.2376,478/- , besides building donation fund of Rs.749,000/- received during the year. Admittedly, there is no application of income or funds for the education, help or support of poor students.

APPELLATTE DECISION

10. The appellant has argued in its submission dated 22.1.2013 that the income derived is from the Kalyan Mantaps, is not pursuant to any other object of general utility, and that it was constructed for alleviating the miseries of people in securing a place for performance of marriages and other functions and religious ceremonies, which many people cannot afford. Thus, it was for the purposes of helping the poor, who cannot afford to pay huge rents for luxurious Kalyan Mantaps, etc., which are run on commercial lines. It is simply income derived from the building. No activity is done while exploiting the same as a business by doing advertisement and soliciting the customers. It is also further submitted that no services are rendered and nominal charges are collected to meet the cost of maintenance. There is no profit motive at all, which is insignia of a business activity done systematically. Therefore, the receipts are not imprinted with the character of business receipts as no systematic and organized activity is undertaken to earn that income and it is done only with a view to cater to the needs of poor and needy.

10.2 In other words, the construction of kalyan mandaps was with the object of the first limb of charitable purpose, as defined in S. 2(15), i.e. 'relief for the poor', However, the same is not born out of the stated objects in the Memorandum of Association. As mentioned earlier in Para 9 above, the construction of buildings and marriage halls and their maintenance with support of the members of koota Brahmin society, is to achieve the main object of friendly contact, social development of such koota Brahmins. Thus construction of such building is an object and purpose of the appellant society by itself. There is nothing in the objects of the assessee to show that relief to the poor through Kalyan Mandaps or other buildings, is one of its objects, at all. Even the other object of helping the poor students has not been pursued. In fact the objects at clause (c) to (e) extracted in Para 9 above is to use the constructed properties for the cultural, social and religious activities of the members of the society, i.e Koota Brahmins.

10.3 There is nothing to show that Koota Brahmins of Kanara are poor or under-privileged. In fact, all the founding members are owners of businesses in Bangalore. Even the internet sites boast of rich and famous from the community. The concession rates charged from members of the Koota Brahmin society, or Brahmins as such could not be said to be providing relief to the poor. In fact, it is discriminatory, and goes against the letter and spirit of Section

13(1)(b) which prohibits tax exemption to the charitable trust or institution created for the benefit of any religious community or caste.

10.4 It is therefore held that the assessee trust has not been created or established with an object of or for the charitable purpose of the 'relief to the poor', and is not engaged in any such activity. As per the stated aims and objects, the society is formed to promote welfare, amity, contact, mutual help, co-operation, social and cultural development among Koota Brahmin community, and to construct Kalyana mandapa and other facilities for their social and religious activities. Thus the objects of the assessee society has been rightly held by the Assessing Officer to fall under the residual category of charitable purpose, i.e. 'any other objects of general public utility'.

11. The other contention of the appellant is that the assessee was not carrying on any business, and that the rent received from letting out of the Kalyan Mantapas should be assessed as income from House property. It is argued that assessee's incomes in earlier years have been treated by Assessing Officer as income from 'other sources', and now it could not be assessed as business income. It is also submitted that the income for the year under appeal is also assessed under the head 'Other sources'. While on this point the Hon'ble Madras High Court in the case of DIT [E] V. SAMYUKTHA GOWDA SARASWATHA SABHA reported in 66 DTR 211.

11.2 In my considered view, it is neither important nor relevant as to whether the income from letting out of Kalyana mandapa and other buildings, along with other assets such as generator, vessels etc. for the performance of marriage or other religious ceremonies, should be called as 'business income' or 'income from house property' or any other name. The decision of Hon'ble Madras High Court (66 DTR 211/ (2000) 245 ITR 242) relied by the appellant was considered by the Hon'ble Madras High Court in a subsequent decision in case of Paramartha Bhushanam Sri Nathalla Sampath Chetty Charities reported in (2003) 182 CTR 380. In this subsequent decision it was held by the Hon'ble High Court that decision of the Court reported in 243 ITR 439 (Madras) which held that letting of kalyana mandapas for marriage and other functions would be business activity and not rental income, cannot be ignored. It also considered that in the earlier order (66 DTR 211) the Court was examining the issue with regard to S. 13(1)(bb) and not S.11(4A). It was held by the Hon'ble High Court (182 CTR 380) that whether the income from letting out the marriage halls would be business income or income from house property

would depend on the intention of the assessee and whether it was carried out systematically to make profits out of the assets. It also held that the Tribunal erred in applying the wrong test to hold that objects of the trust was general public utility and not to earn profit, and hence letting out of marriage hall was not business activity. Para 6-10 of the order (182 CTR 380) is reproduced below:-

6. The second mistake committed by the Tribunal was that the Tribunal has considered the question whether the activities carried on by the assessee-trust in letting out the Kalyanamandapam would be business or not by applying the tests which are meant to determine whether the objects of the trusts are charitable objects or not within the meaning of s. 2(15) of the Act. The Tribunal fell in error in holding that where the object of the trust was general utility and not to earn profit, it would not lose its character of charitable purposes, merely because some profit arose out of the activities. This Court in Madras Stock Exchange Ltd. case (supra) and the Madhya Pradesh High Court in Mahakoshal Shaheed Smarak Trust's case (supra) and Ganeshram Laxminarayan Goel's case (supra) have considered the question as to what are the predominant objects of the trust and whether the activity of the trust was to carry out an object of general public utility and not to earn profit. The Tribunal therefore was not correct in applying the tests laid down in these cases in considering the question whether the activities of the trust are business activities or not.

7. It is no doubt true that Mr. Devanathan, learned counsel for the assessee relied upon the decision of this Court in CIT vs. Samyuktha Gowda Saraswatha Sabha (2000) 245 ITR 242 (Mad) and an unreported decision of this Court in Director of Wealth-tax (Exemptions) vs. A.V.M. Charities (TC No. 235 of '1997, dt. 12th Nov., 2001), wherein it was held that the income derived from letting out Kalyanamandapam was not a business income and hence, the provisions of s. 13(1)(bb) of the Act were not applicable. On the other hand, learned counsel for Revenue strongly relied on the decision of this Court in CIT vs. Halai Memon Association (2000) 162 CTR (Mad) 373 : (2000) 243 ITR 439 (Mad) where this Court held that the letting out of Kalyanamandapam for marriages and other functions and thereby making the premises available to others for limited

periods would amount to business activity and what was granted by the owner was only a licence for a specified period and the activity of the assessee would be described as business activity with the intention of earning income from the building. Though Mr. Devanathan, learned counsel for the assessee sought to distinguish the decision of this Court in Halai Memon Association's case (supra) on the ground that this Court was considering the question whether the income from letting out the Kalyanamandapam was business income or income from house property, however, we are of the view that the decision cannot be side-tracked because this Court considered the question with reference to the assessability of income from letting out of Kalyanamandapam. This Court has considered the question with reference to the head of income under which the income from letting out the Kalyanamandapam would fall. We are of the view that the decision is relevant in considering the question whether the letting out of Kalyanamandapam would amount to business activity or not.

8. As far as the decision of this Court in Samyuktha Gowda Saraswatha Sabha's case (supra) are the unreported decision of this Court in A.V.M. Charities" case (supra) are concerned, learned counsel for the Revenue would contend that this Court has held that the income derived from letting out Kalyanamandapam was not a business income and it was an income from house property with reference to the provisions of s. 13(1)(bb) of the Act and not with reference to the provisions of the s. 11(4A) of the Act. However, we are of the opinion that it is not necessary to express any opinion on the question as to whether the letting out of Kalyanamandapam was a business of the assessee as it would depend upon the intention of the assessee and whether it was systematically carried on by the assessee with intention to make profit out of the assets. The ITO has, no doubt, observed that the Kalyanamandapam was let out to general public at competitive rates and also on daily basis and hence, it was a business activity. The CIT(A) also, following an earlier order of the Tribunal in Tuluva Vellala Associations vs. CIT dt. 8th Feb., 1990, held that the income from Kalyanamandapam was business income: However, the Tribunal has not considered the question with proper perspective, but decided the question by applying a wrong test, viz., whether the predominant

object of the trust was to make profit or not. We are of the view, insofar as s. 11(4A) of the Act is concerned, it is the activity of the assessee that would be relevant.

9. Learned counsel for the Revenue also referred to the deed of settlement dt. 1st March, 1958, to show the objects of the trust. Mr. Devanathan, learned counsel for the assessee submitted that the deed was not referred to either by the AO, or by the CIT(A) or by the Tribunal and therefore, it is not open to the counsel for the Revenue to refer to the said document. We find force in the submission of the learned counsel for the assessee as the deed was not referred to by the Tribunal or by the CIT(A) or by the AO in their respective orders. Though the document was included as a part of the statement of the case on the basis of the directions given by this Court under s. 256(2) of the Act in TCP Nos. 411 to 413 of 1996 dt. 25th Feb., 1997, we are of the view, since the Tribunal or other authorities have not considered the said deed, it is impermissible for the learned counsel for the Revenue to refer to the said document.

10. Learned counsel for the assessee therefore submitted that the matter may be remitted back to the Tribunal so that the Tribunal may consider the question, for such course of action the counsel for Revenue did not object. Hence, we return the reference without answering the question of law referred to us. The Tribunal is directed to consider the question afresh in the light of the principles laid down earlier and in the light of the decisions referred to by us in our judgment. It is made clear that it is open to the parties to let in fresh evidence before the Tribunal. It is also made clear that it is open to the Tribunal to remit the matter to the lower authorities for fresh consideration.

11.3 The decision referred above have been rendered with regard to the application of section 11 (4A), to examine whether the activities of the trust was charitable within the meaning of Section 2(15) or a business activity the profits of which would not be exempt u/s 11. The distinction between 'business' held as property under trust as contemplated in Section 11(4) and that which is not held as property under trust but is carried out to meet the charitable objects of the trust as in S. 11 (4A) has been dealt as length by the Hon'ble Apex Court in Thanthi Trust case (2001) 247 ITR 785 (SC), which held that

in view of substituted sub-s. (4A) of s. 11 w.e.f. 1st April, 1992, assessee-trust was entitled to exemption under s. 11 for asst. yr. 1992-93 and thereafter in respect of its income of newspaper business which was employed to achieve its charitable objects. The Apex Court also cited a hypothetical example of a trust having 'relief to the poor' as its object, engaged in providing employment to weavers, hand looms and purchasing raw materials and selling the produce, which could be said to be an activity for charitable purpose. Construction of marriage halls and letting out the same on commercial lines could not be said to be either the means or the end of providing relief to the poor, or in any way alleviating poverty, as has been claimed by the appellant in the present case.

11.4 The amendments brought about in S.2(15) by the Finance Act, 2008 and subsequent Finance Acts, applies to a case where the trust is pursuing its object of activity in the nature of 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. In the present case, the income earned from letting of the buildings on daily basis on a commercial basis, has been applied to various expenses relating to the activity of letting out the marriage halls, and maintenance of the buildings and facilities, which again is nothing but the general public utility. Even the surplus accumulated is for construction of kalia mantapa (marriage halls) which would only be for general public utility. The assessee has substantial deposits in the bank, which earns substantial interest. These have not been applied to any charitable objects, such as relief to the poor, education or medical relief, despite being rendered surplus after considering the expenses involved in running and maintenance of marriage halls and other buildings. The hold orientation of the trust seems to be construction of more marriage halls. As stated earlier, marriage halls run on commercial lines, are neither the means nor the end for providing relief to the poor, even if people of the Koota Brahmins may have been charged a concessional rate for such utilities.”

5. Aggrieved, the assessee has preferred an appeal before the Tribunal and reiterated its contentions as raised before the CIT(Appeals). Whereas, the Id. DR has invited our attention to the Income & Expenditure

Account available at page 7 of the compilation of the assessee with the submission that out of total receipts of Rs.76,13,788, the kalyana mantapa hire charges was of Rs.37,45,915 and the interest on FDRs was Rs.17,48,006. Similarly, generator hire charges was collected at Rs.1,75,500. There was an excess of income over expenditure of Rs.30,72,028.44. From the details of activities, the assessee could not establish as to what charitable activities in fact was undertaken by it. The Id. DR has also invited our attention to the definition of 'charitable purpose' as given in section 2(15) of the Act with the submission that since the assessee is not engaged in charitable activities, exemption u/s. 11 cannot be allowed to it.

6. Having carefully examined the orders of lower authorities in the light of rival submissions, I find that against the order of cancellation of registration u/s. 12AA of the Act, an appeal was filed before the Tribunal and the Tribunal set aside the order of cancellation against which an appeal was filed before the Hon'ble High Court of Karnataka and the Hon'ble High Court has confirmed the order of Tribunal. While dealing with the issue of cancellation of registration, the Hon'ble High Court has observed that registration can only be cancelled if the activities of such trust or institution are not being carried out in accordance with the objects of the trust/institution. They have not gone into the merits of the case as to whether letting out of kalyana mantapa is a charitable activity or in the nature of business activity. But, while granting exemption u/s. 11 of the

Act, the AO is competent to examine the statement of accounts and the real activities undertaken by the assessee. If the AO is satisfied that the activities undertaken by the assessee are not of charitable nature, and in the nature of commercial activities or in the nature of business, he can deny the benefit of exemption to the assessee.

7. In the instant case, the AO has examined the nature of activities in the light of statement of accounts, balance sheet and the activities undertaken by the assessee. The CIT(Appeals) has also examined the activities of the assessee and has noted that the main activity of the assessee is letting out of kalyana mantapa on hire charges and by doing so, assessee has earned some of Rs.37,45,915. Besides, assessee has also collected generator hire charges and interest on FDRs, etc. Similarly, from the expenditure side, it is also noted that assessee has not incurred any major expenditure on account of education and medical relief to the poor. During the impugned assessment year, income over expenditure was of Rs.30,72,028.44. From a careful perusal of the Income & Expenditure account for AY 2009-10, it is noticed that the main activities of the assessee was only letting out of kalyana mantapa and whatever income over expenditure was earned during the year, it was put in FDRs to earn interest thereon. No charitable activity as defined under the Act was undertaken by the assessee. In the light of these facts, I am of the considered view that the assessee has not undertaken charitable activity during the year, therefore, it is not eligible for exemption u/s. 11 of the Act.

I accordingly find no infirmity in the order of the CIT(Appeals) and confirm his order.

8. In the result, the appeals of the assessee are dismissed.

Pronounced in the open court on this 26th day of August, 2016.

Sd/-

(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 26th August, 2016.

/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.