

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.867 & 868/Mds/2017

निर्धारण वर्ष / Assessment Year : 2009-10 & 2010-11

M/s Karl Kubel Foundation for
Child and Family,
39/741, Iyattil Road, Iyattu Jn.,
Kochi – 682 011.

v. The Assistant Commissioner of
Income Tax (Exemption),
Coimbatore.

PAN : AAATK 2501 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri P.M. Veeramani, CA

प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 29.08.2017

घोषणा की तारीख/Date of Pronouncement : 05.10.2017

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals) -2, Coimbatore, dated 30.01.2017 and pertain to assessment years 2009-10 and 2010-11. Since common issue arises for consideration in both the appeals, we heard both the appeals together and disposing of the same by this common order.

2. Shri P.M. Veeramani, the Ld. representative for the assessee, submitted that the assessee - charitable trust was registered under Section 25 of the Companies Act. The assessee-trust was also granted registration under Section 12AA of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. representative, the Assessing Officer granted exemption under Section 11 of the Act from the date of its incorporation. However, for both the assessment years, the Assessing Officer disallowed the claim of the assessee on the ground that the assessee is receiving fee from the people who are participating in the training programme. On appeal by the assessee, according to the Ld. representative, the CIT(Appeals) found that charging of fee for training and other programmes cannot stand in the way of exemption claimed by the assessee under Section 11 of the Act. Accordingly, the CIT(Appeals) directed the Assessing Officer to grant exemption in respect of the programmes conducted by the assessee in its convention hall. However, in respect of hiring charges received from the corporates for letting out its convention hall, the CIT(Appeals) found that the assessee is not entitled for exemption under Section 11 of the Act. According to the Ld. representative,

the CIT(Appeals) has also confirmed the order of the Assessing Officer with regard to training fee received from Corporates to the extent of ₹9,97,045/- for the assessment year 2009-10 and ₹5,19,634/- for the assessment year 2010-11. According to the Ld. representative, the training programmes were conducted as per object of the trust, therefore, the CIT(Appeals) has no reason to confirm the order of the Assessing Officer.

3. Referring to the claim of depreciation, the Ld. representative for the assessee submitted that when the asset was acquired, the assessee had not claimed the investment as application of funds. Therefore, the assessee is eligible for depreciation.

4. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the assessee admittedly is registered as charitable institution under Section 12AA of the Act. According to the Ld. D.R., the assessee was claiming deduction claiming that it is promoting welfare of family and child in India, especially, in respect of poor and needy. The assessee is receiving fee from the participants of programmes conducted by it. Therefore, according to the Ld. D.R., the Assessing Officer found

that the assessee is not carrying on any charitable activity, hence, he denied the exemption on the claim of the assessee.

5. Referring to the claim of depreciation, the Ld. Departmental Representative submitted that the Assessing Officer found that the Kerala High Court in *Lissie Medical Institutions v. CIT* (2012) 348 ITR 344, after seeking clarification from CBDT, found that when the assessee acquired an asset and claimed the cost as application of income, depreciation on such asset would not be allowable. The High Court further found that depreciation being a notional statutory deduction, has to be added back while computing income from the property held under trust. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

6. By way of rejoinder, the Ld. representative for the assessee submitted that recently the Madras High Court has found that the assessee is entitled for depreciation on commercial principle even though the cost of acquisition was allowed as application of income in the year in which the asset was acquired. In the case before us, according to the Ld. representative, the assessee has not claimed

the cost of acquisition as application of income, therefore, the assessee is entitled for depreciation.

7. We have considered the rival submissions on either side and perused the relevant material available on record. The first issue arises for consideration is training fee and rent received from Corporates for letting out the Convention Hall. In respect of training fee received from poor and under privileged, the CIT(Appeals) allowed the claim of the assessee and directed the Assessing Officer to grant exemption. The Revenue has not filed any appeal before this Tribunal. Therefore, in respect of fee collected from the poor and under privileged, the assessee is entitled for exemption under Section 11 of the Act and the issue attained finality.

8. Apart from the fee collected from poor and under privilege, the assessee has also collected fee from Corporates and also rent from letting out the Convention Hall. The assessee appears to have let out the Convention Hall to Corporates besides NGOs and Government Departments. In respect of hiring charges received from NGOs and Government Departments, the CIT(Appeals) allowed the claim of the assessee. The Revenue has not filed any further appeal. The CIT(Appeals) confirmed the order of the

Assessing Officer only in respect of hiring charges received from Corporates. It is not known the reason for distinction between rent received from NGOs / Government Departments and Corporates. The fact remains that the assessee is receiving hire charges from NGOs, Government Departments, other educational institutions and Corporates. The hiring charge received by the assessee is admittedly used for its charitable activity.

9. We have carefully gone through the provisions of Section 11 of the Act. The income received from property held under trust is entitled for exemption provided the same is applied for the object of the trust. In this case, it is not in dispute that the assessee applied its income for charitable activity. It is also not in dispute that Convention Hall is the property held under trust wholly for the object of the trust. Therefore, this Tribunal do not make any distinction in respect of income from NGOs / Government Departments and the income from Corporates, for letting out Convention Hall. Irrespective of the hirer, the rental / hire charges remains to be same. Therefore, this Tribunal is of the considered opinion that the hire charges or the rental income is an income derived from property held under trust. In this case, the property is Convention

Hall. When such an income was received from Convention Hall, which was held under trust, even though it is received from Corporates is eligible for exemption under Section 11 of the Act. The very fact that the Revenue has not disputed the hire charges from NGOs and Government Departments shows that the property, namely, Convention Hall, is held under trust and rental income is eligible for exemption under Section 11 of the Act on application for the object of the assessee-trust. Hence, the hiring charge said to be received from Corporates also is eligible for exemption under Section 11 of the Act provided it is applied for carrying out the object of the assessee institution. Therefore, we are unable to uphold the orders of the lower authorities. Accordingly, the orders of the authorities below are set aside and the Assessing Officer is directed to grant exemption under Section 11 of the Act in respect of the hire charge received from Corporates also provided the same is applied for the object of the trust or accumulated as per provisions of law.

10. The next issue is disallowance of ₹9,97,045/- for the assessment year 2009-10 and ₹5,19,634/- for the assessment year 2010-11 said to be received from Corporates towards training fee. The assessee is receiving training fee from poor and under

privileged. The assessee is also receiving training fee from NGOs and Government Departments. In respect of the training fee received from NGOs and Government Departments, the CIT(Appeals) directed the Assessing Officer to allow the claim of exemption under Section 11 of the Act. The CIT(Appeals) further found that running of training programme is incidental to the main object of the assessee-trust. The CIT(Appeals) also found that running of training programme for degraded group and members of NGOs and Government Departments is also incidental to the achievement of activities of the assessee foundation. From the order of the CIT(Appeals) it appears that some of the training programmes were run by the assessee-trust without charging fee. Some of the programmes were conducted on charging fee from the members of NGOs and Government Departments. The CIT(Appeals) allowed the claim of the assessee in respect of fee charged from NGOs and Government Departments. Therefore, this Tribunal has no reason to discriminate the fee received from Corporates.

11. When the NGOs and Government Departments are deputing their employees / members for taking training in the assessee-

foundation, the Corporates are also equally eligible to depute their employees. The training provided by the assessee are on the subjects like climatic change and livelihood issues, sanitary workers solid waste management, ageing gracefully, herbal way health way, Tribal welfare, health awareness programme for self-help group, women and health livelihood development, etc. When these training programmes were given to the members of NGOs and Government Departments, the CIT(Appeals) found that the training fee is eligible for exemption under Section 11 of the Act. When such training was offered to the Corporate people, this Tribunal is of the considered opinion that the same effect will have in the society. Therefore, the assessee received training fee from Corporates in the course of its activity, hence, it is eligible for exemption under Section 11 of the Act on application to the object of the trust. Therefore, the orders of the authorities below are set aside and the Assessing Officer is directed to allow ₹9,97,045/- for the assessment year 2009-10 and ₹5,19,634/- for the assessment year 2010-11 being the training fee received from Corporates provided the same was applied for object of the trust or accumulated as per the provisions of Income-tax Act.

11. Now coming to the claim of depreciation, the Assessing Officer disallowed the claim of the assessee by placing reliance on the judgment of Kerala High Court in Lissie Medical Institutions (supra). In the case before Kerala High Court, the assessee claimed the cost of acquisition of asset as application of income. In the case before us, the assessee claims that the cost was not claimed as application of income. It is not known when the assessee acquired the asset. There is no document available on record to verify whether the assessee claimed cost of acquisition as application of income under Section 11 of the Act. Moreover, the copy of latest judgment of Madras High Court relied on by the Ld. representative is also not available before this Tribunal. When the assessee claims that it is a charitable institution, whether Section 32 is applicable or not also needs to be examined. Since this Tribunal has no occasion to go through the latest judgment of Madras High Court said to be passed recently, the matter needs to be re-examined by the Assessing Officer. Accordingly, the orders of the authorities below are set aside and the claim of depreciation is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh after considering the latest judgment of Madras High Court and thereafter decide the

issue in accordance with law, after giving a reasonable opportunity to the assessee.

12. In the result, both the appeals filed by the assessee are partly allowed for statistical purposes.

Order pronounced on 5th October, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 5th October, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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