

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

' D' BENCH : CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं

श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No.3127/Mds./2016

(निर्धारण वर्ष / Assessment Year :2013-14)

M/s.SNR Sons Charitable Trust,
395,Sarajini Naidu Road,
Sihdapudur,
Coimbatore 641 044.

Vs. The DCIT(Exemptions),
Race Course Road,
Coimbatore.

PAN AABTS 1080 P

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.Saroj Kumar Parida,Advocate

प्रत्यर्थी की ओर से /Respondent by : Ms.Vijayaprabha,JCIT, DR

सुनवाई की तारीख/Date of Hearing : 12-10-2017

घोषणा की तारीख /Date of Pronouncement : 12-10-2017

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)-2, Coimbatore dated 28.07.2016 pertaining to assessment year 2013-14.

2. The assessee has raised the following grounds for adjudication.

1. The order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case.
2. The Commissioner of Income Tax (Appeals) failed to consider the facts and circumstances of the Assessee's case and also the scope of Assessment under the provisions of law.
3. The Commissioner of Income Tax (Appeals) erred in holding that the rental income from letting out of Community Hall is in the nature of business income brought to tax as proviso to Section 2(15) of the Act is attracted.
4. The Commissioner of Income Tax (Appeals) ought to have appreciated that letting out of immovable property is assessable as income from house property which will not fall under any types of income contemplated under proviso to Sec.2(15).
5. The Commissioner of Income Tax (Appeals) failed to establish that the receipts are not from any activity which involves in the nature of Trade, Commerce or Business or from any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration.
6. The Commissioner of Income Tax (Appeals) erred in not considering the submission made by the Assessee in proper perspective.
7. The Income from Community Hall cannot be brought to tax as it is fully utilized for the objects of the Trust for which the Trust was established and no excess income was determined. Therefore the decision of the supreme Court [in the Thanthi Trust[(2001) 247 ITR 785/115 Taxman 126(SC)] and Surat Art Silk Cloth Manufacturers Association ((1980)121 ITR 11(1979) 2 Taxman 501)] would squarely apply to the facts and circumstances of the Assessee.
8. Therefore the conditions for exemption contemplated under section 11(4) and (4A) of the Income Tax Act is applicable for the facts of the

Assessee and consequently the Income from Community Hall is exempt under section 11 of the Act and therefore assessing the income from Community Hall as business is not within the four corners of law.

3. The brief facts of the issue are that the Id. Assessing Officer charged income of the trust from a community hall to tax. The background facts are that the assessee is a Registered Charitable Trust u/s 12A, running medical and other educational institutions. The Trust owns a community hall which is rented out for marriage purposes and in the return filed for this year, income derived from the community hall was also claimed exempt u/s 11 along with other incomes. The return was taken up for scrutiny. During the assessment proceedings, the AO took up the issue of exemption claimed in respect of income from community hall and called upon the assessee to substantiate the claim of this exemption. The assessee filed various submissions and arguments to the effect that running of Kalyana Mantapam was incidental to the achievement of trust objectives of providing education and medical relief and that this income was in the nature of "income from House Property". The AO was however not convinced with the arguments of the appellant and took a strong view that running of the community hall is a separate business activity and it does not fit in to any activity incidental to providing education, medical relief or any relief to the poor. On the other hand, it is an activity towards advancement of general public utility and proviso inserted to section 2(15) clearly covers this activity. He further observed that other conditions for treating it as an activity outside the

purview of charitable purpose are satisfied in view of it being run on commercial lines. The AO also held that the activity of letting out community hall is an activity totally unrelated to charitable objects of the Trust and in such circumstances, provisions of section 11(4A) also make the appellant ineligible to exemption u/s 11 in respect of income from community hall. Therefore, the AO denied exemption and brought net income from community hall Rs 96,33,743/- to tax. Aggrieved by this order, the assessee carried the appeal before the Ld.CIT(A). On appeal, the Ld.CIT(A) upheld the action of the Id. Assessing Officer by following the decision of Chennai Tribunal in assessee's own case in the assessment year 2010-11. Against the order of Ld.CIT(A), now the assessee is in appeal before us.

4. We have heard both the parties and perused the material on record. It is noticed that similar issue was decided by this Tribunal in assessee's own case for Assessment Year 2010-11 in I.T.A.No.2630/Mds./2014 vide order dated 12.06.2015 wherein the Tribunal held that:-

"From the above it is apparent that running of the community hall by the assessee is not an activity relatable to education, medical relief, and relief to poor as provided under the Act. At the most, it can be stretched to be an activity for advancement of any other objects of general public utility. However, the materials on record show that this activity of the assessee of hiring out the community hall exclusively for marriages and high level consumer exhibition at a pre-determined fee is a commercial in nature. It cannot be considered

as an activity related to or incidental to education, medical relief, relief to poor etc. Moreover it is apparent that the community hall is not attached or forming part of the educational institutions or hospitals owned by the assessee whereby it can be said that during the spare time when the asset is not used for education/medical relief etc., it is commercially exploited. If the asset is used for education/medical relief etc., and during the spare time the asset is commercially exploited, in such event, probably it could be said that such activity to be incidental to the objects of education/medical relief etc., of the assessee trust. In the given case before us the Kalyana Mandapam is a distinct and separate asset specially designed to conduct such commercial activity. Looking at the nature of this activity conducted by the assessee trust, it can be considered only as a commercial activity of the assessee trust. Further the case laws relied by the assessee would not be applicable to the case of the assessee, because Section-2(15) of the Act was subsequently amended. Further, Section-11(4) of the Act provides as follows which has been pointed out by the Ld. Assessing Officer in his order:-

Section.11(4) For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the [Assessing] Officer shall have power to determine the income of such undertaking in accordance with the provisions of the Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes."

In the case Gujarat Industrial Corporation Vs. ACIT in 129 ITD 73 (2010) Ahmadabad it has held that the word "includes" occurring at section 11(4) means that there is a reference of property or business of a trust which is a business undertaking in addition to the other properties of the trust. In this

given case before us, the community hall or marriage hall whatever may be called is the asset of the separate business of the assessee which falls apart from the other charitable activities conducted by the assessee. Therefore considering the facts and circumstance of the case, we do not find it necessary to interfere with the order of the Revenue."

5. Respectfully applying the ratio laid down in the above Order of Tribunal, we are inclined to dismiss all the grounds raised by the assessee in its appeal.

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

Order pronounced in the open court after conclusion of hearing on 12th October, 2017, at Chennai.

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 12th October, 2017.

K S Sundaram

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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