

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.177/Coch/2017 : Asst.Year 2011-2012

ITA No.178/Coch/2017 : Asst.Year 2012-2013

The Greater Cochin Development Authority S.A.Road, Kadavanthra Ernakulam – 682 020. PAN : AAAJT1797M.	Vs.	The Asst.Commissioner of Income-tax (Exemption) Kochi.
(Appellant)		(Respondent)

Appellant by : Sri Sebi George, CA
Respondent by : Sri. A.Dhanaraj, Sr.DR

Date of Hearing : 27.02.2018	Date of Pronouncement : 01.03.2018
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ORDER

Per George George K., JM

These appeals at the instance of the assessee are directed against two orders of the Commissioner of Income-tax (Appeals) both dated 28.02.2007. The relevant assessment years are 2011-2012 and 2012-2013.

2. Brief facts of the case are as follows:-

2.1 The assessee is a Trust registered u/s 12A of the Income-tax Act, 1961. It is an authority constituted by the Government of Kerala for planning and development of Greater Cochin area. For the A.Ys 2011-2012 and 2012-2013, the return of income was filed after claiming exemption u/s

11 of the I.T.Act. The assessments were completed wherein the assessee was denied the exemption claimed u/s 11 of the I.T.Act. The Assessing Officer invoked proviso to section 2(15) of the Income-tax Act and held assessee's activities are not charitable in nature.

3. Aggrieved by the denial of exemption u/s 11 of the I.T.Act, the assessee preferred appeals before the first appellate authority. The CIT(A) following the judgment of the Hon'ble Kerala High Court in assessee's own case for A.Ys 2009-2010 and 2010-2011, rejected the claim of exemption u/s 11 of the I.T.Act. The CIT(A) further held that assessee is not entitled to benefit of Sec.10(20) of the I.T.Act as assessee cannot be considered as a local authority.

4. Aggrieved by the orders of the CIT(A), the assessee had filed the present appeals before the Tribunal. The assessee has raised identical grounds for A.Ys 2011-2012 and 2012-2013, except for variance in figures. Hence grounds relating to A.Ys 2011-2012 are reproduced below:-

"1. CIT (A) dismissed the appeal on the ground that the appellant's activity is not qualify to be charitable purpose and it is not a local authority as defined in the Constitution of India, hence not eligible for exemption U/S 10 (20).

2. The CIT (A) has not considered the broad object explained in the Town Planning Act. It clearly states the activities which are come under the purview of

Charitable purpose under Sec. 2(15) .

3. The constitution, object and scope of the appellant is conferred from the "Town Planning Act of 1932 (1108ME) as amended in 1969. The appellant was incorporated on 23rd January 1976, by notification in the Kerala Gazette. The said Gazette provided that" to carryon the provisions of the Town Planning Act, 1932 (1108ME), the Govt of Kerala hereby constitute an Authority called "The Greater Cochin Development Authority" in said areas, of

- 1. The Cochin Corporation*
- 2. Perumbavoor Municipality*
- 3. Alwaye Municipality*
- 4. North Parur Municipality*
- 5. Kuzhippilly, Pallippuram, Edavanakkad, Nayarambalam, Njarakkal, Elamkunnappuzha, Chellanam, Kumbalangi, Mulamthuruthy, Thiruvankulam, Trippunithura, Cheranelloor, Kadamakudy, Kalamassery, Thrikkakkara, Kumabalam, Maradu, Udayamperur, Vadavukode-puthencuriz, Vazhakkulam, Choornikkara, Edathala, keezmadu, Changamanad, Sreemoolanagaram, Alangad, Kadungalloor, Eloor, Ezhikara, Kottuvally, Nedumbassery, Angamaly and Kanjoor Panchayaths.*

4. The said Town Planning Act split out in I to X chapters. Chapter II, comprising Sec.3 & 4 explains the Town-Planning Schemes and infrastructure development, which is the main object and activities of the appellant. Again Chapter III & IV comprising Sec.5 to 25 of the said Act the procedure to be followed to carry out the activities. Chapter VII explains the power of Land Acquisition coupled with power conferred under Land Acquisition Act. Chapter IX-A, comprising Sec. 53 A to S3 I explains the constitution of the Appellant.

5. We again humbly submit that, it is very important to consider the object specified in 3 (m) which is reproduced below;

The preservation of objects and building of archaeological or historic interest or of natural beauty or actually used for religious purposes or regarded by the public with special religious veneration.

6. Among other objects specified in Sec. 3(a) to 3(q) of said Act, 3(m) is very important with regard to Sec. 2(15) of Income Tax Act, 1961 as it covers object of preservation of environment and preservation of monuments or places or object of artistic or historic interest, which does not fall in "any other object of general public utility". This object also covers preservation of religious interest.

7. The CIT (A) also not considered the manner in which the income was assessed. The CIT (A) has not referred the detailed Annual Accounts for the F.Y 2010-11 produced by the appellant. The Appellant has classified the revenue and expenses in different head, and prepared the accounts on cash basis. This was regularly followed by the appellant. The summary of revenue & Expenses are

Revenue

Part I	Revenue Account	Rs.16,20,03,076.67
Part II	Capital Account	Rs.8,01,98,427.00
Part III	Debit, Deposit & Suspense A/c	Rs. 5,93,83,004.50
	Total Receipts (I+II+III)	Rs.30,15,84,508.17

Expenditure

Part	I	Revenue Account	Rs.8,65,29,731.99
Part	II	Capital Account	Rs.20,67,57,951.00
Part	III	Debit Head	Rs.3,73,83,997.00
		Total Expenditure (I+II+III)	Rs.33,06,71,679.99

The appellant has excess of Expenditure over Income Rs.2,90,87,171.82, against which NIL income was filed, after claiming exemption u/s 11. The A.O has denied expenditure of Rs.8,00,00,000 which was not justified in the assessment order, the same was also upheld in appeal.

8. The A.O has wrongly stated that Rs .15,00,00,000 was given to Vyttila Mobility Hub .but the appellant have paid Rs. 7,50,00,000.00 as interest free loan, which is separately shown the accounts.

9. We further submit that appellant's registration U/s 12 A is still in force and not cancelled by the Dept., and the status was accepted. There are no changes in the activities carried on by the appellant. The appellant is the back bone of developing Kochi as an important town in India and also booming as commercial capital of Kerala. The income from activities such as renting commercial centres, supervision, development of commercial spaces etc are used for public purpose as it is done by the Government in similar activities.

10. We humbly submit that, the H'ble Allahabad High Court in CIT Vs. Lucknow Development Authority, 2013, it was held that development authorities will not be hit by the proviso to sec 2 (15). Hence denial of exemption in appellant's case is not justified.

11. We also submit the decision of ITAT (Delhi) in *Moradabad Development Authority Vs Department of Income tax 2016*. In this case the ITAT observed that, where the main object of the town planner has been held to be charitable and registration U/S 12 A is in existences, and object was never changed, the exemption u/s 11 rejected by the A.a is not just and proper. In this case, Tribunal dismissed the appeal filed by the Revenue

12. We plea before the Tribunal that, the assessment for year 2011-12 and subsequent dismissal of appeal by the CIT (A) was not just and proper, based on the broad object and developmental activities of the appellant, which akin to the activities of Government in public work, and liable to be squashed. The appellant is rightful for allowing the exemption u/s 11. Hence the tax liability of Rs. 2,20,70,150.00 to be nullified.

13. Further, the refund of prepaid taxes (TOS) allowed u/s 143(1) was Rs.60,52,680.00, the assessment u/s 147 was further reduced the prepaid taxes to Rs.55,02,439.00, thereby prepaid taxes are reduced by Rs.5,50,241.00, for which no justification was given the order. We plea before the Tribunal to allow the prepaid taxes rejected, with interest.

14. We also submit before the Tribunal that the Object of the appellant covers wide area of activities including charitable purpose as per Sec.2(15). We request that the validity of object 3 (m) of the said Act with Charitable Purpose defined in the Income Tax Act.

15. We also request the Tribunal to allow other grounds which is just and proper to establish the claim of the appellant."

5. As regards grounds relating to exemption u/s 11 of the I.T.Act, the learned AR fairly conceded that the issue in question is covered against the assessee by the judgment of the Hon'ble Kerala High Court in assessee's own case for A.Ys 2009-2010 and 2010-2011. It was also conceded that assessee is not a local authority for claiming exemption u/s 10(20) of the I.T.Act.

5.1 The learned AR's only contention before us was that the computation made by the Assessing Officer in the assessment order is not in accordance with the receipts and expenditure statement maintained by the assessee.

5.2 The learned Departmental Representative, on the other hand, submitted that the issue of computation of income was never a subject matter of litigation before the CIT(A), and hence, the same cannot be raised before the Tribunal.

6. We have heard the rival submissions and perused the material on record. As regards the claim of exemption u/s 11, the learned AR has fairly conceded that the issue is covered against the assessee by the judgment of the Hon'ble Kerala High Court in assessee's own case for A.Ys. 2009-2010 and 2010-2011. Hence, the grounds relating to the claim of exemption u/s 11 are rejected. Further, we notice that assessee cannot be termed as a local authority, as enumerated in section 10(20) of the I.T.Act, hence benefit under the said section cannot be granted to the assessee.

6.1 As regards the computation of income, we find that assessee had not raised any grounds on said issue before the CIT(A). Therefore, the issues raised as regards the computation of income does not arise out of the order of the CIT(A). The issues that does not arise out of the order of CIT(A) cannot be subject matter of adjudication by the Tribunal unless it is a pure question of law or issues, which does not require examination of fresh facts. In the instant case, the issue raised for the first time with reference to computation of income is not a legal issue, but a pure factual issue, which were never agitated before the A.O. nor the CIT(A). Therefore, the issue of computation of income cannot be raised for the first time before the Tribunal. Hence, the grounds relating to the computation of income made by the assessee for A.Ys 2011-2012 and 2012-2013 are rejected.

7. In the result, the appeals filed by the assessee are dismissed.

Order pronounced on this 01st day of March, 2018.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 01st March, 2018.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT (Exemption) Kochi.
4. The CIT(A) – II, Kochi.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin