

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1090/Chny/2018

निर्धारण वर्ष / Assessment Year : Not applicable

M/s Arulmigu Devi Karumariamman
Thirukoil, Thiruverkadu,
Poonamalle Taluk, Chennai - 600077

v. The Income Tax Officer
(Exemptions),
Chennai - 600 034.

PAN : AADTA 3737 H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri N.V. Balaji, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri S. Nataraja, JCIT

सुनवाई की तारीख/Date of Hearing : 26.09.2018

घोषणा की तारीख/Date of Pronouncement : 16.11.2018

आदेश /ORDER

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Exemptions) dated 03.11.2016 as modified by order dated 28.12.2017.

2. Shri N.V. Balaji, the Ld.counsel for the assessee, submitted that the assessee is a Hindu religious temple situated in the

outskirts of Chennai since 1943. According to the Ld. counsel, the assessee temple was under the management of individuals till 1963. In the year 1963, the Hindu Religious and Charitable Endowments took over the administration. The assessee-temple was also notified under Section 80G(2)(b) of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. counsel, the assessee-temple was granted approval under Section 10(23C) by an order dated 08.05.1989. It was also renewed subsequently from time to time till assessment year 2014-15. By an order dated 03.11.2016, the CIT (Exemptions) granted approval from the assessment year 2016-17. Therefore, according to the Ld. counsel, the Assessing Officer denied exemption under Section 10(23C) of the Act for the assessment year 2015-16 on the ground that there was no approval for the assessment year 2015-16. According to the Ld. counsel, what was sought for by the assessee is renewal of approval granted earlier in the year 1989. Therefore, the CIT (Exemptions) ought to have renewed the approval under Section 10(23C) of the Act from the year in which the earlier approval expired.

3. Shri N.V. Balaji, the Ld. counsel for the assessee, further submitted that as per the procedure, earlier, every year the approval under Section 10(23C) of the Act has to be renewed. Subsequently, the CBDT by its circular No.7 of 2010 dated 27.10.2010 clarified that it is one time approval which would be valid until it was withdrawn. The requirement of periodical renewal of approval was dispensed with. Therefore, according to the Ld. counsel, the CIT (Exemptions) ought to have granted approval from the assessment year 2015-16. On a query from the Bench, when the assessee-temple was under the administrative control of Hindu Religious and Charitable Endowments Department of Government of Tamil Nadu, how it becomes a taxable unit under the provisions of Income-tax Act?, the Ld.counsel clarified that even though the administration and management of the assessee-temple was under the officers appointed by Hindu Religious and Charitable Endowments Department of Government of Tamil Nadu, the assessee-temple is an independent religious institution as such, hence, it is an assessable unit under the provisions of Income-tax Act. From the year 1985, the CIT (Exemptions) also granted approval under Section 10(23C) of the Act as religious institution regularly.

4. The Executive Officer / Joint Commissioner of the assessee-temple was also present in the court during the course of hearing. The Executive Officer / Joint Commissioner of the assessee-temple clarified that she is a Government employee under the Hindu Religious and Charitable Endowments Board / Department. She was appointed by the Government and salary was paid from Consolidated Fund of State Government. However, as per the provisions of Hindu Religious and Charitable Endowments Act, 1959, every temple has to reimburse the expenditure towards payment of salary and other benefits to the Government. Referring to Section 92 of Hindu Religious and Charitable Endowments Act, 1959, the Executive Officer / Joint Commissioner submitted that to reimburse the expenditure incurred by the Government, towards the salary and allowances of the officers appointed by it, each temple has to contribute 12.5% of its income to the Government. Even though, initially the salary was paid by the Government to the Executive Officer and other officers and employees appointed by the Government, in fact, it was reimbursed by respective temples in the State. Therefore, the Executive Officer / Joint Commissioner of the assessee-temple clarified that the assessee-temple is a

religious institution, hence, eligible for registration under Section 10(23C)(v) of the Act. She also clarified that the assessee-temple is an assessable unit under the provisions of Income-tax Act. The Executive Officer / Joint Commissioner of the assessee-temple has also clarified that all the temples in the State of Tamil Nadu is an independent temple / religious institution and assessable as such under the provisions of Income-tax Act. The Executive Officer / Joint Commissioner of the assessee-temple has also clarified that to her understanding and knowledge, all the temples in the State are filing return of income regularly. It is also clarified that the object of the assessee temple is provided in Section 66 of Hindu Religious and Charitable Endowments Act, 1959.

5. On the contrary, Shri S. Nataraja, the Ld. Departmental Representative, submitted that all the temples in the State of Tamil Nadu and Union Territory of Puducherry are independent religious institutions and they are liable for assessment as such under the provisions of Income-tax Act. According to the Ld. D.R., it is open to the independent temples to apply for registration either under Section 12AA as religions institution or apply for approval under Section 10(23C)(v) of the Act before the CIT (Exemptions).

Referring to the communication said to be received from CIT (Exemptions), the Ld. D.R. clarified that all the religious and charitable institutions are now under the control of CIT (Exemptions) at Chennai. As per the said communication said to be received from CIT (Exemptions), Chennai, the Ld. D.R. submitted that there are about 35,793 temples in the State of Tamil Nadu and Union Territory of Puducherry. He also clarified that many temples are performing "Orukala Poojai" and their gross total income is less than ₹2.5 lakhs, hence, they are not liable to file return of income. The Ld. D.R. further clarified that about 782 temples in the State of Tamil Nadu and Union Territory of Puducherry have obtained Permanent Account Number, out of which, 43 temples are in Chennai Range and 739 temples are in Coimbatore Range. The Ld. D.R. further clarified that out of 782 temples which obtained Permanent Account Number, only 131 temples filed return of income and other temples have not filed any return of income. On a query from the Bench whether any action was taken or initiated against those temples which have not filed return of income?, the Ld. D.R. clarified that such information is not available with CIT (Exemptions) immediately and it has to be collected from the respective Assessing Officers of the range.

6. The Ld. Departmental Representative further submitted that the assessee-temple is a religious institution, therefore, it was approved as religious institution under Section 10(23C)(v) of the Act from the year 1989. However, according to the Ld. D.R., the assessee has not applied for renewal of approval granted earlier. Therefore, the application filed in 2016 was treated as application for fresh approval under Section 10(23C)(v) of the Act and the CIT (Exemptions) has accordingly granted approval from the assessment year 2016-17 by an order dated 03.11.2016. This order was subsequently modified by the CIT (Exemptions) by an order dated 28.12.2017. Since the renewal application was not filed in time, according to the Ld. D.R., the CIT (Exemptions) has rightly granted fresh approval from the assessment year 2016-17. Therefore, according to the Ld. D.R., the assessee cannot claim any retrospective effect of approval under Section 10(23C)(v) of the Act. In other words, according to the Ld. D.R., the assessee cannot claim any approval from the assessment year 2015-16.

7. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee-temple is one of the temples in the State of Tamil Nadu, which is

being managed by Hindu Religious and Charitable Endowments Department of the Government of Tamil Nadu. In order to examine the status of the assessee-temple, we need to go through the legislative history of the religious institutions in the State.

8. Before independence, former rulers and British Government asserted their sovereign power to visit endowments and to prevent and redress abuses in the management. In 1817, the British Government proclaimed Madras Endowment Escheats Regulation No.VII of 1817 conferring general superintendence on all the endowments of Hindu temples in the erstwhile Board of Revenue. The erstwhile Board of Revenue had to ensure that all such endowments were duly appropriated to the purpose for which they were destined by the Government or individuals by whom such endowments were made. The Board of revenue was authorized to appoint local agents. The local agents so appointed by the Board of revenue could not function properly owing to lack of mechanism to enforce their instructions and orders. Accordingly, Regulation VII of 1817 was repealed by an Act XX of 1863. Under Act XX of 1863, local temple committee was formed as a successor to Board of Revenue. This local temple committee also could not function

properly. As a consequence, a separate legislation was passed by the erstwhile Madras Legislature, known as Madras Hindu Religious and Charitable Endowments Act, 1927. Hindu Religious and Charitable Endowments Board was formed under the above Act. Powers were conferred on the said Board to frame schemes for management of temples. In case the temple or endowment was mismanaged, an authority was conferred on the Hindu Religious and Charitable Endowments Board to take over the administration by making a statutory notification

9. Subsequently, the Madras Hindu Religious and Charitable Endowments Board constituted under Madras Hindu Religious and Charitable Endowments Act, 1927, was abolished by enacting another act known as Madras Hindu Religious and Charitable Endowments Act, 1951. By Madras Hindu Religious and Charitable Endowments Act, 1951, the administration of religious institutions and charitable endowments were vested in a hierarchy of officers with defined jurisdiction and headed by a Commissioner. The Act empowers the authorities concerned to appoint trustees in the place of hereditary trustees who were not functioning. An area committee was also formed for all the non-listed temples.

10. The Madras Hindu Religious and Charitable Endowments Act, 1951 was subsequently repealed by Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. In fact, Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 consolidates the law relating to the administration and governance of Hindu religious and Charitable endowments and institutions. The provisions of Hindu Religious and Charitable Endowments Act, 1959 were also extended to Jain religious institutions or endowments. Hierarchy of officers were appointed for managing the religious institutions, temples, endowments and math, etc. In the State of Tamil Nadu and the Union Territory of Puducherry, there are about 38000 temples are in existence, besides endowments, math, arakattalai and trusts which are established for providing service to various temples in the State. Before going into the issue arises in this appeal, we have to see what is a temple. The word "temple" is defined in Section 7(20) of Hindu Religious and Charitable Endowments Act, 1959 as follows:-

"temple" means a place by whatever designation known, used as a place of public religious worship and dedicated to, or for the benefit of, or used as of right by, the Hindu community or of any section thereof, as a place of public religious worship"

“Religious institution” is defined in Section 7(18) of Hindu Religious and Charitable Endowments Act, 1959 as follows:-

“Religious institution” means a math, temple or specific endowment and includes:-

- (1) a samathi or brindavan or
- (2) any other institution established or maintained for religious purpose.”

11. “Religious charity”, “religious endowment”, “Specific endowment” are also defined in Section 6(16), 6(17) and 6(19) of the Hindu Religious and Charitable Endowments Act, 1959. Therefore, a temple is a religious institution independently besides Samadhi, brindavan, etc. The word “Samadhi” “brindavan” are also defined in Hindu Religious and Charitable Endowments Act, 1959. In view of the above, such religious institutions, namely, temple, Samadhi, brindavan, math, arakattalai, endowment are independent assessable unit under the Income-tax Act. The question now arises for consideration is whether these temples, math, endowments, arakattalai, Trust which are being administered and managed by the officers of Hindu Religious and Charitable Endowments Department are part of Government Department or it is an independent assessable unit as such? It is clarified by both the Ld. counsel for the assessee-temple as well as the Ld. D.R. that every religious

institution, temple, math is an independent unit of assessment under the Income-tax Act even though they are administered and managed by Government officers appointed by Hindu Religious and Charitable Endowments Department of Government of Tamil Nadu.

12. To clarify further, we have carefully gone through the provisions of Hindu Religious and Charitable Endowments Act, 1959. Section 12 of Hindu Religious and Charitable Endowments Act, 1959 clarifies that the Commissioner, Additional Commissioner, Joint Commissioner, Deputy Commissioner, Assistant Commissioner and other officers and servants including Executive Officers of religious institutions employed shall be the servants of Government and their salary, allowance, pension and other remunerations shall be paid in the first instance out of Consolidated Fund of the State. The Commissioner subsequently, out of Tamil Nadu Hindu Religious and Charitable Endowments Administration Fund, shall repay to the Government the sums paid by the Government towards salary, allowance, pension and other remunerations to the Government employees. Section 92 of Hindu Religious and Charitable Endowment Act, 1959 provides for payment of 12.5% of the temple's income to the Government

Account in respect of service rendered by the Government and their officers. Therefore, it is obvious that all the temples whether they are listed temples or non-listed temples or called otherwise, math, endowments, religious trusts and other bodies which manage the property of temples are independent assessable units under the provisions of Income-tax Act.

13. We have also carefully gone through the provisions of Section 10(23C)(v) of the Income-tax Act, 1961 which reads as follows:-

“10(23C) any income received by any person on behalf of -

- (i)
- (ii)
- (iii)
- (iiia)
- (iiiaa)
- (iiiiaa)... ..
- (iiiab)
- (iiiac)
- (iiiad)
- (iiiae)
- (iv)

(v) any trust (including any other legal obligation) or institution wholly for public religious purposes, (which may be approved by the prescribed authority), having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof.”

14. Therefore, in view of Section 10(23C)(v) of the Act, the assessee being a public religious temple / institution is entitled for approval by the Commissioner (Exemption). In fact, the Commissioner (Exemption) granted approval under Section 10(23C)(iv) of the Act by an order dated 03.11.2016 from the assessment year 2016-17 which was subsequently modified by an order dated 28.12.2017 as if the approval was granted under Section 10(23C)(v) of the Act. From the material available on record it appears that the approval under Section 10(23C) of the Act was granted from 08.05.1989 by Notification No.8354. Therefore, the assessee is seeking only renewal of earlier approval. Hence, this Tribunal is of the considered opinion that the Commissioner (Exemption) is not justified in restricting the approval from assessment year 2016-17. The approval ought to have been renewed from the assessment year 2015-16. Therefore, the impugned order of the Commissioner (Exemption) dated 03.11.2016 as modified vide order dated 28.12.2017 is modified. The Commissioner (Exemption) is directed to grant approval under Section 10(23C)(v) from assessment year 2015-16, so that the approval under Section 10(23C)(v) of the Act can be continued

without any break. However, the Commissioner (Exemption) and Assessing Officer shall take into consideration the object of the temple as provided in Section 66 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959 and ensure that the temple funds are spent only for the purpose which is provided in Section 66 of the Hindu Religious and Charitable Endowment Act, 1959. In other words, during the course of assessment, if the Assessing Officer finds that the provision of Section 66 of Hindu Religious and Charitable Endowment Act, 1959 was violated or the temple funds are spent contrary to Section 66 of the said State Act, then the assessee is not eligible for any exemption.

15. Even though there are about 38000 temples in the State of Tamil Nadu and Pondicherry, the Commissioner (Exemption) claims that 782 temples have obtained PAN numbers, out of which, only 131 temples filed the return of income. It is not known what action has been taken by the Department against other temples, math, endowments, trusts, which have not filed their return of income. This Tribunal is of the considered opinion that even though all the temples, math, endowment, mosques and churches, etc. are primarily performing religious functions in this State, under the

provisions of Income-tax Act, they are all independent taxable units. Therefore, it is for the income-tax authorities to bring all the temples, churches, mosques, wakf, endowments, math, Kattalai and whatever other name they are called, including Gurudwara, Sikh, Jain Buddhist temple to the tax net. If no action was taken so far in respect of other temples, mosques, wakf, churches, math, endowments, Kattalai, trusts, Gurudwara, Sikh, Jains or Buddhist temple, etc. the concerned income-tax authorities shall enforce the provisions of Income-tax Act immediately. While enforcing the provisions of Income-tax Act, the assessing authority and Commissioner (Exemption) shall keep in mind the religious freedom guaranteed under the Constitution, more particularly, under Article 25 and 26 of Constitution of India. Without affecting the individual freedom guaranteed under Article 25 and 26 of the Constitution, the Commissioner (Exemption) and other authorities shall take immediate action to bring all the temples and other religious institutions such as mosque, wakf, church, math, endowment Kattalai, Gurudwara, Sikh, Jain or Buddhist temple, etc. within the tax net.

16. With the above observation, the impugned order of the Commissioner (Exemption) is modified and the Commissioner (Exemption) is directed to grant approval under Section 10(23C)(v) of the Act from the assessment year 2015-16.

17. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 16th November, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 16th November, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. CIT (Exemptions), Chennai.
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.