

आयकर अपीलीय अधिकरण, " सी न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. Nos.277, 278, 279, 280, 281, 282, 283, 284,
285 and 286/CHNY/2018

निर्धारण वर्ष /Assessment years : 1997-98, 1998-99, 2006-07,
2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-2014 and 2014-15.

M/s. AVM Charities,
No.101, Dr. Radhakrishnan Salai,
Mylapore,
Chennai 600 004.

Vs. The Income Tax Officer,
Exemptions Ward 1,
Chennai.

[PAN AAATA 0512F]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. T. Banusekar, FCA and
Shri. B. Ramakrishnan, FCA

प्रत्यर्थी की ओर से /Respondent by : Shri. V.M. Mahidar, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 17-12-2018

घोषणा की तारीख /Date of Pronouncement : 02-01-2019

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

These are appeals filed by the assessee directed against a
consolidated order dated 29.12.2017 of Id. Commissioner of Income

Tax (Appeals)-17, Chennai. Though the consolidated order of the Id. Commissioner of Income Tax (Appeals)-17 covers assessment years 1987-88, 1991-92, 1997-98, 1998-99, 2006-07 and 2008-09 to 2014-15, appeals filed by assessee are only for assessment years 1997-98, 1998-99, 2006-07 and 2008-09 to 2014-2015.

2. Grounds taken for all the years are common and these are reproduced hereunder:-

1. For that the order of the Learned Commissioner of Income Tax (Appeals) is contrary to law, facts, and circumstances of the case and principles of natural justice.

2. For that the Learned Commissioner of Income Tax (Appeals) erred confirming, the disallowance of deduction claimed u/s 11 of the Act.

3. For that the Learned Commissioner of Income Tax (Appeals) erred confirming the treatment of income from kalyanamandapam as business income, despite the decision rendered in earlier Assessment Years treating such income as income from property and consequently erred in sustaining the denial of the exemption u/s.11 of the Act, without assigning proper reason and justification.

4. For that the Learned Commissioner of Income Tax (Appeals) erred in presuming that the incidental activities as business activity in page 15 of the impugned order, which is unjust and bad in law.

5. For that the Learned Commissioner of Income Tax (Appeals) failed to appreciate that the misconstruction of the provisions of section 11 (4) and section 11 (4A) of the Act would lead to denying the exemption u/s 11 of the Act

6. *For that the Learned Commissioner of Income Tax (Appeals) ought to have considered the test laid down by the Apex Court in the case of Thanthi Trust and the decision of the Jurisdictional High Court including the decision rendered in the Appellant's own case.*

7. *For that the Learned Commissioner of Income Tax (Appeals) having stated in para 4.5 of page 28 of the impugned order that the "income has been derived from the kalyanamandapams and which shall not be included in the total income of the appellant provided that the income so derived is applied for charitable or religious purposes" erred in denying the exemption u/s 11, without appreciating the fact that the said income was fully utilized for charitable purpose approved by the objects of the trust backed by voluminous data including the audited financial statements.*

8. *For that the Learned Commissioner of Income Tax (Appeals) finding that there was failure on part of the appellant in furnishing data is perverse and not in accordance with the material available on record.*

9. *For that the Learned Commissioner of Income Tax (Appeals) ought to have appreciated the fact that the only issue was with respect to treatment of the income derived from kalyanamandapam and there was no dispute on the application of income for charitable purpose.*

10. *For that the Learned Commissioner of Income Tax (Appeals) failed to appreciate that the presumption of commerciality in light of proviso below section 2(15) of the Act into the activities pursued by the appellant was wholly unjustified, thereby negating the consequential findings recorded in relation thereto.*

3. Facts apropos are that assessee a society registered under Societies Registration Act, 1860 and having registration u/s.12A of the Income Tax Act, 1961 (in short "the Act"), had claimed exemption

Section 11 of the Act, in the returns filed for the impugned assessment years. Assessee was having income from two Kalyanamandapams namely Rajeswari Thirumana Kalyanamandapam (in short "RTK") located in Dr. Radhakrishnan Salai, Chennai and Mena Kalyanamandapam (in short "Mena") located at Kumaran Colony Main Road, Vadapalani, Chennai. Assessee was also running a health centre at AVM Charties Health Centre at Vadapalani. Apart from these assessee had given a property of five acres with building located at Valasaravakkam, Chennai to a trust called AVM Rajeswari Educational Trust, from which the latter ran a school called Avichi. One other building at P.S. Sivaswamy Road, Chennai, owned by the assessee was given to one AVM Medical ENT Research Foundation for running a diabetic centre. Assessee also had a library at Virugambakkam, Chennai run by the Government. It appears both AVM Rajeswari Educational Trust as well as AVM Medical ENT Research Foundation were trusts having registration under Section 12A of the Act. Assessee's office was located in a building called Sivakami Building at Dr. Radhakrishnan Salai, Chennai. For the impugned assessment years as well as for assessment years 1987-88 and 1991-92, Id. Assessing Officer had denied exemption claimed by the assessee u/s.11 (1) of the Act considering it to be predominantly into business. For assessment years 2008-09 to 2014-15, Id. Assessing Officer also

applied proviso to Section 2(15) of the Act for denying such exemption. For all these years, Id. Assessing Officer took a view that income earned by the assessee from its Kalyanamandapam could not be treated as income from house property but only as income from business.

4. Appeals for assessment years 1997-98, 1998-99 and 2006-07, now before us, are second round of the proceedings since assessee in its first round was successful before this Tribunal with regard to its claim for exemption u/s.11 of the Act. This Tribunal had held that income derived from the two Kalyanamandapams were to be considered as property income and Sub Sections (4) and (4A) of Section 11 of the Act did not apply. Against these orders, the Revenue had moved an appeal before Jurisdictional High Court for assessment years 1997-98 and 1998-99 and their lordships through a judgment reported as *323 ITR 27* remitted the question regarding eligibility of the assessee for claiming exemption u/s.11 of the Act back to the Id. Commissioner of Income Tax (Appeals) with the following observations.

'5. For the purpose of consideration, we may refer to the judgment of this court in the case of CIT v. Samyuktha Gowda Saraswatha Sabha reported in [2000] 245 ITR 242 . That was a case where this court was considering the question as to whether the letting out of property as marriage hall by a charitable trust for earning income is a

business income or property income and whether such trust is entitled to the benefit of exemption under section 11 of the Act in respect of such income. Of course, the Division Bench held that the sabha lets out its hall to various persons and merely by letting out its hall the assessee has not lost his claim to exemption. In fact, this judgment has been followed by this court in various appeals. To quote a few, we may refer to T. C. No. 235 of 1997 dated November 12, 2001 (Director of Wealth-tax (Exemptions) v. A. V. M. Charities, Madras, T. C. No. 303 of 1997 dated September 18, 2002 (CIT v. A. V. M. Charities, Madras).

6. In this context, we may also refer to yet another judgment of this court in the case of CIT v. Halai Nemon Association reported in [2000] 243 ITR 439 . In that case, this court was considering the provision of section 22 and section 56 of the Income-tax Act with reference to the income by letting out building for marriages. Having noticed that the building was let out by the assessee to others for functions such as marriages and other functions and making available the premises for limited periods, and chairs, mikes, etc., were also made available to others for which a charge was levied and the letting out is only for a limited purpose and for a limited period and by way of licence vis-a-vis the lease granted in respect of the property on monthly or yearly basis. Having regard to the above circumstances, this court had said that the income derived from letting out of halls for marriage purposes would be a business income as defined under section 28 of the Act. Nevertheless in so far as this appeal is concerned, the law stood and applicable to the assessment year reads as under :

"11.(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income, being pro fits and gains of business, unless—

(a) the business is carried on by a trust wholly for public religious purposes and the business consists of printing and publication of books or publication of books or is of a kind notified by the Central Government in this behalf in the Official Gazette ; or

(b) the business is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution and separate

books of account are maintained by the trust or institution in respect of such business."

7. The consideration for entitlement of exemption under section 11(4A), the provision that stood prior to the insertion of the new provision of section 11(4A) to section 11 with effect from April 1, 1992, shows for the entitlement of exemption income being profits and gains of business and the business is carried on by a trust wholly for public religious purposes and the business consists of printing and publication of books or publication of books or is of a kind notified by the Central Government in this behalf in the Official Gazette or the business is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution.

8. From the reading of both the orders of the Commissioner of Income-tax (Appeals) as well as the Tribunal, we are unable to find as to whether the trust in question would be entitled to exemption in terms of the above provision with regard to the profits and gains of business.

9. It is pertinent to point out that the above provision of sub-section (4A) was replaced by insertion of a new provision with effect from April 1, 1992, and that section reads as follows :

"11.(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business."

10. For entitlement of the said new provision, the income being the profits and gains of business and the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business. The consideration for entitlement of the provision is entirely different with reference to newly inserted provision.

11. There is absolutely no discussion about the application of the provision to the trust in question by the Commissioner

of Income-tax (Appeals) as well as the Tribunal. In our opinion, the entire issue should be reconsidered by the Commissioner of Income-tax (Appeals) as to whether the trust in question is entitled to the exemption in respect of the assessment year by applying the relevant provisions. In that case, if the Commissioner of Income-tax (Appeals) comes to the conclusion that the income is a property income, then he has to find out the actual quantum of tax component with reference to the actual profit and the amounts spent towards the object of the trust. In the absence of any of the discussion, we are of the view that we have to only remand the matter after setting aside both the orders of the Commissioner of Income-tax (Appeals) and the Tribunal for fresh consideration.

12. Accordingly, the orders of the Commissioner of Income-tax (Appeals) and the Tribunal are set aside and the matter is remanded to the Commissioner of Income-tax (Appeals) for fresh consideration. We may make it clear that the Commissioner of Income-tax (Appeals) should consider the matter afresh by considering both the judgments of this court reported in CIT v. Halai Nemon Association [2000] 243 ITR 439 (Mad) and CIT v. Samyuktha Gowda Saraswatha Sabha reported in [2000] 245 ITR 242 (Mad) with reference to the provision. We may also point out that all the provisions relating to exemption prior to 1989 and thereafter prior to 1992 and after April 1, 1992, have been considered by the Supreme Court in the case of Asst. CIT v. Thanthi Trust reported in [2001] 247 ITR 785 and that judgment also be taken note of by the Commissioner of Income-tax (Appeals). We also make it clear that both the Revenue as well as the assessee are entitled to place whatever judgments which they intend to rely before the Commissioner of Income-tax (Appeals) for his consideration”.

For assessment year 2006-07, this Tribunal itself had set aside the question regarding eligibility of the assessee for claiming exemption u/s.11 of the Act back to the Id. Commissioner of Income Tax (Appeals) for re-consideration, following the above referred judgment

of Hon'ble Jurisdictional High Court. Appeals for assessment years 2008-09 to 2014-15, are first round.

5. As already mentioned by us, the primary reason, for denying the exemption claimed by the assessee u/s.11(1) of the Act, was that its income consisted of rent received on running of two kalyanamandapam which was run as a business. As per the Id. Assessing Officer these properties were not settled by the settlor as trust property and hence could not be considered as properties held under trust. Further, as per the Id. Assessing Officer, objects of the assessee did not authorize running of kalyanamandapam in a commercial manner. According to the Id. Assessing Officer the activity of running kalyanamandapams were not incidental to any of its main objects but was independent in nature. Id. Assessing Officer took a view that assessee, by running these kalyanamandapams, was into a business and this was its predominant activity. According to the Id. Assessing Officer, income of the assessee lost the exemption under Section 11(1) of the Act by application of Sub Section (4A) of Section 11 of the Act. In contra, as well as agreeing with the Id. Assessing Officer, on a number of aspects, Id. Commissioner of Income Tax (Appeals), in his consolidated order for assessment years 1987-88, 1991-92, 1997-98, 1998-99, 2006-07 and 2008-09 to 2014-2015,

after considering the judgment of Hon'ble Jurisdictional High Court in assessee's case referred (supra), came to the following conclusions:-

- (i) As per the objects clause of the assessee society its main object was medical relief.
- (ii) The land for Kalyanamandapams were acquired by the assessee subsequent to its formation in 1959, and building constructed thereon. Such Kalyanamandapams acquired by the assessee after its formation, could not be considered as property held under trust.
- (iii) Rentals received from Kalyanamandapams were in the nature of business income, since there was no landlord to tenant relationship between the customers who were making one time payment for its use. Hence, the income of the assessee was rightly considered by the Id. Assessing Officer as emanating from business activity.
- (iv) By virtue of judgment of *Hon'ble Apex Court in the case of ACIT vs. Thanthi Trust, 247 ITR 785*, assessee might be entitled to claim the benefit of Section 11(1) of the Act on its business income for assessment years 1997-98, 1998-99, 2006-07 and 2008-2009, subject to it fulfilling other

requirements for claiming such benefit.

- (v) From assessment years 2009-10 to 2014-15, assessee was hit by first proviso to Section 2(15) of the Act, which was introduced by Finance Act, 2008. Assessee being an institution involved in activities of general public utility, it could not be considered as charity.
- (vi) Details of application of the income earned towards any charitable purpose were not furnished, though assessee claimed expenditure on health centre, medial relief and Avichi School. Further, the object clause of the assessee did not enable it to pursue educational activities. Thus even for assessment years 1997-98, 1998-99, 2006-07 and 2008-09, assessee became ineligible for claiming the benefit under Section 11(1) of the Act.
- (vii) Details with regard to amount spent on charitable activities were not produced.

Effectively, Id. Commissioner of Income Tax (Appeals), held that assessee was not eligible for exemption claimed by it u/s.11(1) of the Act for any of the impugned assessment years.

6. Now before us, Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that main object of the assessee society, as contained in its Memorandum of Association indicated carrying out any activity, calculated to promote any object which was wholly charitable in nature, apart from doing medical relief. According to him, the charitable activity allowed by the main object did not exclude education. As per the Id. Authorised Representative, assessee had no grievance in so far as, income from the Kalyanamandapams being treated as business receipts by the lower authorities. However, according to him, the Kalyanamandapams were nothing but property held under trust and income and earnings therefrom were used purely for charity. According to him, it was in correct to say that property settled at the time of formation of trust or society, alone could be considered as property under trust. As per the Id. Authorised Representative, property held under trust, would include land and buildings acquired by a trust from its income, subsequent to its formation as well. Contention of the Id. Authorised Representative, was that the main activities of the assessee were providing medical relief and education help. According to the Id. Authorised Representative, running of schools and giving contributions to organizations pursuing activities of medical relief and education, which

were all having registration u/s.12A of the Act, was nothing but activities predominately in the field of health care and education. Contention of the Id. Authorised Representative was that assessee was subjected to the audit mandated under the Act for trusts claiming exemption under Section 11(1) of the Act, every year, and had filed its returns showing application of funds. These returns and accounts, which were produced before the Id. Assessing Officer, as per the Id. Authorised Representative, proved application of funds for medical relief, education and health. As per the Id. Authorised Representative, assessee had received very nominal rented for the health centre, diabetic and ENT centre, School and library. According to him, five acres of property with a building of 40,000 sq.ft, located at a prime area was given out by the assessee for running Avichi School, for an annual rent of ₹1,00,000/-. As per the Id. Authorised Representative, this by itself was a clear demonstration of charity done in the field of education. According to him, if let out at market rates, this property would have fetched the assessee crores of rupees. Similarly, according to him, health centre as well as diabetic and ENT centre were rented out for nominal rent for use in the medical field. All these as per the Id. Authorised Representative established that the predominant of the object of the assessee was nothing but education and medical relief. Thus, according to him,

lower authorities fell in error in holding that assessee as not eligible for exemption claimed by it u/s.11(1) of the Act and hit by proviso to Section 2(15) of the Act.

7. Per contra, Id. Departmental Representative submitted that 96% of the income of the assessee was from renting out the properties. According to him, rental income received by the assessee from RTK and Mena for previous year ending 31st March, 2014 came to ₹6,70,01,000/-. As per the Id. Departmental Representative, assessee was clearly running a business in the guise of charity. According to him, object clause of the assessee did not have any education in it. As per the Id. Departmental Representative, donations given by the assessee to other trusts having 80G registration could at best be considered as equivalent to contribution given by an individual on which 50% deduction was available, that too to the extent allowable under Section 80G of the Act. Relying on a survey conducted by the Department in the premises of the assessee on 16.07.2018, Id. Departmental Representative submitted that results of such survey clearly indicated that assessee had leased out its property at Dr. Radhakrishnan Salai, Mylapore to a firm called M/s. Cine Film Distributors for a sum of ₹4,80,000/- which was less than its market rate. As per the Id. Departmental Representative the said film

distributors had sublet this property for a sum of ₹1,14,00,000/- and one of partners of this film distribution firm, namely Shri. M. Saravanan was a trustee of the assessee trust. According to him, apart from all the reasons mentioned Id. Commissioner of Income Tax (Appeals) for denying the assessee the benefit of Section 11(1) of the Act, there was thus a violation of the nature mentioned in Section 13(1) (c) of the Act.

8. Ad libitum reply of the Authorised Representative was that the survey was done by the Department on 16.07.2018 and could at the best be used for any proceedings subsequent to the said date. According to him, the said survey report cannot have any bearing on these appellate proceedings. Further, according to the Id. Authorised Representative, if same rate of rentals as projected by the Id. Departmental Representative to have been received by the assessee for RTK was applied to the Avachi School premises, it should have received rentals of more than ₹30,00,00,000/-. According to him, RTK was situated in 20 grounds equivalent to 1.10 acre of land, whereas Avichi School was situated in five acres of land with a 40,000 sq.ft. building, which was given on a nominal rent of ₹1,00,000/-, for running a charitable school. According to him, assessee had forgone the rent which otherwise it could have earned,

as its commitment to education. Thus, as per the Id. Authorised Representative, proportion of rental income received by the assessee viz-a-viz its gross receipts could not be taken as a measure for deciding the charitable nature of the assessee.

9. We have considered the rival contentions and perused the orders of the authorities below. Assessee has not disputed the findings of the Id. Commissioner of Income Tax (Appeals) that rentals received from its Kalyanamandapam had to be considered under the head income from business. In fact Hon'ble Jurisdictional High Court while remitting the question back to the Id. Commissioner of Income Tax (Appeals) for assessment years 1997-98, 98-99 etc, had indicated that income of the assessee from the Kalyanamandapam was more in the nature of business income, by virtue of the judgment of their Lordships in the case of *CIT vs. Halai Nemon Association*, (2000) 243 ITR 439. This view was taken by their Lordships overruling the opinion of this Tribunal in the earlier round, wherein Co-ordinate Bench held the income from Kalyanamandapam as income from house property. For taking this view, in the earlier round, this Tribunal had relied on a judgment of Jurisdictional High Court in the case of *CIT vs. Samyuktha Gowda Saraswatha Sabha*, (2000) 245 ITR 242, which was also duly considered by their Lordships when the question was

remitted back to the Id. Commissioner of Income Tax (Appeals). Obviously, assessee cannot now raise a plea against the finding of the Id. Commissioner of Income Tax (Appeals) that income of the assessee from renting out Kalyanamandapams were business income, and it has wisely done so. However, it is peeved on the view taken by the Id. Commissioner of Income Tax (Appeals) that such business income could not be considered as income earned from a property held under the Trust, thereby disentitling the assessee from taking advantage of Sub section (4) of Section 11 of the Act. Section 11(4) and 11(4A) of the Act, as it was stood in the period covered by the appeals before us and which are apposite are reproduced hereunder:-

Section 11(4) of the Act:-

"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 this 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.

Section 11(4A) of the Act:-

Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the

attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business”.

Ld.CIT(Appeals) was of the opinion that Kalyanamandapam having being built by the assessee subsequent to its formation in the year 1959, could not be considered as property under trust. Ld. Authorised Representative, during the course of his arguments has stated that the land in which Kalyanamandapam were built was part of the original settlement and the building were built therein by the assessee from its income. Be that as it may, there is no dispute that the land and building was owned by the assessee society, whether it was part of original settlement or not. In our opinion, once income of a trust is used by it to acquire a property, the property so acquired will be property held under trust. Income from such property will be income from property under the trust. Thus, in our opinion, rental income received by the assessee from Kalyanamandapam though it was in the nature of income from business, such income was nothing but income from property held under trust.

10. Now the question is whether assessee can be denied the exemption claimed by it u/s.11(1) of the Act by virtue of Sub Section

(4A) thereof. For answering this question we have to see whether renting out the Kalyanamandapams could be considered as incidental to the attainment of the objects of the assessee. Objects of the assessee as it appear in its Memorandum of Association is reproduced hereunder:-

3. *The objects for which the Society is established are :-*

a) to provide for, carry out, and - do all such acts and things as will or are likely or calculated to, promote the objects and purposes of a wholly and society charitable nature.

b) To provide medial relief in its most comprehensive sense and other relief whatsoever, but of a wholly charitable nature to the public irrespective of nationality caste, creed, colour, sect or any other distinction whatsoever.

c) without prejudice to the above comprehensive objects expressed in general terms and, without limiting, in any way, the scope or extent thereof, to establish, promote, provide for and maintain maternity homes nursing homes, hospitals, general and for the treatment of children's diseases, provide facilities for surgical operations. out-patient. Dispensariessupply of medicines and after-treatment care and to take care of and provide for orphans, the aged, the infirm and the destitute

d) for any of the purposes of the Society

i. to acquire, by accepting as gift, purchase, lease, exchange or otherwise, lands, buildings and structures of any tenure or description, to sell, mortgage, exchange, lease, let out, hire or otherwise deal with

such property; and to build constructions on lands and extend, improve and repair buildings and structures and otherwise deal with the property; and to receive rent and other income from property

- ii. to make donations to such persons or bodies and in such cases, and either of cash or other. Assets as the Society may think directly or indirectly conclusive to any of its objects.*
- iii. To do all such acts as may be necessary for the benefit of the Society or in Its Interest to derive benefits from Its assets consistently always with the charitable nature of the Society's objects.*
- iv. to open current. demand deposit, fixed deposit and other accounts with any Scheduled Bank and operate same;*
- v. to receive gifts, donations, contributions, subscriptions, whether In cash or in kind.*
- vi. To do, subject always to the provisions of the Societies Registration Act, 1860 and to the Rules and Regulations of this Society, all such other or further acts and things as shall or may be conducive or incidental to the attainment of charitable objects for which this society is formed''.*

By virtue of clause (d) above, assessee can purchase, build and let out properties for its other purposes. The purpose mentioned in clause (a) clearly indicate promotion of any object which was wholly and solely charitable in nature. No doubt Id. Commissioner of Income Tax

(Appeals) had mentioned this to be a very wide expressions, disentitling it from claiming exemption u/s.11 of the Act. It is true that clause (a) is of a wide amplitude. However what we need to remember is that the assessee was having registration u/s.12A of the Act since 11.04.1975, and such registration still continued. If the main object of the assessee was too wide, as mentioned by Id. Commissioner of Income Tax (Appeals), it would not have been given such registration. Having given such registration, which was alive since 1975, Revenue cannot now turn back and say that the main object was very wide and assessee could not be given benefit of Section 11(1) of the Act. Activity of renting out Kalyanamandapam in our opinion could be construed as only incidental to the attainment of its main object. Assessee therefore could take advantage of Sub Section (4) of Section 11 of the Act. There is no dispute that assessee had maintained separate books for its Kalyanamandapam. The audited accounts filed along with its return clearly show separate income and expenditure for each of the activities, including Kalyanamandapam. Sub Section 4A would not apply to the assessee once its business is considered as incidental to the attainment of its main objects.

11. Now coming to the question whether the predominant activity of the assessee was charity and if so what was the nature of charity. It is not disputed that apart from the two Kalyanamandapams, assessee was having properties from which a school, a health centre and a library were run. It might be true that the school was run by another trust. However, rental received by the assessee for running the school called Avichi school was nominal. We find great strength in the argument of the Id. Authorised Representative, that property from which the School was run, if given out on market rates, would fetch tens of crores in income, and forgoing such income for educational purpose, was nothing but charity in the nature of education. Especially so, since the school was run by a trust which was undisputedly having registration u/s.12A of the Act. Apart from this assessee had earned little revenue from its diabetic centre. It had also given out a premises to the Government for a library. All the activities of the assessee were either in the field of education or in field of medical care. Net revenue earned by the assessee and its expenditure in the field of medical aid, health care and donations as compiled from its income and expenditure account and Balance sheet reads as under:-

<i>Assessment year</i>	<i>Net Revenue</i>	<i>Rajeswari Kalyanamandapam A/c- Donations and Medical Aid</i>	<i>Charitable Expenditure</i>		
<i>1997-98</i>	<i>8,46,748</i>	<i>4,90,315</i>	<i>3,21,091</i>	<i>80,373</i>	<i>3,11,531</i>
<i>1998-99</i>	<i>18,09,985</i>	<i>3,42,045</i>	<i>3,36,118</i>	<i>1,27,689</i>	<i>89,802</i>
<i>2006-07</i>	<i>60,54,507</i>	<i>4,71,500</i>	<i>2,69,468</i>	<i>74,000</i>	<i>1,63,009</i>
<i>2008-09</i>	<i>1,10,03,311</i>	<i>4,06,548</i>	<i>2,81,730</i>	<i>2,24,270</i>	<i>5,17,000</i>
<i>2009-10</i>	<i>1,13,75,508</i>	<i>8,51,108</i>	<i>2,61,353</i>	<i>5,04,676</i>	<i>5,85,000</i>
<i>2010-11</i>	<i>73,00,106</i>	<i>10,86,304</i>	<i>1,26,421</i>	<i>4,93,000</i>	<i>13,16,500</i>
<i>2011-12</i>	<i>2,88,61,952</i>	<i>45,73,439</i>	<i>---</i>	<i>1,27,000</i>	<i>2,31,33,490</i>
<i>2012-13</i>	<i>1,80,01,123</i>	<i>61,87,543</i>	<i>---</i>	<i>1,34,000</i>	<i>35,32,000</i>
<i>2013-14</i>	<i>73,40,730</i>	<i>58,83,146</i>	<i>---</i>	<i>3,35,000</i>	<i>27,72,000</i>
<i>2014-15</i>	<i>4,13,29,717</i>	<i>1,17,57,158</i>	<i>---</i>	<i>3,47,483</i>	<i>41,87,090</i>

Net revenue includes what the assessee received as rentals from its Kalyanamandapams also. Submission of the assessee that donations given were all to organization engaged in either education or medical relief, which were having registration under Section 80G of the Act was not rebutted by the Revenue. No doubt, Id. Departmental

Representative has raised an argument that such donations can at best be treated as donation given by an individual for which benefit to the extent given under Section 80G alone could be claimed. However, a reading of Section 11(1) of the Act clearly show that, types of income mentioned in clauses (a) to (d) therein have to be excluded while computing the total income of a person in receipt of such income. Exclusion is available to any person irrespective of status. Viz whether an individual, HUF, AOP, firm or company. Vide clause (a), income which is applied for charitable purpose or religious purpose is necessarily to be excluded. Donations given to a trust having 12A registration which is pursuing an object of medical relief, education or relief to poor, is in our opinion equivalent to using the money for such purpose. Intention remains the same. No doubt, Id. Commissioner of Income Tax (Appeals) has observed that assessee could not produce evidence for the charity done by it. However, it is not disputed that assessee had maintained books of accounts and produced the books and records before Id. Assessing Officer. Such books were subject to audits and assessee had filed Audit reports in form 10A of the Act. In such circumstances, we find no reason to uphold the finding of the lower authorities that predominant activity of the assessee was not charity.

12. Coming to the application of proviso to Section 2(15) of the Act, said Section is reproduced hereunder:-

2 (15) "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility ;

[Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any 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, unless-

- (i) Such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and*
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of the previous year]*

First proviso applies to an assessee engaged in advancement of general public utility other than relief to the poor, education, medical relief, preservation of environment and preservation of monuments. As already mentioned by us, assessee's charitable activities were directly or indirectly in the nature of relief to the poor or education or medical relief. It was not an organization which was pursuing an activity of general public utility, different from education, medical relief or relief to the poor. First proviso to Section 2(15) of the Act is attracted only where an assessee carries on activities which was of

general public utility other than those mentioned specifically in the definition of charitable purpose given in Section 2(15) of the Act. In the circumstances, we are of the opinion that assessee was eligible for the exemption claimed by it u/s.11(1) of the Act for the impugned assessment years. Orders of the lower authorities are set aside and the Id. Assessing Officer is directed to give assessee the exemption claimed by it u/s.11(1) of the Act for the impugned assessment years.

13. In the result, the appeals of the assessee for all the assessment years are allowed.

Order pronounced on Wednesday, the Second day of January 2019, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:02 January, 2019

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

