

आयकर अपीलीय अधिकरण, डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH : CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.2868/CHNY/2017
निर्धारण वर्ष /Assessment year : 2012-2013.

Tamil Nadu Industrial Guidance & Export Promotion Bureau,
No.19A, Rukmani,
Lakshmipathi Salai, Egmore,
Chennai 600 008. **Vs.** The Assistant Director of
Income Tax,
(Exemptions) Ward -I,
Chennai.

[PAN AACCT 7538B]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. B. Suresh, C.A.
प्रत्यर्थी की ओर से /Respondent by : Shri. M.S. Nethrapal, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 20-08-2019
घोषणा की तारीख /Date of Pronouncement : 05-09-2019

आदेश / ORDER

PER INTURI RAMA RAO, ACCOUNTANT MEMBER:

This is an appeal filed by the Assessee directed against the order of the Commissioner of Income Tax (Appeals)-17, Chennai ('CIT(A)' for short) dated 12.09.2017 for the Assessment Year (AY) 2012-2013.

2. The Assessee raised the following grounds of appeal:

1. The order of CIT(A) is arbitrary and opposed to the spirit of law and against the facts.

2. Article 289

2.1 Ld. CIT (A) erred in not adjudicating the ground that the appellant is a state and as per article 289 of Constitution of India appellant's income is not subject to income tax.

2.2 Ld. CIT (A) erred in not appreciating the fact that the appellant is a state and as per article 289 of Constitution of India its income is not taxable.

3. Charitable

3.1 Ld. CIT (A) erred in mechanically following the decision of Hon. ITAT Chennai for AY 2009-10 even though it was demonstrated that the decision of tribunal was based on erroneous assumption of facts and an independent decision need to be taken.

3.2 Ld. CIT(A) has erred in not appreciating the fact that there is no commerciality or business motive involved at the point of time of receipt of income as there is no service rendered to any investor.

3.3 Ld. CIT(A) has erred in not appreciating the fact that a regulatory authority being a representative of the Govt., of Tamil Nadu can't embark on any activity with business or commercial motive and can't wear a mask of being charitable as mentioned in Circular No 11/2008 dt 19/12/2008

3.4 Ld. CIT(A) has erred in not understanding the fact that such regulatory work is incidental to its main object and charges received for such regulatory work is not hit by proviso to Sec.2(15).

3.5 Ld. CIT(A) has also not understood what is Single Window clearance and assumed that the income is by way of giving some consultation which is contrary to true and order based on such erroneous fact is bad in law.

4. Corpus Donation

4.1 Ld. CIT(A) erred in not appreciating the fact that in any organization money received with a specific direction of its usage is a capital receipt and not taxable.

4.2 Ld. CIT(A) failed to appreciate the fact that once he started assessing the appellant as AOP the provisions of Sec. 2(24)(iia), 11 & 12 are inoperative and addition/disallowance can't be made under these sections.

4.3 Ld. CIT(A) has erred in not appreciating the fact that the corpus donation received under the instruction of Govt. of Tamil Nadu is not for any service and it is outside the scope of taxation.

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5. Depreciation

5.1 Ld. CIT(A) has erred in not allowing the depreciation as the relevant amendment came only in Finance Act 2014 without any retrospective effect and it is a settled position. of law that depreciation is an allowable expenditure eventhough the cost of respective asset was allowed as deduction in earlier years.

5.2 Ld. CIT(A) has failed to understand that once the assessee is assessed as AOP all provisions with respects to Block of Assets and Depreciation will become mandatorily applicable and denial of depreciation on the basis of section 11 & 12 is incorrect as these provisions are not applicable to AOP.

The appellant craves for justice for these grounds and on additional grounds that may be adduced in future, for which leave may please be granted”.

3. The brief facts of the case are as under:

The assessee namely "Tamil Nadu Industrial Guidance & Export Promotion Bureau" is a society formed by Government of Tamil Nadu for promoting Industrial growth and exports in the state of Tamil Nadu. It is registered u/s.12A of the Income Tax Act, 1961 (in short "the Act"). It performs the function of processing the application submitted by the business organizations and verifying whether the application is in conformity with the rules relating to environment, local authority, fire protection, water, forest, police etc., and then submits

to the Government of Tamilnadu. Assessee collects consideration for rendering this service as processing fee prescribed by the Government of Tamil Nadu. The return of income for the Asst. Year 2012-13 was filed on 04.01.2013 disclosing Nil income after claiming exemption u/s.11 of the Act. Against the said return of income, the assessment was completed by the Income Tax Officer (Exemptions) Ward-1, Chennai (hereinafter referred as "Assessing Officer") vide order dated 24.03.2015 passed u/s. 143(3) of the Act at total income of ₹1,21,24,515/-. While doing so, the AO had brought to tax excess of income over expenditure and the corpus donation of ₹25,00,000/- while denying the exemption u/s.11 of the Act by holding that activities of the assessee trust was not charitable in nature as it is rendering services to the business organizations.

4. Being aggrieved, an appeal was preferred before Id. CIT(A), who vide impugned order following the decision of the Co-ordinate Bench of the Tribunal in assessee's own case dismissed the appeal.

5. Being aggrieved by the order of the CIT(A), the appellant is in appeal before us in the present appeal. The Id. Authorised Representative contended that assessee society was instrumentality of the State as defined in Article 12 of the Constitution and discharging function as an extended arm of the State of Tamil Nadu and therefore

excess of the income over expenditure cannot be brought to tax as it is not assessable entity, in support of this, he placed reliance on the decisions of Hon'ble Supreme Court in the cases of Rajasthan Electricity Board, 3 SCR 377, Sukhdev Singh & Others Vs. Bhagatram Sardhar Singh, 3 SCR 619 (1925) and Pradeep Kumar Biswas vs. Indian Institute of Chemical Biology & Others 5 SCR 111 (2002).

6. On the other hand, the Id. Sr. Departmental Representative placed reliance on the orders of lower authorities.

7. We heard the rival submissions and perused the material on record. Assessee before us is a society formed by Government of Tamil Nadu with an object of promoting industrial growth and exports in the state of Tamil Nadu. It process the application submitted by the industrial organization and verify whether the applications are in conformity with the rules relating to environment, local authority, fire protection, water, forest, police etc. Fees were charged for rendering this services as prescribed by the Tamil Nadu Government from the industrial organization. Assessee is duly registered u/s.12A of the Act. It is not the case of the assessee that it falls within the preview of first three limbs i.e. relief for poor, education and health but under public general utility. Therefore the provisions of Section 2(15) of the Act are squarely applicable. According to AO, proviso to Section 2(15)

of the Act are applicable as it charges fees from the business organizations for the services rendered by it. Even the Id. CIT(A) confirmed the findings of the Assessing Officer following the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for earlier years. No argument were advanced as to how the proviso to Section 2(15) of the Act is not applicable to the case of the assessee. The whole case of the assessee is premised on the argument that it is instrumentality of the State coming within the meaning of Article 12 of the constitution and therefore it is not an assessable entity. Submissions made by the Id. Counsel cannot be accepted even the State Corporation Societies cannot be equated with State Government though it is instrumentality of the State as held by Hon'ble Supreme Court in the case of *Arun Kumar and Others vs. Union of India and Others*, (2006) 286 ITR 89. Further, the Bangalore Bench of the Tribunal in the case of *National Dairy Research Institute vs. ACIT (TDS)*, Circle 18(1), Bengaluru (2018) 171 ITD 271, wherein it was held as follow.

'7. We heard rival submissions and perused material on record. The only issue in the present case is, for the purpose of valuing perquisites of the accommodation, provided to employees of the assessee society should be done under clause (i) or clause (ii) of table 1 of rule 3 of the Income-tax rules 1962. Clause (i) of sub-rule (1) of rule 3 of Income-tax Rules is applicable in case of employees of Central Government or State Government. Clause (ii) of sub-rule (1) of rule 3 of Income-tax Rules is applicable in case of other than Central and State Government employees. Therefore, the issue which requires to be adjudicated is whether the employees of assessee-society are employees of Central

Government or not. Needless to say that once the employees of the society are treated as employees of the Central Government for the purpose of evaluating perquisites of rent free accommodation, rules prescribed under clause (i) of sub-rule (1) of rule 3 of Income-tax rules are to be adopted. Otherwise clause (ii) of sub-rule (1) of rule 3 of IT Rules is to be adopted. An identical issue had come before the co-ordinate bench of this Tribunal in the case of Central Food Technology Research Institute (supra) wherein this Tribunal took a view that the employees of the corporation fully controlled by the Central Government cannot be equated with Central Government employees though it is instrumentality of the State within the meaning of Article 12 of the Constitution of India.

'10. We are of the view that the reliance placed by the learned counsel for the Assessee on the aforesaid decision is of any help to the present case. The question in the case of Pradeep Kumar Biswal (supra) was regarding as to whether CSIR is "State" within the meaning of Article 12 of the Constitution of India. As by the learned DR before us, the meaning of the word "State" has been defined in Article 12 of the Constitution of India and the decision has to be confined to those cases and cannot extend to interpretation of Rule 3 of the IT Rules, 1962. Public corporations are established by Government to achieve purpose of welfare state. Financial autonomy and functional autonomy are required for such purpose. These corporations are commercial corporations, development corporations, social services corporations or Financial corporations. Such corporations have all trappings of Government but their, employees cannot be equated with employees either holding office or post in connection with the affairs of the Union or of such State. Eminent Author Seervai in his book Constitutional Law of India, 1984 Vol. II pp. 2578-79 has deduced the following principles with regard to the status of employees of a statutory corporation

(i)		<i>a statutory corporation has a separate and independent existence and is a different entity from the Union or the State Government with its own property and its own fund and the employees of the corporation do not hold civil post under the Union or the State;</i>
(ii)		<i>makes little difference in this respect, whether the Union or the State holds the majority share of the Corporation and controls its administration by policy directives or otherwise;</i>
(iii)		<i>it also makes little difference if such a statutory corporation imitates or adopts the Fundamental Rules to govern the service conditions of its employees;</i>

(iv)	<p><i>although the ownership, control and management of the stator corporation may be, in fact, vested in the Union or State, yet in the eye of law the corporation is its own master and is a separate entity and its employees do not hold any civil post under the Union or the State;</i></p>
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if, however, the State or the Union controls a post under a stator corporation in such a manner that it can create or abolish the post or can regulate the conditions subject to which the post is or will be held and if the Union or the State pays the holder the post out of its own funds, then although the post carries the name of an office of the statutory corporation, it may be a civil post under the State or the Union”.

In the light of the above settled legal positions of law, we do not find any reason to interfere with the orders of the lower authorities.

8. In the result, the appeal of the assessee stands dismissed.

Order pronounced on 5th day of September, 2019, at Chennai.

Sd/-
(जॉर्ज माथन)
(GEORGE MATHAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(इंटूरी रामा राव)
(INTURI RAMA RAO)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:5th September 2019.

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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 |