

**आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"B" BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ITA Nos.2367 & 2368/Chny/2016  
(निर्धारण वर्ष / **Assessment Years: 2010-11 & 2011-12**)

<b>M/s. Sivasakthi Environmental Trust</b> B-5, Palace Tower Commercial Complex, Cherry Road, Salem – 636 001.	<b>बनाम/ Vs.</b>	<b>Income Tax Officer</b> Ward-1(1), Salem.
स्थायी लेखा सं./जी आइ आर सं./ <b>PAN/GIR No. AAGTS-1063-H</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थीकी ओरसे/ <b>Appellant by</b>	:	Shri T. Vasudevan (Advocate) – Ld. AR
प्रत्यर्थीकी ओरसे/ <b>Respondent by</b>	:	Shri P. Sajith Kumar (JCIT) –Ld. DR

सुनवाईकी तारीख/ <b>Date of Hearing</b>	:	14-02-2022
घोषणाकी तारीख / <b>Date of Pronouncement</b>	:	21-02-2022

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeals by assessee for Assessment Years (AY)2010-11 & 2011-12 arises out of separate orders of first appellate authority. However, the facts as well as issues are substantially the same and therefore, the appeals are being disposed-off by way of this common order for the sake of convenience & brevity. The appeal for AY 2010-11 arises of the order of learned Commissioner of Income Tax (Appeals),

Salem [CIT(A)] dated 27.07.2016 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) on 28.03.2013. The assessment for AY 2011-12 has been framed u/s 143(3) on 26.03.2014. These matters are recalled matter since the appeals were disposed-off ex-parte qua the assessee vide order dated 10.11.2016. However, the order has been recalled, upon assessee's misc. application, vide order dated 24.03.2017. Accordingly, the appeals have been placed before us for adjudication.

2. The revised grounds as filed by the assessee for AY 2010-11 read as under: -

1. The order of the Commissioner of Income Tax(Appeals) dismissing the appeal is contrary to law, erroneous and unsustainable on the facts of the case.
2. The CIT(A) erred in confirming the denial of exemption under Sec. 11 of the Act to the assessee.
3. The CIT(A) failed to appreciate that the assessee is engaged in the activity of garbage removal, cleaning the streets and public areas within the Coonoor Municipality and this per se a charitable activity and falls within the 'preservation, of environment' envisaged under sec.2(15) of the Act.
4. The CIT(A) further failed to appreciate that denial of exemption for the reason, that the assessee has received an amount of Rs.42,94,800/- from Coonoor Municipality as cleaning charges is unjustified and unsustainable on the facts of the case.
5. The CIT(A) further failed to appreciate that the cleaning charges received are in the nature of reimbursement of expenses for the activity of cleaning the town and cannot be characterized as a commercial venture by the assessee warranting the denial of exemption.
6. The CIT(A) further failed to appreciate that in order to invoke the second proviso to sec.2(15), the activity of assessee should involve carrying on of any activity in the nature of trade, commerce or business or in any activity in relation thereto for a cess or fee or any other consideration, which is clearly absent in the assessee's case and hence the denial of exemption is untenable in law.
7. The CIT(A) further failed to appreciate that any excess income resulting from the charitable activity is only incidental and would not render the activity non-charitable and hence confirming the denial of exemption is wholly unjustified and untenable in law.
8. The CIT(A) erred in confirming the addition of corpus donation of Rs.4,08,000 as income of the assessee and is clearly excludible under Sec.11(1)(d) of the Act.
9. The CIT(A), in any event, ought to have considered the contentions of the assessee in the proper perspective and held that the assessee is engaged 'preservation of environment', which is a charitable activity falling within the main limb of sec.2(15) and hence allowed the exemption under sec.11 as claimed by the assessee.

3. The Ld. AR submitted that the assessee was engaged in preservation of environment and therefore proviso to Sec.2(15) would not apply to the assessee. The Ld. DR, on the other hand, submitted that the assessee was merely a contractor for municipality and received contract under bidding. The work done by the assessee was not voluntary and therefore, the assessee would not be eligible to claim any exemption as applicable to Trust.

4. Having heard rival submissions and after going through the orders of lower authorities, our adjudication would be as given in succeeding paragraphs.

5. The assessee is registered u/s 12A vide order dated 20.04.2007. The assessee received cleaning charges from Coonoor Municipality for Rs.42.94 Lacs. The assessee undertook work of removal of garbage, cleaning of streets and public areas. The Ld. AO, invoking proviso to Sec.2(15), held that the activity carried out by the assessee could not be said to be charitable in nature and therefore, the assessee is not eligible to claim exemption u/s 11. The activity would not fall under 'preservation of environment' since the activities carried on by the assessee merely involve commercial exercise of garbage removal. The activity was the primary responsibility of the municipality which was outsourced to the assessee. The assessee was merely donning the role of a contractor. Mere registration u/s 12A would not make assessee eligible to claim exemption u/s 11. In the above background Ld. AO held that the voluntary contributions received by the assessee would form part of its income. It was only due to the express provisions of Sec.11(1)(d) that voluntary contributions made with specific direction that they shall form part of corpus of trust are not includible in the income of the trust. Since

the assessee was not eligible to claim exemption u/s 11, this amount would also be liable to be included in its income. Accordingly, the corpus donations of Rs.4.08 Lacs were adjusted from the loss of Rs.1.41 Lacs and the income was determined at Rs.2.66 Lacs.

6. Though the assessee preferred further appeal, however, the position as noted by Ld. AO could not be controverted. The Ld. CIT(A) confirmed the stand of Ld. AO and held that the corpus amount of Rs.4.08 Lacs would be included to assessee's income u/s 2(24)(iia). Aggrieved, the assessee is in further appeal before us.

7. In AY 2011-12 also, the exemption u/s 11 was denied to the assessee. The assessee reflected surplus on transfer of shares of Integrated Waste Management and Urban Services Company (Tamil Nadu) Ltd. (IWMUST) for Rs.174.14 Lacs. Upon perusal of documents, it transpired that the sale consideration of the shares was Rs.251.74 Lacs whereas the value of investment, as per Balance Sheet was Rs.53.70 Lacs. Therefore, the differential amount should have been offered to tax. The assessee submitted that the sale amount was not fully received and the transaction was yet to finished. However, Ld. Held that capital gain arises when transfer take place and when once the transfer is complete, it would not be necessary that the profits should have actually been realized. The Ld. AO also noted that the only receipt of the assessee in preceding three years was contract amount received from the municipality and whole of the expenditure incurred by the assessee was only for execution of the project. Therefore, the assessee was hit by proviso to Sec.2(15). To support the same, the copies of assessee's financial statements have already been extracted in the assessment order. Accordingly, it was held that the assessee was not eligible to claim

exemption u/s 11. For the said reason, the capital gains would be computed as per normal provisions. The same was computed as Rs.179.31 Lacs from which loss sustained by the assessee was allowed.

8. During appellate proceedings, the assessee submitted that Ld. AO had applied normal rate of tax to Long- term capital gains. The assessee also submitted that the indexation done by Ld. AO was erroneous. The assessee also assailed the action of Ld. AO in denying the exemption. However, keeping in view the material facts, the stand of Ld. AO was confirmed barring the directions to apply correct rates of tax to Long-Term Capital Gains in accordance with law. Aggrieved, the assessee is in further appeal before us.

### **Our findings and Adjudication**

9. Upon careful consideration of factual matrix as enumerated in the preceding paragraphs, the undisputed position that emerges is that the assessee is merely working as garbage collection contractor for Coonoor Municipality. For the same, the assessee receives contract from the municipality and carry out the activities in lieu of cleaning charges. All the expenditure incurred by the assessee are directed towards execution of the project only which is evident from assessee's financial statements. Pertinently, this work is not voluntary work but mere execution of the contract against fees. This is the only activity carried out by the assessee in preceding three years. This being the case, the assessee's activities, could not be, at all, termed as charitable in nature. The findings of lower authorities, in this regard, could not be faulted with. Merely because the assessee has obtained registration u/s 12A, the said fact alone would not make the assessee eligible to claim exemption of charitable trust. To claim this exemption, the assessee must carry put charitable activities as

defined in the Act. Nothing of that sort has been shown to us. As rightly noted by Ld. AO, the cleaning activity was the primary responsibility of the municipality which was outsourced to the assessee. The assessee was merely donning the role of a contractor. This being so, the conclusion of lower authorities would not require any interference on our part. The appeal for AY 2010-11 stand dismissed. The relevant grounds raised in AY 2011-12 stands dismissed. The other grounds raised in AY 2011-12 pertain to application of correct rate of tax to Long-Term Capital Gains. The necessary directions, in this regard, have already been issued in the impugned order. Nevertheless, Ld. AO is directed to re-compute correct Long-Term Capital gains and apply correct rates of tax in accordance with law. These grounds stands allowed for statistical purposes. The appeal for AY 2011-12 stands partly allowed for statistical purposes.

10. The appeal for AY 2010-11 stands dismissed whereas the appeal for AY 2011-12 stand partly allowed for statistical purposes.

Order pronounced on 21<sup>st</sup> February, 2022.

**Sd/-**  
**(MAHAVIR SINGH)**  
**उपाध्यक्ष /VICE PRESIDENT**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
**लेखासदस्य /ACCOUNTANT MEMBER**

चेन्नई/ Chennai; दिनांक/ Dated : 21-02-2022  
EDN/-

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF