

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं डॉ. एम.एल मीना, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
DR. M.L. MEENA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.:2834, 2835, 2836 & 2837/CHNY/2018
Assessment Years: 2010-11, 2012-13, 2013-14 & 2014-15

M/s. Samyukta Gowda Saraswata
Sabha,
No.55, (Old No.16), Habibullah Road,
T. Nagar, Chennai – 600 017.

The Income Tax Officer,
Vs. Ward – 4, 3rd Floor, Annexe Bldg.,
Aayakar Bhawan,
No.121, M.G. Road,
Chennai – 600 034. T.N.

PAN : AAATS 0971 L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Mr. S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Mr. AR.V. Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 08.03.2022

घोषणा की तारीख/Date of Pronouncement

: 09.03.2022

आदेश /O R D E R

PER BENCH:

These four appeals by the Assessee are arising out of the common order of the Commissioner of Income Tax (Appeals)-17, Chennai in Appeal Nos.482/14-15, 146, 170 & 171/16-17 dated 03.08.2018. The Assessments were framed by the Income Tax Officer (Exemptions), Ward-4, Chennai for the Assessment Years 2010-11, 2012-13, 2013-14 & 2014-15,

under sections 143(3) r.w.s147 of the Income Tax Act, 1961 (hereinafter referred as 'the Act') for the Assessment Years 2010-11, 2012-13, 2013-14 & 2014-15 u/s.143(3) of the Act vide orders dated 28.03.2016, 26.02.2015, 28.03.2016 & 28.12.2016 respectively.

2. The only common issue in these four appeals of the Assessee is as regards to the order of CIT(A) in confirming the action of the Assessing Officer in denying the claim of exemption u/s.11 of the Act holding that the Assessee's case falls under the amended provisions, i.e. Proviso of Section 2(15) of the Act. For this, the Assessee has raised identical worded grounds in all the years and the grounds in large numbering. We will take the facts and circumstances from the first Assessment Year, i.e. 2010-2011 in I.T.A. No.2834/Chny/2018 and will decide the issue.

3. The brief facts are that the Assessee is a Society, registered under Section 12A(a) of the Act. The Assessee filed its return of income for the relevant Assessment Years 2010-2011 and claimed exemption u/s.11A of the Act, as charitable organization. The assessment was completed u/s.143(3)

r.w.s.147 of the Act and the Assessing Officer applied the Proviso to Section 2(15) of the Act and invoked tax to all the receipts as commercial, as being engaged in trade and not towards the object of general public utility. The Assessee before the Assessing Officer stated that the objects of the Society, as mentioned in its bye-laws includes education and relief to the poor, including promotion of intellectual, physical, social and moral advancement of the United Gowda Saraswatha Community. It was claimed by the Assessee that towards attainment of its objects, the Assessee Society is disbursing scholarships, funds and grants to the students and also provide relief in the form of medical assistance to the poor. It is a fact that the Assessee is running a Kalyana Mandapam and according to the Assessing Officer, the Assessee's main source of income is to let out of marriage hall for a fee which is unarguable in the nature of business activity and therefore hit by the Proviso to Section 2(15) of the Act as brought out by the amendment by the Finance Act 2008 w.e.f.01.04.2009. The Assessing Officer noted that by amending and bringing the Proviso to Section 2(15) of the Act, the fundamental and drastic change is brought in the statues book by the legislature,

excluding the group of trusts which are engaged into trade and business related activities. According to the Assessing Officer, the Assessee is running a Kalyana Mandapam with the intention of commercial exploitation of the asset which is in the nature of trade. Accordingly, the Assessing Officer treated the net receipt falling under the Proviso to Section 2(15) of the Act and denied the claim of deduction for the net receipts after allowing the expenditure. Aggrieved with the denial of exemption, the Assessee preferred an appeal before the CIT(A).

4. The CIT(A) after considering the Proviso to Section 2(15) of the Act and also the decision of the Co-ordinate Bench of the Tribunal in the case of DCIT (Exemptions) Vs. Chennai Kammavar Trust reported in 166 ITD 196 confirmed the action of the Assessing Officer for denying the claim of exemption u/s.11 of the Act. The CIT(A) also denied the claim of exemption in regard to corpus donation. Aggrieved, the Assessee preferred an appeal before the Tribunal.

5. The Assessee before us, first of all stated that the issue is covered by the decision of the Hon'ble Madras High Court in the Assessee's own case, Director of Income Tax (Exemptions) Vs.

Samyuktha Gowda Saraswatha Sabha reported in [2011] 339 ITR 456 (Madras) and stated that the Hon'ble Madras High Court has held that the activities of the Society as charitable in the society. When it was pointed out to the learned Counsel for the Assessee, Shri. S. Sridhar, Advocate that the Assessing Officer as well as the CIT(A) has specifically relied upon the Proviso to Section 2(15) of the Act w.e.f. the Assessment Year 2009 – 2010, the entire decision of law is changed.

The learned Counsel for the Assessee agreed and stated that the ratio laid down by the Hon'ble Madras High Court in another case, Sri Ram Samaj Vs. Joint Director of Income Tax (Exemptions) reported in [2020]119 Taxmann.com 134 (Madras), wherein the Hon'ble Madras High Court considering the Proviso to Section 2(15) of the Act exactly on identical facts, wherein the Assessee was running a community hall and giving accommodations for marriages on rent. Hon'ble High Court has remanded the matter back to the file of the Assessing Officer with the following directions, as under:

"21. The contention of the Appellant / Assessee is that in view of the above objects of the trust to be fulfilled, which is for a charitable purpose, the income there from would be entitled to exemption u/s.11(1) of the Act.

22. Whether the income derived from letting out of Kalyana Mandapam, Community Hall and Gnanavapi owned by the Appellant / Assessee is the income from the house property or business income and whether the same is liable to be taxed or exempted is the other question. The contention of the Assessee is that since utilization of the surplus income from the running of Kalyanna Mandapam, Community Hall and Gnanavapi are for the objects of the trust, it is exempted from tax.

23. It is to be noted herein that both the CIT(A) and the ITAT have not discussed about the facts in respect of the surplus income having been utilized for the objects of the trust, viz. Running educational institution, providing medical relief to the poor, etc., absolutely there is no discussion of the facts relating to the utilization of earned income from letting out of Kalyana Mandapam and Gnanavapi towards charitable objects such as education and medical relief to the poor as given in the objects of the trust. Further, the Assessing Officer has not looked into the facts as to whether the entire income from Community Hall, Kalyana Mandapam and Gnanavapi are utilized for fulfilling the objects of the trust that is being education medical relief and relief to the poor. In such circumstances, the order dated 06.04.2016 passed by the Income Tax Appellate Tribunal, Chennai "D" Bench in Sri Ram Samaj (supra) is set aside. The matter is remitted back to the Assessing Officer for de novo consideration as to whether the entire revenue derived from letting out of Kalyana Mandapam, Gnanavapi and Community Hall are utilized for charitable objects of the Trust and also to consider as to whether the income received from the properties of the Trust namely, Community Hall, Kalyana Mandapam and Gnanavapi to be classified as "income from house property" or "business income" since the income there from is utilized for charitable purpose of the trust. The Assessing Officer shall consider the above said questions and decide the matter on merits.

24. With the above observations, the Tax Case Appeals stands allowed and the order passed by the Income Tax Appellate Tribunal, Chennai "D" Bench, in Sri Ram Samaj (supra) is set aside and the matter is remitted back to the Assessing Officer for de novo consideration. The substantial questions of law are left open to be decided by the Assessing Officer by considering the issue afresh. No costs."

6. In view of the above, the learned Counsel for the Assessee stated that the Assessing Officer will consider as to whether the letting out of the Kalyana Mandapam is to be assessed from income from house property or business income and secondly the Assessing Officer will also examine the applicability of the Proviso to Section 2(15) of the Act as pleaded by the learned Departmental Representative and also after hearing to both the sides and going through the decisions of the Hon'ble High Court in the case of Sri Ram Samaj Vs. Joint Director of Income Tax (Exemptions) (supra), we direct the Assessing Officer as under:

- I. That the Assessing Officer first of all will ascertain as to whether the income earned by letting of the marriage hall and Kalyana Mandapam is income from business or income from house property, in terms of the decision of the Hon'ble Madras High Court.
- II. Secondly, the Assessing Officer will also ascertain the applicability of Proviso to Section 2(15) of the Act, afresh to the activity of letting out of the Kalyana Mandapam. The Assessing Officer will decide both the issues *de novo*.

Similar, are the facts in the Assessment Years 2012-13, 2013-14 & 2014-15. All the appeals of the lower authorities are set aside and the matter remanded back to the file of the Assessing Officer.

10. In the result, the appeals of the Assessee in ITA Nos.:2834, 2835, 2836 & 2837/CHNY/2018 are allowed for statistical purposes.

Order pronounced in the court on 9th March, 2022 at Chennai.

Sd/-

(डॉ. एम.एल मीना)

(Dr. M.L. MEENA)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 9th March, 2022

IA, Sr. PS

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:** 1. ँ पीलर्षी/Appellant
2. प्रत्यर्षी/Respondent
3. आयकर आयुक्त (ं पील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभर्षीय प्रतिनिधि/DR
6. गार्ड फर्ल/GF