

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1054/CHNY/2019**

निर्धारण वर्ष /Assessment Year: 2011-12

M/s. Devi Academy,
C/o. Shri T.N. Seetharaman,
Advocate,
#384, (Old No.196),
Lloyds Road, Chennai – 600 086.

The DDIT (Exemptions)-III,
v. Chennai - 34.

PAN: AAATD 1676M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri T.N. Seetharaman, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri P. Muthushankar, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 28.04.2022

घोषणा की तारीख/Date of Pronouncement

: 28.04.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-17, Chennai in ITA Nos.145/2014-15/CIT(A)-17 dated 30.01.2019. The assessment was framed by the DDIT (Exemptions)-III, Chennai for the assessment year 2011-12 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 22.03.2014.

2. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in denying exemption u/s.11 of the Act to the assessee's trust for the violation of provision of section 13(1)(c) of the Act in regard to payment of Rs.5,00,000/- dated 27.09.2010 made to Dr.P.N. Parameswaran, founder trustee and Smt. R. Jeyalekshmy, permanent trustee. The assessee has raised various interconnected grounds and argumentative grounds which we need not to reproduce.

3. Brief facts are that the assessee is a trust and runs a school affiliated to CBSE in the name and style of Devi Academy, Chennai. During the course of scrutiny assessment proceedings, the AO noticed from the bank statement of assessee that it had paid a sum of Rs.5 lakhs to Bank of Ceylon vide banker cheque dated 27.09.2010. The assessee in reply stated that the founder trustee Dr.P. N. Parameswaran has taken a long term loan from Bank of Ceylon, Chennai for school construction, furniture and equipments. Since the bank demanded the payment back and accordingly for settlement of loan, cheque of Rs.5 lakhs bearing No.917990 dated 27.09.2010 drawn on The Karur Vysya Bank Ltd, Chennai in favor of Bank of Ceylon towards loan account out of school funds was paid on account of Smt. R.Jeyalekshmy. The AO noted this fact and

required the assessee to explain how the term loan from Bank of Ceylon taken for construction of school building and furniture & fixtures. The assessee could not file any details. The AO noted that this is payment to Dr.P.N. Parameswaran and Smt. R. Jeyalekshmy, founder trustee and permanent trustee respectively. Accordingly, he invoked the provisions of section 13(1)(c) of the Act and disallowed the exemption claimed by assessee on the entire claim of exemption made u/s.11 of the Act. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) confirmed the action of AO, as the assessee was unable to produce any material that the payment was for the construction of school building or for furniture & fixture of school. The CIT(A) confirmed the addition vide para 6.3.1 as under:-

“6.3.1 Regarding the payment of Rs.5,00,000/- on 27/9/2010 to Bank of Ceylon from The Karur Vysya Bank Limited, the A.R. did not bring any material on record to establish that Dr Late P.N. Parameswaran had given the Loan taken in his personal capacity from Bank of Ceylon to the trust or to establish that the trust has to repay Rs.5,00,000/- to Dr.Late P.N. Parameswaran or Smt. R. Jeyalekshmy.

Hence the payment of Rs.5,00,000/- on 27/9/2010 to Bank of Ceylon by the trust towards the liability of Smt R. Jeyalekshmy clearly attracts section 13(1)(c).”

Aggrieved now assessee is in appeal before Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. Even now before us, on query from the Bench, the assessee could not submit any details that the initial loan of Rs.5 lakhs taken from Bank of Ceylon was for the purpose of construction of building or installation of furniture & fixture. In the absence of any evidence, the lower authorities have also made addition and hence, we confirm the same. Accordingly this issue of assessee's appeal is dismissed.

6. The next issue in this appeal of assessee is as regards to payment made of Rs.38 lakhs to Smt. R. Jeyalekshmy, permanent trustee in violation of section 13(1)(c) r.w.s.13(1)(d) of the Act, as the same is paid out of the funds of the trust.

7. Brief facts are that Dr.P.N. Parameswaran who founded the school in 1989 had taken loan from Indian Bank in his personal name by mortgaging the land belonging to him at Kattupakkam village for construction of school building and purchase of school equipments. Dr.P.N. Parameswaran, the founder trustee died in 2002 without discharging the loan and the property mortgaged that is land devolved on his wife Smt.R. Jeyalekshmy, permanent trustee of the assessee's trust. The debt due to the Indian Bank was still

outstanding. Subsequently, the land was sold to one Shri K. Selvam, who with the consent of Indian Bank paid a sum of Rs.38 lakhs as part consideration but his condition was that the assessee's trust should be made a party to the litigation and payment be made through the assessee's account with Bank of Baroda. Accordingly, Shri K.Selvam paid the amount of Rs.38 lakhs by cash in the assessee's account on 18.12.2010 and passed on the same day by way of banker's cheque including bank charges of Rs.25,148/-. The AO has not considered these facts and treated the payment as paid to Smt. Jeyalekshy, the permanent trustee in violation of the provisions of section 13(1)(c) of the Act and disallowed the exemption u/s.11 of the Act in entirety to the trust including this Rs.38 lakhs. Aggrieved assessee preferred appeal before CIT(A).

8. The CIT(A) confirmed the disallowance for the reason that the assessee did not explain the reasons for depositing the advance received by Smt. R. Jeyalekshmy with respect to sale of land in the bank account of the trust. The CIT(A) confirmed the action of AO by observing in para 6.3.2 as under:-

“6.3.2. Regarding the bankers cheque dt 18.12.2010 for Rs.38,25,148/- from Bank of Baroda OD Account of the assessee, the A.R did not bring any material on record to establish that Dr Late P.N.Parameswaran had given the Loan taken in his personal capacity from Indian Bank to the trust or to establish that the trust has to repay

Rs 38,25,148/- to Dr Late P.N. Parameswaran or Smt R. Jeyalekshmy. Moreover, the A.R did not explain the reason for depositing the advance received by the legal heirs of Late Dr.P.N. Parameswaran, with respect to sale of land in the bank account of the trust. The A.R did not bring any evidence in support of this argument. Hence the payment of Rs. 38,25,148/- on 18.12.2010 to Bank of Ceylon by the trust towards the liability of Smt R. Jeyalekshmy clearly attracts section 13(1)(c).”

Aggrieved assessee preferred appeal before the Tribunal.

9. We have heard rival contentions and gone through facts and circumstances of the case. We noted from the arguments of Id. senior counsel Shri T.N. Seetharaman that the assessee’s trust was made a party to litigation on the buyers desire to remit the payment through the assessee’s account with Bank of Baroda. The buyer Shri K.Selvam came forward to buy the land only with this condition and with the consent of Indian Bank and accordingly paid sum of Rs.38 lakhs as part consideration. The Id.counsel before us pointed out that the land actually belong to Dr.P.N. Parameswaran, who died in 2002 and land devolved on his wife Smt. R. Jeyalekshmy, permanent trustee of the trust. The assessee has taken this loan in Indian Bank in his personal capacity by mortgaging the above stated land. The Id.counsel for the assessee before us filed order copy of Debt Recovery Tribunal wherein the assessee’s trust including Smt. R.Jeyalekshmy, permanent trustee was made a party as defendant

by the Indian Bank wherein a total sum of Rs.6,87,30,521/- was claimed and the relevant order of attachment reads as under:-

“Whereas you the defendants have failed to pay the sum of Rs.6,87,30,521,96p (Rupees Six Crores eighty seven lakhs thirty thousand five hundred and twenty one and paise ninety six Only), payable by you, jointly and severally, to the applicant in terms of Debt Recovery Certificate No.99/2009 dated 3.7.2009 issued in TA No.483/97 drawn up by the Hon’ble Presiding Officer, Debts Recovery Tribunal-I at Chennai, and further interest and costs payable as per law.”

This matter was taken by assessee trust before Hon’ble Madras High Court and Hon’ble High Court finally settled the claim to pay Rs.1,60,00,000/- and the relevant order dated 24.11.2010 in MP No.2 and 1 of 2010 in WP 26545 and 26546/2010 reads as under:-

“The learned counsel appearing for the petitioner would submit that he would pay a sum of Rs.160 lakhs (Rs.257 lakhs (-) Rs.97 lakhs) in a period of four weeks in the even this Court grants stay of the sale of the property.

2. In view of the said submission, there will be an order of stay of sale of the property in question subject to the petitioner deposits with the bank a sum of Rs.1,60,00,000/- (Rupees one Crore and Sixty lakhs only) on or before 23.12.2010. In the event, the said amount is not deposited as directed, the stay would be deemed to have been vacated automatically.”

9.1 Now before us, the Id.counsel for the assessee also pointed out the confirmation letter from Shri K.Selvam, regarding payment of Rs.1.60 crores paid through bank account of assessee maintained with Bank of Baroda and the relevant reads as under:-

“I have decided to purchase the land at Kattupakkam owned by Smt. R. Jeyalekshmy Managing Trustee of Devi Academy since her loan recovery proceedings are pending at High Court of Judicature at Madras. It was finally decided by the High Court that the loan will be cleared in full, on payment of Rs.1,60,00,000/-. I have decided to purchase the said land by having a sale agreement entered into with Indian Bank, Asset Recovery Branch, Mount Road on behalf of Devi Academy.

Out of abundant caution and as the proceedings are taken against Devi Academy, I paid the sum of Rs.38,00,000/- on 18.12.2010 by way of demand draft by depositing the money in Devi Academy Bank of Baroda Current Account.

I finally confirm that the bank draft for Rs.38,00,000/- was made at my request by Ms.R. Jeyalekshmy, Managing Trustee and the said amount does not belong to the Trust account and the sale deed has not been executed since there are other legal issues pending.”

9.2 The Id.counsel pointed out that the bank draft of Rs.38 lakhs was paid to the Bank of Baroda through other payments and this was routed through the assessee's trust bank account. We noted that the sum of Rs.38 lakhs was paid out of part consideration received for sale of land at Kattupakkam village to Smt. R.Jeyalekshmy and not out of the funds of the assessee's trust i.e., Devi Academy and hence, according to us there is no violation of section 13(1)(c) or 13(1)(d) of the Act as held by the lower authorities. Hence, we delete the disallowance of exemption and direct the AO to allow this amount as deduction. This issue of assessee's appeal is allowed.

10. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in denying the benefit of exemption u/s.11 of the Act on entire net receipts of Rs.94,29,413/- including above stated two disallowances. For this, assessee has raised following ground No.7

“7. The appellant submits that the computation of income of the trust denying the benefit of exemption u/s11 of the Act as Rs.94,29,413/- (against Nil income returned) in the manner set out in para 4 (at page 6) and para 5 (at page 7) of the assessment order and levy of tax treating the appellant as a business enterprise is arbitrary and unjustified.”

11. We have heard rival contentions and gone through facts and circumstances of the case. We noted that this issue is squarely covered in favour of assessee by the decision of Hon'ble Madras High Court in the case of CIT vs. Working Women's Forum (2014) 365 ITR 353 (Mad), wherein the Hon'ble High Court has held that in case of violation of section 13(1)(d) only that part of the income which was violative of the said section can be brought to tax and the entire income of the assessee cannot be denied exemption. Even the SLP filed by the Department has been dismissed by the Supreme Court vide (2015) 63 taxmann.com 324(SC). In viw of the above, we direct the AO to restrict the disallowance to the extent of above disallowance confirmed by the Tribunal in above para No.5

amounting to Rs.5 lakhs and rest, he will allow exemption. Accordingly, this issue of assessee's appeal is partly allowed.

12. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 28th April, 2022 at Chennai.

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 28th April, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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