

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. Nos. 768, 769, 770 & 771/Chny/2018
निर्धारण वर्ष/Assessment Years:2009-10, 2010-11, 2012-13 & 2013-14

Periyar Public Press Trust,
"Periyar Thidal", 50,
EVK Sampath Salai
Vepey, Chennai 600 007.

The Joint Commissioner of
Vs. Income Tax (SD), [Exemptions] II,
No. 121, Nungambakkam High Road,
Chennai 600 034.

[PAN:AAATP0542J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri I. Dinesh, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri AR V Sreenivasan, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 10.08.2022
घोषणा की तारीख /Date of Pronouncement : 26.08.2022

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

These four appeals filed by the assessee are directed against the common order of the Id. Commissioner of Income Tax (Appeals) 17, Chennai dated 10.01.2018 relevant to the assessment years 2009-10, 2010-11, 2012-13 and 2013-14. Since the facts are identical and common issue has been raised, all the appeals were heard together and being disposed of by this common order for the sake of brevity. The assessee has raised the following common grounds:

- “1. *The Order of the Commissioner of Income Tax (Appeals) is erroneous and bad in law.*
- 2.1 *The Commissioner of Income Tax (Appeals) erred in upholding the order of the Assessing officer denying exemption claimed by the assessee u/s. 11.*
- 2.2 *The Commissioner of Income Tax (Appeals) failed to consider the fact that the Trust exists for educational purposes and as such is not it by any amendment of Section 2(15) of the IT Act.*
- 2.3 *The Commissioner of Income Tax (Appeals) erred in upholding the order of the AO that the objects of the trust falls under "Object of general public utility" and therefore the amended provisions of Section 2(15) of the Income Tax Act would apply.*
- 2.4 *In any event, even assuming that objects of the trust falls under "Object of general public utility" failed to note that on facts, the assessee trust neither carried on any business nor does its activities are for earning profit.*
- 2.5 *The Commissioner of Income Tax (Appeals) erred in upholding the order of the AO that the receipts from the activities are in the nature of commercial receipts and section 2(15) would apply.*
3. *The Commissioner of Income Tax (Appeals) erred in disallowing expenses stating that all the expenses incurred do not relate to income derived from running of printing press by the Appellant.*
4. *Any other grounds that may be adduced at the time of hearing.”*

2. Brief facts of the case are that the assessee trust was established in the year 1991 and was initially granted registration under section 12AA of the Income Tax Act, 1961 [“Act” in short] since its inception. In the assessment order for the assessment year 2009-10, the Assessing Officer has noted that the DIT (Exemptions) has cancelled the registration of the assessee-trust through order dated 26.12.2011, and therefore, the assessee has no registration for the Assessment

Year under consideration. Further, the Assessing Officer has observed that the objects of the assessee-trust fall under the category of the general public utility and that the assessee was carrying printing of publications/magazines for another trust by name Periyar Self Respect Propaganda Institution for the object of printing, the assessee was earning business income. Therefore, by considering the proviso to section 2(15) of the Act, the Assessing Officer was of the opinion that the activities of the assessee cannot be considered to be charitable in nature. Accordingly, the Assessing Officer denied the exemption claimed under section 11 of the Act. Thus, the entire receipt was brought to tax after allowing expenses, which includes education aid, donations, maintenance of old age home, etc.

3. The assessee carried the matter in appeal before the Id. CIT(A) and contended that the Chennai Benches of the ITAT in its order in ITA No.418/Mds/2012 dated 27.11.2012 restored the registration under section 12AA of the Act. The assessee further contends that the proviso to section 2(15) is not applicable in their case in view of the fact that their activities are educational in character, and that, in the light of the object of education the

receipts from printing and paper charges are incidental to their object if at all their activities are construed as a business.

4. After considering the submissions of the assessee, the Id.CIT(A) has observed that the assessee trust carries on the activity of printing journals/magazines published by its sister concern, viz. Periyar Self Respect Propaganda Institution which is also a trust registered under section 12AA of the Act and also a fact that these magazines are subscribed by the followers of Periyar's ideology and principle. By relying upon the judgement of the Hon'ble Supreme Court in the case of Sole Trustee, Loka Shikshana Trust (101 ITR 234)(SC) with regard to the term 'education' as used in section 2(15) of the Act, the Id. CIT(A) was of the opinion that the activity undertaken by the assessee cannot be considered as education for income tax purposes. Moreover, by considering the provisos inserted below section 2(15) with effect from 01.04.2009 (as amended by the Finance Act, 2010, w.r.e.f. 01.04.2009 and the Finance Act, 2011, w.e.f. 01.04.2012), the Id. CIT(A) has held that from the assessment year 2009-10, the object of general public utility will not be considered to be a charitable purpose, if it involves any business activity and confirmed the assessment order.

5. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that as a part of objects of charitable activity, the surplus were given back or utilized to the other charitable activities of the sister institutions like running of old-age home, hospital, school, etc. The Id. Counsel for the assessee has vehemently argued that the views of the authorities below that since the assessee Trust is a one which involved in any other object of "General public utility", and the gross receipts having crossed the limits thereby not entitled to exemption under section 11 of the Act is not correct. The Id. Counsel for the assessee has submitted that the assessee Trust is one of the groups of Trusts of "Periyar Public Trust" which are engaged in various charitable objects and primarily education. The assessee Trust caters only to these sister institutions of the Periyar Self-Respect Propaganda Institution (SRPI). It was further submission that the assessee trust was not engaged in any printing work to any other commercial or business establishment except the SRPI and other sister institutions. The Id. Counsel for the assessee has relied on the decision in the case of CIT v. Thanthi Trust 247 ITR 785 (SC) for the proposition that the trust was running a newspaper on commercial lines; its income was exempt as it is a public trust maintaining separate accounts for the business carried on by it. He also relied on the decision in the case of Ashoka Charities (163

ITR 579) (Mad), wherein, it was held that the activity of running a printing press by a Charitable Trust engaged in the object of general public utility is also exempt in view of the fact that the business itself was held as a property of the Trust. By relying upon various case law, the Id. Counsel for the assessee has prayed for allowing the claim of exemption under section 11 of the Act.

6. On the other hand, the Id. DR has submitted that after insertion of provisos below to section 2(15) of the Act, from the assessment year 2009-10 onwards, the object of general public utility will not be considered to be a charitable purpose if it involves any business activity and strongly supported the orders of authorities below.

7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The objects of the assessee-trust as per trust deed are as under:

- (i) *Imparting of knowledge essential for education and improvement of mind of all citizens by making available to them all necessary literature for this purpose either by printing publication and/ or distribution of dailies, wall newspapers, periodicals, pamphlets, and reference books, audio and video cassettes, advertisement and features directly or through any publicity media besides radio and television.*
- (ii) *To help all those who are engaged in any activity relating to the above objects.*

- (iii) *To promote and assist educational and medical institutions and vocational training institutions, either directly or helping the existing ones or by way of grant or other assistance.*
- (iv) *To organize, run or assist orphanages, home for aged and handicapped persons, leper homes and such other institutions.*
- (v) *The benefits and assistance expected to be promoted will be confined to the States of India.*

8. The case of the assessee is that the assessee-trust is created by “The Periyar Self Respect Propaganda Institution”, which is having 12A registration and the assessee-trust is exclusively working for the parent trust to achieve the objects of parent trusts. The assessee trust is printing magazine/journals, books, etc. published by the parent trust and not working for any other profit making organization and no other work is accepted. Though there is some surplus, it cannot be said that the assessee is carrying its activity on commercial line. The following expenses met out by the assessee in the assessment years under appeal have been allowed by the Assessing Officer:

A.Y.	Purpose	Total amount	Page of PB
2009-10	Education aid – ₹.3,500/- Donation – ₹.5,40,900/- Maintenance of old age home – ₹.1,10,400/-	₹.6,54,800/-	38
2010-11	Donation – ₹.19,000/- Maintenance of old age home – ₹.1,10,400/-	₹.1,29,400/-	54
2012-13	Donation – ₹.80,770/- Maintenance of old age home – ₹.1,10,400/-	₹.1,91,170/-	64
2013-14	Maintenance of old age home – ₹.1,97,010/-	₹.1,97,010/-	77

The above expenses incurred by the assessee are of charitable in nature.

9. When the assessee solely exists to achieve the objects of parent trust, which is fully charitable trust, it cannot be said that the assessee is carrying on commercial activities. However, the Assessing Officer was of the view that the activity of the assessee trust is printing of books, magazines for its parent trust - Periyar Self Respect Propaganda Institution, it comes under general public utility and not charity and the same view is confirmed by the Id. CIT(A).

10. By considering the objects and similar facts and circumstances of the case, in the case of DDIT(E) v. Vivekananda Kendra Prakashan Trust in I.T.A. No. 2248/Mds/2014 & C.O. No. 131/Mds/2014 dated 15.07.2015, the Coordinate Benches of the Tribunal has considered the issue and held that once the assessee is working for parent trust and the parent trust is enjoying 12A registration and the assessee trust is only supporting the parent trust, the activity carried by the assessee trust cannot be said as commercial activity. The relevant portion of the order is extracted as under:

“4.4 We have heard both the parties and carefully perused the materials available on record. From the facts of the case it is not disputed that the assessee trust is a trust created solely by the parent trust. The activities of the parent trust falls under the limbs of Section2(15) of the Act ‘education’, ‘relief to the poor’, ‘medical relief’, ‘preservation of monuments of places or objects of artistic or historical interest or advancement of any other general public utility’. The objects of the assessee’s trust are only in support of the assessee’s parent trust. Therefore, the scope of the assessee’s trust cannot go outside the ambit of the objects of the parent trust but in parity with the assessee’s parent Trust. Hence all the activities of the assessee’s trust which are associated with the main

objects of the assessee's Parent trust has to be recognized in consonant with the assessee's Parent Trust "VK" viz., 'education', 'relief to the poor', 'medical relief', 'preservation of monuments of places or objects of artistic or historical interest' or 'advancement of any other general public utility' and thereafter if the proviso of Section-2(15) of the Act is applicable to any of the activity of the assessee's trust, to that extent the benefit of Section-11 of the Act only can be withdrawn. In this case before us the issue is with respect of the sale of books, magazines, pictures, calendars, diaries and novelties etc., containing the preaching's of swami Vivekananda which is directly attributable to the upkeep of the Sami Vivekananda Rock Memorial because it will bring an awareness to the public at large and influence them to participate in the cause of the parent trust who's one of the objects is 'preservation of monuments of places or objects of artistic or historical interest'. Therefore as per our discussions herein above considering the activities of the assessee Trust which is associated with the object of the assessee's parent trust viz., preservation of monuments of places or objects of artistic or historical interest', we hereby hold that proviso to Section-2(15) of the Act would not be applicable to the case of the assessee. Therefore, we hereby direct the Ld. Assessing Officer to allow the benefit of Section 11 to the assessee."

11. In view of the above decision of the Coordinate Benches of the Tribunal and considering the facts and circumstances of the case, we set aside the orders of authorities below and allow the appeals filed by the assessee for all the assessment years under consideration.

12. In the result, all the appeals filed by the assessee are allowed.

Order pronounced on the 26th August, 2022 in Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 26.08.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/
Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5.
विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.