

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **2850/CHNY/2019**

निर्धारण वर्ष/Assessment Year: 2016-17

M/s. TVS Charities,

7-B, TVS Building, West Veli Street,
Madurai – 625 001.

The Income Tax Officer,

Vs. Exemption Ward,
Madurai.

PAN : AAATT 1082B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 15.12.2022

घोषणा की तारीख/Date of Pronouncement

: 21.12.2022

आदेश / O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-2, Madurai in ITA No.167/2018-19 dated 20.08.2019. The assessment was framed by the Income Tax Officer, Exemptions Ward, Madurai for the assessment year 2016-17 u/s.143(3) of the Income Tax Act, 1961, (hereinafter 'the Act') vide order dated 14.12.2018.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in assessing the lease rent from the land leased out to T.V. Sundaram Iyengar & Sons Pvt. Ltd., and Southern Roadways Ltd., on notional lease rent basis by adopting market value of lease rent for land on the basis of lease rent paid by the Income-tax Department for occupying of four-storeyed building in the center of the city of Vijayawada. The assessee raised the following question during the course of hearing, "Whether in the given facts and circumstances of the case, can the Department assess notional rent in the case of charitable trust, the assessee, assessed u/s.11 of the Act". For this, assessee has raised various grounds, which are argumentative and exhaustive and hence, need not be reproduced.

3. Brief facts are that the assessee M/s. TVS Charities Trust, is registered as society with the Registrar of Societies on 05.06.2003 vide Sl.No.63 of 2003. The assessee is also registered as public charitable trust u/s.12AA of the Act with the CIT-Madras vide No.C.No.212(263)/73 dt.18.03.1973. The assessee trust has filed its return of income for the relevant assessment year 2016-17 on 28.09.2016 admitting 'nil' total income. The assessee's case was selected for limited scrutiny in order to verify, "whether transaction

with specified persons are correctly shown in the return of income". The AO during the course of scrutiny assessment proceedings noted that during the year main receipts of the assessee's trust was by way of rent and income from investments and the applications are donation to Lakshmi Vidya Sangham, Madurai for financial assistance towards medical expenses and distribution of dresses to the poor. The AO also noted that the assessee's trust is having following proceeds:-

- (i) Shri R. Haresh, TVS Building 7B, West Veli Street, Madurai
- (ii) Sri Suresh Krishna, Gopal Bhagh, 180 Mount Road, Chennai
- (iii) Ms. Shrimathi Mahesh, 16, Sathyanarayana Avenue, Chennai
- (iv) Sri Venu Srinivasan, West Side House, No.2, Adyar Club Gate Road, Chennai.

3.1 The AO during the course of assessment proceedings noted that the proceeds of the assessee's trust, the above noted are relatives of the trustees and other relatives of the trustees are jointly holding substantial interest in companies namely TVS & Sons Pvt. Ltd., and Southern Roadways Ltd., as under:-

Name of the Trustees/Interested concerns	Percentage of shares held by the trustee along with their relatives in the Company M/s TVS & Sons Pvt. Ltd., during the F.Y.2015-16	Percentage of shares held by the trustee along with their relatives in the Company M/s Southern Roadways during the F.Y.2015-16
Sri R. Haresh, Director of M/s. TVS & Sons Pvt. Ltd	11.9	2.28

Sri Suresh Krishna, Director of M/s. TVS & Sons Pvt. Ltd.	16.27%	15.75%
Ms. Shrimathi Mahesh	8.18%	2.59%
Sri Venu Srinivasan, Director of M/s. TVS & Sons Pvt. Ltd. & M/s. Southern Roadways	22.95%	9.18%
M/s. TVS & Sons Pvt. Ltd.	-	54.98%
Total	59.3%	84.78%

According to AO, the assessee charitable trust owns land in Vijayawada and leased out the same to TVS Iyengar Pvt. Ltd., and Southern Roadways Ltd., and these two tenants are specified persons u/s.13(3) of the Act and hence, provisions of section 13(1)(c) of the Act are applicable to the case of the assessee and hence, as such assessee is not entitled to claim exemption u/s.11 of the Act.

3.2 The AO also noted that the above two properties leased out by assessee are not the fair market value of rental income and it is only nominal value and he compared the prevailing market rent in the area and also obtained the copy of certificate of rent reasonableness issued by Superintending Engineer, CPWD, Vijayawada for the building taken on rent by Income-tax Department and accordingly, in term of the same he arrived at the prevailing market rate and

assessed the rent leased to Southern Roadways at Rs.98,23,320/- and land leased to TVS & Sons Ltd., at Rs.81,44,316/- and thereby assessed the total income for leased properties at Rs.1,79,67,636/-.

For this, he made calculations in para 7(x)(a) and (b) as under:-

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x) In view of the above, the assessee's objections are rejected and the violation u/s 13(1)(c) r.w.s 13(2)(b) of the I.T. Act is computed based on the monthly prevailing market rent for the site at Rs. 8.5/- per Sq. ft (25.5/3) and that of building at Rs. 17 per Sq. ft. as under,

a) Based on the prevailing market rate the trust property-land measuring 6164 Sq. Mts. (66348 Sq. Ft) leased to the company M/s Southern Roadways is arrived at Rs. 5,63,958/- (66348*8.5) per month and yearly rent is arrived at Rs. 67,67,496/- (563958* 12). Also as per lease deed the property consists of land with building measuring 1487.66 Sq. Mts. (Plinth area taken from Vijayawada Municipal tax calculation old Assessment no. 26122F) and the monthly rent of the said building is arrived at Rs. 2,72,221/- (17*16013 Sq.ft) and thus the yearly rent of the building is arrived at Rs. 32,66,652/- (272221*12). The yearly marketable rent off the property land cum building is arrived at Rs. 100,34, 148/- (6767496+3266652). After reducing the rent actually received during the financial year 2015-16, the total income applied for the benefit of a person referred to in sub-section (3) of section 13 of the I.T. Act, by leasing out the trust land without charging adequate rent by violating the provisions of Sec 13(1)(c) r.w.s 13(2) (b) is arrived at Rs.98,23,320/- (10034148-210828) and is charged to tax at maximum marginal rate as per the proviso to section 164(2) of the I.T. Act.

b) Based on the prevailing market rate the trust property-land measuring 7658 Sqm (82430 Sq. Ft) leased to the company M/s TVS & Sons Ltd., is arrived at Rs. 7,00,655/- (82430*8.5) per month. Yearly Rent on the same is Rs.84,07,860/- (700655* 12) after reducing the rent actually received during the year 2015-16, the total income applied for the benefit of a person referred to the sub-section (3) of section 13 of the Income Tax act by leasing out the trust land without charging adequate rent by violating the provisions of Sec 13(1) (c) r.w.s 13(2)(b) is arrived at Rs. 81,44,316/- (8407860-263544) and is charged to tax at maximum marginal rate as per the proviso to section 164(2) of the I.T. Act.

The AO also denied exemption by treating the assessee to be assessed as Association of Persons and denied exemption u/s.11 & 11 of the Act by observing in para 'c' as under:-

c) Since, in the assessee's case as per the Income & Expenditure statement for the A.Y.2016-17, the excess of income over expenditure was Rs.1,85,208/- was less than basic exemption limit for levying tax at the rates applicable for Association of Persons there is no tax liability on denying of exemption u/s 11 & 12 of the I.T. Act.

Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) after considering the arguments of assessee and submissions of assessee recomputed the lease rentals on land portion only and recomputed the fair market rent to be assessed on the basis of rates determined as under:-

S.No.	Particulars	Amount
A	Southern Roadways (P) Limited	
	Land Portion per month (5.48 * 66348)	3,63,587
	Building (constructed by lessee)	-
	Total	3,63,587
	Rent assessed	43,63,044
	Less: Actual Rent Offered	2,10,828
B	T.V. Sundram Iyengar & Sons P. Ltd.	
	Land Portion (5.48 * 82430)	4,51,716
	Rent assessed	54,20,597
	Less: Actual Rent Offered	2,63,544
	Amount of disallowance	51,57,053
	Total under assessment of rent which is disallowed u/s.13(1)(c) r.w.s 13(2)(b)	
C	Total Disallowance (A+B)	93,09,269

For this, the CIT(A) gave his finding in para 5(I) as under:-

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I)

Admittedly, the assessee trust has let out 6,164 square meters of land located at door No.40-5-7 Venkateswarapuram, Tikkal Road, Vijayawada to Southern Roadways Pvt. Ltd. with a shed constructed thereon. The assessee trust has further let out land measuring 7,658 square meters to M/s. T.V. Sundaram Iyengar & Sons Ltd. which is located at door No.40-5-142 Mughalrajapuram, Bunder Road (MG Road), Labbipet, Vijayawada. There is a super structure standing on this land. In the Remand Report, the Assessing Officer has conceded that the lessee M/s. Southern Roadways Pvt. Ltd. has raised this super structure from its own resources. Under the facts, the assessee trust is entitled to receive rent for the vacant land only.

However, the CIT(A) confirmed the action of AO by holding that the lessee companies are part of the same group, where the trustees of the assessee's trust and relatives hold more than 50% of the shares. He also observed that the assessee's trust has not charged the fair market rent of these two group companies and cumulatively they have violated the provisions of section 13(1)(c) r.w.s. 13(2)(b) of the Act as they have violated the provisions of section 13(1)(c) of the Act as the assessee's trust had sold out benefit to the interested parties who are the trustees or the relatives or the concerns in which the interested persons have substantial interest as noted by the AO in his assessment order. The CIT(A) also rejected the ground of assessee in regard to deduction for maintenance claimed at 30% as against 10% adopted by the AO. The CIT(A) also not disturbed the

finding of AO in charging of maximum marginal rate of tax as per the provisions of section 164(2) of the Act. Aggrieved, assessee came in appeal before Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the Id.counsel for the assessee made argument that the AO as well as the CIT(A) has assumed the market value of the leased rent for these two lands on the basis of lease rent paid by the Income-tax Department for occupying a four storeyed building in the center of city of Vijayawada. The CIT(A) restricted the assumed market value to the extent of land of the property and re-determined the notional rent at Rs.93,09,269/- as against determined by AO at Rs.1,79,67,636/-. The Id.counsel for the assessee stated that the trust can be assessed only actual income recognized and realized by it and not on notional income as computed by AO and CIT(A). For this, proposition, Id.counsel for the assessee first of all relied on CBDT Circular no.005P (LXX-6) Dt. 19th June 1968 and drew our attention to para 4 of Circular which reads as under:-

4. Where the trust derives income from house property, interest on securities, capital gains, or other sources, the word "income" should be understood in its "commercial sense", i.e., book income, after adding back any appropriations

or applications thereof towards the purposes of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise. It should be noted, in this connection, that the amounts so added back will become chargeable to tax under section 11(3) to the extent that they represent outgoings for purposes other than those of the trust. The amounts spent or applied for the purposes of the trust from out of the income computed in the aforesaid manner, should be not less than 75 per cent of the latter, if the trust is to get the full benefit of the exemption under section 11(1).

The Id.counsel for the assessee stated that even Hon'ble Madras High Court in the case of CIT vs. Rao Bahadur Calavala Cunnan Chetty Charities, 135 ITR 485 held that income from properties held under trust would have to be arrived at in the normal commercial manner without reference to the provisions which are attracted by section 14 of the Act. The Id.counsel for the assessee pointed out the relevant para of the judgment which reads as under:-

“This is because the Act sometimes deals with income attributed by some statutory fiction. There can be no distribution or accumulation of what is taxed under some fiction. The Supreme Court in CIT v. Bipinchandra Maganlal & Co. Ltd. considered the question whether the expression "smallness of profits" has to be understood in the sense of smallness of assessable income. It was pointed out that a company normally distributes dividends out of its business profits and not out of its assessable income and that even though the assessable income of a company may be much, the commercial profits may be so small that compelling distribution of the difference between the balance of the assessable income reduced by the taxes payable and the amount distributed as dividend would require the company to fall back either upon its reserves or upon its capital which in law it could not do. Applying the same reasoning, the expression "income" has to be understood in the popular or general sense and not in the sense in which the income is arrived at for purpose of assessment to tax by the application of some artificial provisions either giving or denying deduction. That income

cannot be understood in the sense of what is arrived at for the purpose of income-tax would be clear if we pay some attention to Section 10. For instance, Section 10(1) exempts agricultural income. It is not necessary to find out what the agricultural income is. It is enough if the agricultural income as a category is excluded. There is no need or scope to arrive at the income in the manner contemplated by the I.T. Act. Other instances can be multiplied. Taking into account, the purpose for which the conditions of Section 11(1)(a) are imposed, it would be clear that we have to consider the income as arrived at in the context of what is available in the hands of the assessee, subject of course to any adjustment for expenses extraneous to the trust. If the expression "income" is so understood, then we have to take the accounts of the assessee with reference to the receipts and deduct therefrom the expenses necessary for earning or looking after that income. The net amount that remains would be available for distribution or application for charitable purpose. In applying the income for charitable purposes, even capital expenditure may be incurred. Therefore, the nature of the expenditure in the hands of the entity which receives the money is not the criterion. So long as the assessee disburses the amount for charitable purposes, whether the amounts are utilised for capital or revenue purposes by the charity concerned, the assessee would have complied with that part of the requirement of Section 11, namely, application of the income for charitable purposes. The authorities will have to find out as to whether they are really charitable purposes or not. Subject to such examination, the application of the income for charitable purposes will have to be excluded and it is only the balance that would require examination for finding out whether the assessee has complied with the rule of accumulation to the extent of Rs. 10,000 or 25 per cent. of the income, whichever is higher."

The Id.counsel also drew our attention to para 20 of the judgment which reads as under:-

21. There is one further error in the order of the Tribunal. The Tribunal has proceeded on the basis that the receipts from rents amounting to Rs. 1,31,412 during the year ending with 31st of March, 1965, would have to be considered under the head "Income from house property" and the net income arrived at under that head. In the view that we have explained above, the determination of the income as if the sum of Rs. 1,31,412 relates to house property and would, therefore, have to be considered in the context of the

provisions of Sections 22 to 27, would not be correct. Those provisions enact certain technical rules for the purpose of the ascertainment of income for the particular head for purposes of charge and as seen already that cannot be imported into the determination of the income of the property held in trust for the purpose of Section 11 which excludes that income from the computation of total income. The view that we have taken above is also consistent with the circular of the Central Board of Direct Taxes dated 19th June, 1968, reproduced in V.S. Sundaram's Law of Income Tax In India, 11th Edn., p. 798.

The Id.counsel for the assessee also relied on the decision of Hon'ble Gujarat High Court in the case of CIT vs. Ganga Charity Trust Fund, (1986) 162 ITR 612 and stated that notional income, if calculated on the basis of mercantile method of accounting is conceived as income for the purpose of section 11(1)(a) of the Act, it must be considered that such notional income can never be actually applied or accumulated or set apart for the purpose of the trust and the assessee's trust, will be able to pay income-tax on accrual basis, not be able to derive the benefit confined by the above said provision. The Id.counsel for the assessee drew our attention to para 5 of the judgment where the provisions of section 11(a) of the Act is discussed as regards to accumulation of income and the relevant para 5 reads as under:-

5. Section 11(1)(a) of the Act with which we are concerned reads as under :

"11.(1) Subject to the previous of sections 60 to 63, following income shall not be included in the total income of the previous year of the person in receipt of the income -

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of twenty-five percent of the income from such property;"

On a plain reading of this sub-section, it becomes clear that the income referred to in clause(a) is not liable to be added to the total income of the previous year of the assessee in receipt of the income to the extent to which such income applied for the purposes of the trust in India and, where such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of 25% of the income from such property. It is, therefore, clear that the income derived from property must be such as can be applied for the purposes of the trust or accumulated or set apart for such application at a future date not exceeding 25% of the income from such property. The word "applied" was construed by the Supreme Court in *H. E. H. Nizam's Religious Endowment Trust v. CIT* [1966] 59 ITR 582 and the Supreme Court stated that it envisaged actual application of the income for the purposes of the trust. Similarly, the word "accumulated" meant the income so set apart during the year for future spending on such purposes. There can be no actual application or setting apart or accumulation of income derived from the trust property unless it is actually available for application or accumulation in the hands of the trustees. Where an assessee is following the mercantile system of accounting, income on accrual basis may be reflected in the account books, but such notional income is incapable of actual application or accumulation under section 11(1)(a) of the Act and if the assessee-trust is called upon to pay income-tax for want of such application or accumulation, it would result in rendering the benevolent provision found in clause(a) of section 11(1) of the Act nugatory. Therefore, on a plain reading of section 11(1)(a) of the Act, the view taken by the Tribunal commends itself to us.

The Id.counsel also drew our attention to para 7 where the view taken by various courts is discussed and the same reads as under:-

9. The view taken by the courts in the above referred cases is that before determining the income which could be actually applied or accumulated for the purposes of the trust under section 11(1)(a) of the Act, all outgoings, including the outgoing in the nature of payment of income-tax, must be deducted. It is only from the surplus income that remains in the hands of the trustees that actual application or accumulation for the purposes of the trust can be expected. If there is no income which could be actually applied or accumulated by the trustees would be incapable of actually applying or accumulating the income for talking the benefit of section 11(1)(a) of the Act. Therefore, even in the case of an assessee following the mercantile system of accounting, there can be no doubt that for the purposes of actual application or accumulation or setting apart of income from trust property for the purposes of the trust, the trustees must have on hand income which could be so utilised and what are outgoings towards payment of income-tax must be deducted for working out such surplus income. If a notional income calculated on the basis of accrual under the mercantile system of accounting is conceived as income for the purposes under section 11(1)(a) of the Act, it must be conceded that such notional income can never be actually applied or accumulated or set apart for the purposes of the trust and the assessee-trust while being liable to pay income-tax on accrual basis, will not be able to derived the benefit conferred by the said provision. We are, therefore, of the view that the Tribunal was right in coming to the conclusion that the income derived form trust property must be determined on commercial principles and in doing so, all outgoings including outgoing by way of income-tax paid by the assessee-trust must be deducted and it is only from the surplus income in the hands of the trustees that the question of application or accumulation or setting apart of income can arise. In this view that we take, we do not feel called upon to examine the second contention bases on the decisions referred to above, whether the expenditure incurred by the trust for the payment of income-tax can be said to be actual application of income for the charitable purposes of the trust in India.

He also relied on another decision of Hon'ble High Court of Calcutta in the case of CIT vs. Jayashree Charity Trust, (1986) 159 ITR 280.

6. When we pointed out that these facts to Id.Senior DR, he stated that there is no bar in computing notional income of rent in term of provisions of section 23 of the Act, where a formula is given as to how the annual value of any property is to be determined. The Id.Senior DR stated that even in the provisions of section 11 to 13 of the Act, there is no bar in computing annual value of the trust property and AO as well as CIT(A) has rightly computed the annual value in term of the provisions of section 23 of the Act. As regards to violation of provisions of section 13(1)(c) r.w.s. 13(1)(b) of the Act, the Id.Senior DR stated that now assessee's counsel before us conceded that the income of the trust has to be assessed on maximum marginal rate u/s.164(1) of the Act and moreover, no deduction or exemption can be allowed u/s.11 of the Act, because the two tenants are specified persons u/s.13(3) of the Act and hence, provisions of section 13(1)(c) is applicable to the assessee and as such, assessee is not entitled for claim of exemption u/s.11 of the Act.

7. After hearing the arguments of Id.counsel for the assessee as well as Id. Senior DR and going through the CBDT Circular No.005P (LXX-6) dt. 19th June, 1968 cited above, which has been considered by Hon'ble Madras High Court in the case of Rao Bahadur Calavala

Cunnan Chetty Charities., *supra* and also by Hon'ble Gujarat High Court in the case of Ganga Charity Trust Fund, *supra*, we are of the view that the 'accumulation' or 'application' in section 11(1)(a) of the Act must be of real income and as per the CBDT circular No.005P(LXX-6) cited above, makes it clear that the word 'income' in section 11(1)(a) must be understood in commercial sense. The entire income of the trust in the commercial sense has been spent for the purpose and not the notional income. But in the present case before us, the assessee has violated the provisions of section 13(1)(c) r.w.s. 13(1)(b) of the Act, as the assessee has received rent from two tenants who are specified persons u/s.13(3) of the Act and hence, clear violation of provisions of section 13(1)(c) r.w.s. 13(1)(b) of the Act. Therefore, the assessee is not entitled for claim of deduction.

7.1 Accordingly, we held as under:-

- (i) The assessee trust cannot be assessed on notional rental income in term of CBDT Circular No.005P(LXX-6) dt. 19th June 1968 and in term of decision of Hon'ble Madras High Court in the case of Rao Bahadur Calavala Cunnan Chetty Charities., *supra*.

- (ii) The AO will deny exemption u/s.11 of the Act, in regard to the income declared by assessee at Rs.8,25,510/- and will assess the same to tax in term of section 164(1) of the Act.

In term of the above, the appeal of the assessee is partly allowed.

8. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 21st December, 2022 at Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

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

चेन्नई/Chennai,
दिनांक/Dated, the 21st December, 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. |