

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

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

आयकर अपील सं./ **ITA No.1016/Chny/2019**
(निर्धारण वर्ष / Assessment Year: 2012-13)

Income Tax Officer Exemption Ward, Trichy.	बनाम/ Vs.	M/s. M.A.M. Subramanian Chettiar Educational Society, No.6, Warners Road (Cantonment), Trichy-620 001.
स्थायी लेखा सं./जीआइ आर सं./ PAN/GIR No. AABTM-0601-N		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Shri P.Sajit Kumar,(JCIT) –Ld.DR
प्रत्यर्थी की ओरसे/ Respondent by	:	Shri T.Vasudevan, Advocate
सुनवाई की तारीख/ Date of Hearing	:	15-12-2022
घोषणा की तारीख / Date of Pronouncement	:	06-01-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2012-13 arises out of order of learned Commissioner of Income Tax (Appeals)-1, Trichy [CIT(A)] dated 11-01-2019 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 27-03-2015. The grounds taken by the Revenue read as under:

- “1. The Order of the learned CIT (A) is contrary to the Law and facts of the case.
2. The Id CIT(A) erred in holding that the on money payments made over and above the registered value of the property is to be allowed as application of income without realizing the fact that non-payment of

stamp duty on such on money payments amount to violation of Stamp Duty Act and such payments also cannot be considered as investments in terms of Section 11(5) of the Income Tax Act, 1961.

3. The Ld.CIT(A) erred in holding that a sum of Rs.100 lakhs given to another charitable trust is to be treated as application of income without realizing the fact that the assessee trust itself is not entitled for exemption u/ s 11 of the Income Tax Act, 1961 and therefore it is not entitled for allowance of any such payments as application of income.”

2. The Ld. Sr. Dr advanced arguments and submitted that the relief has been granted without properly appreciating / verifying the facts of the case. The Ld. AR, on the other hand, supported the findings rendered by Ld. CIT(A). Having heard rival submissions and after perusal of case records, the appeal is disposed-off as under.

3. During assessment proceedings, it transpired that the assessee trust purchased immoveable property admeasuring 87.12 acres in Neivasal Village, Thirumayam Taluk, Pudukkottai District. Though the assessee reflected payment of Rs.210.14 Lacs in the receipts and payments account, however, the sale deed was executed for Rs.50 Lacs with stamp duty payment of Rs.4.78 Lacs. For the balance payment of Rs.155.35 Lacs, the assessee could not furnish any documentary evidences. The assessee claimed that the land owners were paid a sum of Rs.150 Lacs through banking channels over and above the document value. In support, the assessee could only furnish its own bank statement and affidavit of the recipients. Therefore, Ld. AO held that the payment of Rs.150 Lacs could not be considered as an application of income since the assessee connived in evading payment of stamp duty and capital gain taxes which was opposed to public policy.

4. As a further consequence, Ld. AO proceeded to deny the exemption u/s 11 r.w.s. 13(1)(d)(i) for violation of Sec.11(5). Further,

net cash available for investment was Rs.51.66 Lacs whereas the assessee made investment of Rs.210.14 Lacs which would mean that the money was drawn out of accumulated income of earlier years. The assessee claimed misc. expenses of Rs.108.59 Lacs which were held to be not incurred wholly and exclusively for earning the income. Lastly the depreciation of Rs.1.81 Lacs was also disallowed and total income was assessed at Rs.313.37 Lacs.

5. During appellate proceedings, the assessee made a submission that the payments were made for protecting the title of the land. Concurring with the same, Ld. CIT(A) held that the related payments made by cheque to identified persons was to be considered proper. Further, out of payment of Rs.108.59 Lacs, an amount of Rs.100 Lacs was given to another registered charitable Society and therefore, the same was to be allowed and the balance addition was to be sustained. Accordingly, the appeal was partly allowed against which the assessee is in further appeal before us.

6. Upon perusal of impugned order, it could be seen that before Ld. AO, the assessee could only produce Bank statement and affidavit in support of the plea that the additional amount of Rs.150 Lacs was paid to procure the land. However, during appellate proceedings, the assessee maintained that the payment was made to family members of sellers to enjoy peaceful possession of the property. The Ld. CIT(A), without rendering any concrete finding on the observations made by Ld. AO that the aforesaid payment was opposed to public policy, granted relief to the assessee. Therefore, as rightly pointed out by Ld. Sr. DR, the impugned order has to be set aside and it is a fit case for remand back to Ld. CIT(A) for denovo adjudication with a direction to

the assessee to substantiate its case. The issue of application of sum of Rs.100 Lacs to another charitable trust is consequential in nature and the same may accordingly be re-adjudicated in the light of view taken by Ld. CIT(A) on main ground of the assessee.

7. In the result, the appeal stands allowed for statistical purposes.

Order pronounced on 6th January, 2023

Sd/-
(MAHAVIR SINGH)
उपअध्यक्ष / VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई / Chennai; दिनांक / Dated : 06-01-2023
DS

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded 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