

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.: 2819/CHNY/2018

निर्धारण वर्ष/Assessment Year: 2013-14

**The Income Tax Officer
(Exemptions Ward),**
No.44, Williams Road,
Cantonment,
Trichy – 620 001.

**The Tiruchirapalli District Bus
Operators Association,**
vs. No.5/G, Lawsons Road,
Cantonment, Trichy – 620 001.

PAN: AAATT 9428K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri P. Sajit Kumar, JCIT
: Shri Philip George, Advocate

सुनवाई की तारीख/Date of Hearing : 16.01.2023

घोषणा की तारीख/Date of Pronouncement : 16.01.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-1, Tiruchirappalli in ITA No.237/2016-17/CIT(A)-1/TRY dated 06.07.2018. The assessment was framed by the Income Tax Officer, Exemptions Ward, Trichy for

the assessment year 2013-14 u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 14.12.2016.

2. At the outset, it is noticed that this appeal by Revenue is barred by limitation by 13 days. The Revenue received the impugned appellate order on 20.07.2018 and appeal was to be filed on or before 17.09.2018 but actually it was filed on 01.10.2018 thereby there was a delay of 13 days. The Revenue has filed condonation petition stating the reason that the appeal papers were mixed up with other files and it was traced only on 10.09.2018 after exhaustive search and thereafter immediately appeal was filed. When this was confronted to Id.counsel for the assessee, he has not objected for condonation of delay. Hence, we condone the delay and admit the appeal.

3. The only issue in this appeal of Revenue is against the order of CIT(A) holding the assessee society as eligible for exemption u/s.11 of the ACT even though the assessee society is neither existing for charitable purpose nor carrying on any charitable activity. For this, the Revenue has raised various grounds which are argumentative and hence, we will not reproduce the same.

4. We have heard rival contentions and gone through facts and circumstance of the case. Brief facts are that the assessee society 'The Tiruchirappalli District Bus Operators Association', an association for the welfare of bus operators in Trichy district is registered as society under the Societies Registration Act on 08.03.1977. The objects of the society read as under:-

- To promote solidarity and co-operation among the members with a view to focusing their collective thinking and perspective of the Road Transport Industry.
- To promote healthy trade practices and technical competency among its members and protect their interests and rights and also try to find solutions to their problems.
- To co-operate with the Government and other bodies for the purpose of developing the Industry in the interests of the public.
- To promote friendship and understanding among the members and with the public and to organize cultural programmes, study tours and such of the projects for the benefit and welfare of the members and the public.
- To do all such things in the interests of the members as are incidental or conducive to the attainment of the above objects.

Subsequently, the society amended its objects vide memorandum executed on 27.07.2005 and the following changes were carried out:-

“2(f) : To put up shelters at Bus stops and provide such amenities there of for the waiting public.

(g) To set up educational institutions / industrial Training Institutes for the Training in safety operation of buses to ensure property / personal safety of the travelling public and also to develop cordial relationship with the travelling public.

(b) To put up Medical Centers in the National Highways to provide emergency medical care in case of accidents free of cost to all public.

The society was granted registration u/s.12AA of the Act w.e.f. assessment year 2006-07 vide order in C.No.6162E(66)/2005/CIT-1/TRY dated 10.11.2005. The assessee society has declared following receipts and payments account for the year ended 31.03.2013 and the receipts are as under:-

RECEIPTS:

Capital Fund Received		3321468
Rent Received		
Reliance Life Insurance	186400	
Royal Sundaram	282833	
Shriram Chits	254793	
Sundaram Finance Limited	332670	
HDFC Bank	1004211	2060907
Generator Hire Charges		655816
Subscriptions Received		369052
Miscellaneous Receipts		15585
Operators List		8000
Reliance Life Insurance		15800
Royal Sundaram		27886
Total		<u>6474514</u>

The AO rejected the assessee's claim u/s.11 and brought to tax the entire capital funds as well as subscriptions of members and other rental incomes earned by assessee society and taxed the entire income and made computation as under:-

	Other receipts as discussed above	10,31,691
	Capital Fund as discussed above	33,21,468
[1]	Total income assessed at AOP rates	Rs.43,53,159
[2]	Revenue fund treated as the benefit extended to its members assessed at MMR	Rs.1,67,24,014
[3]	Repayment to members assessed at MMR	38,00,000
	TOTAL INCOME ASSESSED	Rs.2,48,77,173

Aggrieved, assessee preferred appeal before CIT(A).

5. The CIT(A) by an cryptic order allowed the claim of assessee by relying on earlier years order of Tribunal in assessee's own case by observing in para 7 as under:-

7. The argument of the appellant before me is on the grounds i.e. 1) the surplus in the income and expenditure account represents collection from the members and on the principle of mutuality, the same cannot be taxed as one cannot be expected to make profit from his own. 2) similarly the amount returned to the members represent their own funds as the association is established for the benefit of the members only and hence there is no provision under the charging sections of the Act to tax the same 3) on the same ground the amount credited under capital fund cannot be subjected to tax. 4) The sum of Rs.1,67,24,014/- is not an item of application of funds in the Current year at all and this item is assessed by the AO for all the years from Asst Year 2006-07. The appellant relies on various case laws as given in the grounds of appeal to support his arguments. The issue as to whether the subscription collected from the members are assessable to tax or not has already been decided by the Jurisdictional Tribunal in the case of the appellant itself for the A.Y. 2000-01 / 2003-04 in ITA No.203 / 204 vide para 9 page 12 of its order dated 30th April 2013. It is also pertinent to note that the department has not filed further appeal before the High Court against the said order. Further the issue as to whether a society is entitled for exemption under section 11/ 12 or not in respect of the rent received from the buildings own by it was also decided by the jurisdictional Tribunal in the case of DCIT V St Josephs College Jesuit in ITA No.432 / Mds / 2011 vide order datted 5th August 2011 and In the case of ACIT V National College Council in ITA No.1057/Mds/2011 vide order dated 9n September 2011. My predecessor in

the appellant's own case in ITA Nos.63 to 66 for the assessment years 2007-08/ 2009-10 / 2010-11 and 2012-13 vide order dated 05.04.2017 has deleted the assessment made by the AO on the similar grounds. Above all do not find any reason to assess the same amount of Rs.1,67,24,014/- for all the assessment years from 2006-07 to 2012-13. When the AO is not having any doubt over the fact that the subscriptions are collected from the members only and the same is returned to the members only, the assessment of both as the income is directly opposed to law. Respectfully following the decision of the ITAT cited supra, I delete all the amounts assessed to tax.

Aggrieved, now Revenue is in appeal before the Tribunal.

6. Admittedly, assessee is falling under proviso to section 2(15) of the Act as a society for the advancement of any other object of general public utility. Admittedly, it is not carrying out any charitable purpose which includes relief of the poor, education, yoga, medical relief, preservation of environment including watersheds, forests and wildlife and preservation of monuments or places or objects of artistic or historic interest. It means that the assessee is solely for the object of general public utility and not engaged in charitable purpose. Admittedly in this year, the receipts from rent is Rs.20,60,907/-, generator hire charges is Rs.6,55,816/- etc., that means the aggregate value of receipts from the activities referred to therein is exceeding Rs.25 lakhs and hence, assessee's case falls under proviso to section 2(15) of the Act as a society for

the advancement of any other object of general public utility. It means that the issue is squarely covered by the decision of Hon'ble Supreme Court in the case of ACIT (Exemptions) vs. Ahmedabad Urban Development Authority, [2022] 449 ITR 1 and hence, assessee is not entitled for claim of exemption u/s.11 of the Act. However, the assessment should be made as an 'AOP' and it should be allowed normal business expenditure and capital receipt if not taxable should not be added to the returned income of the assessee. Hence, this matter needs reconsideration at the level of AO to consider this as an AOP and make assessment as normal business entity after allowing the normal expenditure as claimed by assessee as well as any capital fund received including subscription from members or any other capital receipt as per law. The AO will consider the arguments and evidences of the assessee afresh while reframing the assessment. Accordingly, the order of CIT(A) and that of the AO is set aside and the matter remanded back to the file of the AO with the above directions.

6.1 It is to be clarified that in this year, the assessee is not entitled to claim of deduction in the given facts of the case because it is not carrying out the activities of charities as provided in section 2(15) of the Act, this decision will be limited to this year only. The

assessee in case carries out any charitable activity in any other year that will be decided based on facts of that year. In term of the above, matter restored back to the file of the AO.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 16th January, 2023 at Chennai.

Sd/-

(जी. मंजुनाथ)

(G. MANJUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 16th January, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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