

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

1. आयकरअपील सं./ ITA No.2269/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2008-09)
&
2. आयकरअपील सं./ ITA No.2270/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2009-10)
&
3. आयकरअपील सं./ ITA No.2271/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2010-11)
&
4. आयकरअपील सं./ ITA No.2272/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2011-12)
&
5. आयकरअपील सं./ ITA No.2273/Chny/2018
(निर्धारण वर्ष / Assessment Year: 2012-13)
&
6. आयकरअपील सं./ ITA No.814/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2013-14)
&
7. आयकरअपील सं./ ITA No.815/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2014-15)
&
8. आयकरअपील सं./ ITA No.816/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2015-16)
&
9. आयकरअपील सं./ ITA No.817/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2016-17)

&

10. आयकरअपील सं./ ITA No.818/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2017-18)

&

11. आयकरअपील सं./ ITA No.819/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2018-19)

M/s. Young Men's Christian Association New No.24, Old No.223, NSC Bose Road, Chennai-600 001.	बनाम/ Vs.	ITO (Exemptions) / ACIT Ward-2 / Ward-3 / Central Circle-2(3) Chennai.
स्थायीलेखासं./जी आइ आर सं./PAN/GIR No. AAATY-0296-N		
(□ पीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri G. Reddi Prakash (CA) - Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri P.Sajit Kumar, (JCIT)-Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	16-02-2023
घोषणाकीतारीख / Date of Pronouncement	:	16-02-2023

आदेश / ORDER

PER BENCH:

1. Aforesaid appeals by assessee for captioned Assessment Years arises out of separate appellate orders. The impugned order is common order for AYs 2008-09 to 2012-13 which has been passed by Ld. Commissioner of Income Tax (Appeals)-17, Chennai [CIT(A)] on 27.03.2018. The impugned order is common order for AYs 2013-14 to 2018-19 which has been passed by Ld. Commissioner of Income Tax (Appeals)-19, Chennai on 26.07.2022.

2. The Ld. AR, at the outset, placed on record, activities carried out by the assessee in all the years and receipts generated out of such activities. The attention has been drawn to the recent decisions of Hon'ble Apex Court in bunch of appeals titled as **ACIT vs. Ahmedabad**

Urban Development Authority (143 Taxmann.com 278; 19.10.2022) as well as the decision rendered on same day in **New Noble Educational Society vs. CIT (143 Taxmann.com 276)**. It was admitted position from both the sides that these decisions would have material bearing on the case of the assessee and accordingly, the assessments could be restored back to the file of lower authorities in the light of legal position settled in these decisions. In the above background, the appeals are disposed-off as under.

Proceedings before lower authorities

3.1 The appeal for AY 2008-09 is in second round of appeal before us. The facts, as noted by Ld. AO in assessment order passed on 31.03.2015 in second round, are that the assessee was denied exemption as claimed u/s 11 in the original assessment proceedings. The original assessment order was rectified u/s 154 also. The assessee preferred appeals against both the orders which was allowed by first appellate authority. However, in appeals of the department, the matter was remitted back by Tribunal to the file of Ld. AO to examine all the aspects afresh. The assessee preferred further appeal against the same before Hon'ble High Court of Madras vide TCA Nos.35 and 36 of 2014 and MP No.1 of 2014 dated 03.03.2014 wherein Hon'ble Court confirmed open remand of issues back to the file of Ld. AO.

3.2 Pursuant to the same, another assessment order has been passed by Ld. AO on 31.03.2015. In the first round, the various activities carried out by the assessee were held to be business activity. The Ld. AO again appreciated the objects of the assessee and took a view that the activities in the nature of establishment of guest houses, working women's hostel, canteen, gymnasium running Kalyan mandapam, party

hall etc. were to be categorized as main activity and not activities incidental to its main objects. Only few of the objects would fall under the category of education whereas majority of the objects would fall under the category of advancement of objects of general public utility. The Ld. AO also held that the activities were run on commercial line which was evident from the fact that the assessee was letting out guest houses at hefty prices. The assessee was having conference halls, party halls which were given on hire to customers for various events and functions. The assessee also has open grounds and parking lots which are hired for marriages and other events. The gymnasium and sports coaching centers including swimming pools were generating fees for the assessee. The two schools, an orphanage and home for Tsunami victims as run by the assessee formed small part of its entire activities. The Ld. AO also noted that the major source of income was from letting out the premises etc. which was nothing but commercial in nature. The letting out was an organized activity which was nothing but business. Further, the schools being run by the assessee were self-sufficient and the expenses were met out of their own income.

3.3 In the above factual matrix, Ld. AO reached an inevitable conclusion that the income from letting out was independent of the objects of the trust and accordingly, the assessee was treated as an AOP and taxed as a business enterprise on commercial principles. Finally, the income was assessed at Rs.162.32 Lacs after making certain adjustments.

3.4 In AY 2009-10, an assessment was framed u/s 143(3) r.w.s. 147 denying exemption of Sec.11 to the assessee. Upon further appeal, Tribunal restored the matter back to the file of Ld. AO with certain

directions. The Hon'ble High Court of Madras sustained the order of Tribunal. In the set-aside proceedings, Ld. AO took a view that the activities of the assessee were more in the nature of trade, commerce or business for a fee and the assessee was hit by proviso to Sec.2(15). Consequently, the assessee was treated as an AOP and taxed as a business enterprise. The income of the assessee was determined at Rs.181.98 Lacs.

3.5 In AY 2010-11, the assessee was assessed u/s 143(3) on 06-02-2013 wherein similar view was taken and the income was determined at Rs.79.99 Lacs. Similar was the assessment for AYs 2011-12 as well as for AY 2012-13.

3.6 Aggrieved as aforesaid, the assessee preferred further appeal before Ld. CIT(A) which was disposed-off vide common order dated 27.03.2018 for AYs 2008-09 to 2012-13. The Ld. CIT(A) tabulated the various issues arising in all these assessment years in para 3.1 of common order dated 27-03-2018. For AY 2008-09, Ld. CIT(A) held that the assessee would be entitled for benefit of Sec.11 subject to fulfillment of stipulated conditions. Since the assessee failed to maintain separate books of accounts, it would not be entitled for exemption u/s 11 for AY 2008-09 also. For subsequent years, the assessee would be hit by proviso to Sec.2(15) and therefore, not entitled for exemption u/s 11. The plea of principle of mutuality was also dismissed since the income of the assessee was not restricted to contributions from members alone. The Ld. CIT(A) further adjudicated the issue of allowability of expenditure etc. as arising from computation of income under the head business income. Aggrieved, the assessee is in further appeal before us.

3.7 The assessment for AYs 2013-14 to 2018-19 has been framed on similar lines i.e., the assessee has been treated as AOP and the income has been computed as business enterprise. The appeal of the assessee has been disposed-off by first appellate authority vide common order dated 26-07-2022 wherein Ld. CIT(A) has merely followed common appellate order dated 27-03-2018. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

4. From the facts, it could be seen that the prime issue that arise in all the years is that whether the assessee's activities could be termed as charitable activities or not and consequently, whether the assessee is entitled for exemption u/s 11 as applicable to a charitable trust. The said question has to be answered in the light of objects of the assessee trust and actual activities carried out by the assessee over all these years. The Ld. AR has submitted that the activities would fall under more than one head i.e., certain activities would fall under education / relief to poor which would not be hit by proviso to Sec.2(15). On the other hand, certain activities would fall under advancement of objects of general public utility for which proviso to Sec.2(15) would apply and the consequences would follow. To demonstrate the same, Ld. AR has placed on record activity-wise receipts earned by the assessee and expenditure incurred therein in all the years for each of its activities. The Ld. AR has sought another opportunity to enable assessee to bifurcate its activities under various heads considering the receipts / expenditure under each of the distinct head. The Ld. Sr. DR also submitted that in view of the recent decisions of Hon'ble Supreme Court settling the issue,

the matter could be remanded back to lower authorities to consider the ratio of these decisions.

5. After careful consideration of factual matrix as well as case records, the bench concurs with the submissions made by both the sides before us. Both the cited decisions rendered by Hon'ble Supreme Court subsequent to passing of impugned orders would have material bearing on the assessment of the assessee. These two decisions have settled the legal position with respect to registered trusts engaged in education as well as in advancement of objects of general public utility. Considering the arguments made before us, we remit the assessment of all the years back to the file of Ld. AO with a direction to the assessee to provide the requisite details / documents and substantiate its stand. The Ld. AO shall examine the objects the trust vis-à-vis actual activities carried out by the assessee and frame de novo assessment for all the years. The matter shall be decided in the light of both the decisions rendered by Hon'ble Supreme Court. Needless to add that, adequate opportunity of hearing shall be granted to the assessee.
6. All the appeals stand allowed for statistical purposes.

Order pronounced in open court on 16th February, 2023.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / VICE PRESIDENT

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

चेन्नई/ Chennai; दिनांक/ Dated : 16-02-2023
DS

आदेश की प्रतिलिपि ँ ग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त/CIT 4. विभागीय प्रतिनिधि/DR
5. गार्डफाईल/GF