

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

श्री महावीर सिंह, माननीय उपाध्यक्ष, एवं  
श्री मंजूनाथा.जी, माननीय लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND**  
**SHRI MANJUNATHA.G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.53 to 61/Chny/2023  
निर्धारण वर्ष/Assessment Years: 2013-14 to 2019-20

M/s.Ramsahaimal Sahuwala &  
Sons Charitable Trust,  
No.24, Cathedral Garden Road,  
Nungambakkam,  
Chennai-600 034.

v. The ACIT,  
Central Circle-2(3),  
Chennai.

The ITO,  
Exemptions Ward-4,  
Chennai.

[PAN:AAATR 0709 B]  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकी ओर से/ Appellant by : Shri T. Banusekar, Adv.  
Shri H. Yeshwanth kumar, CA  
प्रत्यर्थीकी ओरसे /Respondent by : Shri P. Sajit Kumar, JCIT  
सुनवाई की तारीख/Date of Hearing : 06.10.2023  
घोषणकी तारीख /Date of Pronouncement : 18.10.2023

**आदेश / ORDER**

**PER MANJUNATHA.G, ACCOUNTANT MEMBER:**

This bunch of 'nine' appeals filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-19, Chennai, dated 16.11.2022, and pertains to assessment years 2013-14 to 2019-20. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

:: 2 ::

2. The assessee has, more or less, raised common grounds of appeal for both the assessment years. Therefore, for the sake of brevity, grounds of appeal filed for the AY 2013-14, are re-produced as under:

1. *For that the order of Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interest of the appellant and at any rate is opposed to the principles of equity, natural justice and fair play.*

2. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order o\* the Assessing Officer is without jurisdiction.*

**Reopening of Assessment**

3. *For that the reassessment was bad in law.*

4. *For that the reopening was not made based on any new tangible material **Denial of Exemption u/s.11***

5. *For that the Commissioner of Income Tax (Appeals) erred in upholding the denial of exemption u/s.11 of the Income Tax Act.*

6. *For that the Commissioner of Income Tax failed to appreciate that the appellant Trust is having composite object and not a Trust with the sole object of advancement of General Public utility.*

7. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the activities carried on by the appellant trust are charitable in nature.*

8. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant trust had applied its receipt from Kalyanamandapamas donation for educational and medical institutions.*

9. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant trust would not fall under the ambit of the proviso to section 2(15) of the Income Tax Act.*

10. *For that the Commissioner of Income Tax (Appeals) erred in upholding the disallowance of Rs.12,11,816/-.*

11. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the appellant had spent Rs.12,11,816/- for charitable purpose.*

**Provision of Section 13(1)(c) not invocable**

12. *For that the Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of section 13(1)(c) are not invocable in the facts and circumstances of the case.*

13. *For that the Commissioner of Income Tax (Appeals) erred in concluding that the bhawan at Kulod is utilized only for the family members of Sahuwala family.*

**Denial of Depreciation**

14. *For that tie Commissioner of Income Tax (Appeals) erred in denying depreciation amounting to Rs.14,87,279/- to the appellant Trust.*

:: 3 ::

15. Without prejudice to the above, the appellant is eligible to claim depreciation amounting to Rs.14,87,279/- even if assessed in the status of Association of Persons.

**PRAYER**

*For these grounds and such other grounds that may be raised, may be altered, amended or modified, with the leave of this respected authority before or during the hearing of the appeal, it is most humbly prayed that this respected authority may be pleased to*

- a. *Quash the order of reassessment.*
- b. *Allow the exemption u/s.11 as claimed by the appellant.*
- c. *Delete the addition made u/s.13(1)(c).*
- d. *Allow the depreciation claimed by the appellant.*
- e. *Pass such other orders as this respected authority may deem fit.*

**3.** The appellant Trust was established in the year 1972 and is registered u/s.12AA of the Income Tax Act, 1961 (in short "the Act"). The assessee has filed its return of income for AYs 2013-14 to 2019-20 u/s.139 of the Act, and admitted 'nil' total income after claiming exemption u/s.11 of the Act. A survey u/s.133A of the Act, was conducted in the business premise of the assessee on 23.01.2020. During the course of survey, it was noticed that the assessee's Trust is running Kalyan Mandapam in Chennai & Coimbatore, and charging rent on par with the market rates. The predominant activity of the assessee's Trust is running marriage hall and also major income comes from running of marriage hall and interest income, etc. The major expenses incurred by the assessee pertain to the activity of running of marriage hall only. It was further observed that the Trust is managing a temple called Bhawan at Kulod exclusively for the benefit of Sahuwala family. A statement on oath was recorded from Shri. Rajavel, Manager (Accounts) of the Trust and Shri Ashok Kumar Gupta, Chairman of the Trust, and in response to

:: 4 ::

the specific questions, they have stated that the Trust is running Kalyan Mandapam at Chennai & Coimbatore, and charging rent.

**4.** Consequent to survey action u/s.133A of the Act, assessment has been re-opened u/s.147 of the Act. During the course of assessment proceedings, the AO noticed that the objects of the assessee's Trust and activities carried out during these assessment years predominantly running of marriage hall. Further, Trust is not running any Educational Institution or Old Age Home as per the objects of the Trust. The AO has discussed the issue at length in light of certain observations made during the course of survey, including certain bills from the Graphic Systems, Coimbatore, which was on account of printing of Sahuwala Pariwar Directory-2019 which contains the details of family tree of Sahuwala Pariwar and the payments made out of the Trust funds. The AO had also discussed the bills received from M/s Ratna Café, Chennai, and accounted under the head 'other expenses'. The Trust funds were used for the benefit of the trustees in violation of provisions of Sec.13 (1)(c) of the Act. Therefore, the AO opined that the activity of running of Kalyan Mandapam by charging fees on par with commercial rates charged by any other private Kalyan Mandapam operator is in the nature of trade, commerce or business which comes under the last limb of definition of charitable purpose, i.e. any other object of General Public Utility (in short "GPU") as defined u/s.2(15) of the Act, and thus, as per proviso to sec.2(15) of the Act, the advancement of any other object of GPU shall

:: 5 ::

not be a charitable purpose, if it involves the carrying of any activity in nature of trade, commerce or business or any activity of running any services in relation to trade, commerce or business for a cess, fees or any other consideration irrespective of the nature of use or application or retention of income from such activity. Since, the receipts from the activity is in excess of the prescribed limit provided under the proviso, the assessee is not entitled for the benefit of exemption u/s.11 of the Act, and thus, rejected exemption claimed by the assessee and computed the income on commercial principle and taxed excess of income over expenditure. Similarly, the AO has disallowed donations paid to other charitable trust or institutions on the ground that the said expenditure has not been incurred for charitable purpose. The AO had also disallowed depreciation claimed on fixed assets, the cost of which has already been allowed as application of income in the year of purchase of said fixed assets. Similarly, the AO has disallowed expenses incurred for Bhawan at Kulod, a community temple on the ground that said expenditure has been utilized for the benefit of trustees and their family members alone and not for the purpose of charity, and thus, not allowable as deduction.

**5.** Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld.CIT(A), the assessee has reiterated its arguments made before the AO and submitted that the Trust was formed in the year 1972 and registered u/s.12AA of the Act, as a charitable institution. The main object of the Trust is relief to the poor,

**:: 6 ::**

education and medical relief and to achieve its objects, the Trust has constructed and maintained a Kalyan Mandapam in Chennai & Coimbatore, to generate income for the purpose of achieving its objects. Therefore, the AO is incorrect in stating that the predominant activity of the Trust is running Kalyan Mandapam and not charity. The assessee had also challenged the re-opening of assessment u/s.147 of the Act, for AYS 2013-14 to 2015-16 on the ground that re-opening of assessment was a change of opinion.

**6.** The Ld. CIT (A) after considering relevant submissions of the assessee and also taken note of reasons recorded for re-opening of assessment opined that the AO has formed reasonable belief of escapement of income on the basis of tangible materials which came to the knowledge of the AO during the course of survey and without survey there may not have any occasion on the part of the AO to examine the activities of the Trust and application of income. The books of accounts maintained and submitted by the assessee may not reveal the original affairs and activities of the Trust. Therefore, the opined that there is live link between reasons recorded for re-opening of assessment and escapement of income, and thus, rejected arguments of the assessee and upheld re-opening of assessment.

**7.** As regards rejection of exemption u/s.11 of the Act, and taxation of excess income over expenditure under normal commercial principles, the

:: 7 ::

Ld.CIT(A) observed that on going through the objects of the Trust and predominant activity carried out during these assessment years, it is abundantly clear that the Trust is carrying out predominantly GPU activities by running a marriage hall in commercial lines and such activity can only be falls under the last limb of any other object of general public utility (GPU) as per sec.2(15) of the Act. Since, the Trust is a GPU Trust, the entitlement of exemption needs to be examined as per proviso to sec.2(15) of the Act, where it has been clearly laid down that the advancement of any other object GPU shall not be a charitable purpose, if it involves carrying any activity in the nature of trade, commerce or business or any activity of running a service in relation to any trade, commerce or business for a fees or cess irrespective of the nature of use or application of the income of such activity. Since, the predominant activity of the assessee's Trust is in the nature of trade and commerce, the activity of the Trust comes under GPU, and thus, the proviso to sec.2(15) of the Act, clearly attracts in the given facts and circumstances of the case. Since, the receipts from the activity of GPU is in excess of the prescribed profit as per proviso to sec.2(15) of the Act, the benefit of exemption u/s.11 of the Act, cannot be allowed. Therefore, the CIT(A), by following the decision of the Hon'ble Supreme Court in the case of ACIT(Exemptions) v. Ahmadabad Urban Development Authority (2023)290 Taxman 137, rejected arguments of the assessee and upheld the reasons given by the AO to reject exemption u/s.11 of the Act. The

:: 8 ::

Ld.CIT(A) had also discussed the issue in light of gross receipts from the assessee and application of income and opined that the assessee has applied a meniscal income for charitable purpose which is evident from expenses incurred by the assessee. The Ld.CIT(A) had also discussed the issue of violation of provisions of Sec.13(1)(c) of the Act, in light of certain evidences found during the course of survey, including bills from Graphic Systems, Coimbatore, with regard to printing of Sahuwala Pariwar Directory-2019 and observed that the benefit of the Trust is limited to a particular community or family but not for general public. The Ld.CIT(A) had also discussed the issue in light of bills received from Ratna Café, Chennai, with regard to amounts spent for Diwali get together of the Trust and family members and observed that the benefit of the Trust has been extended to Trust and their family members. Therefore, rejected the arguments of the assessee and upheld additions made by the AO towards excess of income over expenditure. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

**8.** The Ld. Counsel for the assessee, Shri T. Banusekar, Adv. & Shri H. Yeshwanth kumar, CA, submitted that the Ld.CIT(A) erred in upholding the denial of exemption u/s.11 of the Act. The Ld. Counsel for the assessee referring to Deed of Trust dated 22.06.1972 submitted that the objects of the Trust is to fund and maintain or aid educational institutions, which comes under the definition of education. If you see other objects, the Trust is providing medical relief and relief to the poor. The running of

:: 9 ::

Kalyanamandapam is to aid and achieve the main objects of the Trust like imparting education, relief of the poor and medical relief. The AO and the Ld.CIT(A) grossly erred in holding that the predominant object and activity of the Trust is running of Kalyan Mandapam in commercial lines, but not charity as per the objects of the Trust. The Ld. Counsel for the assessee further submitted that the Trust is having composite objects which include education, relief of the poor and medical relief and advancement of any other object of GPU. The gross receipt from Kalyan Mandapam is applied for education and medical relief purpose. Therefore, the objects and activity of the assessee's Trust comes under the main limb of education and relief of the poor, but not advancement of any other objects of GPU. Since, the object and activity of the Trust does not come under GPU category, the proviso to Sec.2(15) of the Act, does not come into play and question of denial of exemption u/s.11 of the Act, does not arise. The Ld. Counsel for the assessee further submitted that the AO and the Ld.CIT(A) failed to appreciate the fact that provisions of Sec.13(1)(c) of the Act, are not invocable in the facts and circumstances of the present case, because, reference made by the AO to a particular bill paid for printing of diary of members of the Trust, does not *per se* lead to conclusion that funds of the Trust are used for the benefit of the Trustees. The Ld. Counsel for the assessee further submitted that even a solitary reference to bill of a restaurant to allege that the funds of the Trust has been diverted for the trustees, is incorrect, because, the Trust

:: 10 ::

has utilized the services of the Restaurant in the course of running of its activities and same cannot be treated as benefit to the trustees and their family members. Therefore, he submitted that the observations of the AO & the Ld.CIT(A) with regard to violation of provisions of Sec.13(1)(c) of the Act, are not correct.

9. The Ld. Counsel for the assessee further submitted that the Ld.CIT(A) erred in denying depreciation on assets without appreciating the fact that when assessee's trust is claiming exemption u/s.11 of the Act, depreciation on fixed assets is allowable even in a case where entire cost of asset has been allowed as application of income in the year acquisition of said fixed assets as held by various courts and the Hon'ble Supreme Court and this issue is settled before the law has been amended from the AY 2015-16 . The Ld. Counsel for the assessee further submitted that the AO & the Ld. CIT(A) erred in treating 'corpus donations' as income of the Trust without appreciating the fact that the 'corpus donations' forming part of corpus of the Trust, is capital receipt which cannot be included in the income of the Trust' whether the trust is claiming exemption or not? The AO and the Ld.CIT(A) without appreciating the relevant facts simply treated 'corpus donations' as income of the Trust. In this regard, the counsel for the assessee has relied upon the decision of ITAT, Mumbai benches in the case of Chandraprabhu Jain Swetamber Mandir vs. ACIT (2016) 50 ITR (Trib) 355

**:: 11 ::**

**10.** The Ld. Sr.AR, Shri P. Sajit Kumar, supporting the order of the Ld. CIT (A) submitted that in order to consider any Trust or institution for the benefit of exemption u/s.11 of the Act, irrespective of what is written in the objects of the Trust, the activity carried out by the Trust or Institution during relevant period has to be seen. In the present case, although the assessee has composite objects, but if you go by the activities carried out by the Trust for these assessment years, it is predominantly engaged in the activity of a running of Kalyan Mandapam at Chennai & Coimbatore, in commercial lines for fees or cess like any other private service provider and thus, the activity of the Trust comes under the last limb of definition of charitable purpose, the advancement of any other object of GPU. Since, the assessee is a GPU Trust, the proviso to sec.2(15) of the Act, comes into operation and as per said proviso, gross receipts from the activity is exceeds the specified sum, the Trust or Institution cannot claim the benefit of exemption u/s.11 of the Act. Since, the AO and the Ld.CIT(A) brought out clear facts to the effect that gross receipts from the activity of the assessee's Trust exceeds the specified limits for all these assessment years, the AO has rightly denied exemption u/s.11 of the Act, and their orders should be upheld.

**11.** The Ld. DR further submitted that the AO had also brought out clear facts to the effect that the assessee's Trust has violated provisions of Sec.13(1)(c) of the Act, by allowing benefit to the Trustees and their family members which is evident from facts gathered during the course of

:: 12 ::

survey, where the assessee's Trust has incurred the cost of printing Sahuwala Pariwar Directory-2019 and also Diwali celebrations in a Restaurant which clearly indicates violation of provisions of Sec.13(1)(c) of the Act. Further, the AO has rightly treated and disallowed depreciation claimed by the assessee on fixed assets, because, once the income of the Trust has been computed under normal commercial principles, the assessee cannot claim double deduction. Therefore, there is no error in the findings of the AO in disallowing the depreciation on fixed assets. Similarly, the AO has rightly treated 'corpus donations' as income of the Trust, because, once the Trust loses the benefit of exemption u/s.11 of the Act, the 'corpus donations' becomes income of the Trust in light of provisions of Sec.2(24) of the Act, and thus, the AO and the Ld.CIT(A) has rightly treated 'corpus donations' as income of the Trust, and their orders should be upheld.

**12.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The AO rejected exemption u/s.11 of the Act, for these assessment years on the ground that the objects and activity of the assessee's Trust comes under the last limb of the definition of charitable purpose u/s.2(15) of the Act i.e. the advancement of any other object of GPU and activities carried out by the assessee for these assessment years, is in the nature of trade, commerce and business and hit by proviso to s.2(15) of the Act. Since, the assessee is a GPU Trust and hit by proviso to s.2(15) of the Act, and further, the

:: 13 ::

gross-receipts from the activity is exceeded the prescribed limit, the assessee is not entitled for exemption u/s.11 of the Act. The AO has arrived at a conclusion on the basis of objects of the Trust as per their deed of Trust dated 22.06.1972 and the activities carried out during these assessment years. According to the AO, although the assessee' Trust is having composite object which may be falls under other limbs of the definition of the charitable purpose, but the Trust has carried out only the object of advancement of any other object of GPU which is evident from the activities of the Trust for these assessment years. The Trust is only running Kalyan Mandapam at Chennai & Coimbatore on commercial lines by charging fees and cess. The AO took support from materials gathered during the course of survey conducted u/s.133A of the Act, coupled with statement recorded from trustees to arrive at a conclusion that except carrying out the object of GPU, the assessee is not carrying out any charitable objects as defined u/s.2(15) of the Act. The AO had also discussed certain violations referred to u/s.13(1)(c) of the Act with regard to payment made for certain expenses and opined that the income of the Trust has been diverted for the benefit of trustees and their family members in contravention of s.13(1)(c) of the Act.

**13.** We have given our thoughtful consideration to the reasons given by the AO to reject exemption u/s.11 of the Act, in light of various averments made by the Ld. Counsel for the assessee and we ourselves

**:: 14 ::**

subscribe to the reasons given by the AO to deny the benefit of exemption u/s.11 of the Act, for the simple reason that although, the assessee is having composite objects which can be considered under other limb of the definition of charitable purpose u/s.2(15) of the Act, but the assessee has only carried out advancement of any other object of GPU which is clearly evident from the activities carried out by the assessee's Trust for these assessment years. The facts brought on record by the AO in light of survey conducted u/s.133A of the Act, clearly shows that the assessee is running Kalyan Mandapam at Chennai & Coimbatore in commercial lines for fees and cess like any other persons carrying out business operations. Further, although the assessee claims to have spent the income generated from GPU activity for education and relief of the poor, but on perusal of financial statement filed by the assessee for these assessment years, it is abundantly clear that except a minimum amount of donations, the assessee has not spent any amount for charitable purpose as per their objects specified in the deed of Trust. Therefore, we are of the considered view that there is no merit in the arguments of the assessee that the assessee's Trust is a charitable Trust and carrying out charitable activities as defined u/s.2(15) of the Act, and further, the activities of the assessee's Trust comes under the definition of 'education'. Further, the definition of "education" has been defined by the Hon'ble Supreme Court in the case of CIT v. Lok Shikshana Trust reported in [1970] 77 ITR 61 (Mys.) and as per the judgment of the Hon'ble Supreme

:: 15 ::

Court, a systematic instruction, schooling or training given to the young in preparation for the work of life and the process of training and developing the knowledge, skill mind, and character of students by normal schooling. In other words, 'education' means educational institutions imparting education to students and award a formal degree, diploma etc., In the present case, none of the objects specified in the Trust Deed and activities carried out by the Trust, does come under the definition of 'education', and thus, there is no merit in the arguments of the assessee that its objects and activities are come under the definition of 'education'.

**14.** Having said so, let us come back to the reasons given by the AO to tax excess of income over expenditure under normal provisions of the Act by denying exemption u/s.11 of the Act. Admittedly, the assessee is a GPU Trust which is evident from the activities carried out during these assessment years. In order to ascertain the nature of a Trust, it is not necessary to consider only the objects specified in the deed of Trust, but it is necessary to consider the activities carried out by the Trust. If you consider the activities carried out by the Trust for these assessment years, there is no dispute whatsoever with regard to the fact that the assessee is only a GPU Trust and carried out the advancement of any other object of GPU only. Since, the assessee's Trust is a GPU Trust, the taxability of income derived from property held under Trust has to be examined in light of proviso to s.2(15) of the Act. The proviso to

**:: 16 ::**

Sec.2(15) of the Act provides that the advancement of any other object of GPU, shall not be a charitable purpose if it involves carrying of any activity in the nature of trade, commerce, or business or any activity of rendering of any services in relation to any trade, commerce or business for a cess or fees or any other consideration irrespective of the nature of use or application or retention of the income from such activity. The proviso further provides that the first proviso shall not apply to the aggregate value of the receipts from the activity referred to therein is within the specified limit in the previous year. In the present case, there is no dispute with regard to the fact that receipts from the marriage hall related to activities of the assessee's Trust are more than the specified limit as per proviso to s.2(15) of the Act. Since, a gross receipt from the activities of running marriage hall is in excess of prescribed limit, the AO has rightly rejected exemption u/s.11 of the Act, and taxed excess of income over expenditure under normal provisions of the Income Tax Act, 1961. This legal principle is supported by the decision of the Hon'ble Supreme Court in the case of ACIT (Exemptions) v. Ahmadabad Urban Development Authority (supra), where it has been clearly explained the provisions of Sec.2(15) of the Act, and proviso provided thereto and held that if the activity of the Trust is in the nature of GPU, then, carrying out such activity for a fees or cess in line with trade and commerce, then, such Trust cannot be considered as charitable trust for the purpose of exemption u/s.11 of the Act. In the present case, the assessee is running

:: 17 ::

a Kalyan Mandapam charging significant amount and thus, activities of the assessee's Trust is nothing but carrying out activities in the nature of trade, commerce, business or service in relation to such activities. Hence, we are of the considered view that the AO has rightly rejected exemption u/s.11 of the Act, to the assessee's Trust.

**15.** Coming back to other observations of the AO in light of provisions of Sec.13(1)(c) of the Act. The AO has also considered violations of section 13(1)(c) to reject the exemption u/s.11 of the Act, on the ground that there is a violation referred to u/s.13(1)(c) of the Act, and thus, the assessee's Trust is not entitled for exemption u/s.11 of the Act. According to the AO, the assessee has allowed the funds for the benefit of the trustees and their family members and for this purpose; the AO has considered two solitary instances of expenses incurred by the assessee. According to the AO, the assessee has paid a bill pertains to printing of Sahuwala Pariwar Directory-2019 for exclusive benefit of trustees and their family members, which amounts to allowing the benefit of trust funds for the trustees and their family members in violation of provisions of Sec.13(1)(c) of the Act. The AO had also considered a bill payment to Ratna Café, a Restaurant, at Chennai, towards amounts spent for Diwali get-together of the trustee's families at Chennai. The Ld. Counsel for the assessee has explained the purpose of spending amounts out of trust funds. We find that payment for printing a diary of trustees and their family members does not per se amounts to diversion of trust funds for

**:: 18 ::**

the benefit of trustees, because, diary printing by the Trust may be useful for the general public in many ways. Therefore, we cannot appreciate the observations of the AO on this issue. Similarly, amounts spent for the Diwali get-together of the trustees in the course of carrying on activities of the Trust, cannot be considered as diversion of Trust funds for the benefit of trustees, because, in many times, it is necessary to incur certain expenses for day to day activities of the Trust, which may also cover entertainment expenditure of the trustees. Therefore, we are of the considered view that observations of the Assessing Officer with regard to violations referred to under provisions of Sec.13(1)(c) of the Act, is devoid of merits, and thus, rejected.

**16.** In this view of the matter and considering the facts and circumstances of the case and also by following the decision of the Hon'ble Supreme Court in the case of ACIT vs. Ahmadabad Urban Development Authorities (supra), we are of the considered view that the objects and activities of the Trust are GPU in nature and thus, proviso to Sec.2(15) of the Act is applicable for the assessee's Trust. Since, the assessee is a GPU Trust and gross receipts from said activities is in excess of prescribed limit provided under proviso of Sec.2(15) of the Act, for these assessment years, in our considered view, the AO has rightly rejected exemption u/s.11 of the Act, for these assessment years. The Ld.CIT(A) after considering relevant facts rightly upheld the reasons given by the AO to reject exemption u/s.11 of the Act, and thus, we are inclined

**:: 19 ::**

to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee for all assessment years.

**17.** The next issue that came up for our consideration from AYs 2013-14 to 2019-20 is additions towards depreciation on fixed assets. The AO has disallowed depreciation on fixed assets on the ground that the cost of assets purchased during the relevant previous year has already been allowed as application of income u/s.11 of the Act, and thus, further claiming depreciation on said assets amounts to double deduction. Accordingly, the AO disallowed depreciation on fixed assets and added back to the total income of the assessee.

**18.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. Since, the assessee's Trust has been denied exemption u/s.11 of the Act, income of the Trust needs to be computed under normal commercial accounting principles and further, depreciation, if any, needs to be allowed as per the provisions of the Act. Further, before amendment, depreciation is an allowable deduction even if the cost of asset acquired during the relevant previous year, has been allowed as application of income u/s.11 of the Act. Therefore, we are of the considered view that the AO needs to verify these facts and consider the issue of allowability of depreciation in accordance with law.

:: 20 ::

**19.** The next issue that came up for our consideration from grounds of appeal of the assessee's for AYs 2015-16, 2016-17 & 2019-20 is assessment of 'corpus donations' as income of the assessee. The assessee has claimed exemption for 'corpus donations' on the ground that the assessee is eligible for exemption u/s.11 of the Act. The AO has made addition towards 'corpus donations' as income of the assessee on the ground that when sec.11 of the Act, is inoperative and exemption is denied, 'corpus donations', and other capital receipts should be treated as income of the assessee.

**20.** The Ld.Counsel for the assessee referring to the decision of the ITAT Mumbai in the case of Chandraprabhu Jain Swetamber Mandir v. ACIT reported in [2016] 50 ITR (Trib.) 355 submitted that 'corpus donations' received by any Trust is capital receipt which is outside the scope of income and cannot be taxed, even if exemption u/s.11 of the Act, is denied.

**21.** The Ld. DR. on the other hand, supporting the order of the ITAT Chennai Benches in the case of Veeravel Trust in ITA No.2064/Chny/2019 submitted that sec.11 of the Act, is inoperative and exemption is denied, then, 'corpus donations' received by any Trust falls within the ambit of income of the Trust and includable in the total income of the Trust.

:: 21 ::

**22.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We find that an identical issue has been considered by the decision of co-ordinate Bench in the case of Veeravel Trust(supra) wherein, the issue has been considered in light of provisions of Sec.11, 12 & 12A of the Act, and after considering relevant facts and also by following the decision of the Hon'ble Supreme Court in the case of M/s. U.P. Forest Corporation & Anr. v. DCIT in Civil Appeal No.9432 of 2003 dated 27.11.2007 held that voluntary contribution received by a Trust with a specific direction that forming part of corpus of the Trust is income of the trust, when the Trust is not entitled for exemption u/s.11 of the Act. The relevant findings of the Tribunal are as under:

9. *We have heard both the parties, perused material available on record and gone through orders of the authorities below. The definition of income as defined u/s.2 of sub-section (24) includes voluntary contribution received by any trust created wholly or partly for charitable or religious purpose. This means, for any assessee, including trust or institution voluntary contribution is income. The provisions of section 11, 12A & 12AA, deals with taxation of trust or institution. The income of any trust or institution is exempt from tax with certain conditions. The provisions of section 11(1)(d) of the Act excludes voluntary contributions received by trust, with a specific direction that they shall form part of corpus of trust or institution. Similarly, provisions of section 12 also states that any voluntary contribution received by a trust or institution, excluding contributions with a specific direction shall for the purpose of section 11 be deemed to be income derived from property held under trust. Further, provisions of section 12A states that provisions of section 11 & 12 shall not apply in relation to income of any trust or institution, unless such trust or institution fulfill certain conditions. As per said section one of the conditions for claiming benefit of exemption u/s. 11 & 12 of the Act is registration of trust under sub-section (aa) of the Act . From conjoint reading of the above provisions, it is very clear that income of any trust including voluntary contributions received with a specific direction is not includable in the total income of the trust, if such trust is registered u/s.12A / 12AA of the Income Tax Act, 1961. In other words, conditions precedent for claiming exemption u/s.11 including for voluntary contributions is registration of trust u/s.12A of the Income Tax Act, 1961. This principle is supported by the decision of the Hon'ble Supreme Court in the case of M/s. U.P.Forest Corporation & Another vs. DCIT (supra), where the Hon'ble Supreme Court has very clearly held that a conjoint reading of section 11, 12 & 12A makes it clear that registration u/s.12A is a condition precedent for availing benefit u/s.11 & 12 of the Act. Unless and until an institution is registered u/s.12A of the Act, it cannot claim benefit of section 11 & 12 of*

:: 22 ::

*the Act. In this case, trust is not registered u/s.12A / 12AA of the Income Tax Act, 1961. Therefore, we are of the considered view that corpus donations received by the trust with a specific direction that they form part of corpus of the trust falls within ambit of income of a trust derived from property held under trust and hence, includable in total income of the trust.*

10. *Insofar as various case laws relied upon by the assessee, we find that although the assessee has relied upon four case laws of various benches of this Tribunal, we find that none of the Tribunal has considered the ratio laid down by the Hon'ble Supreme Court in the case of M/s. U.P.Forest Corporation & Another vs. DCIT(supra), while deciding the issue and hence, we are of the considered view that those case laws are not applicable to the facts of the present case.*

11. *In this view of the matter and considering facts and circumstances of the case, we are of the considered view that voluntary contribution received by the trust with a specific direction that they form part of corpus of the trust is income of the trust within the meaning of section 11 & 12 of the Income Tax Act, 1961. Therefore, we are of the considered view that there is no error in the findings recorded by the learned CIT(A) to confirm additions made by the Assessing Officer towards disallowance of corpus donations. Hence, we are inclined to uphold findings of the learned CIT(A) and dismiss appeal filed by the assessee.*

**23.** In this view of the matter and by following the decision of ITAT Chennai benches in the case of Veeravel Trust, we are of the considered view that 'corpus donations' received by the assessee's Trust would fall under the definition of income and includable in the total income of the Trust. In so far as case relied upon by the counsel for the assessee, although ITAT Mumbai has taken view and held that corpus donation is capital receipt and not taxable, but fact remains that the ITAT Chennai Bench after considering ITAT Mumbai bench decision has taken a view and held that corpus donation is income when section 11 benefit is not applicable, we prefer to follow jurisdictional ITAT decision and thus, we are inclined to uphold the findings of the AO and the Ld.CIT(A) and reject the ground taken by the assessee for these assessment years.

**24.** The next issue that came up for our consideration from grounds of appeal of the assessee's for AYs 2017-18 & 2019-20 is additions towards

:: 23 ::

donations paid. The assessee has claimed exemption towards donations paid to other Trust as application of income u/s.11 of the Act. Since, the AO has denied exemption u/s.11 of the Act, and taxed excess of income over expenditure, he has disallowed donation paid for charitable purpose on the ground that said expenditure has not been incurred for earning income.

**25.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. Since, the AO has denied exemption u/s.11 of the Act, and computed income as per provisions of Sec.2(15) of the Act, and proviso provided therein, in commercial lines after denying exemption, any expenditure incurred towards earning of income including donations, if any, paid in the course of carrying on activities needs, to be allowed as deduction. Since, the assessee has incurred expenditure in the course of carrying out its trade or commerce, the AO is directed to delete additions made towards disallowance of donations for both assessment years.

**26.** The next issue that came up for our consideration from grounds of appeal of the assessee's for AYs 2016-17 & 2017-18 is additions towards accumulation of income u/s.11(2) of the Act, for earlier assessment years. The AO has made addition of Rs.1,32,53,185/- towards accumulations of income for AY 2015-16 u/s.11(2) of the Act. Similarly,

:: 24 ::

the AO has made additions of Rs.2,15,92,541/- towards accumulation of income for AY 2016-17 u/s.11(2) of the Act. Since, the AO has rejected exemption u/s.11 of the Act and taxed excess of income over expenditure as per income and expenditure account for relevant assessment year, in our considered view, accumulation of income u/s.11(2) of the Act, by filing form No.10 and set off of said income to subsequent years to be applied for charitable purpose becomes academic in nature. Therefore, we direct the AO to delete separate additions made towards accumulation of income for AYs 2015-16 to 2016-17& 2017-18.

**27.** The next issue that came up for our consideration from grounds of appeal of the assessee's for AYs 2013-14 to 2017-18 & 2019-20 is validity of re-opening of assessment. The Ld.Counsel for the assessee at the time of hearing submitted that the assessee does not want to press grounds taken for challenging validity of re-opening of assessment, and thus, grounds of appeal taken by the assessee for these assessment years challenging validity of re-opening of assessment proceedings, is **dismissed** as withdrawn.

**28.** The next issue that came up for our consideration from grounds of appeal of the assessee's for AYs 2016-17 & 2017-18 is additions towards disallowance of expenses incurred for maintaining Kulod Bhawan. During the course of survey, it was found that the Bhawan at Kulod was given at

:: 25 ::

free of cost to Sahuwala family members. Further, assessee's Trust has spent amounts towards maintaining Kulod Bhawan out of income of the Trust. The AO made additions towards expenses incurred for maintaining Kulod Bhawan for both assessment years on the ground that said expenditure has not been incurred in connection with earning of income.

**29.** We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The assessee's Trust has been denied the benefit of exemption u/s.11 of the Act, in accordance with provisions of Sec.2(15) of the Act, and proviso provided therein and income of the assessee has been computed under normal provisions of the Act. In addition to taxation of excess of income over expenditure, the AO has disallowed expenses incurred for maintaining Kulod Bhawan on the ground that said expenditure is in the nature of personal expenses. Since, the assessee's Trust is maintaining Kulod Bhawan exclusively for the benefit of Sahuwala family members, said expenditure cannot be considered as expenditure incurred wholly and exclusively for the purpose of earning of income and further said expenditure is in the nature of personal expenses. Therefore, we are of the considered view that there is no error in the reasons given by the AO and the Ld.CIT(A) to disallow expenses incurred for maintaining Kulod Bhawan for both assessment years and thus, we are inclined to uphold

:: 26 ::

the findings of the Ld.CIT(A) and reject the ground taken by the assessee.

**30.** In the result, appeals filed by the assessee for all assessment years are partly allowed for statistical purposes.

Order pronounced on the 18<sup>th</sup> day of October, 2023, in Chennai.

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

**Sd/-**  
(मंजूनाथा.जी)  
(MANJUNATHA.G)  
लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,  
दिनांक/Dated: 18<sup>th</sup> October, 2023.  
**TLN**

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:**

- |                          |                        |                  |
|--------------------------|------------------------|------------------|
| 1. ँ पीलार्थी/Appellant  | 3. आयकरआयुक्त/CIT      | 5. गार्ड फाईल/GF |
| 2. प्रत्यर्थी/Respondent | 4. विभागीयप्रतिनिधि/DR |                  |