

**आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI**

**माजनीय श्री महावीर सिंह, उपध्यक्ष एवं
माजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

- 1. आयकर अपील सं ITA No.1087/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2009-10)
&**
- 2. आयकर अपील सं ITA No.1088/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2010-11)
&**
- 3. आयकर अपील सं ITA No.1089/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2011-12)
&**
- 4. आयकर अपील सं ITA No.1090/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2012-13)
&**
- 5. आयकर अपील सं ITA No.1091/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2013-14)
&**
- 6. आयकर अपील सं ITA No.1092/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2014-15)
&**
- 7. आयकर अपील सं ITA No.1093/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2015-16)
&**
- 8. आयकर अपील सं ITA No.1094/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2016-17)
&**
- 9. आयकर अपील सं ITA No.1095/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2017-18)**

&

10. आयकर अपील सँ ITA No.1096/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2013-14)

&

11. आयकर अपील सँ ITA No.1097/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2014-15)

&

12. आयकर अपील सँ ITA No.1098/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2015-16)

M/s. Thamizhvel PT Rajan Commemoration Trust New No.26 Old No.20, East Abhiramapuram 2 nd Street, Mylapore, Chennai-600 004.	बनम/ Vs.	ITO (Exemptions) Ward-1, Chennai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAATT-0664-R		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी कीओरसे/ Appellant by	:	Shri N.V. Balaji (Advocate) - Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri D. Hema Bhupal (JCIT) - Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	19-03-2024
घोषणा की तारीख / Date of Pronouncement	:	11-06-20234

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid appeals by assessee for Assessment Years (AY) 2009-10 to 2017-18 arises out of a common order passed by learned Commissioner of Income Tax (Appeals)-18, Chennai [CIT(A)] on 03-08-2023 in the matter of separate assessments framed by Ld. Assessing Officer [AO] for all these years. The appeals ITA Nos.1087 to 1095/Chny/2023 are quantum appeals whereas appeals ITA Nos.1096 to 1098/Chny/2023 are penalty appeals for AYs 2013-14 to 2015-16.

1.2 Facts as well as issues in quantum appeals are substantially the same in all the years. The impugned order is a common order. First we take up ITA No.1088/Chny/2023 for AY 2010-11. Upon perusal of case records, it could be seen that for this year, an order was passed by Tribunal vide ITA No.1080/Mds/2015 on 18-03-2016 against an order passed by revisionary authority u/s 263 on 27-03-2015. The substantive adjudication of Tribunal was as under: -

12. Now coming to the merit of the appeal filed by the assessee, now doubt, the assessee-trust constructed a community hall on the piece of land allotted by Government of Tamilnadu. The land originally belongs to Cosmopolitan Club, Madurai. The main objects of the trust are establishing educational institution and providing scholarships to the students. Running of community hall / kalyana mandapam is not the object of the assessee-trust as per the trust deed. Sec. 11(4) of the Act enables the charitable institution to hold a business undertaking as a property held under a trust. Sec. 11(4A) of the Act provides that when the business of the trust is incidental to the attainment of the objectives of the trust and the trust is maintaining separate books of account in respect of such business, the provisions of sec. 11 would be applicable and the assessee is entitled for exemption. The Assessing Officer, in fact, found that running of community hall is incidental to the attainment of the objects of the trust, therefore, entitled for exemption u/s 11 of the Act. This Tribunal is of the considered opinion that when the main object of the assessee is education and providing scholarship to the needy people, the assessee naturally needs money to feed the charitable activity and performing the objects of the trust. Therefore, the business can be held as property under the trust. However, the assessee is expected to maintain a separate books of account and the business of the assessee-trust shall be incidental to the main activity.

13. In the case before us, the CIT(E) has received petitions regarding tax evasion by the assessee. The assessee was receiving corpus donation in the guise of letting out the community hall to the poor people. This fact was disclosed in the return filed by the assessee itself under the Service Tax Act. Therefore, the question arises for consideration is whether the assessee is carrying out the charitable activity in accordance with the objects of the trust or not? It is also needs to be examined whether the assessee-trust, in fact, utilized the income from community hall for charitable activity or not. The Assessing Officer simply found that receipts of rent from community hall are incidental to the carrying out of the objects of the trust. When the Assessing Officer has not examined the utilization of rent for charitable activity, this Tribunal is of the considered opinion that utilization of the income of the assessee-trust for charitable activity needs to be examined year by year for allowing the claim of the assessee u/s 11 of the Act. The CIT(E) also has not examined the utilization of the fund for charitable purposes. The CIT(E) proceeded as if the proviso to sec. 2(15) of the Act would make the assessee-trust not eligible for exemption u/s 11 of the Act. This Tribunal is of the considered opinion that proviso to sec. 2(15) is applicable in respect of the trust whose object is advancement of any other general public utility. In the case before us, it is not the object of the trust to advance any public utility service. The main object as per the trust deed is to establish educational and medical institution and also providing scholarship to the needy people. Therefore, proviso to sec. 2(15) may not be

applicable at all. However, this Tribunal is of the considered opinion that the matter needs to be reexamined by the Assessing Officer in the light of the material available on record with regard to utilization of the income for charitable activity. Accordingly, while confirming the exercise of jurisdiction by the CIT(E), the Assessing Officer is directed to examine the utilization of the income of the assessee-trust in the light of the material available on record including the tax evasion petitions said to be received and thereafter decide the claim of exemption u/s 11, in accordance with law after giving a reasonable opportunity to the assessee.

14. With the above observations, the appeal of the assessee is partly allowed.

The Tribunal, while upholding the revision, remitted the matter for re-examination by Ld. AO considering the material on record with regard to utilization of the income for charitable activity. The Ld. AO was directed to examine the utilization of the income of the assessee-trust and thereafter decide the claim of exemption u/s 11, in accordance with law. The aforesaid order attained finality since the assessee as well as revenue did not prefer any further appeal against the same. The Ld. AO gave effect to the order of Tribunal which is discusses slightly later in the order.

1.3 In the light of revision order u/s 263 for AY 2010-11, Ld. AO reopened assessments of other years and framed assessments for AYs 2009-10, 2011-12 to 2017-18 rejecting claim of exemption u/s 11. The assessee, in batch of appeals, assailed notices issued by Ld. AO u/s 148 by way of Writ Petitions before Hon'ble Single Judge of Hon'ble High Court of Madras in WP Nos.30843 & ors. The same was disposed-off on 26-07-2022 with certain directions. It was noted in the order that the assessee was constituted under a Deed of Trust dated 27-08-1991 having thirteen specific objects. The Hon'ble Court noted the revision made by appropriate authority u/s 263 for AY 2010-11 and also noted the adjudication of Tribunal. It was noted that there were findings by the Tribunal that running of community hall / Kalyana Mandapam was not an

object of assessee trust as per trust deed. However, the same was held to be factual error insofar as clause 3(k) specifically states that 'to build kalyanamandapams, pravachanamandapams for the use and benefit of the public' would constitute an object of trust. In para-11, it was further held that such observations of Tribunal stem from its (mis)understanding that the running of the community halls and kalyana mandapams did not constitute an object as per trust deed. It was also noted that the assessee did not challenge the aforesaid order of the Tribunal. The Ld. AO proceeded on the basis that it was a case of remand simplicitor since no appeal was filed against the same. The Hon'ble Court upheld the interpretation of the Ld. AO qua the effect of the order of the Tribunal. In para-14, it was held that it must be ascertained as to whether the business activity fuel the charity or whether the charitable activities are merely incidental to the business of running the kalyanamandapams. In para-17, it was held that the critical issue continues to relate to the usage of funds by the assessee as this would determine whether the activities are charitable or otherwise. This has then to be set and seen in the context of Sec. 2(15) of the Act. This exercise necessarily involves an appreciation of facts and accordingly, Hon'ble court refused to exercise powers under Article 226 and a liberty was given to the assessee to prefer regular appeals against the orders passed by Ld. AO.

1.4 The assessee challenged the aforesaid observations of Hon'ble Single Judge on merits in Writ appeals before coordinate bench of Hon'ble High Court of Madras vide WA Nos.114 & ors. of 2023. It was submitted that learned Single Judge made observations on the merits which would adversely affect the assessee's right to appeal and reduce the exercise of filing appeals a mere formality since the appellate

authority would be influenced by the observations of the learned Single judge. Concurring with the same, the co-ordinate bench in its order dated 08-02-2023, held as under: -

6. Following the above judgment of the Hon'ble Supreme Court, the observations / findings on the merits of the case made by learned Single Judge, in the order dated 26.07.2022 passed in the writ petitions are vacated / set aside and the Appellate Authority is directed to decide the appeals, if filed on merits and uninfluenced / unobsessed by the observations of the learned Single Judge. The captioned writ appeals stand disposed of accordingly. No costs.

It was thus directed by Hon'ble Court that appellate authority was to decide the appeal on its merits uninfluenced by the observations of learned single judge. In other words, the observation of learned Single Judge was not to be considered during appellate proceedings.

2. Assessment Proceeding

2.1 Pursuant to revision order passed u/s 263 as well as after considering the order of Tribunal dated 18-03-2016, revision effect order was passed by Ld. AO u/s 143(3) r.w.s. 263 on 31-03-2016. The Ld. AO noted that the assessee trust was registered u/s 12AA of the Act. The revisionary authority flagged the issued that the assessee was in receipt of income from PT Rajan Hall Kalyana Mandapam at Madurai. The assessee was also found to be in receipt of corpus donation.

2.2 The assessee's registered office premises at Chennai as well as Kalyana Mandapam at Madurai was inspected on 08-01-2016 wherein day cash book was impounded from Kalyana Mandapam at Madurai and certain other material was impounded at registered office at Chennai. After considering assessee's submissions, Ld. AO noted the objects of the assessee and held that the assessee trust expended only 10% to 20% of its gross receipts towards its charitable activities. All the other expenses were towards maintaining the Kalyana Mandapam. The

Trustee Shri Ramesh Rajan, in statement recorded on 08-01-2016, could not mention the charitable activities conducted by the trust. He generalized the charitable activities by stating that the trust provide educational assistance, medical to poor, providing toilets and infrastructure to schools and provide equipments for the livelihood of the people. However, he could not point out any program conducted for distribution of such aid to deserving people. It expended only amounts ranging from 15000 to 30000 per year towards infrastructure to school whereas its gross receipts exceeded Rs.1 Crores per year.

2.3 It was further noted by Ld. AO that one of the objects as per clause 3(k) was to build Kalyana Mandapam, Pravachanmandapam for use and benefit of the general public. In this context, it was noted that the assessee trust took on lease 2 acres of land from Cosmopolitan Club, Madurai who owned large chunk of land in Madurai. The Govt. of Tamil Nadu permitted such leasing on certain terms and conditions which *inter-alia* include the condition that the Kalyana Mandapam should not be run with profit motive and the Kalyana Mandapam should be let out to the poor people at 50% of the normal rent charged. A lease deed was executed on 21-10-1999.

2.4 The Ld. AO, on the basis of records and impounded material, alleged that trust did not let out the Kalyana Mandapam to poor people charging 50% of normal rent. In fact, Kalyana Mandapam was being managed with a profit motive which was evident from the fact that the rate of profits from Kalyana Mandapam ranged from 62% in AY 2009-10 to 92% in 2012-13. Therefore, Ld. AO concluded that the assessee trust did not exist for charitable purposes. The Ld. AO bolstered the allegation by observing that upon perusal of cash books as impounded from

Madurai, the assessee collected Kalyanamandapam receipts of Rs.124.58 Lacs during the period from 01-04-2009 to 31-03-2010 for letting out Kalyana Mandapam on rental basis for conducting various functions. The assessee collected receipts under various heads which were as under: -

No.	Description	Amount
1.	Donations	64,87,875
2.	Hall Rent	4,11,011
3.	Refundable Deposit	23,68,500
4.	Amenities	2,96,695
5.	Extra Rooms	1,71,000
6.	Service Tax	1,63,635
7.	Diesel	7,40,885
8.	Gas	6,53,940
9.	Electricity	3,95,978
10.	Water & Cleaning	5,06,225
11.	Misc.	2,62,590
	Total	1,24,58,334

The Ld. AO observed that contributions under above heads were made by those persons who had booked Kalyana Mandapam for conducting various functions. The person who booked Kalyana Mandapam only contributed donations which would show that the same were nothing but Kalyana Mandapam receipts. The donors were the same person who paid for above expenditure. It was also noted that the assessee offered only an amount of Rs.24.54 Lacs as Kalyana Mandapam receipts and accordingly there was suppression of receipts to the extent of Rs.100.03 Lacs (Rs. 124.58 Lacs – Rs.24.54 Lacs).

2.5 The assessee submitted that all that was required to claim exemption u/s 11 was application of income to the extent of 85%. Donations made and additions to fixed assets should be treated as an

application of the income. Further refundable deposit and contra entries should be excluded in the computations.

2.6 However, Ld. AO held that since the activities of running Kalyana Mandapam was in the nature of business, first proviso to Sec. 2(15) would be attracted. The second proviso would also not apply since aggregate receipts from Kalyana Mandapam were exceeding Rs.10 Lacs per year. In such a case, income has to be computed as per commercial principles and concept of application of 85% of receipts would not apply to the case of the assessee. Under such a scenario, the donations made as well as addition made to fixed assets could also not be set-off against the income of the assessee. Regarding refundable deposits, no evidence was furnished by the assessee that the same were refunded to the customers. The practice of such refund would not prevail in the case of Kalyana Mandapam. Accordingly, the aforesaid pleas of the assessee were rejected. The claim qua contra entries was also rejected since the same could not be established by the assessee,

2.7 The Ld. AO also noted that the assessee had voluntarily disclosed suppressed rental receipts of Rs.52 Lacs to the Service Tax Department under the Amnesty Scheme called Voluntary Compliance Encouragement Scheme (VCES). Accordingly, the alleged suppressed receipts of Rs.100.03 Lacs were brought to tax separately.

2.8 The Ld. AO also proceeded to tax the unexplained credit under the head corpus fund transfer treated as anonymous donation. The same stem from the fact that during the course of inspection proceedings at the assessee's premises in Chennai on 08-01-2016, a sheet relating to corpus fund transfer was found which was impounded in ANN / KVD / B&D / IMP/8 - LS#25. This sheet bears a caption "Actuals received"

against which an amount of Rs.66.71 Lacs was mentioned for this assessment year. The same would lead to a conclusion that the assessee actually received corpus donation of Rs.66.71 Lacs as against disclosure of Rs.52 Lacs. There was a difference of Rs.14.71 Lacs. The assessee stated that this amount includes ordinary donations of Rs.14.71 Lacs. However, since the sheet bear the heading "Corpus fund transfer", the explanation of the assessee was rejected and the differential of Rs.14.71 Lacs was brought to tax as anonymous donations u/s 115BBC.

2.9 The Ld. AO also noted the object clause 3(k) wherein one of the objects of trust was to '*To build kalyanamandapam, pravachana mandapam etc., for the use and benefit of the public*'. The Ld. AO opined that this activity would fall in the category of activity in the nature of "advancement of general public utility" as held by Chennai Tribunal in the case of **M/s SNR Sons Charitable Trust [ITA No.2630/Mds/2014 dated 12.06.2015]**. Therefore, first proviso to Sec. 2(15) would apply to the case of the assessee and benefit of exemption could not be extended to the assessee considering the provisions of Sec. 13(8). The assessee, in such a case, would be treated as an Association of Person (AOP) and its income would be determined in a commercial sense. The expenditure which was not connected with the income earning activity would not be allowable to the assessee. Therefore, the donations paid for Rs.4.88 Lacs was added to the income of the assessee. The corpus donation of Rs.52 Lacs would form part of income of the assessee. Finally, the income of the assessee was determined at Rs.172.80 Lacs and assessment was finalized.

2.10 The assessment for AY 2009-10 was reopened and an order was passed u/s 143(3) r.w.s. 147 on 31-03-2016. The assessment was reopened pursuant to findings unearthed in the course of proceedings u/s 263 for AY 2010-11. Based on those findings, belief of escapement of income was formed for this year and the case was reopened. The day book as impounded by the department revealed that the assessee received receipts of Rs.115.88 Lacs whereas the assessee offered receipts of Rs.22.68 Lacs only. Accordingly, the differential of Rs.93.19 Lacs was added to the income of the assessee. The corpus donations were treated as income of the assessee. The deduction of donations paid by the assessee was denied. The anonymous donations of Rs.21.12 Lacs were brought to tax u/s 115BBC. The same is subject matter of ITA No. 1087/Chny/2023.

2.11 Similar assessments were framed for AYs 2011-12 to 2017-18 which are subject matter of ITA Nos.1089 to 1095/Chny/2023. Consequent to conclusion of assessments for AYs 2013-14 to 2015-16, penalties u/s 271(1)(c) were levied by Ld. AO for these three years which are subject matter of ITA Nos.1096 to 1098/Chny/2023.

3. Appellate Proceedings

3.1 The assessee submitted certain additional evidences which were subjected to remand proceedings. On the issue of exemption of corpus donation u/s 11(1)(d), the assessee submitted that the concept of taxable service under Service Tax is different from income under the Income Tax Act. Under the provisions of Service Tax Act, whatever be the nomenclature of the receipt, if there is nexus between the services rendered and consideration received either as service charges or donations, it forms part of value of taxable service whereas under

Income Tax Act if there is nexus between corpus donation and consideration received for service rendered, so long as the donor and donee understand and accept that the donation is for furthering of charitable activity of the institution, the nature of payment is a donation towards corpus fund and not fees for services rendered to the donor by the donee.

3.2 However, in the remand proceedings, Ld. AO went by the declaration made by the assessee before Service Tax Department wherein Corpus donations were offered to service tax and additional service tax was paid by the assessee for various years. The Ld. AO observed that corpus donors were none other than the hirers of hall. The assessee accounted a portion of the rental receipts as corpus donations. The concealed rental receipts were declared as service income before service tax department under VCES. The assessee activities would fall under advancement of general public utility (GPU) and accordingly, it is hit by proviso to Sec. 2(15). The major portion of application of income was claimed as administrative expenditure and the excess income was not applied for the object of the trust.

3.3 The assessee assailed the remand report of Ld. AO, *inter-alia*, by stating that none of the documents as supplied by the assessee were considered in the remand report. It was also stated that the direction given by Tribunal were also to considered wherein Tribunal directed Ld. AO to look into the aspect of utilization of income for charitable purposes. The assessee also pleaded to rejection of remand report on various grounds.

3.4 On the contrary, the assessee submitted that its activities were incidental to attainment of objective of the trust and therefore, it would be

entitled for exemption u/s 11. The object was not for advancement of general public utility (GPU). The main object was to establish educational and medical institution and also providing scholarships to the needy people. The Ld. AO overlooked the provision of Se.11(4) which enable charitable institution to hold a business undertaking as a property held under a trust for the attainment of the charitable objectives of the trust.

3.5 The assessee also refuted the allegation of Ld. AO that there was suppression of receipts in the audited financial statements. The assessee submitted that complete reconciliation of receipts was submitted by it in its submissions dated 10-09-2020. The gross receipts as per day book were fully reconciled with the financial statements. The total collections in the day book include donations (voluntary and corpus donations), hall rent, refundable deposit, amenities, charges for extra rooms, service tax, electricity, water & cleaning charges etc. The voluntary donations were offered as income. The corpus donations were included in the total collections. The refundable deposits were refunded to the concerned patties and separate invoices were raised for actual amenities and the same was accounted as income. The misc. receipts were similarly stated to be offered in the financial statements.

3.6 The Ld. CIT(A) rendered its findings from para 10.1 onwards in the impugned order. It was noted that the assessee was established by trust deed dated 27-03-1991 to carry out specific objects. On the basis of trust deed, the assessee was granted registration u/s 12A(a) on 08-05-1991. One of the objects of the trust was to build kalyanamandapams, pravachanmandapam etc. for the use and benefit of the public. Accordingly, the assessee had leased out certain land which was

approved by Govt. of Tamil Nadu on certain conditions including the condition that the kalyanamandapam should not be run with profit motive and it should be let out to poor people at 50% of normal rental charges. Considering certain tax evasions petitions, Ld. CIT(E) invoked powers u/s 263 on 27-03-2015 wherein certain directions were given.

3.7 In the meanwhile, an inspection was carried out at the premises of the assessee on 08-01-2016 and day book and other documents were impounded on the basis of which Ld. AO held that the amounts were collected by the assessee under various heads. The person who booked kalyanamandapams had only contributed donations which would show that donations were nothing but part of kalyanamandapams receipts. The trust made hirers pay major part of collectible rent as corpus donation and it used to collect minimum amount as rent. Therefore, the donations were falsely termed as corpus donations in the financial statements for which exemption was claimed u/s 11(1)(d) of the Act. This same would be evidenced by the fact that the assessee disclosed corpus donations as rental receipts under VCES and paid additional service tax. If corpus donations were considered as regular rental receipts, the assessee would be making high profits and therefore, it could not claim that running of kalyanamandapams was a charitable venture. The object in Clause 3(k) were not incidental activity but carried out as predominant activity. Such activity would fall as advancement of general public utility and accordingly, it would be hit by first proviso to Sec. 2(15).

3.8 Regarding interpretation of Tribunal order, it was held that Tribunal remitted the matter to the file of Ld. AO to re-examine the activities carried out by the assessee in the light of material on record and in case,

the objects would fall under main limb of charities then proceed to examine the utilization or application of income.

3.9 The Ld. AO verified and decided that the primary object of the assessee was running of kalyanamandapams and therefore, this activity would fall under GPU and therefore, AO invoked the proviso to Sec.2(15). In the light of the concrete fact that the assessee's activity would fall under GPU category and the assessee was hit by first proviso to Sec. 2(15), it was observed that the receipts from such activities, in all the year, exceeded the threshold limits as provided in Sec.2(15). The Ld. CIT(A) also held that the kalyanamandapams was not given to poor at 50% of rent and various charges were collected by the assessee from the hirers. A part of the hire charges was camouflaged as corpus donations which were offered to service tax under amnesty scheme. The assessee disclosed aggregate additional rental income of Rs.457.24 Lacs for FYs 2007-08 to 2012-13. All these facts would prove that the assessee was running this activity as business only. Further, running of kalyanamandapams amounts to commercial activity as held in various judicial decisions which include the decision of Chennai Tribunal in **M/s. SNR Sons Charitable Trust [ITA No.2630/Mds/2014 dated 12.06.2015]** as well as the decisions of Hon'ble High Court of Madras in the case of **CIT vs. Halai Namon Association (243 ITR 439)** and also in **DIT(E) vs. Willington Charitable Trust (330 ITR 24)**. The Hon'ble Supreme Court in the case of **ACIT vs. Ahmadabad Urban Development Authority (143 Taxmann.com 278; in short 'AUDA')** held that argument of GPU activities generating profits which could feed the main object and incidental profit-making also in not a good law. Once

GPU is carried on as business, Sec.11 exemption would not be available as business income ploughed back to charity is irrelevant.

3.10 The Ld. CIT(A), in para 12.3, observed that though the assessee has main object of establishing educational and medical institutions and instituting scholarship endowments, these were not implemented. Only object clause 3(k) viz. running of kalyanamandapams was executed in reality. This activity would fall under the category of GPU. The activity of kalyanamandapams was being run as main activity and not incidental but with pure profit motive. If the corpus donations are added back, it would be evident that the assessee was collecting high rental receipts. Only a part of the net profits of the kalyanamandapams was being utilized for charitable purposes viz. school fees, CM relief fund, PM relief fund. As per decision in AUDA, ploughing back of business income to feed charity would be irrelevant factor. Therefore, the surplus / profit from kalyanamandapams which being an object of advancement of GPU, even if used for charitable purposes could not entitle the assessee to claim exemption u/s 11. This argument would not hold good after the amendment in Sec. 2(15) w.e.f. AY 2009-10 onwards. Only the main limb charities, by virtue of Sec.11(4A), can involve an incidental business and if the profits are ploughed back, they are eligible for exemption u/s 11. However, the same is not applicable for GPU charities by virtue of proviso to Sec.2(15) w.e.f. AY 2009-10. Therefore, the relevant grounds urged by the assessee were dismissed.

3.11 The Ld. CIT(A) also observed that the marriage hall was not let out to poor people at 50% concessional rent as stipulated by Govt. of Tamil Nadu. The Hon'ble Supreme Court in the decision of AUDA introduced the concept of nominally above cost and held that charging of any

amount towards consideration of an activity or which is on cost-basis or nominally above cost, cannot be termed as trade, commerce or business or any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of cess or fee of any other consideration towards trade, commerce or business. To fix the percentage of profits that could be considered as nominally above cost, clue could be drawn from Sec.44AD providing special provision of computation of business profits on presumptive basis wherein 8% has been prescribed. This percentage was fixed for business. Considering the same, net profit up to 5% would be apt benchmark to be considered as abnormally above cost to meet the ends of justice. The Ld. CIT(A) also concluded that rental charges which were disguised as corpus donations were to be considered as part of rental receipts since element of quid pro quo was clearly visible in the same. Such donations would not be exempt u/s 11(1)(d) since it was not a voluntary contribution. When exemption u/s 11 is denied to the assessee, the assessee would be treated as AOP and taxed accordingly. The expenses incurred for earning of income only would be allowed and concept of application of 85% for charitable purpose would not be applicable. In such a case, corpus donations, as claimed u/s 11(1)(d) would become taxable and it partake the character of rental charges. Therefore, the donation given for charitable purpose would also not be allowed to the assessee but the same would be eligible for deduction u/s 80G. Suitable directions were given to Ld. AO, in this regard, at para 12.13 of the impugned order.

3.12 On the issue of suppressed hall receipts, it was stated by the assessee that Ld. AO has taken the credit entries alone as miscellaneous income but not taken the debit entries for payments made for services rendered. Further, refundable deposits were collected only as precaution against possible damages and the same has been returned to the hirers after the event was over. The assessee also argued that complete list of donors was available and therefore, the same could not be taxed u/s 115BBC of the act. This argument found acceptance with Ld. CIT(A) who concurred that names and address of the hirer was available from whom various charges were collected in the guise of donations. The Ld. AO was directed to verify whether the donations were already included as part of total receipts of corpus donations treated as rental receipts and ensure that this amount was not added twice in the computations. The Ld. CIT(A), accepting the argument of double addition, in para 12.15.5, issued suitable directions to Ld. AO regarding double addition of donations, refundable deposits, miscellaneous income etc. Accordingly, the arguments raised by the assessee, in this regard, were partly allowed.

3.13 The assessee's claim of depreciation was not allowed since the cost of purchase of assets was already claimed as application of income in earlier years. The Ld. CIT(A) referred to amendment made by Finance Act, 2015 w.e.f. AY 2015-16, in this regard. The provisions of Sec.11(6) were noted in this regard at para 12.16 of the impugned order. Before AY 2015-16, this claim could be allowed to the assessee in terms of various judicial decisions. The Ld. CIT(A) directed Ld. AO to allow

depreciation up-to AY 2014-15. With effect from 01-04-2015, depreciation would be allowed only in terms of amendment made by Finance Act, 2015.

3.14 The Ld. CIT(A), in para 13.3 of the order, tabulated the utilization of funds by the assessee for charitable purposes. The Ld. CIT(A) also considered the ratio of various judicial decisions as cited by the assessee and sought distinction of the same on the ground that all these decisions were rendered prior to the ruling in AUDA. The Ld. CIT(A), in para 16, worked out the profit earned by the assessee in various year which was in the range of 5.33% to 46.62%. The same was worked out after including corpus donation as part of gross receipts. Accordingly, it was held that the exemption of Sec.11 would not operate in assessee's case and its income has to be determined in a commercial sense. All the receipts including voluntary donations would be treated as income and expenses in connection with running of Kalyan mandapams would be allowed to the assessee. Accordingly, the appeals were partly allowed.

3.15 The assessee assailed reopening of the assessments for other years. It was noted that in all the years, no regular scrutiny was done u/s 143(3) and therefore, no question of change of opinion would arise. The Ld. AO duly recorded reasons for all the years before issuing notice u/s 148. The Ld. AO has sufficient material and reasons on record for reopening the assessments. Considering various judicial decisions, the reopening grounds were rejected.

3.16 The assessee also challenged rejection of rectification u/s 154 on the ground that sum given as donation was not allowed as application of income. The assessee also raised argument qua depreciation. The Ld. CIT(A) reiterated that donations given by the assessee would be eligible

for deduction u/s 80G. The decision regarding depreciation was already rendered.

3.17 The assessee also challenged penalty levied by Ld. AO for AYs 20-13-14 to 2015-16. However, Ld. CIT(A) rejected the same on the ground that the assessee had furnished inaccurate particulars of income as well as concealed its income and therefore, penalty was justified. However, Ld. AO as given liberty to reduce the same while giving effect to the order on assessment.

3.18 Aggrieved as aforesaid, the assessee is in further appeal before us with following grounds of appeal: -

1. The order of the Commissioner of Income Tax (Appeals) [CIT(A)] is against the law, the facts and circumstances of the case and the principles of equity and natural justice.
2. The order of the CIT(A) is without jurisdiction, particularly since the CIT(A) had failed to follow binding judgement of the Hon'ble High Court and this Hon'ble ITAT. The order of the CIT(A) is in gross violation of natural justice.
3. The CIT(A) erred in holding that the activities carried on by the appellant falls under the category- "any other object of general public utility" (GPU activity).
4. The CIT(A) erred in taxing the corpus donation received from hirers and others as income ignoring the various pronouncements of the judicial authorities which have all held uniformly that Corpus donations are capital in nature and hence fully exempt.
5. The CIT(A) erred in not granting the applications of claimed by the appellant as deduction from the income of the appellant.
6. The CIT(A) erred in not allowing the donations of Rs.4,88,620/- and other sums which were applied, in line with the objects of the trust, during the impugned year.
7. The outright rejection by the CIT(A), of the pricing analysis submitted by the appellant trust to demonstrate that the charges and the mark up are carried at arm's length basis and is as per the established norms, is incorrect.
8. The CIT(A) erred in holding that 5 % profit percentage should be considered as the bench mark for charitable trusts, which view, is totally incorrect and has no basis whatsoever.
9. The CIT(A) erred in merely setting aside the matter to the file of assessing officer to delete the erroneous additions including multiple additions. The CIT(A) ought to have deleted the addition, particularly when all the materials were placed before the CIT(A).
10. The CIT(A) erred in not adjudicating the ground of the appellant in respect of addition made on account of alleged difference between return of income and seized material as anonymous donations of Rs.14,71,001/-. The CIT(A) failed to appreciate that the assessing officer has made the said addition without appreciating that the said sum was part of gross receipts.
11. The CIT(A) failed to note that the appellant appeared before the assessing officer in response to his predecessor's calling for a remand report from the assessing officer and the assessee had produced the necessary particulars in 2019 /2020. The CIT(A) ought to

have verified the existence of remand report pursuant to such submissions of the assessee and not merely proceeded to conclude the order without any such examination.

12. The CIT(A) has erred in rejecting all case laws cited in support of the appellants case under the head rebuttal and his views and reasoning while rejecting the applicability of these decisions are incorrect.

13. The CIT(A) erred in not following the directions of the Hon'ble ITAT. Despite the directions of this Hon'ble Tribunal to verify utilization of income, the CIT(A) erred in holding that the aspect of utilization of income was irrelevant.

Our findings and Adjudication

4. Upon careful consideration of factual matrix as noted by us in the preceding paragraphs, we find that the Tribunal, in its order dated 27-03-2015 remitted the matter back for re-examination by Ld. AO considering the material on record with regard to utilization of the income for charitable activity. The Ld. AO was directed to examine the utilization of the income of the assessee-trust and thereafter decide the claim of exemption u/s 11 in accordance with law. The aforesaid order attained finality since the assessee as well as revenue did not prefer any further appeal against the same. On the basis of revision order, the assessment of other years have been reopened which were subject matter of assessee's challenge before Hon'ble High Court of Madras. The Hon'ble Single Judge made certain observations and refused to exercise jurisdiction under Article 226. The assessee challenged those observations before co-ordinate bench wherein bench concurred with the grievance of the assessee and directed appellate authority to decide the appeal on merits uninfluenced by the observations of Ld. Single Judge. It could thus be seen that ultimately the matter stand remitted back to the file of Ld. AO for re-examination wherein utilization of income for Charitable Activity would be a crucial factor to determine the assessee's claim of exemption u/s 11.

5. In the set-aside proceedings, the Ld. AO observed that though the assessee had multiple objects in the Trust Deed, the substantial activity carried by the assessee remained focused to run Kalyan Mandapams in terms of clause 3(k). We find that the assessee-trust is established by trust deed dated 27-03-1991 and it is a registered entity u/s 12A since 1991 onwards. There is apparently no change in the objects of the assessee-trust. In fact, the assessee has confined itself to carry out objects of the trust though the substantial activity has remained confined toward one activity as mentioned in Clause 3(k) of Trust Deed. Nevertheless, that fact would remain that the assessee-trust is working within the boundaries set out by trust deed. It could also be seen that the surplus generated out of this activity has been utilized by the assessee in furtherance of other charitable purposes viz. payment of school fees, contribution to relief funds etc. In other words, the surplus so generated out of this activity has been utilized in furtherance of other objects of the assessee-trust. It is quite clear that the assessee has confined itself to carry out those activities only which has been mentioned in the trust-deed. There is no material to indicate that the assessee has drifted from any of its objects and carried out any other activity which is not mentioned in the trust deed.

6. In the above background, we find that Ld. AO has alleged that the corpus donations as received by the assessee were nothing but rental receipts since the same was received from only those persons who had hired halls on various occasions. The allegation is primarily based on the fact that the assessee has declared addition service income under amnesty scheme of Service Tax department and paid additional service tax on the donations also. However, we are of the considered opinion

that taxability of service under service tax is on different principles and computation of income under Income Tax Act is on different principles. To illustrate, the assessee may have collected amenities charges on actual basis from hirers. In that event, the assessee would incur equivalent expenditure to procure those services and finally the resultant income out of these receipts would ultimately be nil. In other words, though these charges would still be subjected to service tax, however, under the income tax act, the same would not result into income for the assessee. To put it more clearly, the collection of such charges, being connected with renting of hall, would still be chargeable to service tax notwithstanding the fact that the same would ultimately have not income element in the same. Therefore, the concept of service income under Service Tax Act as well as concept of income under Income Tax Act would be quite different from each other and the two could not be equated with each other. Pertinently, there is no allegation or finding by Ld. AO that the corpus donations as received by the assessee were non-voluntary or forced donations. Notwithstanding the fact that the hirer of the hall and contributor of donations were the same persons, the donor thereof understood the donations to be corpus donations and voluntary contributions only and agreed for such donations with complete understanding of nature thereof. Therefore, to equate the same with rental receipts would not be a correct proposition unless it was shown that the rental charges were bifurcated into hall rental charges and donations. We find that there are no such independent findings by Ld. AO and Ld. AO has merely gone by the declaration made by the assessee before Service Tax Department which could not be held to be justified. We also find that the rental collection has been made by the

assessee under various heads viz. hall rent, refundable deposit, charges for amenities, extra rooms, fuel, gas, electricity etc. under full knowledge of the hirer of Kalyan Mandapams who have agreed to pay the amounts under those heads with full knowledge and understanding. Similarly, corpus donations have separately been contributed by those persons with full understanding of nature thereof. Therefore, in the absence of contrary findings, it was to be held that corpus donations were voluntary donations received by the assessee and the same could not be attributed towards rental charges. The findings of lower authorities, to that extent, do not find our concurrence. We order so.

7. Proceeding further, so far as the allegation of suppression of receipts as per day book impounded during inspection, as made by Ld. AO is concerned, the same also could not be concurred with since there is no finding or allegation that the assessee has received any amount which is not found recorded in the books of accounts. The assessee has earned receipts under various distinct heads and it has also received voluntary donations / corpus donations which have been classified under various distinct heads. The actual charges and refundable deposits as received by the assessee would get nullified in view of the fact that the same were mere reimbursements and the same ultimately would not have any element of income in the same. It could also be noted that the assessee had furnished complete reconciliation of receipts in its submissions dated 10-09-2020 to Ld. AO. The gross receipts as per day book were fully reconciled with the financial statements. In such a case, the allegation made by Ld. AO of suppressed receipt is bereft of any material evidence / concrete finding on record and such allegations are to be disregarded fully.

8. It is finding of Ld. AO and CIT(A) that the assessee has earned huge margins on such receipts. The profitability analysis as done by Ld. CIT(A) treat corpus donations as part of rental receipts. The same, in view of our finding in para-6, is to be excluded from rental receipts. If we exclude the corpus donations from rental receipts, the surplus earned by the assessee from this activity over various assessment years, as tabulated on page no.230 of the paper-book, would be as under; -

AY	Interest & Other Income	Hall Rent Collection	Gross Receipts	Total Expenses as per Audited Accounts	Capital Exp.	Loan Repayment not claimed earlier	Depreciation Allowable	Total of Utilization	85% utilisation on gross collection	Excess / Shortfall in Utilization	Commulative Excess / Shortfall in Utilization
2009-10	230605	2268994	2499599	3488254	1354626	800000	2705871	8348751	2124659	6224092	6224092
2010-11	1701031	2454427	4155458	3938734	2182270	1200000	2360289	9681293	3532139	6149154	12373246
2011-12	1511161	3861425	5372586	5247521	903000	0	2217088	8367609	4566698	3800911	16174156
2012-13	1560816	6031878	7592694	7312589	3529150	0	2792487	13634226	6453790	7180436	23354593
2013-14	1811931	10549312	12361243	7142092	1393330	0	2356847	10892269	10507057	385212	23739805
2014-15	2296129	12158417	14454546	13347424	61900	0	2192309	15601633	12286364	3315269	27055074
2015-16	2984599	14217913	17202512	11726498	0	0	1955360	13681858	14622135	-940277	26114797
2016-17	2979238	15301145	18280383	16024494	0	0	1829844	17854338	15538326	2316012	28430809
2017-18	2613201	14660950	17274151	16045758	0	0	1526209	17571967	14683028	2888939	31319748
	17688711	81504461	99193172	84273364	9424276	2000000	19936304	115633944	84314196	31319748	194786319

We find that on an overall basis, gross receipts of the assessee including interest and other income, during all these years, aggregate to Rs.991.93 Lacs whereas it has incurred expenditure of Rs.842.73 Lacs which includes charities / donations given by it in these years. The net surplus is Rs.149.20 Lacs. The assessee has incurred capital expenditure of Rs.94.24 Lacs whereas its depreciation would be Rs.199.36 Lacs. If these two items are deducted, the assessee has, in fact, has utilized way much more amount than its net surplus. The Ld. CIT(A) has arrived at profit rates after considering corpus donations as part of gross receipts. Further, the amount expended by the assessee towards charities has not been considered in the computations. As held by us, the corpus donations were voluntary in nature and the same could not be treated as part of rental receipts. Further, the fact of application of

income has also to be considered and kept in mind while examining the charity claim of the assessee considering the specific directions of Tribunal in its order dated 27-03-2015. Therefore, we do not concur with the re-working of profit by Ld. CIT(A) at page no.119 of impugned order. We would go by overall analysis of receipts and funds expended by the assessee during all these years to ascertain whether the aforesaid activity of Kalyan mandapam could be said to be carried out with profit motive with utter disregard to the other charities objective of the assessee. Going by above analysis, we find that though the activities of Kalyan mandapam may have resulted into some surplus for the assessee, nevertheless, the surplus funds were fully utilized to carry out charitable activities and therefore the assessee's claim of deduction u/s 11 could not be usurped merely on the finding that the assessee's activities resulted into surplus funds for the assessee. Considering overall facts and circumstances of the case, we would concur with assessee's claim of exemption u/s 11. The Ld. AO is directed to grant the impugned exemption, in all the years and re-compute the income of the assessee for all these years. The assessee has also assailed reassessment proceedings on legal grounds. However, we concur with the adjudication of Ld. CIT(A) on legal grounds and find no reason to interfere in the same. In other words, the quantum appeals for AYs 2009-10 to 2017-18 stands partly allowed in terms of our above order. Consequently, the impugned penalties would not survive. In the result, penalty appeals also stand allowed.

9. The quantum appeals ITA Nos.1087 to 1095/Chny/2023 stands partly allowed. The penalty appeals ITA Nos. 1096 to 1098/Chny/2023 stand allowed.

Order pronounced on 11th June, 2024

Sd/
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 11-06-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF