

आयकर अपीलीय अधिकरण, "ए"/ 'बी'/ 'सी'/ 'डी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.641/Chny/2024
निर्धारण वर्ष /Assessment Year: 2010-11

Madhurika Educational &
Charitable Trust,
No.11, Millers Road, Kilpauk,
Chennai-600010.
[PAN: AAATM8627M]

Asst. Director of Income Tax
Vs. (Exemptions)-IV,
Chennai-34

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri D.Anand, Advocate.

प्रत्यर्थी की ओर से /Respondent by

: Ms.Gouthami Manivasagam, JCIT

सुनवाई की तारीख/Date of Hearing

: 30.07.2024

घोषणा की तारीख /Date of Pronouncement

: 16.10.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

This appeal is filed against the order bearing DIN & Order No.ITBA/NFAC/S/250/2023-24/1059541811(1) dated 10.01.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi, for the assessment years 2010-11. Through the aforesaid appeal the assessee has challenged order u/s 250 dated 10.01.2024 passed by NFAC, Delhi.

2.0 The appellant has altogether raised eight grounds of appeal. Save for ground of appeal No.1 which is general in nature the remaining grounds are centered around two major issues. The first issue being denial of exemption u/s 11 by invocation of provisions of section 13(3)(d) and section 13(3)(cc) of the Act and the second being taxation of the security deposit of Rs.70 lakhs invoking provisions of section 13(1)(C) r.w.s 13(2) along with 3rd proviso to section 164(3) of the act.

3.0 The first issue raised by the appellant through grounds of appeal No.2 to 6 denial of exemption u/s 11 by invocation of provisions of section 13(3)(d) and section 13(3)(cc) of the Act. The Ld. Counsel for the assessee informed that the appellant is a Public charitable Trust Constituted vide Deed of Declaration dated 10.12.2002 registered as Document No. 119/2003, SRO: Triplicane. The appellant Trust was granted registration under section 12AA of the Income Tax Act by the Director Of Income Tax (Exemptions) in DIT(E). No.2(836)/02-03 dated 15.10.2007 which has its principle objects to run an educational institution. It was submitted that the trust provides courses in Pre and Post Sea training/ refresher courses to ship crew, including Chief Engineers and Captains of ships so as to make them proficient in sea fairing activities. For the Assessment Year 2010-11 the appellant had filed its return of income on 29.09.2010 declaring NIL income. The appellants return was taken up for scrutiny and notice u/s

143(2) was issued on 16.09. 2011 calling for various details. The Details called for by the assessing officer was furnished by the appellant time to time. The Assessing Officer thereafter completed the assessment vide his order dated order dated 31.03.2013 determining the, total income of the appellant at Rs.1,28,25,952/- and also denied the benefit of section 11 to the appellant. In doing so the assessing officer invoked the provisions of Section 13(1)(c)/13(1)(d).

3.1 The Ld. Counsel for the assessee submitted that a total sum of Rs.42,40,000/- P.A was paid as remuneration to Sanjeev S. Vakil (Managing Director) which included a sum of Rs.3,00,000/- P.M under the head Salary Viz (aggregating to 36 Lacs per annum) and Rs.4,40,000/- as Bonus and Rs.2,00,000/- towards leave salary. The Assessing officer invoked section 13(2)(C) r.w.s 13(3) of the Income Tax Act and restricted the reasonable remuneration payable to Shri. Sanjeev. S. Vakil at Rs. 12,00,000/-. The Ld. AO has observed that the balance sum of Rs.30,40,000/- was paid as excessive remuneration and therefore was in violation of section 13 of the Income Tax Act. While doing so the assessing officer invoked 3rd provision to section 164(3) of the Income Tax Act and taxed the balance sum of Rs.30,40,000/- at Maximum Marginal Rate. It was further submitted that the appellant had paid total sum of Rs.21,30,000/- P.A as remuneration to Smt. Tarangi S Vakil which included a sum of

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Rs.1,50,000/- P.M under the head Salary Viz (18 Lacs per annum), Rs.2,30,000/- as Bonus and Rs.1,00,000/- towards leave salary. The Assessing officer invoked section 13(2)(C) r.w.s 13(3) of the Income Tax Act and restricted the reasonable remuneration payable to Smt. Tarangi S Vakil at Rs.6,00,000/- and observed that the balance sum of Rs.15,30,000/- paid as excess remuneration paid and was in violation of section 13 of the Income Tax Act thereby treating the same under the head excess remuneration paid In doing so the assessing officer invoked 3rd provision to section 164(3) of the Income Tax Act and taxed the balance sum of Rs.15,30,000/- at Maximum Marginal Rate.

3.2 The Ld. Counsel for the assessee argued that the addition of excess remuneration paid to Shri Sanjeev S, Vakil, (Managing Director) and Smt. Tarangi S Vakil and the consequent taxing of the same at Maximum Marginal Rate by invoking 3rd provision to section 164(3) of the Income Tax Act is unwarranted when examined in the proper prospective, inter-a- alia, including peculiar facts of the case and material available on records. At the outset the Ld. Counsel for the assessee argued that for the A. Y. 2011-12 the assessing officer himself has allowed a sum of Rs.25,00,000/- and 12,00,0001 - as reasonable remuneration payable to Shri. Sanjeev S.Vakil and Smt. Tarangi S. Vakil and therefore on this very aspect itself the action of the assessing officers restricting the reasonable remuneration payable to

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Sanjeev S. Vakil and Smt. Tarangi S.Vakil to Rs.12,00,000/- and Rs.6,00,000/- is totally unjustified. In support of its contentions the appellant placed on records a copy of the order for A.Y. 2011-12. The Ld. Counsel for the assessee informed that the appellant trust provides various courses in Sea fairing activities to make proficient sea men. Shri. Sanjeev S. Vakil an MBA is CEO of the appellant trust and is the brain behind being involved in day to day affairs of the trust. He has been conducting classes for various courses, including the premium courses. He is an approved faculty by D.G. Shipping. It was submitted that compared to market practices, he was paid much less salary. The appellant placed on records through his paper book documents regarding his qualification, and experience.

3.3 As regards Smt.Tarangini S. Vakil, the appellant placed on record a letter dated 05.04.2011 from the Mercantile Marine Department approving Smt.Tarangini S.Vakil as a faculty member. Smt. Tarangini S. Vakil was reported to be a B. Pharm graduate and a Government of India approved faculty for Medical courses, necessary for learning courses for topics on Drug Abuse, Pharmacology and Medical on board etc. It was submitted that Mrs. Tarangini, looks after Finance & Administration of the trust since its inception and has a sailing experience of over 5 years. The Ld. Counsel submitted that other senior faculty, involved exclusively in teaching work,

part time only and are paid on hourly basis between Rs 500/hr. to Rs. 1500/hr. The appellant placed on records through his paper book documents regarding her qualification and experience

3.4 The Ld. Counsel for the assessee thus argued that the remuneration paid to Shri. Sanjeev S. Vakil and Smt. Tarangini is very reasonable and in terms with the prevailing market norms and that there is no violation of section 13 of the Income Tax Act. It was further submitted that sums of Rs.4,40,000/- paid as Bonus and of Rs.2,00,000/- towards leave salary to Shri Sanjeev S Vakil and sums of Rs.2,30,000/- paid as Bonus and of Rs.1,00,000/- towards leave salary to Smt. Mrs. Tarangini respectively is paid as per norms and in line with other staffs employed in the organization. It was urged that consequently there is no violation of invoked provisions of the Income Tax Act and consequently not warranting taxing the same at Maximum Marginal Rate by invoking 3rd provision to section 164(3) of the Income Tax Act. The Ld. CIT(A) on his part has in para-8 of his order merely concluded that “...*the appellant has merely repeated the submissions made before the assessing officer during the assessment proceedings. No fresh evidences are brought in by the appellant to clearly outsmart the arguments of the findings of the Ld. AO in order...*”. The Ld. DR would like to make us believe the order of the Ld.

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CIT(A) to be in order and placed reliance upon the same as also of the Ld. AO concerned.

4.0 We have heard rival submissions in the light of material available on records. At the outset we have noted that the Ld. AO has indicated in his order non-submission of sufficient details by the appellant in support of its claims. As indicated above, the Ld. CIT(A) has merely relied upon the AO's order without applying his own mind on the issue and has not passed an speaking order. Be that as it may be we have taken judicial notice of the paper book dated 26.07.2024 placed by the appellant on records wherein a categorical certification has been made that all the details in the paper book were made available to the Ld. CIT(A) and the Ld. AO during proceedings before them. Consistency is the hall mark of any disciplined working. Consequently, there exists force in the argument of the assessee that as the assessing officer for the AY-2011-12 has allowed specific amounts of salary in respect of Shri. Sanjeev S. Vakil and Smt. Tarangini. We have also noted that the two persons are possessing sufficient professional qualification and experience to command a decent salary and remuneration in this line of profession. It is also a fact on records, emanating from assessment order for AY-2011-12, that the two persons are not related to any trustees. We have also considered the decision of this tribunal in the case of assessee's sister concern HIMT for AY-2009-10 referred in

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assessment order for AY-2011-12 qua application of section 13. Therefore, we are of the view that ends of justice would be met if the salary of the two persons i.e Shri. Sanjeev S. Vakil and Smt. Tarangini is restricted to the amount of Rs. 25 lakhs and Rs. 1 lakh respectively as adopted during the assessment year AY-2011-12. As the violation of provisions of section 13(1)(c) and (d) are evidenced, the ineligibility to claim exemption under section 11 becomes operative. Consequently, in view of overriding nature of provisions of section 13 the excess income, would have to be computed as per the regular provisions of the act and brought under tax. Accordingly, the orders of the lower authorities in respect of impugned additions are set aside and the Ld. AO is directed to recompute the remuneration paid to Shri. Sanjeev S. Vakil and Smt. Tarangini in line with his own decision taken on the matter as evident from the assessment order for AY-2011-12. Accordingly the ground of appeals 2 to 6 raised by the assessee is partly allowed.

5.0 The next issued raised by the assessee vide grounds of appeals Nos. 7 & 8 are in respect of treatment of interest free security deposit of Rs. 70,00,000/- paid by Smt. Tarangi S Vakil, to the assessee. While doing so the assessing officer invoked 3rd provision to section 164(3) of the Income Tax Act and taxed sum of Rs.70,00,000/- considered as excess security deposit at Maximum Marginal Rate. The assessing officer compared the

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transactions to a standard rental agreements of Chennai and observed that the common practice in Chennai is only to collect 10 months rent as security deposit and hence restricted the reasonableness to Rs.40,00,000/. The Ld. Counsel for the assessee submitted that the Directorate General of Shipping had not granted approval for commencing the engineering courses to the assessee trust as there was no Ship in Campus available for the student's practical training. A Ship in Campus is an essential facility / practical workshop place that will facilitate the students to equip themselves with the working of the ship's engine and other machineries in the ship without actually going into a ship. Originally the Ship in campus was planned to be purchased by the assessee trust and the initial advance was paid to Bansal Marine. However, the bank did not approve the loan proposed to be taken for the Ship in Campus as the capital expense was too high. Hence, Mrs.Tarangini Vakil came forward to take up the risk and install the same for the usage of the assessee trust on lease basis by taking an initial advance of Rs.5,00,001/- on 18th August, 2009 and the same was repaid to the assessee trust by Mrs. Tarangini Vakil. The assessee trust got the approval of Directorate General of Shipping for various engineering courses only after Mrs Tarangini Vakil had leased out the Ship in Campus to the assessee trust from 1.9.2009. The assessee trust is continuing to run the three engineering courses including PG Course for Graduate Marine

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Engineers, all approved by DG shipping even now and is generating income from the said courses. The assessee trust had paid initially an amount of Rs.1,10,00,000/- to Mrs Tarangini Vakil as Security Deposit for the Ship in Campus taking into account the cost of the Ship in Campus and later she repaid an amount of Rs.30,00,000/- on 31st March, 2010.

6.0 The assessee argued that the analogy drawn by the Ld. Assessing Officer is in-correct as no comparison can be made between rental income from immovable properties and leased charges from movable properties. It was urged that the security deposits collected by the lesser are for the purpose of ensuring that the risk of damages which would occur to the asset can be securitized by a deposit. While the damages that could be caused to an immovable asset is very limited, extensive damages, which could be even a total damage, can occur to the ship in campus due to extensive use by the students which would justify collective such high security deposit. The Ld. Counsel alternatively submitted that, assuming without conceding to the arguments of the Ld. AO, in the subsequent year the security deposit was reduced to a figure which is even less than 10 months.

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7.0 Further, justifying its case the Ld. Counsel submitted that Mrs Tarangini Vakil had got a beached ship from Alang, a ship breaking yard in Gujarat and cut the engine room of the same into several pieces, transported them to their campus in various trailers/ lorry etc and reassembled the parts to rebuild the entire structure. The denial of the loan by the Bank was thus attributed to this activity of the ship being cut into small pieces and brought in as scrap. Mrs Tarangini had taken her personal risk and obtained the personal loan from the bank and had built the entire ship in campus and gave the entire structure on lease to the assessee trust for the benefit of the students. The Ld. Counsel for the assessee informed that the cost of buying a new ship for the training purpose was exorbitant. Even the comparative renting of ship from another party was also reported to be fairly high. Reliance was placed on a proposal received from Yak Educational Trust for taking on lease the Ship in Campus at a monthly rental of Rs.9,00,000/- per month. The Ld. Counsel thus argued that on the scale of a cost benefit analysis, obtaining the ship from Mrs. Vakil by paying a security deposit was fairly economical proposal. In support of its contentions, the Ld. Counsel for the assessee placed voluminous documents in the form of paper book.

8.0 The Ld. CIT(A), as evident from para-8 of page 24 of his order has merely confirmed the order of the Ld. AO on the premise that no fresh

evidence or submissions have been brought by the appellant. The Ld. DR vehemently argued in favour of addition made by the assessing officer and its confirmation by Ld. CIT(A).

9.0 We have heard the rival submissions in the light of the material available on records. As per the brief factual matrix the assessee trust had given an advance of Rs.1.10 Crs. To Smt. Vakil and for which the trust was supplied ship of Rs.90,97,096/-. The Ld. AO noted that the lease rental was only Rs.4 lac per month and hence taking the house rental market scenario of Chennai wherein it is customary to take 10 months rent as security deposit, the Ld. AO allowed 40 lacs as the admissible security deposit and deemed Rs.70 lakhs as an excess amount within the meanings of 13(1)(c) r.w.s 13(2) of the IT act and holding that it is a case of diversion of income and would therefore be taxed at maximum marginal rate as per 3rd proviso to sec. 164(3) of the IT act. The argument invoked by the Ld. AO has however been found to be flawed and bereft of any merits. To begin with there cannot be any worthwhile comparison between obligation governing an immovable property and movable property. There is no connection between the two. Whereas in the case of an immovable property the security deposit is taken merely to secure the rent due to the owner, deposits in respect of movable properties are primarily taken to ensure that there are no damages caused. Examining the varied facts and

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circumstances governing the matter having a ship for training was a pre-requisite for the assessee to commence its activities. Material available on records suggest that the arrangement made with Mrs.Vakil was a reasonable understanding. Evidence on records suggest that this was an economically viable solution when compared with available alternatives. Accordingly, we are of the view that the interference caused by the Ld. AO in terms of deeming Rs.70 lakhs as an excess amount within the meanings of 13(1)(c) r.w.s 13(2) of the IT act and holding that it is a case of diversion of income and thus taxing it at maximum marginal rate as per 3rd proviso to sec. 164(3) of the IT act was totally unwarranted. Accordingly we set aside the orders of the lower authorities and direct the Ld. AO to delete the impugned addition of Rs.70 lakhs. Consequently, the grounds of appeal Nos. 7 & 8 raised by the assessee are allowed.

10.0 The next issue raised by the assessee through ground of appeal No.9 is denial of depreciation of Rs.3,99,495/-. The assessee had claimed depreciation of Rs.8,32,026/-. The Ld. Counsel for the assessee submitted that the Ld. AO only allowed depreciation of Rs. 4,32,531/- qua additions of depreciable assets made during the year holding that the cost in respect of assets of earlier years for which depreciation has been claimed is a case of application of income and therefore no depreciation can be allowed in the current year. The Ld. Counsel informed that while doing so the Ld. AO

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had placed reliance upon judicial pronouncements made by Hon'ble Apex Court, Jurisdictional High Court. The Ld. Counsel for the assessee submitted that its case is squarely covered by the decision of Hon'ble Apex Court in CJT Vs Rajasthan & Gujarat Charitable foundation Trust 402 ITR 441(SC). The Ld. CIT(A), as evident from para-8 of page 24 of his order has merely confirmed the order of the Ld. AO on the premise that no fresh evidence or submissions have been brought by the appellant. The Ld. DR would like to make us believe on the correctness of order of the Ld. AO.

11.0 We have heard rival submissions in the light of material available on records. We have noted that Hon'ble Apex Court in its decision of CJT Vs Rajasthan & Gujarat Charitable foundation Trust Supra has laid down the ratio that the amendment in section 11 (6) of the act brought by Finance Act No.2 of 2014 which become operative from AY-2015-16 is prospective in nature and cannot be applied retrospectively. In the impugned judgement their Lordship have held that once the assessee allowed depreciation it shall be entitled to carry forward the same. In respectful compliance to the order of Hon'ble Apex Court Supra, we set aside the order of lower authorities and direct the Ld. AO to allow the assessee the full depreciation of Rs.8,32,026/- claimed during the year. Accordingly, the ground of appeal No.9 raised by the assessee is allowed.

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12.0 In the result the appeal of the assessee is partly allowed.

Order pronounced on 16th, October-2024.

Sd/-

Sd/-
(मनु कुमार गिरि)

(Manu Kumar Giri)

(अमिताभ शुक्ला)

(amitabh shukla)

न्यायिक सदस्य / **Judicial Member**

लेखा सदस्य / **Accountant Member**

चेन्नई/Chennai, दिनांक/Dated: 16th, October-2024.

EDN/-

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT-Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF