

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'A', CHANDIGARH

**BEFORE SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER
& SHRI PARESH M JOSHI, JUDICIAL MEMBER**

आयकर अपील सं./ ITA No. **1570/CHD/2019**

निर्धारण वर्ष / Assessment Year : 2014-15

Bhai Ghanhya Trust (Sanjivni Trust), SCO 175-187, Sector 34-A, Chandigarh	Vs. बनाम	The DCIT (Exemptions), Circle 1, Chandigarh
स्थायी लेखा सं./PAN No: AAAGTS2472Q		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ REPSONDENT

(Physical Hearing)

निर्धारिती की ओर से/Assessee by : Shri Atul Goyal, CA

राजस्व की ओर से/ Revenue by : Shri Vivek Vardhan, JCIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 29.10.2024

उद्घोषणा की तारीख/Date of Pronouncement : 20.11.2024

आदेश/Order

Per Krinwant Sahay, A.M.:

The appeal in this case has been filed by the Assessee against the order dated 05.09.2019 of the Id. Commissioner of Income Tax (Appeals)-2, Chandigarh.

3. Grounds of appeal are as under: -

1. *That order passed by the CIT(A) and Ld. A.O. is contrary to law and facts of the case.*

2. *That the CIT(A) has grossly erred in treating the appellant trust as AOP and denying the appellant the benefit of exemption under Section 11 of the Income Tax Act 1961*
 3. *That the CIT(A) and Ld. A.O. has grossly erred in ignoring the past history and the assessment orders of earlier without their being any change in activities of the appellant trust from year to year without any change.*
 4. *That in the facts and circumstances of the case the CIT(A) and Ld. A.O. have gravely erred in denying the appellant trust benefit of exemption under Section 11 of the Income Tax Act 1961.*
 5. *That in the facts and circumstances of the case and the presence of registration of the trust under Section 12A of the Act, the CIT(A) and Ld. A.O. has gravely erred in denying exemption to the assessee trust Sind sustaining addition of Rs. 68,02,637*
 6. *That the CIT(A) erred in laws in sustaining the order of the Ld. A.O. and holding the order as within jurisdiction.*
 7. *That the appellant prays for permission to amend, raise or delete any grounds of appeals with the permission of the court.*
4. Brief facts of the case, as per the CIT(A)'s order are as under: -
- “Brief facts of the case are that the assessee trust claims to be engaged in providing cost effective quality health care facility to the members and employees of Co-operative Institutions/ Co-Operative Societies,

employed /Retired employees of the Department of Co-operation/Registrar Cooperative Societies, Punjab and their dependents through an insurance backed scheme. During the assessment proceedings it was observed that the assessee trust is just working as an insurance service provider/intermediary, to its members and earning revenue from the premium paid. It was surmised that the activities of the assessee is not covered as charitable activities u/s 2(15) of the IT Act, 1961. Further, on perusal of the objectives, beneficiaries and scope and limit of the Scheme, it became clear that beneficiary section of the society was only the members of this scheme of co-operative societies of Punjab and that too those who paid society enrolment fee. It was clear that there was no commoner who could partake these benefits other than the members. Since only the members or employees of eligible co-operative society were the target beneficiaries of the scheme it was further held that the trust was not providing any benefit to public at large.

Recourse was taken to the newly inserted proviso to section 2(15) applicable to entities whose purpose is 'advancement of any other object of general public utility' i.e. the fourth limb of the definition of 'charitable purposes' contained in section 2(15). As per the said proviso such entities will not be eligible for exemption u/s 11 or u/s 10(23) C of the Act if they undertook commercial activities. Whether such an

entity is carrying on an activity in nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity. Therefore, in the light of facts emerging from the trust"- activities it was held that the assessee was not entitled for exemption u/s 1 I of the IT Act, 1961. The claim of the assessee for exemption u/s 11 of the IT Act, 1961 was rejected and the excess of income over expenditure amounting to Rs. 68,02,637/- had been assessed as business income of the assessee by treating the assessee trust as AOP.”

5. The ld. CIT(A) in his order has given his findings that during the appellate proceedings many opportunities were given to the Assessee but the Assessee sought adjournments at eight times and appeared only once. No substantive response or submissions were filed by the Assessee.

6. During the proceedings before us, the ld. Counsel for the Assessee requested that since the Assessee could not file all the required documents before the ld. CIT(A), therefore, in the interest of natural justice, the case could be considered for remanding back to the CIT(A)

7. The ld. DR had no objection to the request of the Assessee’s counsel.

8. We have considered the request of the Counsel of the Assessee and his arguments for remanding the matter back to the file of the CIT(A) and after hearing the arguments of the Counsel of the Assessee as well as of Id. DR, we are of the considered view that in the interest of justice, the matter is remitted to the file of the CIT(A), to be decided afresh on merit, in accordance with law, on affording due and adequate opportunity of hearing to the Assessee. The Assessee, no doubt, shall cooperate in the fresh proceedings before the CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly.

9. In the result, the appeal is allowed for statistical purposes.

Order pronounced on 20.11.2024.

Sd/-
(PARESH M JOSHI)
Judicial Member

Sd/-
(KRINWANT SAHAY)
Accountant Member

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar