

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

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER

आयकरअपील सं./ ITA Nos.127, 128 & 129/Chny/2024
(निर्धारणवर्ष / Assessment Years: 2011-12, 2012-13 & 2013-2014)

Guru Krishnanand Charitable Trust,
157, P.M. Swamy Colony,
5th Street,
Coimbatore 641 002.

Vs. The Deputy Commissioner of
Income Tax,
Central Circle 1,
Coimbatore

[PAN: AAATG 4923A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. N. Arjun Raj, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Ms. R. Anita, IRS, Addl. CIT.

सुनवाई की तारीख/Date of Hearing : 02.12.2024

घोषणा की तारीख /Date of Pronouncement : 04.12.2024

आदेश / O R D E R

PER MANU KUMAR GIRI (Judicial Member)

These appeals by the assessee are arising out of the separate orders of even date 20.12.2023 of the Commissioner of Income Tax (Appeals), Chennai -20 for assessment years 2011-12, 2012-13 and 2013-2014. The assessments were framed by the Deputy Commissioner of Income Tax, Central Circle 1, Coimbatore vide orders dated 20.12.2016 framed u/s.144 r.w.s.147 of the Income Tax Act,

1961 (in short "the Act"). Since the issues raised by the assessee are common in all the appeals, we dispose of all the appeals in this common order.

2. First, we take up ITA No.127/Chny/2024 for assessment year 2011-2012 for adjudication. Our decision on this issue will equally apply mutatis mutandis to other appeals being ITA Nos. 128 and 129/CHNY/2024 for assessment years 2012-2013 and 2013-2014.

3. The assessee M/s Guru Krishnanand Charitable Trust is registered u/s.12A of the Act vide registration number 156/83-84, dated 1984 and is running three projects viz. Guru Saranalaym (Home for the needy), Guru Kripa Hospital and Guru Krupa Jain Dhadavadi (a temple within the Hospital premises). A warrant of authorization u/s 132 of the Act was executed in the case of Shri D. Ramgopal to search the residential premises of Shri G. Vijaychand Jhabakh, Chartered Accountant on 27.11.2013. Shri Vijaychand Jhabakh and his family members are trustees of Guru Krishnanand Charitable Trust. The assessee trust has not filed any return of Income originally for the AY 2011-12. Consequent to search, basing on some inquiries it was found that there were huge cash deposits in bank accounts of appellant trust. Some other issues were also noticed by AO like payments made by Appellant trust to individuals, withdrawal of funds by trustees from bank accounts of trust etc. Notice u/s 148 of the Act was issued to the appellant trust on 01.09.2015 and the appellant did not file return of income in response to the said notice. Subsequently, notice u/s 142(1) of the Act was issued on 13.01.2016 and there was no compliance to this notice also. A notice u/s 271F of the Act was issued on

04.04.2016 to show cause why penalty should not be levied for non-filing of Return and the penalty u/s 271F was levied on 03.05.2016. The Id. Assessing Officer issued letters dated 11.07.2016 and 20.10.2016 seeking compliance to the statutory notices but the appellant has not responded to these letters also. A final opportunity was afforded vide a show cause notice dated 12.12.2016 calling for submissions by 19.12.2016, which was not responded to by the appellant. The Id. Assessing Officer passed an order u/s 144 of the Act on 20.12.2016 based on verification and analysis of the seized material and materials available on record, assessing the income at Rs.1,28,48,725/- as a result of the following additions:

i	Unexplained Cash credits in the Bank accounts	Rs.72,63,100/-
ii	Transfer of money from trust account to personal accounts	Rs.23,35,625/-
iii	Unexplained investment	Rs.32,50,000/-
	Assessed Income u/s 144	Rs. 1,28,48,725/-

Aggrieved by the order, the assessee preferred an appeal before the Id. CIT(A).

4. The first issue raised by the assessee is with regard to Unexplained Cash credits in the Bank accounts. The Id. CIT(A) noted that the assessee has not explained sources for amount deposited in bank account out of cash balance in cash book. When cash is found deposited in bank account of assessee, onus is on assessee to explain source for funds with sufficient evidence. But assessee merely produced cash book for the first-time during remand proceedings, expected AO to

understand everything out of it by linking both cash book and bank statement. It is noticed that not even iota of effort has been put by appellant to provide evidence for sources mentioned. In the absence of any evidence in support of amounts deposited in bank account, the Id. CIT(A) was of the view that the AO has rightly added Rs.72,63,100/- as unexplained deposits. Consequently, the Id.CIT(A) dismissed the ground of assessee.

5. The next issue raised by the assessee before the Id. CIT(A) is with regard to Transfer of money from trust account to personal accounts of Rs.23,35,625/-. The Id. CIT(A) noticed that trustees have withdrawn Rs.23,35,625/- from trust funds during the year. Since appellant could not sufficiently prove that withdrawal from bank accounts is towards recovery of purchase consideration incurred on behalf of trust by establishing the fact of purchase of land in the name of trust, it is considered that the funds have been withdrawn for benefit of trustees. The Id.CIT(A) held that the AO has rightly held that the appellant has violated provisions of section 13(1)(c)(ii) by applying funds of the trust for the benefit of persons mentioned u/s.13(3)(cc) i.e. trustees. However, since cash deposits in bank accounts have been added by AO, considering the fact that trustees have withdrawn funds from same bank accounts, no separate addition can be made. The Id. CIT(A) directed the AO to delete addition made to the extent of Rs.23,35,625/-. As per provisions of section 13 of IT Act, the appellant is not entitled to benefit of section 11 of IT Act for the year. Further, since appellant failed to furnish any evidence to prove expenditure in its hands either during assessment proceedings or during remand proceedings, no expenditure can be allowed from taxable receipts

found in the bank accounts of appellant trust. Consequently, the Id. CIT(A) partly allowed the ground raised by the assessee.

6. The last ground raised by the assessee is with regard to unexplained investment of Rs.32,50,000/-. Since the assessee has explained the source for Rs.20,00,000/-, the Id. CIT(A) deleted the addition of Rs.20,00,000/- and confirmed the addition of Rs.12,50,000/- made by the Id. Assessing Officer. The Id. CIT(A) partly allowed the ground of the assessee. Aggrieved, by the action of the Id. CIT(A), assessee preferred an appeal before the Tribunal.

7. At the outset, Ld. Counsel for the appellant submitted that the Id. Assessing Officer had not properly followed the principles of natural justice. Ld. Counsel for the appellant contended that assessee has not received notices except notice dated 12.12.2016 which was served on assessee on 15.12.2016 and assessee was directed to submit the reply before 19.12.2016 and hence assessee could not submit required documents. The Id. AR further contended that the assessment order was passed on 20.12.2016. Ld. Authorized Representative prayed that if an adequate opportunity of hearing is given before Id. Assessing Officer, assessee will submit the required documents. Ld. Senior Departmental Representative urged that the order of AO and that of the Id.CIT(A) be confirmed.

8. We have gone through the orders of lower authorities and submissions addressed by the parties before us. We find that the Id. Assessing Officer has passed ex-parte assessment order u/s 144 r.w.s. 147 of the Act wherein the assessee missed an opportunity of hearing to explain its case. Hence, in the light of aforesaid factual position and in the interest of substantial justice, we feel that an

opportunity should be given to the appellant before the AO for adequate representation. Accordingly, the impugned order is set aside and the appeal is restored back to the file of Ld. AO for denovo assessment on merits after affording proper opportunity of hearing to the assessee subject to consolidated cost of Rs.5000/- which shall be deposited by the assessee within 30 days from the date of receipt of this order to 'Tamil Nadu State Legal Services Authority' at Hon'ble High Court of Madras. The proof of the same will be furnished by the Assessee before Ld.AO. The assessee is directed to adduce evidence, if any, or substantiate its case forthwith without any fail, failing which Ld.AO shall be at liberty to proceed with the denovo assessment on merits.

9. In the result, the appeals filed by the assesses in ITA Nos.127, 128 & 129/Chny/2024 are allowed for statistical purposes.

Order pronounced in the open court on 4th day of December, 2024

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai:

दिनांक Dated : 04-12-2024

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आदेश की प्रतिलिपि अग्रेषित /Copy to :

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

Sd/-

(मनु कुमार गिरि)

(MANU KUMAR GIRI)

न्यायिक सदस्य / JUDICIAL MEMBER