

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

श्री जॉर्ज जॉर्ज के, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष  
**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND  
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **138/CHNY/2025**

निर्धारण वर्ष/Assessment Year: 2017-18

**The Income Tax Officer,**  
Exemptions Ward,  
Nellai City Centre,  
Tiruchendur Road,  
Rahmath Nagar,  
Tirunelveli – 627 011.

**M/s. Hemla Trust,**  
Vs. B-46, First Cross Street,  
Maharaja Nagar,  
Tirunelveli – 627 011.

**PAN: AAATH 6898K**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by  
प्रत्यर्थी की ओर से/Respondent by

: Shri V. Justin, CIT  
: Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing

: 06.05.2025

घोषणा की तारीख/Date of Pronouncement

: 08.05.2025

**आदेश / O R D E R**

**PER GEORGE GEORGE K, VICE PRESIDENT:**

This appeal at the instance of the Revenue is directed against the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi order dated 20.11.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Year is 2017-18.

2. The grounds raised read as follows:-

*1. Whether Ld.CIT(A) was justified in ruling that trust had not violated the provisions of Sec 13(2)(cc) of Income Tax Act when the fact remains that trust has not furnished any corroborative evidence to substantiate that vehicle had been put to use by trust for its objectives and when ownership was held by Trustee?*

*2. Whether Ld.CIT(A) was justified in shifting the onus on burden of proof on Revenue regarding vehicle being used by trustee when the fact remains that trust has not discharged the primary onus cast on it to substantiate that vehicle had indeed been used by trust for its stated objectives?*

*3. Whether Ld.CIT(A) was justified in admitting additional evidences during the course of appeal proceedings without calling for remand report from the Assessing Officer ?*

*4. Whether Ld.CIT(A) was justified in holding that trust has not done any commercial activity as far as purchase and sale of books were concerned when the fact remains that trust has generated huge surplus by overpricing the students in above transaction and when the fact remains that such surplus generated was not given back to students but distributed to schools in an arbitrary manner?*

*5. Whether Ld.CIT(A) was justified in allowing an amount of Rs.2,41,00,000/- (which is donation given to other trust) as application of income, when the factual matrix suggests that assessee ought to be treated as AOP and not as AOP(Trust) given the specified violations and commercial nature of activities undertaken?*

*6. Any other grounds with permission of Honorable Bench at time of hearing.*

3. Brief facts of the case are as follows: The assessee is a trust established on 10.02.1988. The assessee trust has been registered u/s.12A of the Act w.e.f. assessment year 2008-09. For the assessment year 2017-18, the return of income was filed on 22.12.2017 declaring 'nil' income. The assessment was selected for scrutiny and notice u/s.143(2) of the Act was issued on 24.08.2018.

During the course of scrutiny proceedings, the AO issued show-cause notice dated 14.12.2019 directing the assessee to explain why exemption claimed u/s.11 of the Act ought not to be denied, since assessee had violated the provisions of section 13(1)(c) of the Act. In this context, it is to be mentioned that assessee trust had purchased Tata Venture LCV school van and van was registered in the name of the trustee Shri V. Jayendran. The AO in the show-cause notice had stated that the van was purchased through a vehicle loan from Tata Motor Finance Ltd., and portion of the purchase cost was also paid by the assessee trust. It was further mentioned that interest on the said loan was paid by the assessee trust and having the vehicle registered in the name of the trustee and payment towards procurement of the same clearly attracts the provisions of section 13(1)(c) of the Act. In reply to the show-cause notice dated 20.12.2019, the assessee submitted that van was purchased in the name of the trustee as there was no provision to register the van in the name of the trust. It was stated that thereafter the van was handed over to the school namely Sri Jayendra Swamigal Silver Jubilee MHSS School. It was stated that the said school was managed and run by Sri Sankara Ramana Kendram, which was a society registered u/s.12A of the Act. It was stated in the reply to the show-cause notice that the van was used to

pick up the teachers of the school and never utilized by the trustee or by any other prohibited persons mentioned in section 13(3) of the Act. It was also stated that the entire maintenance and fuel charges were borne by the said school and the assessee trust did not receive any income.

3.1 The AO however, rejected the contentions of the assessee and completed the assessment u/s.143(3) of the Act on 27.12.2019. The AO held that the purchase of Tata Venture vehicle in the name of Shri V. Jayendran (being a specified person referred to in section 13(3)(cc) of the Act) by using funds of the assessee trust has benefited the trustee (Shri V. Jayendran) and hence, there is a violation committed by the trust as per the provisions of section 13(1)(c) r.w.s.13(3)(cc) of the Act. It was concluded by the AO that in view of the aforesaid violation, the trust is not entitled to exemption u/s.11 of the Act and assessee trust is to be treated as AOP, by assessing the excess income over expenditure after disallowing the inadmissible expenses. Further, the AO also added a sum of Rs.1,84,40,413/- as income of the trust being surplus on account of the supply of books to two schools. It was noticed by the AO that the amount collected from the students for selling of books was for a sum of Rs.3,00,53,454/- and the cost of such books was

only Rs.1,16,13,041/-. Hence, the surplus of Rs.1,84,40,413/- was added to the total income of the assessee trust since the claim of exemption u/s.11 of the Act was denied for violation of section 13(1)(c) of the Act. By adding the surplus sum of Rs.1,84,40,413/-, the AO rejected the contention of the assessee trust that it had not received any surplus income but had passed on the surplus as discounts to the schools. Further, the AO in the assessment order completed u/s.143(3) of the Act (order dated 27.12.2019) had also added corpus donation made by the assessee for a sum of Rs.2,41,00,000/-.

4. Aggrieved by the assessment completed, the assessee trust filed appeal before the First Appellate Authority. The CIT(A) allowed the appeal of the assessee trust. As regards to the issue of violation of provisions of section 13(1)(c) of the Act, the CIT(A) held that though the van is registered in the name of the trust and expenditure for purchase of the van was made out of the funds of the trust, there is no evidence or proof that said van has been used by the trustee for his own benefit. The relevant finding of the CIT(A) holding there is no violation of provisions of section 13(1)(c) of the Act reads as follows:-

*“4.3 I have perused the issue thoroughly. As per Trust Act Indian laws do not recognize trusts as a separate legal entity, these laws recognize trusts as an obligation of the trustee to hold or own any property not as an absolute owner but to use and manage the trust property for the benefit of the beneficiaries. Even if, the ownership of the trust property is legally vested in a trustee, it does not imply that the trustee himself is drawing any benefit out of the said trust property and such decision can only be found out from the facts of the case. In this case, although the property which is a Van was registered in the name of the trustee and the expenditure for purchase of the property was made from the funds of the trust, there is no evidential proof that the said Van was used by the trustee for his own benefit. In case of movable property, a trust is considered to be settled when the trust property is transferred to the trustee. Hence, the property acquired for the purpose of the trust is registered in the name of the trustee holding it in trust for the benefit of the beneficiaries. Under the said provisions of the law and on the facts of the case, I do not find that there had been any violation of the provision of Section 13(1)(c) r.w. section 13(3)(cc) of the Income Tax Act and therefore the treatment given by the Assessing Officer in the assessment order to treat the trust as AOP and to assess the income of the trust on commercial principles is not proper and correct. Therefore, the first ground of appeal of the assessee is allowed and the Assessing Officer is directed not to treat the trust as a taxable AOP.”*

4.1 As regards to the issue of addition of surplus fund of Rs.1,84,40,413/-, the CIT(A) after perusing the ledger account, noticed that assessee had not received the surplus of Rs.1,84,40,413/- as income of the trust, since the same has been passed on to the respective schools as discounts. The relevant finding of the CIT(A) in this regard reads as follows:-

*“7.2 At the appeal stage, a specific query was raised to the trustee seeking details of how such surplus fund of Rs.1,84,40,413/- was given to the schools as discount. In reply, the assessee trust submitted the respective ledger account of the two schools in the books of account of the assessee trust. It is seen from such ledger that on 24.03.2017, a sum of*

*Rs.44,63,888/- was shown as discount due to books and notebook sale and credited in the ledger of the school Sri Lalitha Vidhyashram. Similarly, on the said same date a sum of Rs.1,39,76,526/- was credited to Sri Jayendra Swamigal Silver Jubilee MHSS School. The said discount was actually physically paid by the trust to the two schools by making payments through banking channel on different dates starting from April 2016 till March 2017. It may be stated that the Lalitha Vidhyashram school is managed by Sankara Ramana Kendram trust, an entity registered u/s.12A of the Income Tax Act under PAN: AABTS1865J and the Jayendra Swamigal Silver Jubilee MHSS School is managed by Sri Sankara Ramana Kendram, a society registered u/s.12A of the Income Tax Act under PAN: AAEAS2236B. From the documentary evidences, it is clear that the assessee trust did not retain a single paise out of the surplus generated from sale of books to the students of the two schools and were paid back to the said schools which are run and managed by societies or trust which are registered u/s.12A of the Income Tax Act as charitable organization engaged for the purpose of donation.”*

4.2 As regards to the consequential addition of corpus donation made by the AO totaling to Rs.2,41,00,000/-, the CIT(A) held that the donation given by the assessee trust is nothing but application of income in terms of section 11(3)(d) of the Act and directed the AO to delete the disallowance of Rs.2,41,00,000/-.

5. Aggrieved by the order of the CIT(A), the Department has filed the present appeal before the Tribunal. The Ld.DR strongly supported the grounds raised and relied on the findings of the AO.

6. The Ld.AR on the other hand, supported the finding of the CIT(A) and reiterated the submissions made before the Income-tax authorities. It is to be mentioned that the assessee has filed a paper-book comprising of 300 pages enclosing therein the return of income and the financials, the notice and the proceedings during the course of assessment proceedings, the first appellate proceedings and the case laws relied on.

7. We have heard rival submissions and perused the material on record. The AO had denied exemption u/s.11 of the Act, for the reason that the van (Tata Venture, LCV) was purchased in the name of a trustee namely Shri V. Jayendran. The financier namely Tata Motors Finance Ltd., agreed to finance the vehicle purchase with a condition the vehicle should be in the name of the trustee and not in the trust name. Hence the vehicle was purchased in the name of Shri Jayendran, the trustee. For record purposes, Shri V. Jayendran made endorsement in the invoice that the vehicle belongs to the assessee trust and for its use. Thereafter, the vehicle was recorded in the books of accounts of the assessee trust. In this context, it is to be mentioned that a movable property can be purchased in the name of a trustee as permitted by the Indian Trust Act, 1882. Section 5 of the Indian Trust Act reads as under:-

*“Trust of movable property – No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee”*

Section 12 of the Indian Trust Act reads as under:-

*“12. Trustee to inform himself of state of trust property – A trustee is bound to acquaint himself as soon as possible, with the nature and circumstances of the trust-property; to obtain, where necessary, a transfer of the trust-property to himself; and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.”*

Hence, it is lawful to hold trust's movable property in the name of the trustee. According to the AO, the income of the trust or the property of the trust has been utilized or applied during the previous year for the purpose of purchase of a property for the benefit of a trustee. For this reason, exemption u/s.11 of the Act has been denied. The purchase of a school van in the trustee name for the trust's purpose as evidenced by the vehicle purchase bill does not give rise to believe that income/property of the trust is during the previous year used or applied for the benefit of a prohibited category of person. The trust is the owner of the vehicle though the vehicle has been purchased in the name of the trustee as permitted under law. There is no finding in the assessment order that vehicle has been used directly or indirectly for the benefit of the trustee in whose name, the vehicle has been purchased. On the contrary, from the evidence placed on record, we find that the impugned vehicle has been used

for Sri Jayendra Swamigal Silver Jubilee School, another charitable institute registered u/s.12A of the Act under the same management for picking up of teachers for the school. The expenses of running and maintenance of the vehicle is incurred by the said school. Copies of the fuel and maintenance bill borne by the school has been placed on record from pages 266 to 274 of the paper-book filed by the assessee. Since, it has been established by documentary evidence that van was used by Sri Jayendra Swamigal Silver Jubilee MHSS School, we agree with the finding of the CIT(A) that invocation of section 13(1)(c) of the Act by the AO was not proper.

7.1 As regards surplus of Rs.1,84,40,413/- which is treated by the AO as income of the assessee trust, we notice that as per activities of the assessee trust, it supplies text books to the students of Sri Jeyandra Swamigal Silver Jubilee School and Sri Lalitha Vidhyashram, two institutions run by other charitable trust of the same group. The AO by analyzing the books of accounts of the trust, found that total funds collected by the assessee trust from the students for selling the books was for a sum of Rs. Rs.3,00,53,454/-. However, the cost of such books was Rs. 1,16,13,041/-. Hence, there was a surplus of Rs.1,84,40,413/-. The assessee trust had claimed that such excess amount / surplus collected over the expenditure was paid back to the

respective schools under the head discount given. The AO however was not convinced and hence, the surplus of Rs.1,84,40,413/- was treated as income of the assessee trust. During the appellate proceedings, the CIT(A) directed the trustee to explain how such surplus fund of Rs.1,84,40,413/- was given to schools as discount. In reply, the assessee trust submitted the respective ledger account of the two schools in the books of accounts of the assessee trust. The CIT(A) after perusing the said ledger found that on 24.03.2017, a sum of Rs.44,63,888/- shown as discount due to books and note books sales was credited in the ledger account of the school Sri Lalitha Vidhyashram. Similarly, on the said date, a sum of Rs.1,39,76,526/- was also credited to Sri Jeyandra Swamigal Silver Jubilee School. The said discounts were paid through banking channels on different dates starting from April, 2016 till March, 2017. Based on the documentary evidence produced before the CIT(A), the CIT(A) had come to a categorical conclusion that assessee trust has not retained any amount of surplus generated from sale of books to the students of the two schools and were paid back to the said schools which are run and managed by societies or trusts which are registered u/s.12A of the Act. The said finding of the CIT(A) has not been controverted by placing any contra evidence. Hence, we

confirm the CIT(A)'s direction to delete the excess surplus of Rs.1,84,40,413/- which was treated as income of the assessee trust.

7.2 Since we have found that on facts, the CIT(A) is legally correct in holding that assessee cannot be taxed as a AOP and entitled to exemption u/s.11 of the Act, the corpus donation made by the assessee for a sum of Rs.2,41,00,000/- in the assessment year, which is consequential to the main issue is also deleted and we hold the said sum to be an application of income.

7.3 Before concluding, it is to be mentioned that Revenue has raised a ground with regard to violation of Rule 46A of the Income Tax Rules, 1962. The above ground raised by the Revenue is devoid of any merits since the assessee trust in the instant case has not filed any additional evidence before the First Appellate Authority. The CIT(A) during the course of appellate proceedings had directed the assessee to produce evidence/proof how the excess/surplus of Rs.1,84,40,413/- has been paid to the schools as discount. The details were called by the Ld.CIT(A) under sub-rule (4) to Rule 46A of IT Rules, 1962. In other words, details were furnished at instance of CIT(A) and same was not furnished by the assessee as additional evidence. Since the CIT(A) had called for the details/evidence, there

is no violation of provisions of Rule 46A(1) to (3) of IT Rules, 1962. In support of the above conclusion, we rely on the order dated 10.01.2025 of Chennai Bench of ITAT, in the case of DCIT vs. Rajpriyam in ITA No.2047/CHNY/2024. In light of aforesaid reasoning, we hold that the CIT(A)'s order is correct and is in accordance with law and no interference is called for. It is ordered accordingly.

8. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 8<sup>th</sup> May, 2025 at Chennai.

Sd/-  
(जगदीश)

**(JAGADISH)**

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 8<sup>th</sup> May, 2025

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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

Sd/-

(जॉर्ज जॉर्ज के)

**(GEORGE GEORGE K)**

उपाध्यक्ष /VICE PRESIDENT