

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2063, 2064, 2065, 2066 & 2067/Mds/2014

निर्धारण वर्ष / Assessment Years : 2004-05 to 2008-09

The Deputy Director of Income
Tax (Exemptions),
Chennai - 600 034.

v. M/s Nachipur Educational Trust,
No.16, Rajammal Street,
Shenoy Nagar, Chennai - 600 030.

(अपीलार्थी/Appellant)

PAN : AABTN 3631 R

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.2173/Mds/2012

निर्धारण वर्ष / Assessment Year : 2004-05

The Deputy Director of Income
Tax (Exemptions),
Chennai - 600 034.

v. M/s Anugraha,
No.16, Rajammal Street,
Shenoy Nagar, Chennai - 600 030.

(अपीलार्थी/Appellant)

PAN : AACTA 4591 N

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.2068, 2069, 2070 & 2071/Mds/2014

निर्धारण वर्ष / Assessment Years : 2005-06 to 2008-09

The Deputy Director of Income
Tax (Exemptions),
Chennai - 600 034.

v. M/s Anugraha,
Rutland Towers, 2nd floor,
No.33, Shafee Mohamed Road,
Greems Road, Chennai - 600 006.

(अपीलार्थी/Appellant)

PAN : AACTA 4591 N

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Bharath, CIT

प्रत्यर्थी की ओर से/Respondents by : Ms. S. Deepa, CA

सुनवाई की तारीख/Date of Hearing : 18.08.2015

घोषणा की तारीख/Date of Pronouncement : 01.10.2015

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the appeals of the Revenue are directed against different orders of the Commissioner of Income Tax (Appeals), out of which two are common orders, viz. one for assessment years 2004-05 to 2008-09 and the other for assessment years 2005-06 to 2008-09 and there is a separate order for assessment year 2004-05. Since common issue arises for consideration in all these ten appeals, we heard the appeals together and disposing of the same by this common order.

2. There was a delay of 23 days in filing these appeals by the Revenue. The Revenue has filed a petition for condonation of delay. We have heard the Ld. Departmental Representative and the Ld. representative for the assessee. We find that there was

sufficient cause for not filing the appeals before the stipulated time.

Therefore, we condone the delay and admit the appeals.

3. Shri S. Bharath, the Ld. Departmental Representative, submitted that both the assesseees are registered as charitable institutions under Section 12AA of the Income-tax Act, 1961 (in short 'the Act'). During the assessment years under consideration, both the assesseees claimed to have received corpus donation. However, the corpus donation claimed to have been received by both the assesseees found to have been added to the Capital Fund. The Ld. D.R. further submitted that the assets created out of the accumulated Capital Fund were not reflected in the books of account of both the assesseees. The Ld. D.R. further submitted that the assesseees have not furnished the complete details of the donors from whom the corpus donation was claimed to have been received. Therefore, the Assessing Officer treated the entire so-called corpus donation said to be received by the assesseees as income of the assesseees. According to the Ld. D.R., the assesseees have also not filed any evidence for application of their fund for charitable purpose. Referring to the assessment orders, the Ld. D.R. submitted that both the assesseees transferred their funds to two

private companies, namely, M/s Prajit Foundation Pvt. Ltd. and M/s Golden Shelters Pvt. Ltd. According to the Ld. D.R., both the assesseees pooled their funds for construction of massive marble structure at Chedulapakkam Village, Varadalapalam Mandal, Chittoor District, Andhra Pradesh. The massive marble structure was said to be meant for meditation hall for general public. However, the structure constructed by two private companies continue as asset in their books of account. Moreover, two of the Directors of the above said two companies are close relatives of the trustee of both the trusts. Therefore, the Assessing Officer found that there was a clear violation of Section 13(1)(d) of the Act. Referring to Section 11 of the Act, the Ld. D.R. pointed out that what was excluded as income is corpus fund received by the assesseees with a specific direction. In this case, according to the Ld. D.R., the details of the donors were not disclosed to the Department. Therefore, it cannot be construed as corpus donation at all. Diversion of fund to the private limited companies for construction of a meditation hall by two private companies would amount to diversion of fund other than the object of the trusts. Therefore, the Assessing Officer has rightly rejected the claim of the assesseees for exemption under Section 11 of the Act.

4. Referring to the assessment orders, the Ld. D.R. pointed out that the assessees claimed the diversion of fund to two private companies as infrastructural development expenses. However, the asset created did not form part of the asset of the trusts. According to the Ld. D.R., the money transferred to two companies for construction of a meditation hall cannot be construed as infrastructural development expenses. The funds were given to the companies for the benefit of said companies. Referring to the lease agreement, the Ld. D.R. pointed out that the lease agreement to transfer the assets is an afterthought. The asset was, in fact, constructed on the land belonging to Anirjita Properties. The assessees are not the owners of the land. Therefore, the CIT(Appeals) is not justified in saying that there was no violation of Section 13(1)(c) of the Act. The Ld. D.R. further pointed out that Shri N.V.K. Krishna and his wife Smt. K. Preethi are holding the entire shares of the company, namely, M/s Golden Shelters Pvt. Ltd. and Shri Vijaykumar, father of Shri N.K.V. Krishna, is a founder trustee of the assessees. Similarly, the said Shri N.K.V. Krishna and his wife Smt. K. Preethi are the major shareholders of M/s Prajit Foundation Pvt. Ltd.

5. The Ld. D.R. further pointed out that M/s Anirjita Properties was the owner of the land on which the meditation hall was constructed. There was an agreement between Anirjita Properties and M/s Golden Shelters Pvt. Ltd. However, the company claimed in the later stage that there was a lease agreement for a period of 30 years. The Ld. D.R. further pointed out that both the assessee-trusts own vast stretch of land at Kunnawalkam Village in Andhra Pradesh. Therefore, it is not known why the massive construction was put up in a land belonging to other person. According to the Ld. D.R., since the construction was made in the land belonging to Anirjita Properties, and building stands in the name of two companies, which are owned by close relatives of Shri Vijaykumar, one of the trustees, the Assessing Officer rightly found that there was a violation of Section 13(1)(c) and 13(1)(d) of the Act. Therefore, the assessees are not entitled for exemption under Sections 11 and 12 of the Act. According to the Ld. D.R., the CIT(Appeals) misconstrued himself and allowed the claim of the assessees under Section 11 of the Act.

6. On the contrary, Ms. S. Deepa, the Ld. representative for the assessee, submitted that admittedly, both the trusts are registered as charitable trusts under Section 12AA of the Act. In furtherance of

the object of the trusts, the assessees intended to construct a meditation hall for the use of the public at large. Since the assessees have no technical expertise to erect a big meditation hall, the work was entrusted to M/s Prajit Foundation Pvt. Ltd. and M/s Golden Shelters Pvt. Ltd. The assessees have also received corpus donation with a specific direction to use the funds for construction of meditation hall. The two companies carried out the construction of meditation hall on the funds advanced by the assessee-trusts. After completing the construction, the entire meditation hall was handed over to the assessees. Referring to the order of the CIT(Appeals) for the assessment year 2004-05, the Ld. representative submitted that the CIT(Appeals) after referring to the object of the trusts, found that the assessees are conducting classes for teaching ideology of Buddha and J. Krishnamurthy. The meditation hall constructed by the assessees is open to general public, not only for meditation but also for conducting lectures, educational activities, training purpose, etc.

7. Referring to the contention of the Ld. D.R. that the funds were transferred to the companies in which close relatives of the trustee are Directors, the Ld. representative submitted that one Shri

V. Vijaykumar was the trustee till 08.06.1991. The said Shri V. Vijaykumar relinquished the trusteeship with effect from 08.06.1991. Therefore, Shri V. Vijaykumar is no longer a trustee in both the trusts in the assessment years under consideration. Therefore, merely because the Directors of the two companies, which constructed the meditation hall, are related to the above said ex-trustee Shri V. Vijaykumar, it cannot be construed as violation of Section 13(1)(c) and 13(1)(d) of the Act. According to the Ld. representative, in the assessment years under consideration, there is no violation of any provisions of Section 13 of the Act. Referring to the orders of the CIT(Appeals), the Ld. representative submitted that the CIT(Appeals), after considering the fact that Shri V. Vijaykumar relinquished his trusteeship on and from 08.06.1991, found that there was no violation of Section 13(1)(d) of the Act. Hence, the exemption claimed by the assessee under Section 11 of the Act cannot be denied.

8. Now coming to construction of meditation hall, the Ld. representative submitted that the construction was made by the two companies on the funds advanced by the two assessee-trusts. After completion of construction, the companies admittedly handed

over the building to the trusts. The property tax assessment stands in the name of assessee-trusts. Therefore, according to the Ld. representative, the property belongs to the trusts and not to the companies. The moment the construction was completed, the physical possession of the property was handed over to the assessees. Therefore, at any stretch of imagination, the Revenue cannot claim that the property belongs to two companies. The Ld. representative further submitted that the property tax was also assessed in the hands of the two assessee-trusts by the respective local bodies. Hence, there is no justification in claiming that the building belongs to the companies. According to the Ld. representative, in fact, the building belongs to the assessee-trusts, therefore, the expenditure incurred by the assessees for construction of the building has to be treated as infrastructural development expenses. The Ld. representative further submitted that the meditation hall was constructed in furtherance of the object of the trusts. Therefore, the expenditure has to be treated as application of funds under Section 11 of the Act.

9. Referring to the receipt of corpus donation, the Ld. representative submitted that in fact the assessees have received

corpus donation from various people with specific direction to use the same for construction of meditation hall. The details of the donors were furnished before the lower authorities. However, in respect of some of the donors, only the village name was furnished. According to the Ld. representative, the people who hailed from villages could be identified by referring to their village. Therefore, it cannot be said that the details of the donors were not furnished by the assesseees. Even assuming for argument sake, according to the Ld. representative, that these are anonymous donation, still it has to be treated as application of funds for creation of infrastructure for the trusts. The entire receipt was used for construction of meditation hall at Varadalapalam Mandal. Therefore, according to the Ld. representative, the CIT(Appeals) has rightly allowed the claim of the assesseees.

10. We have considered the rival submissions on either side and perused the relevant material on record. Admittedly, both the assessee-trusts are registered under Section 12AA of the Act. Both the assesseees claim exemption under Section 11 of the Act. However, the Assessing Officer denied the same on the ground that there was violation of Section 13(1)(d) of the Act. In other words,

the trust funds were diverted for interested person as provided under Section 13(1)(d) of the Act. We have gone through the orders of the lower authorities and material available on record. The funds of the trusts were advanced to two companies, namely, M/s Prajit Foundation Pvt. Ltd. and M/s Golden Shelters Pvt. Ltd. for construction of meditation hall at Varadalapalam Mandal, Chittoor District, Andhra Pradesh. One Shri N.K.V. Krishna and his wife Smt. K. Preethi own the entire shares in M/s Prajit Foundation Pvt. Ltd. and M/s Golden Shelters Pvt. Ltd. Shri N.K.V. Krishna is none other than the son of Shri V. Vijaykumar, who was the trustee of both the trusts. However, the said Shri V. Vijaykumar relinquished his trusteeship on and from 08.06.1991. Therefore, for the assessment years under consideration, the said Shri V. Vijaykumar has no relationship with the trusts. The question arises for consideration is when Shri V. Vijaykumar is no longer a trustee of the assessee-trusts, can the funds be advanced to the companies in which the son of Shri V. Vijaykumar and his daughter-in-law are holding shares would amount to diversion of funds to interested person? This Tribunal is of the considered opinion that the moment Shri V. Vijaykumar relinquished his trusteeship, it cannot be said that Shri V. Vijaykumar's son and daughter-in-law are interested

persons in the trusts. Therefore, this Tribunal is of the considered opinion that there is no violation of Section 13(1)(d) of the Act.

11. Now coming to corpus donation, the assessees claim that all the details were furnished before the lower authorities. From the material available on record, it appears that all the details were not furnished. Though certain details were furnished, it is a fact that complete details were not furnished before the lower authorities. Therefore, part of the so-called corpus donation has to be treated as income of the assessee-trusts. However, it is not in dispute that the entire corpus donation and other donations were used for the construction of meditation hall at Varadalapalam Mandal. Therefore, even if the claim of the assessees with regard to receipt of corpus donation is disbelieved, then the so-called donation has to be treated as income of the assessee and it is to be allowed as application for creating infrastructure. Since admittedly the donations were used for construction of meditation hall, this Tribunal is of the considered opinion that the entire income has to be held as application of income. Therefore, the CIT(Appeals) has rightly allowed the claim of the assessee.

12. Now coming to construction of meditation hall by two companies, the contention of the Ld. D.R. appears to be that the meditation hall forms part of the asset of the two companies. Therefore, it cannot be created as infrastructure of the assessee-trusts. The fact that the meditation hall was handed over to the assessee-trusts is not in dispute. The property tax assessment by local body also stands in the name of two assessee-trusts. Therefore, this Tribunal is of the considered opinion that when the two companies constructed the meditation hall and handed over the same to the assessee-trusts and the property tax assessment stands in the name of assessee-trusts, the assessees are the owners of the property under the provisions of Income-tax Act. Under the Indian law, a land can belong to one person and the building can be owned by other person. In the case before us, the land in which the meditation hall was constructed belongs to a different person, but the building was constructed by the two companies on the funds advanced by the assessee-trusts. After construction, the building was handed over to the assessee-trusts. Therefore, there was transfer of property within the meaning of Section 2(47) of the Act. Under the common law, registration of document is required when the property value exceeds more than

₹100/-. However, under Section 2(47) of the Act, registration of the document is not mandatory. When the physical possession of the building is handed over to the assessee-trusts and allowed the assessee-trusts to enjoy the same, this Tribunal is of the considered opinion that the assessee-trusts became the owners of the meditation hall. Therefore, for all practical purpose, the assessee-trusts become the owner of the meditation hall constructed by the two companies on the funds advanced by the assessee-trusts. The treatment of the assessee in the accounts of the companies or trusts cannot override the provisions of Income-tax Act. In other words, the provisions of Income-tax Act would prevail over the treatment of the assessee in the accounts. Therefore, this Tribunal is of the considered opinion that there is no violation of any of the provisions of Sections 11, 12 & 13 of the Act. This Tribunal is of the considered opinion that since the assessee-trusts applied their funds for establishing an infrastructure in furtherance of their object, namely, construction of meditation hall, and the meditation hall in fact was completed and the possession was handed over to the assessee-trusts, the CIT(Appeals) has rightly allowed the claim of the assessees under Section 11 of the Act. This Tribunal do not

find any infirmity in the orders of the CIT(Appeals), accordingly, the same are confirmed.

13. In the result, all the appeals filed by the Revenue stand dismissed.

Order pronounced on 1st October, 2015 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 1st October, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-VII, Chennai-34
4. आयकर आयुक्त (अपील)/CIT(A)-XII, Chennai-34
5. आयकर आयुक्त/DIT (Exemptions), Chennai
6. विभागीय प्रतिनिधि/DR
7. गार्ड फाईल/GF.