

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिकसदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT  
MEMBER AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.1913/Mds/2014

निर्धारण वर्ष /Assessment year : 2010-2011

M/s. Kasthuri Sreenivasan  
Trust Culture Centre,  
No.16, Avinashi Road,  
Civil Aerodrome Post,  
Coimbatore 641 014.

**Vs.** The Income Tax Officer,  
Company Ward I,  
Coimbatore 641 018.

**[PAN AAATK 3583C]  
(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

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

: Ms. R. Bhavya, Advocate  
: Shri. A.B. Koli, IRS, JCTI.

सुनवाई की तारीख/Date of Hearing

: 07-01-2016

घोषणा की तारीख /Date of Pronouncement

: 13-01-2016

**आदेश / ORDER**

**PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

The appeal filed by the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-I, Coimbatore in

ITA No.74/1314 Dt. 23.05.2014 passed u/s.143(3) and 250 of the Income Tax Act, 1961 for the assessment year 2010-2011.

**2.** The assessee is a charitable institution raised only one substantive ground in respect of inclusion of dividend income, though exempted u/s.10(35) of the Act for the purpose of computation of income u/s.11 of the Act by the Assessing Officer.

**3.** The Brief facts of the case are that the assessee is a public Charitable Trust registered u/s.12A of the Act. For the assessment year 2010-2011 return of income was filed on 12.08.2010 and the case was selected for scrutiny followed by notice u/s.143(2) of the Act. In compliance to the notice, the Id. Authorised Representative for assessee appeared from time to time and furnished details called for, produced books of accounts for verification. The Assessing Officer after verifying the financial statements found that the assessee trust has received dividend income of ₹7,14,285/- and claimed it as exempted u/s.10(35) of the Act and issued show cause notice and informed that dividend income though exempted for taxation purpose but in the case of trust, the dividend income should be shown as income and applied for attainment of objects of the trust and included for the purpose of computation of income u/sec. 11 of the Act. In response to the show cause notice, the assessee filed explanations on

the issue and submitted that the Agricultural income being exempted under Income Tax not considered for working out application of income and the same analogy should be applied to the assessee based on the decision of *CIT vs. Nabhinandan Dighambar Jain 257 ITR 91 (MP)* but the Assessing Officer is of the opinion that dividend income constitute income from property held under the trust as per the provisions of Sec. 11A of the Act and has to be disclosed in income and expenditure account and applied for attaining the objects of the trust. The Assessing Officer made addition in respect of depreciation and dividend income and passed the order u/s.143(3) of the Act dated 17.01.2013. Aggrieved by the order of the Assessing Officer, assessee filed an appeal before the Commissioner of Income Tax (Appeals).

**4.** In the appellate proceedings, the assessee has raised grounds and also relied on the decision of *CIT vs. Nabhinandan Dighambar Jain (supra)* and argued that the Id.AO has erred in drawing the conclusion that the dividend income should be considered for the purpose of working out 85% limit in computation of income u/Sec.11 of the Act. The Id. Commissioner of Income Tax (Appeals) after hearing the submissions and considering factual stipulations contained in the Sec. 11(1) of the Act partly allowed grounds by confirming the findings of the Assessing Officer on the issue of

dividend income and overlooked analogy of the Judicial decision cited and concluded that dividend income should also be considered as per the provisions of Sec. 11 of the Act and upheld the order of the Assessing Officer. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the assessee has filed an appeal before the Tribunal

**5.** Before the Tribunal, the Id. Authorised Representative reiterated his submissions made before the lower authorities and argued the grounds raised in the appeal and relied on the decision of Bombay Tribunal in the case of *Jamsetji Tata Trust vs. JCIT 161 TTJ 742* and Delhi High Court decision in the case of *CIT vs. Divine Light Mission 278 ITR 659*. Further, argued that the dividend income being exempted u/s.10(35) of the Act and cannot be part of the application of the income for the purpose of working out computation u/sec 11 of the Act. Exempt income cannot be considered for the calculation of 85% application of funds as per provisions of the Act and further Id. Authorised Representative supported submissions with the decision of Bombay High Court decision of ' the *Director of Income Tax (Exemptions) vs. M/s. Jasubhai Foundation in Income Tax Appeal No. 1310 of 2013*, dated 1<sup>st</sup> April, 2015 and pleaded to exclude the

dividend income for calculation of computation of income for section 11 of the Act.

**6.** Contra to the submissions, Id. Departmental Representative relied on the orders of the lower authorities and submitted that there is a amendment to Sec. 11(7) of the Act and as per the amendment nothing contain in Sec 10 shall apply to exclude any income for calculation of income u/sec.11 of the Act and pleaded for dismissal of the appeal.

**7.** We heard the rival submissions of both the parties, perused the orders of the lower authorities and judicial orders cited. The Id. Authorised Representative submitted that the dividend income is exempted u/s.10(35) of the Act and shall not be part of the application of income for calculation of 85% limit as the provisions of Sec.11 of the Act. Further the analogy of agricultural income shall be effectively apply to the case and argued vehemently for exclusion of dividend income and relied on the decision of *M/s. Jasubhai Foundation (supra)*. We are of the opinion that the dividend income is exempted u/s.10(35) of the Act and such dividend income cannot be taxed or considered for transactions or application of funds for activities of the trust. The Id. Departmental Representative has alleged that Sec.11(7) of the Act is amended and shall apply to the

assessee but on verification, we found that the amendment has come into effect from 01.04.2015 and the decision cited by the Id. Authorised Representative supporting the case is similar to the disputed issue. We find that the present case is squarely covered with the decision of M/s. Jasubhai Foundation (supra). Accordingly, we direct the Assessing Officer to exclude the dividend income for the purpose of calculation of computation of income for Sec.11 of the Act and allow the appeal in favour of the assessee.

**8.** In the result, the appeal of the assessee in ITA No.1913/Mds/2014 is allowed.

Order pronounced on Wednesday, the 13th day of January, 2016, at Chennai.

Sd/-  
(चंद्र पूजारी)  
**(CHANDRA POOJARI)**  
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-  
(जी. पवन कुमार)  
**(G. PAVAN KUMAR)**  
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:13.01.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |