

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य स्यकेसमक्ष

**BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 397/Mds/2015  
निर्धारण वर्ष /Assessment year : 2010-2011.

Vaigarai Public Charitable  
and Educational Trust,  
Beschi College,  
Karur Road,  
Dindigul 624 001.

**Vs.** The Income Tax Officer,  
Ward I(1)  
Dindigul.

**[PAN AAATV1676P]**  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. T. Vasudevan, Advocate  
प्रत्यर्थी की ओर से /Respondent by : Shri. Supriyo Pal, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing : 10-01-2017  
घोषणा की तारीख /Date of Pronouncement : 31-01-2017

**आदेश / ORDER**

In this appeal filed by the assessee directed against an order dated 22.12.2014 of Id. Commissioner of Income-tax (Appeals)-I, Madurai, it assails denial of exemption claimed by it u/s.11 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. Grounds taken by the assessee are reproduced hereunder:-

1. *'The order of the Commissioner of Income-tax(Appeals) dismissing the appeal is contrary to law, erroneous and unsustainable on the facts of the case.*
2. *The CIT(A) erred in confirming the order of the officer that the assessee-trust is not entitled for the claim for exemption under sec.11 of the Act.*
3. *The CIT(A) failed to appreciate that the assessee's activity of printing, distribution and sale of educational books was wholly carried on with a non-profit motive and hence is not engaged in the carrying on of any activity for profit.*
4. *The CIT(A) further failed to appreciate that the activity of assessee was purely an educational one with a non-profit motive and thus was a charitable activity as envisaged in Sec. 2(15) of the Act.*
5. *. The CIT(A) further failed to appreciate that confirming the denial of exemption to the assessee was merely on surmises and conjectures and hence the denial of exemption was not in accordance with law.*
6. *.. The CIT(A) failed to appreciate that the contribution paid of RS.16,40,626 to various institutions were for educational purposes and hence the rejection of the same was without any basis and material by the officer and hence confirming this was unsustainable and untenable on the facts of the case.*
7. *.. The CIT(A) further failed to appreciate that the assessee having furnished the details of contributions made for educational purpose, the rejection of the same without any rhyme or reason is unjustified and ought to have accepted that the assessee was entitled for exemption under sec.11 of the Act*
8. *. The CIT(A) further failed to appreciate that this being the sole activity of assessee and also complete books of accounts having been maintained, the reasoning that the requirements of sec.11 (4) and Sec.11 (4A) are not met, is not in consonance with facts obtaining on record of the assessee..*

9. . *The CIT(A) ought to have considered the miscellaneous expenses written off of RS.11,20,203, being the unreceivable debts outstanding for which the entire details were furnished and thus allowed the claim of assessee*

10. .. *The CIT(A), in any event, ought to have appreciated that the activity of assessee squarely falls within the precincts of charitable activity as envisaged in sec.2(15) and hence allowed the claim for exemption u/s.11 of the Act''.*

**3.** Facts apropos are that assessee is a trust registered u/s.12A(a) of the Act. It had filed a return of income for the impugned assessment year claiming exemption u/s.11 & 12 of the Act. During the course of assessment proceedings, it was noted by the Id. Assessing Officer that assessee was maintaining separate accounts under three heads named as trust main account, trust farm account and sales unit account. Sale unit account was also known as Vaigarai Pathipagam. As per Id. Assessing Officer object of the trust was to print, distribute and sell books for educational purposes. Ld. Assessing Officer examined books of accounts, accounts statements and bank statements of the assessee and reached an opinion that trust was purely engaged in a commercial activity of printing, publishing, purchasing and selling books. As per Id. Assessing Officer this was a business activity and not relatable to any charitable objects mentioned in the trust deed. As per Id. Assessing Officer by virtue of judgment of Kerala High Court in the case of *CIT vs. P. Krishna Warrior 84 ITR 119*, once the dominant object was publication, purchase and sale of books, it could no longer

be considered as a charity. After going through Sec. 11(4) and 11(4A) of the Act, Id. Assessing Officer concluded a public trust could at the best carry on a business which was incidental to attainment of its objects and nothing more. Once the business itself was the main activity, as per Id. Assessing Officer, assessee could no longer be eligible for exemption provided u/sec. 11 and 12 of the Act.

4. The assessee did point out that it had given contributions totaling to ₹16,40,626/- as part of its charitable activities. However, as per Id. Assessing Officer assessee could not show how the recipients were benefited or how this could be construed as charity. Id. Assessing Officer was of the opinion that exemption u/s.11 & 12 would be available only where business carried on was incidental to the attainment of the main objects and generating profit was only for feeding such objects of charity. Relying on the definition of charitable purpose given u/s.2(15) of the Act, Id. Assessing Officer concluded that mere business of publication, purchase and sale of books would not constitute charity. Id. Assessing Officer also noted that there were certain balance sheet items like DCTO deposit, which substantiated the business nature of the functioning of the assessee. Further as per Id. Assessing Officer though assessee had shown receipt of contribution totaling ₹66,47,188/- in the income side of its income and

expenditure account, these represented sale proceeds of books. The bank account of the assessee trust as per Id. Assessing Officer reflected a series of innumerable number of transactions of purchase and sale which proved a definite pattern of business. Id. Assessing Officer held that assessee trust was doing only business activity. He computed income of the assessee by deducting from its gross receipts what was construed as reasonable expenditure. While deducting such reasonable expenditure, Id. Assessing Officer excluded the contributions of ₹16,40,626/- given by the assessee and miscellaneous expenditure of ₹11,20,203/- written off by the assessee.

5. Aggrieved on the above, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). It was argued that it had given a contribution of ₹16,40,626/- to the following parties which were only for educational purpose.

<b>Name</b>	<b>Amount</b>	<b>Purpose</b>	<b>Details</b>
Society of St. Mary's, Dindigul	2,00,000	Educational Purpose	Given for educational activity
Dalit Camp, Dindigul.	52,500	Educational Purpose	Every year Jesuit Madurai province conducting summer duration camp for students. Vaigarai contribute some amount to that camp

Dawn Books,Dindigul.	3,00,000	Educational Purpose	Printing books for education
Arul Kadal, Chennai.	20,000	Educational Purpose	Conducting Seminar
Media Oriented services for action and integrated conscientization.	25,000	Educational Purpose	Training programme conducted by MOSAIC
Communication commission, Chennai.	50,000	Educational Purpose	Writing Skills workshop
Institute of Heart of Jesus	7,74,114	Educational Purpose	Value education books printing
St. Joseph's Trichy	15,000	Educational Purpose	Conducting seminar
Thirulrudhaya Thoothan, Dindigul	1,79,012	Educational Purpose	Printing books for education
Kanal Book Writers	25,000	Educational Purpose	Workshop conducted to students, collected their articles and sign as "Kanal book" and distribute them to improve their skills
	<b>16,40,626</b>		

Assessee also stated that it was engaged only in educational activities and by virtue of judgments of Hon'ble Apex Court in the case of *Assam State Text Book Production and Publication Corporation Ltd vs. CIT 319 ITR 317* and *Oxford University Press vs. CIT 247 ITR 658*, it was eligible for exemption under section 11 of the Act. However, Id. Commissioner of Income Tax (Appeals) was not impressed. According to him, merely because assessee had contributed a sum of ₹16,40,626/- to persons listed in table mentioned above would not

show that these contributions were for any charitable purpose. Further, as per the Id. Commissioner of Income Tax (Appeals), printing and selling of text books could be considered as a charitable activity only where such books were of a nature prescribed by the educational department of a State Government. As per Id. Commissioner of Income Tax (Appeals) assessee was printing books dealing with moral subjects and these were not in the nature of text books. Id. Commissioner of Income Tax (Appeals) also affirmed the view taken by the Id. Assessing Officer that printing and selling books carried on by the assessee was not incidental to the attainment of its main objects but was done as the main activity. Thus, according to Id. Commissioner of Income Tax (Appeals) exemption u/s.11 and 12 of the Act was rightly denied by the Id. Assessing Officer. He upheld the order of the Id. Assessing Officer.

**6.** Now before me, Id. Authorised Representative of the assessee strongly assailing the orders of the lower authorities submitted that assessee was doing only educational activity. As per Id. Authorised Representative assessee never claimed itself to be pursuing any object of general public utility. Contention of the Id.AR was that assessee was printing and distributing books which were promoting moral values to the society. According to him, substantial part of books were freely distributed and the value of the books distributed to different

organization came to ₹16,40,626/-. Name of the organizations to whom assessee had given books free of cost, list of which was reproduced by Id. Commissioner of Income Tax (Appeals) clearly proved that assessee was engaged only in charity. As per Id. Authorised Representative assessee had received contribution of ₹66,47,188.42 from various parties for its objects. Contention of the Id. Authorised Representative was that printing of moral books and distributing it free was one of the main object of the assessee trust and such activity squarely fell within the definition of charitable purpose u/s.2(15) of the Act. Even otherwise as per Id. Authorised Representative, property held under trust could also include a business undertaking by virtue of Sec. 11(4) of the Act. Further, as per Id. Authorised Representative there was no case for the revenue, that assessee had not maintained separate books of accounts for its sales unit namely Vaigarai Pathipagam. In any case, according to him Miscellaneous expenditure of ₹11,20,203/- which was not allowed was nothing but bad debts which were written off and by virtue of judgment of Hon'ble Apex Court in the case of *TRF vs. CIT 323 ITR 397* such write off was an allowable expenditure.

7. Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.

8. I have considered the rival contentions and perused the orders of the authorities below. It might be true that assessee had a number of objects in its founding document which were charitable in nature. However, the only activity carried on by the assessee during the relevant previous year was printing, publishing and selling books. Income and expenditure accounts of the assessee which has been separately prepared under three head namely main account, farm account and sales unit account, do not show in the expenditure side any payments which could be construed as charitable as per the definition of "charitable purpose" given in Sec. 2(15) of the Act. The only amount claimed by the assessee which could arguably construed as charity is a sum of ₹16,40,626/- paid to 10 different persons listed at para 4 above. But for stating that these persons were also carrying out educational activity, nothing whatsoever was brought on record by the assessee to show that these persons were organizations registered u/s. 12A(a) or 12AA of the Act or were pursuing any charitable cause. First requirement for claiming exemption u/s.11 and 12 of the Act as a charity is that the person should be carrying out an activity which can be called "charitable purpose" as defined in Sec. 2(15) of the Act. The said section is reproduced hereunder:-

*"Charitable purpose" includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of*

*artistic or historic interest, and the advancement of any other object of general public utility”.*

Assessee is claiming to fall within the limb of “education”. Ld. Counsel for the assessee specifically stated that claim of the assessee was not under the last limb namely “ advancement of any other object of general public utility”. Contention of the assessee is that printing of moral books and selling them would be “education”, thereby making it eligible for claiming exemption u/s.11 & 12 of the Act. The term ‘education’ in the context of charity, for claiming exemption from the Income Tax Act, cannot be given a very wide meaning so as to include imparting of knowledge in anything and everything. Printing, publishing and selling books which encourages building of moral values, may be good for the society but cannot be construed as ‘education’ coming within the ambit of Section 2(15) of the Act. Its perimeter has been defined by Hon’ble Apex Court in the case of Sole Trustee, *Loka Shikshana Trust vs. CIT 101 ITR 234* to be something akin to normal schooling.

**9.** No doubt, Hon’ble Apex Court in the case of *ACIT vs. Thanthi Trust 247 ITR 785* did hold that a business which do not directly accomplish wholly or in part the charitable objects of the trust but only feeds such activities could not be held as a business carried on in the course of actual accomplishment of the objects of the trusts.

However, the assessee here was engaged in printing, publishing and selling books as its main activity. Prior to substitution of subsection 4A of Section 11 through Finance (No.2) Act, 1991 with effect from 01.04.1992, a business of printing or publishing of books could have been considered for exemption where a trust existed for a public religious purpose or such business was carried on by an institution through its beneficiaries. After the substitution of the said deduction this benefit is available only where such business was incidental to the attainment of main object. There is a clear finding by the Id. Assessing Officer that contribution of ₹ ₹66,47,188.42 claimed to have been received by the assessee was in lieu of books distributed by it, and apart from this assessee had made direct sale of books of value ₹60,71,555.99. Thus assessee was carrying on the business of printing, publication and sale of books and not any charity. Considering all these aspects, we are of the opinion that lower authorities were justified in denying the claim of exemption.

**10.** Now, coming to the claim of the assessee that a sum of ₹11,20,203/- written off as miscellaneous expenditure was bad debts of its business, such claim is definitely allowable by virtue of the judgment of Hon'ble Apex Court in the case of *TRF Limited (supra)*. However none of the lower authorities had verified whether the

amount represented write off of bad debts. To this extent verification is necessary. Thus while upholding the orders of the lower authorities denying the assessee exemption claimed u/s.11 & 12 of the Act, we remit the issue as to whether miscellaneous expenditure written off actually represented bad debts, to the file of the Id. Assessing Officer for verification afresh. In case they are bad debts it has to be allowed. Ordered accordingly.

**11.** In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced on Tuesday, the 31st day of January, 2017, at Chennai.

**Sd/-**

**(अब्राहम पी. जॉर्ज)**

**(ABRAHAM P. GEORGE)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 31st January, 2017.

**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        |