

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.06.2015

CORAM :

THE HON'BLE MR. JUSTICE R. SUDHAKAR
AND
THE HON'BLE MS. JUSTICE K.B.K. VASUKI

Tax Case Appeal No. 1040 of 2014

M/s. Natya Sankalpaa
2 Kilpauk Garden Road
1st street, Chennai - 10.

...Appellant/Respondent

-vs-

Director Income Tax (Exemptions)
Chennai.

...Respondent/Appellant

Tax Case Appeal under Section 260 A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, dated 07.04.2014 in I.T.A. No: 1167/Mds/2013 for the Assessment year 2009-2010 and against the order of the Commissioner of Income Tax (Appeals) - XII, Chennai - 34, in ITA No.185/2012-13 dated : 25.02.2013 for the Assessment year 2009-2010 and against the order of the Assistant Director of Income Tax (Exemptions) - IV, Chennai in PA/GIR No.AAA TN 3596 N, dated 29.12.2011 for the Assessment year 2009 - 2010.

For appellant : M/s. N.V. Balaji

For respondent : Mr. J. Narayanaswamy

J U D G M E N T
सत्यमेव जयते

(Judgment of the Court was delivered by R. Sudhakar, J.)

The appellant assessee Trust was formed by Smt. Urmila Sathyanarayanan for promoting Bharatanatyam and other forms of Indian Classical Dance. The other Trustee of the Assessee Trust is Sri.A.D.Sathyanarayanan, husband of Smt.Urmila Sathyanarayanan. The land in question belong to Sri.A.D. Sathyanarayanan as an individual and in order to extend his goodwill for the benefit of his wife's endeavour to promote the classical dance, he permitted the Trust to construct a building by utilising the funds of the Trust for the purpose of promoting Bharatanatiyam and other Indian

Classical dances.

2. The assessee trust is registered under Section 12 AA of the Income Tax Act, 1961, (hereinafter referred to as the Act) on 23.12.1997. The Assessing Officer, while completing the assessment in the year 2009-2010, denied exemption under Section 11 of the Act, as claimed by the assessee, stating that the income of the assessee Trust fell within the ambit of amended provisions of Section 2 (15) of the Act and that the assessee trust has violated the provisions of Section 13 (1) (c) of the Act. On a challenge made to the assessing order, the Commissioner allowed the appeal in favour of the Trust. The Tribunal reversed the said finding. Hence, the present appeal by the assessee.

3. The finding of the Tribunal is that,

" 6. Even though the trust is not paying any rent or compensation to the trustee for the land used by the assessee trust which was belonging to one of the trustees, since the assessee trust is using its income for construction of the building on the land belonging to one of the trustees amount to applying the income of the trust for the benefit of the trustee which is certainly falls under Section 13 (1) (c) of the Act. The trustee is certainly the beneficiary as on the date of construction of the building. As long as the trustee is holding the property and the trust is using the said property by putting up building / structure for conducting dance classes, trustee is enjoying the benefit indirectly though not directly. Therefore, benefit to the trustee cannot be completely ruled out."

4. In this appeal, we are now concerned with the issue relating to the denial of benefit on account of the alleged violation of Section 13 (1) (c) of the Act.

5. It is the specific case of the appellant that there is an agreement dated 13.02.2013 whereby as and when the Trust decides not to use the premises which has been constructed for the aforesaid purpose, the individual Sri.A.D.Sathyanarayanan would pay the trust the value of the building so constructed. There is no rent or fee or such other claim by the said individual on the trust for the utilisation of the land on which the building is constructed by the Trust. According to the assessee no income is derived to the individual Sri.A.D.Sathyanarayanan as a Trustee. It is the further contention of the learned counsel for the assessee that the property is also not built for the benefit of the individual Sri.A.D.Sathyanarayanan who happens to be one of the trustee. Therefore, the contention of the Department that there is

violation of Section 13 (1) (C) is not justifiable.

6. We are unable to countenance the finding of the Tribunal that the present act would fall under the definition of the term "Trustee" enjoying the benefit directly or indirectly because the land in question has been parted away by the individual to the Trust. The trust has put up the construction with a clause that it shall return back the building to the individual and receive the compensation for the value of the building so put up. It is not the case of the Department that such part of the income or any part of the property of the trust or the institution is directly or indirectly used or built for the benefit of the persons referred to in sub section (1) (c) (3) of Section 13 of the Income Tax Act, 1961 which reads as follows :

"SECTION 13

(1) (c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof-

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust or institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in sub-section (3);

... ..

(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following namely :-

(a)

(b)

(c)

(cc) any trustee of the trust or manager (by whatever name called) of the institution ; "

7. The fact that the Trust, during the assessment year in issue, constructed the building in question and spent amounts for the entire construction is not in dispute. The fact that the Trust has not paid any amount as rent, licence fee, lease fee or such other fee to the individual Sri.A.D.Sathyarayanan is also not in dispute. The issue that is raised by the Department is that while accepting that the Trust has not paid any rent or any compensation to the trustee for the land used by the assessee trust which belongs to one of the trustees, the income for construction of the building on the land belonging to one of the trustee would amount to income for the benefit of the trustee which will fall under

Section 13 (1)(c) of the Act unmindful of the agreement which states that in the event of the trust vacating the building in future, the trustee shall compensate the trust for the value for the building in question. De hors this agreement, there is nothing to show that there was any manner of use of application of the income or property of the Trust to the person set out in sub section 13 (1) (3) (c) of the Act. It is only when there is an application of income or any part of the property or building directly or indirectly put to use for the benefit of person referred to above, the provision will get attracted we do not find such application in the facts of the present case. We are in agreement with the decision arrived at by the Commissioner Appeals on this point.

8. Yet another plea raised by Mr.J. Narayanaswamy learned Standing Counsel appearing for the Department is that the acquisition of ownership of the building to the trustee itself is a benefit in the form of right and therefore, it deemed to be an application of fund of the trust for the benefit of the trustee. That contention is replied by Mr. N.V. Balaji, learned counsel appearing for the appellant / assessee stating that there is no vesting of the property on the trustee per se because, as per the agreement, on surrender of the building the trustee will have to pay compensation and, therefore, the question of application of funds for the benefit of the trustee does not arise. The definition of "Beneficial Owner" in terms of Black Law Dictionary, relied upon by the counsel for the department, will not further the case of the department because as the definition of " Owner " also has a restrictive meaning as in this case. We extract the said portion hereunder :

" Owner. The person in whom is vested the ownership, dominion, or title of property, proprietor. He who has dominion of a thing, real or personal, corporeal or incorporeal, which he has a right to enjoy and do with as he pleases, even to spoil or destroy it, as far as the law permits, unless he be prevented by some agreement or covenant which restrains his right. "

9. In the result, the tax case appeal is allowed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Director Income Tax (Exemptions)
Chennai.

2. The Commissioner of Income Tax (Appeals)-XII,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

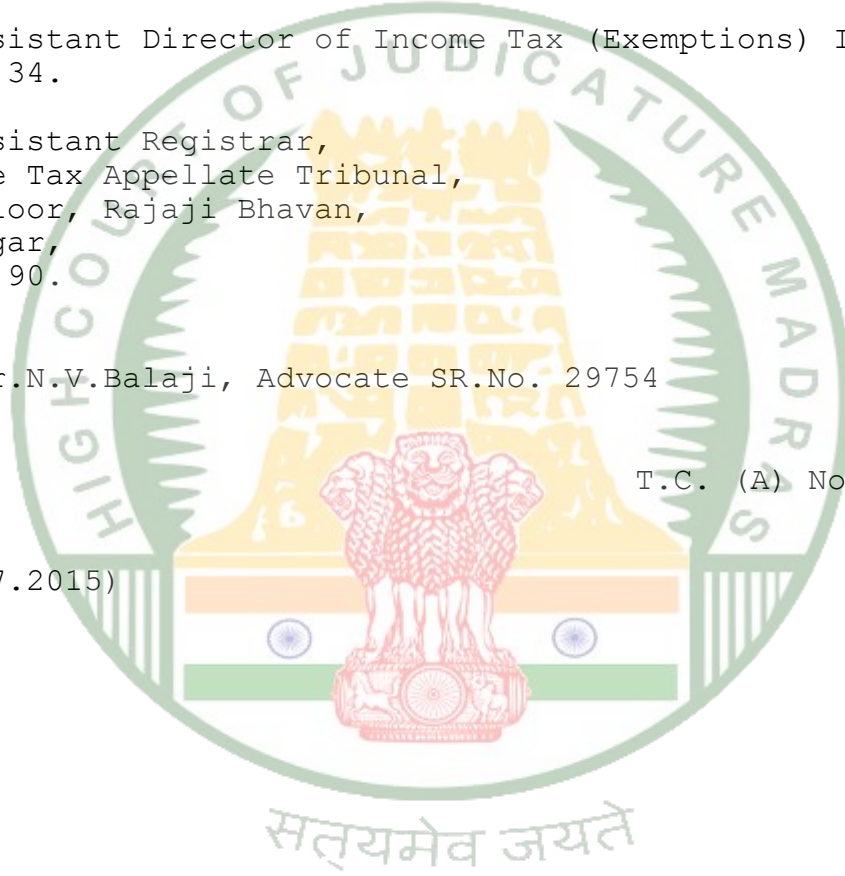
3. The Assistant Director of Income Tax (Exemptions) IV,
Chennai - 34.

4. The Assistant Registrar,
The Income Tax Appellate Tribunal,
A3, 2nd Floor, Rajaji Bhavan,
Besant Nagar,
Chennai - 90.

1 CC to Mr.N.V.Balaji, Advocate SR.No. 29754

T.C. (A) No: 1040 of 2014

BVR (CO)
PSI (31.07.2015)



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