

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal No.951 of 2008

M/s.Nadigar Sangam Charitable Trust,
153, Habibullah Road,
T.Nagar,
Chennai – 600 017.

Appellant

Vs.

The Assistant Director of Income Tax,
Exemptions IV,
Chennai – 600 034.

Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, Chennai, dated 29.02.2008 made in ITA No.845/Mds/2006.

For Appellant : Mr.N.V.Balaji

For Respondent : Mr.J.Narayanasamy
Standing Counsel

J U D G M E N T

(Delivered by **DR.VINEET KOTHARI,J.**)

The Assessee, M/s.Nadigar Sangam Charitable Trust, T.Nagar, Chennai, a Trust created for the benefit of artistes and actors, has filed this appeal under Section 260-A of the Income Tax Act, 1961 aggrieved by the order of the learned Income Tax Appellate Tribunal, 'B' Bench, Chennai dated 29th February 2008 for the assessment year 2001-2002, whereby the learned Income Tax Appellate Tribunal allowed the appeal of the Revenue, reversing the order of the first Appellate Authority, Commissioner of Income Tax (Appeals), and held that the Assessee Trust was not entitled to exemption under Section 11(1)(a) of the Act for the assessment year 2001-2002 in respect of Rs.52.00 lakhs spent by it for purchasing the leasehold rights in respect of the immovable property, an Auditorium, which was intended to be used for serving the objects of the said Trust, including from the rental income from it.

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2. The object of the Assessee Trust, as discussed in the Assessment Order itself, as per the Trust deed dated 30th May 1987 is to provide educational assistance to the children of poor artistes; to

provide medical relief to the poor artistes and others; to provide relief to aged and incapacitated artistes and others and to provide such other assistance to artistes and their families, including to provide education in the area of art, culture and such other vocational training in order to promote employment etc.

3. The Assessing Officer found that the advance amount of Rs.52.00 lakhs given by the Assessee was an 'Investment' and could not be treated as 'application of income' towards the object of the Trust and therefore, the Assessee was not entitled to exemption to the said extent of advance given by it to the lessor for taking the leasehold rights in respect of the said immovable property.

4. In the first appeal filed by the Assessee against the order of the Assessing Officer, the learned Commissioner of Income Tax (Appeals), however, allowed the appeal of the Assessee and held that such an amount of advance towards purchase of subject immovable property was in furtherance of the objects of the Trust and the same constituted 'application of income' by the Assessee and therefore, the Assessee was entitled to exemption under the said provisions of the Act. The learned Commissioner of Income Tax (Appeals), *inter alia*,

relied upon various case laws, which are referred to in paragraph 3 of the said order and some of which amongst others are being discussed hereunder, as cited at the bar.

5. The Revenue filed the second appeal before the Income Tax Appellate Tribunal, 'B' Bench, Chennai, which allowed the said appeal of Revenue and held that the Assessee was not entitled to exemption in respect of the advance of Rs.52.00 lakhs under Section 11(1)(a) of the Act. Being aggrieved by the same, the Assessee has come up with this appeal before this Court.

6. The appeal of the Assessee was admitted by a Co-ordinate Bench of this Court on 16th July 2008 on the following substantial questions of law, which are quoted below:

"1. Whether the Appellate Tribunal is correct in law in sustaining the assessment of shortfall of the income applied for charitable purpose even though the advance given for the purchase of the property was for the purpose of achieving such objectives, to be considered as 'application of income' within the ambit of Section 11 of the Act?

2. Whether the Tribunal is correct in law in sustaining the order of assessment on the

interpretation of the provisions in Section 11 of the Act especially the direct application of income even though the indirect benefits derived from such application including the purchase of immovable property which had a future impact in achieving the objectives of the Trust had no express or implied prohibition in the said provisions of the Act?

3. Whether the Tribunal is correct in law in sustaining the assessment of shortfall of the application of the income earned even though the income as such would not be assessable to taxation within the scope of Section 11 of the Act in any event?"

7. The learned counsel for the Assessee, Mr.N.V.Balaji, urged before us that advance of Rs.52.00 lakhs in question was given by the Assessee to take on lease the immovable property for the benefit of the group of artistes for whose benefit the said Trust itself was created and the Trustees had the power to invest also in the immovable property for serving the cause of artistes in the aforesaid manner, by holding various shows therein, including by way of earning rental income by giving such immovable property on which Cinema Hall or Auditorium was being constructed on hire and the rental income was

also to be used for the benefit of artistes and other persons as per the objects of the Trust deed.

8. He submitted that even the investment in the immovable property is covered by the term 'application' as employed in Section 11(1)(a) of the Act, which word is of wider import and the Assessing Officer as well as the learned Income Tax Appellate Tribunal have erred in taking a narrow view of the matter and holding that the advance for purchase of the immovable property/taking of leasehold rights in that property was not 'application of income' during the year in question and thus denying exemption to the Assessee.

9. The learned counsel for the Assessee firstly relied upon the decision of Kerala High Court in the case of **Commissioner of Income Tax v. St. George Forane Church, reported in (1988) 170 ITR 62 (Kerala)**, in which, a Division Bench of the Kerala High Court held in paragraph 4, quoting the meaning of 'applied' as per *Webster's Third New International Dictionary, Volume-I* and the decision of the Hon'ble Supreme Court in the case of **Indian Molasses Company Private Limited v. Commissioner of Income Tax, reported in (1959) 37 ITR 66**, that the word 'applied' is wider

in import than the word 'expenditure'. The relevant extract from paragraph 4 is quoted below for ready reference:

"4.The word 'applied' is wider in import than the word 'expenditure'. As per Webster's Third New International Dictionary, Vol. I, the word 'applied' means:

"to put to practical use; engaged in for a utilitarian or contributory purpose; employed in the decoration, design or execution of useful objects."

The word 'expenditure' means 'disbursement'. 'Expend' means: 'to put out or distribute; to spend'. The Supreme Court in the decision in Indian Molasses Co. (P.) Ltd. v. CIT (1959) 37 ITR 66 held that the word 'expenditure', means: 'pay out or away; spending something which is gone out irretrievably'. Considering these two words, we should state that the word 'applied' is of a wider import. The money or amount will not go out irretrievably, when it is 'applied' to a purpose. Relying upon the decision in Satya Vijay Patel Hindu Dharamshala Trust v. CIT (1972) 86 ITR 683 (Guj.), in Sampath Iyengar's Law of Income-tax, Seventh edn., Vol.I, it is stated as follows:

*".....The word 'applied' in the text means **'actually applied or actually expended'. Such application may be***

by adding to the corpus of the fund and not merely in the form of revenue expenditure for implementing the purposes of the trust.” (p.883)

The decision in *Satya Vijay Patel Hidu Dharamshala Trust's case (supra)* was accepted in principle by the Madras High Court in *CIT v. Kannika Parameswari Devasthanam & Charities* (1982) 133 ITR 779 at p.783. In the light of the above, we are of the view that the Tribunal was justified in holding that the sum of Rs.51,396 was applied by the respondent (assessee) for religious or charitable purposes and the reasoning and conclusion of the Tribunal are valid and justified in law.”

(emphasis supplied)

10. Relying upon the decision of the Hon'ble Supreme Court in the case of ***S.R.M.C.T.M. Tiruppani Trust v. Commissioner of Income Tax, reported in (1998) 230 ITR 636 (SC)***, the learned counsel for the Assessee urged that every charitable or religious Trust, irrespective of whether it has filed a declaration in Form No.10 under Section 11(2) of the Act or not, for first accumulating its income and then applying the same in the specified investments under Section 11(5) of the Act, which includes an investment in the immovable

property, if such income is applied for purchase of immovable property for serving the cause and objects of the said charitable Trust, cannot be denied the exemption under Section 11(1)(a) of the Act. Paragraph 6 of the said decision of the Hon'ble Supreme Court, which we find to be relevant and applicable for the controversy before us is quoted below for ready reference:

"6. A mere look at section 11(1) and 11(2) is sufficient to dispel this argument. Under section 11(1), every charitable or religious trust, **irrespective of whether it has filed a declaration under section 11(2) or not**, is entitled to deduction of certain income from its total income of the previous year. The income so exempt is the income which is applied by the charitable or religious trust to its charitable or religious purposes in India. **If the entire income is so applied, the entire income would be exempted.** If the entire income is not applied but some income is accumulated by such a trust, then also under Section 11(1)(a), such accumulated income to the extent of 25 per cent of the total income (or Rs.10,000, whichever is higher) would be exempted from income-tax. Section 11(2), in turn, provides that the restriction which is specified in clause (a) of sub-section (1) as regards accumulation, shall not apply if the

assessee gives notice as prescribed under section 11(2)(a) and invests the amount accumulated in the Government securities as per section 11(2)(b). The restriction specified in clause (a) of sub-section (1) is clearly the restriction of 25 per cent of the accumulated income (or Rs.10,000, whichever is higher) being exempt. If more than 25 per cent (or Rs.10,000) is to be exempted then the assessee has to comply with the conditions prescribed under section 11(2). In the case of Addl. CIT v. A.L.N. Rao Charitable Trust (1995) 216 ITR 697 / 83 Taxman 252, this Court considered the provisions of section 11(1)(a) in the light of section 11(2) and held that section 11(2) does not in any manner restrict the operation of section 11(1). The accumulated income which is exempt under section 11(1)(a) need not be invested in the Government securities. It is only in respect of any additional accumulated income beyond 25 per cent that, if the assessee wants exemption of this additional accumulated income also, the assessee is required to invest the additional accumulated income in the manner laid down in section 11(2) after following the procedure laid down therein."

(emphasis supplied)

11. The Delhi High Court, in its later decision, in the case of ***Director of Income Tax (Exemptions) v. Maharaja Agarsen Technical Education Society, reported in (2010) 328 ITR 551 (Delhi)***, following the view of the Hon'ble Supreme Court in the case of ***S.R.M.C.T.M. Tiruppani Trust***, supra, held that the amount paid by the Assessee to M was towards acquisition of a capital asset in accordance with section 11 of the Act, as on receipt of money, M had not only handed over peaceful and vacant possession of the property to the Assessee but had also executed an irrevocable general power of attorney in Assessee's favour. Such amount paid by the Assessee would be exempted under Section 11(1)(a) of the Act.

12. Thus, the learned counsel for the Assessee urged that the advance of Rs.52.00 lakhs, in the present case, given by the Assessee Trust for obtaining the leasehold rights in the immovable property, which fact is not disputed by the Revenue, amounts to 'application of income' of the said Trust and was, therefore, entitled to exemption under Section 11(1)(a) of the Act.

13. On the other hand, the learned counsel for the Revenue, Mr.J.Narayanaswamy, submitted before us that the said advance by

the Assessee Trust did not crystallise in any 'application of income' by the Assessee during the year itself and was in 'suspended animation' and, therefore, the said expenditure or outgo of money would not amount to 'application of income' by the Assessee during the relevant year and the Assessee admittedly did not comply with the procedure of Section 11(2)(b) of the Act for accumulation of the income by filing requisite declaration in Form No.10 for the same and did not invest the same in the prescribed modes under Section 11(5) of the Act, the Tribunal was justified in restoring the order passed by the Assessing Officer and denying the said exemption to the Assessee.

14. The learned counsel for the Revenue relied upon the following decisions, which we find to be distinguishable on facts:

(i) In ***Commissioner of Income Tax v. V.G.P. Foundation, reported in (2004) 134 Taxman 663 (Mad.)***, a Division Bench of this Court held that where the Trust had advanced certain sums to its sister concern, a private limited company, of which the trustees of Assessee were also Directors and that sister concern held the said amount with it for whole of the year and did not spend for the purpose of constructing hospital/use for charitable purpose as was intended

and in such facts, the Court held that the Assessee Trust could not be held to have 'applied' that amount of advance given to its sister concern for the object of the Trust and was, therefore, not entitled to exemption under Section 11 of the Act. We do not find any such inter-corporate or inter-partes deposits in the present case, which could not achieve the object of the Trust in the case on hand.

15. The crux of the matter, in our opinion, is as to whether the 'investment' can also amount to 'application' or not. We would think that there is nothing in the provisions of Section 11(1) of the Act to curtail or narrow down the meaning of the word 'application', which by definition is of wider import as found by the Kerala High Court in *Commissioner of Income Tax v. St. George Forane Church*, (supra).

The scheme of Section 11 of the Act, in our opinion, is to advance the cause of charity by allowing the religious or Charitable Trusts to employ their funds in such a manner, for the purpose of charity or for advancing the cause of charity. There is nothing contrary placed before us from the side of Revenue to even indicate that purchase of immovable property in question even on lease basis was not going to serve the cause of charity as per the objects of the

Charitable Trust in question in any manner. The investment in immovable property, if it serves the cause of charity immediately or even in near future, the rental income or otherwise cannot be said to be not serving the objects of the Trust at all. On the contrary, investment in immovable property which is intended to be used for serving the cause and objects of the Trust is more committed and firm 'application' of income of the Trust. The burden, therefore, was on the Revenue to establish that the 'investment' was for the purpose, other than, for subserving the objects stipulated in the Trust deed. The Revenue, in our opinion, has utterly failed to bring on record any evidence to the contrary to the claim of exemption by Assessee on the ground that the immovable property in question was being taken on lease to create a Theatre or Auditorium, which would be used for the purpose of the group of artistes or their families or even serve the cause of general public in times of floods or to provide education to the children, etc. Unless there was evidence on record to show that the said investment of the immovable property was being used for the purpose altogether different from the objects of the Trust deed, the denial of exemption on an assumed distinction between the 'application' and 'investment' was not only too far-fetched, but beyond the scheme of Section 11 itself and the said view of the Tribunal,

therefore, cannot be countenanced.

(ii) The next judgment relied upon by the Revenue in the case of ***Madani Musafir Khana Welfare Society v. Commissioner of Income Tax, reported in (2004) 139 Taxman 384 (Pat.)*** is also distinguishable on facts. There, the Commissioner rejected the application of the Assessee for renewal of exemption under Section 80G of the Act on the ground that except construction of shopping complex, no other charitable work has been carried out and therefore, the Court, by a short order upheld the order of the Commissioner rejecting the application for renewal of the Trust, as the Trust was not entitled to exemption under Section 80G of the Act. No such facts were available in the present case and therefore, the said decision is of little help to the Revenue.

(iii) The next citation relied upon by the learned counsel for the Revenue is ***Nachimuthu Industrial Association v. Commissioner of Income Tax, reported in (1999) 235 ITR 190 (SC)***, wherein the Hon'ble Supreme Court, by a short order, dismissed the appeal against the decision of the High Court, wherein the High Court held that mere setting apart as provision in the books of accounts of the

assessee of Rs.2,50,000/- without actually spending such sum for any charitable or religious purpose, does not entitle the Assessee to claim benefit under Section 11 of the Act in respect of such provision amount. Again, with great respects, we do not find any parity of facts here.

16. Therefore, we are of the clear opinion that the Assessee in the present case while making the advance of Rs.52.00 lakhs in question for purchase of immovable property in question even on lease basis, cannot be said to have not applied its income during the year in question for the charitable purposes within the meaning of Section 11(1)(a) of the Act and, therefore, the Assessee was clearly entitled to exemption under the said provision in respect of the said investment in immovable property.

17. We cannot agree with the contention of the learned counsel for the Revenue that such advance did not crystallise in any 'application of income' and was in suspended animation as we have already indicated above that nothing contrary was brought on record by Revenue that this advance did not crystallise in any 'application of income' in favour of the assessee during the year or even

subsequently. On the contrary, it was contended at the bar by the Assessee that the leasehold rights were secured by the Assessee with the said investment and building on the said leasehold land is under construction as of now. However, we are not giving any findings on facts in this regard, but *per se* also we have no hesitation in holding that the advance or investment in the said lease hold property by the Assessee's Charitable Trust in the year in question could be held to be 'application of income' within the meaning of Section 11(1)(a) of the Act and therefore, the Assessee was entitled to the exemption.

18. We, accordingly, answer the substantial questions of law in favour of the Assessee and against the Revenue.

19. The appeal of the Assessee is allowed. No costs.

सत्यमेव जयते (V.K.,J.)

(C.V.K.,J.)

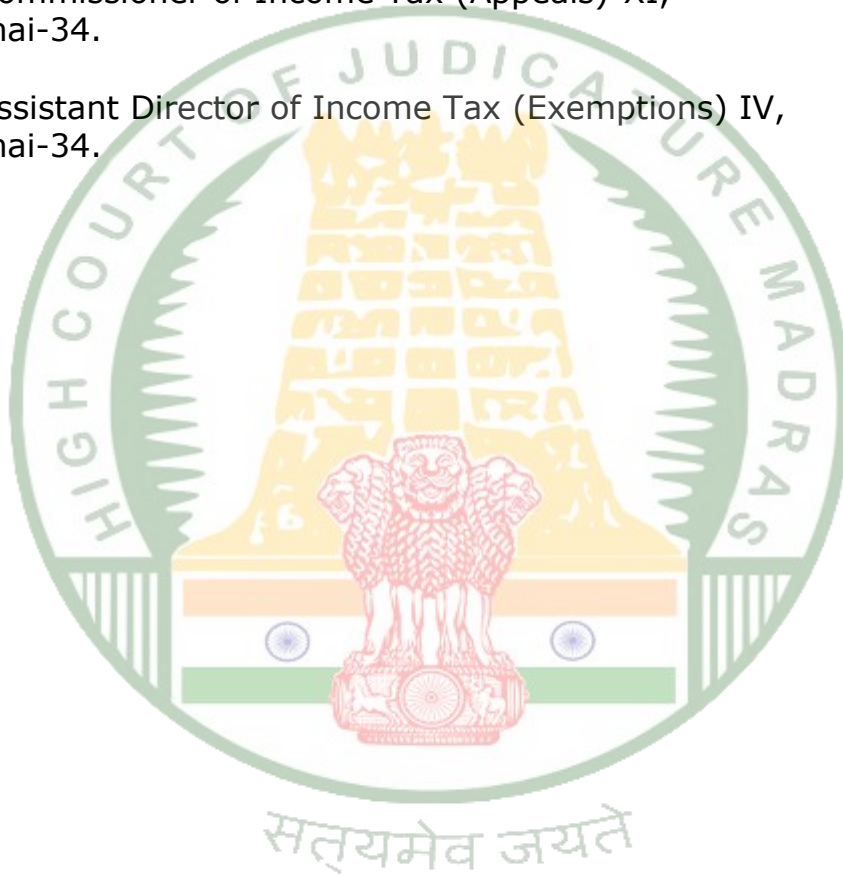
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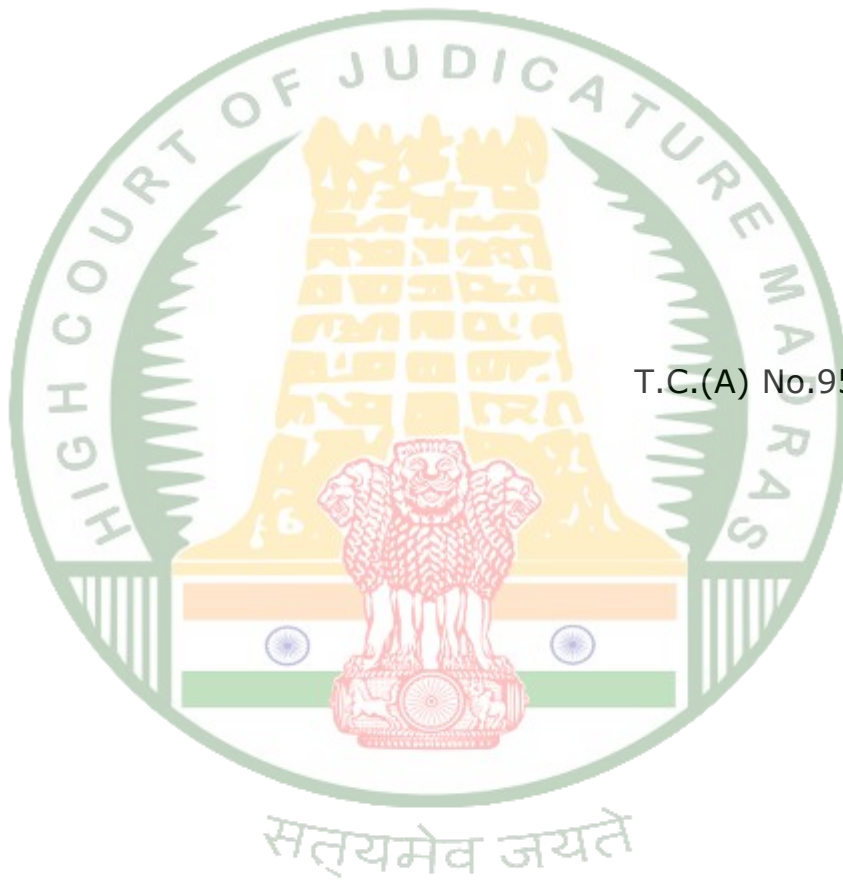
1. The Registrar,
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DR.VINEET KOTHARI, J.
and
C.V.KARTHIKEYAN, J.

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