IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2022

CORAM :

**THE HONOURABLE MR. JUSTICE R. MAHADEVAN**
AND
**THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ**

T.C.A.Nos.168 and 169 of 2017

Commissioner of Income Tax,
Chennai. ... Appellant in both TCAs

Versus

M/s.Anugraha,
Rutland Towers, 2nd Floor,
No.33, Shafee Mohamed Road,
Greams Road, Chennai - 600 006. ... Respondent in T.C.A.No.168 of 2017

M/s.Anugraha,
No.16, Rajammal Street,
Shenoy Nagar,
Chennai - 600 030. ... Respondent in T.C.A.No.169 of 2017

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the common order of the Income Tax Appellate Tribunal, Madras “C” Bench, dated 01.10.2015 in I.T.A.Nos.2071/MDS/2014 and 2173/Mds/2012 respectively.

For Appellant in both TCAs' : Mr.J.Narayanaswamy
Senior Standing Counsel

For Respondent in both TCAs' : Mr.Harishankar Mani

**COMMON JUDGMENT**

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

These tax case appeals have been filed by the appellant / Revenue, challenging the common order dated 01.10.2015 passed by the Income Tax Appellate Tribunal, Madras 'C' Bench in I.T.A.Nos.2071/Mds/2014, 2173/Mds/2012, relating to the assessment years 2008-09 and 2004-05 respectively, by raising the following substantial questions of law:-

> *"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee had not violated the provisions of Section 13 (1)(d) even though the assessee trust had allowed the private limited company to utilize the trust funds for the purpose of construction of meditation hall in the land belonging to the trust and said hall was not reflected as an asset in the assessee balance sheet but was reflected in the balance sheet of the company.*
>
> *(ii) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the assessee had not violated the provisions of Section 13 (1)(d) even though the directors of the private limited company were the trustees and their relation and they have benefited directly and indirectly.*

*(iii) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that by taking physical possession of the mediation hall the assesee trust had become the owner without appreciating the conditions stipulated under Section 2 (47)(V) read with Section 53A of T.P.Act.*

*(iv) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that investment of the trust funds in the private limited company which in turn had built the mediation hall and had reflected the said asset in the companies balance sheet had to be ignored without appreciating the provisions of Section 11(5) of the Act which bars investments of such nature and bars consequential benefits under Section 11.*

*(v) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that provisions of Section 13 (1)(c) cannot be invoked to deny the exemption to the trust even though the admittedly founder trustee's close relatives were the stake holders/directors of the company and admitted the hall/asset was built out of the trust funds and admitted the said asset is not reflected in the books of account of the trust by is reflected in the books account of the company as a owner.*

*(vi) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that even though the assessee had not provided the details of the donors, the income is to be treated as application to income towards construction of mediation hall and the said income cannot be assessed to tax.*

*(vii) Whether on the facts and in the circumstances of the case the Tribunal was right in holding that the provision of Section 115BBC cannot be invoked on the grounds of application of income even through the Section specifically envisages disallowance of Rs.1 lakh or 5% whichever is higher."*

2.When the matters were taken up for consideration, the learned counsel for the appellant / Revenue brought to the notice of this court the Circular No.17/2019 dated 08.08.2019 issued by the Central Board Direct Taxes, wherein, it is stipulated that appeal shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore). It is also submitted that the tax effect in these appeals is less than the threshold limit.

3. In the light of the aforesaid submissions made by the learned counsel for the appellant / Revenue, the present appeals, wherein, the tax effect is said to be less than the monetary limit imposed, are dismissed as withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs.

**(R.M.D., J.) (M.S.Q., J.)**
**24.08.2022**

Internet : Yes
Index : Yes / No
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To

1. The Income Tax Appellate Tribunal,
   'C' Bench, Chennai.

2. The Commissioner of Income Tax (Appeals)-XII,
   Chennai.

3. The Deputy Director of Income-tax,
   (Exemptions)-III, Chennai.

**R. MAHADEVAN, J.**
**and**
**MOHAMMED SHAFFIQ, J.**

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**T.C.A.Nos.168 and 169 of 2017**

**24.08.2022**