

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2020

CORAM:

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN  
and  
THE HON'BLE MR.JUSTICE P.VELMURUGAN

**T.C.A.Nos.896 and 899 of 2018**

M/s.Sri Ram Samaj,  
No.47, Arya Gowda Road  
West Mambalam  
Chennai 600 033  
(PAN AACTS5436N)

..Appellant in both TCAs  
/Appellant

-Vs-

The Joint Director of Income Tax (Exemptions)  
Chennai-600 034

..Respondent in both TCAs  
/Respondent.

Prayer: Tax Case Appeal filed under Section 260 A of the Income Tax Act, 1961, praying to set aside the order dated 06.04.2016 passed by the Income Tax Appellate Tribunal, Chennai 'D' Bench in ITA.No.665 & 664/Mds/2015 for the Assessment Year 2010-11 and 2011-12.

For Appellant : Mr.Sathish Parasaran, Senior counsel  
for Mr.Srinath Sridevan

For Respondent : Mr.J.Narayanaswamy.

## **JUDGMENT**

### **P.VELMURUGAN,J.**

The above Tax Case Appeals are filed against the order of the Income Tax Appellate Tribunal, Chennai 'D' Bench, dated 06.04.2016 passed in ITA.No.665 & 664/Mds/2015 for the Assessment Year 2010-11 and 2011-12.

2.1. The appellant herein is the assessee. The assessee is a society registered under the Societies Registration Act. It got its approval under Section 12AA of the Income Tax Act, 1961 [hereinafter in short called as "Act"].

2.2. The appellant society filed its return for the Assessment Years 2010-11 and 2011-12 on 21.10.2010 and 21.10.2011 respectively, admitting nil income, after claiming an exemption under Section 11(1)(a) of the Act.

2.3. The appellant's case for both Assessment Years was selected for scrutiny and notices u/s.143(2) of the Act had been issued to the appellant. In response to the notices, the appellant's authorized representative appeared from time to time and provided the details called for. After scrutinizing the details filed, the assessments were completed u/s.143(3) of the Act on 25.02.2013 and 27.01.2014 for the Assessment Years 2010-11 and 2011-12 respectively. In

both orders, the Assessing Officer invoked Sections 2(15) and 13(8) of the Act to make Sections 11 and 12 inapplicable insofar the appellant is concerned and computed the taxable income of the appellant, treating the appellant as an Association of Persons at Rs.25,42,950/- for A.Y.2010-11 and at Rs.22,16,619/- for AY 2011-12.

3.1. The appellant society operates a community hall 'Ayodhya Aswamedha Mandapam', a marriage function centre 'Mithalapuri Kalyana Mandapam' and a unit to facilitate performance of customary and traditional rites connected with funeral obsequies named 'Gnanavapi'. The corresponding income received from these properties, is classified as income from House Property. The Assessing Officer pointed out that such categorization of the nomenclature of the head of receipt of income as "income from House Property" is incorrect.

3.2. The Authorized Representative of the appellant society pleaded that the same is an income derived from house property only, relying on the decision of High Court of Madras in the case of ***Chennai Properties and Investments Ltd., reported in 136 Taxman 202 (MAD)***.

3.3 The Assessing Officer pointed out that such reliance is misplaced. There is no such relationship of landlord and tenant subsisting. In case of

profitable entities would obviously be in the nature of business income and a different classification in respect of the operations by a non profitable organization appears to be unfair. Therefore, the claim that the income derived from these units is Income from House Property is not entertained.

4. Further, the Assessing Officer rejected the claim of deduction u/s.24(a) of the Act @ 30% stating that the question of allowing statutory deduction will not arise.

5. It is further pointed out by the Assessing Officer that the objects of the Trust fall under the main limbs of charitable purpose being education, medical relief and relief to the poor. The income from Community Hall, Kalyana Mandapam and Gnanavapi are used to offset the cost in maintaining schools run by the Trust and hence proviso to Section 2(15) cannot find an application so as to bring the income from running of Kalyana Mandapam to tax.

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6. The Assessing Officer held that the business of running Community Hall, Marriage Hall and Gnanavapi cannot be treated as an incidental business eligible for exemption u/s.11(4A). It is pointed out that “since the society whose charitable purpose is an object of General Public Utility has ventured in

the nature of trade, commerce or business during the year and had also received a fee as consideration for the services rendered, which is in excess of Rs.10 Lakhs, the proviso to section 2(15) gets invoked, inexorably.” It is also held that since the proviso to section 2(15) is invoked, the provisions of section 11 & 12 become inoperative.

7. In the assessment order pertaining to A.Y.2011-12, the Assessing Officer in paragraph 8.1, cited proviso to Section 2(15) of the Act. It is as follows:-

“8.1 Proviso to Section 2(15) introduced with effect from 01/04/2019 reads as under:-

“Charitable purpose” includes relief to 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.

1<sup>st</sup> Proviso- Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income such activity.

2<sup>nd</sup> Proviso – Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakhs rupees or less in the previous year.”

8. The Assessing Officer, dealt with new proviso in Section 2(15) of the Act, holding that certain types of activities (advancement of objects of general public utility) considered otherwise charitable were taken out of the definition of charitable activity, if they were found to be engaged in trade and commerce. As per section 11(4A), a charitable institution is permitted to carry on business activities which are incidental to its objects as long as they maintain separate account for the business activities. The activities of the assessee organization clearly come within the purview of 'Business' related. 'Business' under the Income-tax Act is an inclusive definition and not exhaustive. In paragraph 8.7, it is held as under:-

“ 8.7. The receipts are from the community & marriage halls and Gnanavapi have been received throughout the year and there is a systematic and regular carrying on of activity in the nature of trade, commerce or business or an activity of rendering any service in relating to any trade, commerce or business for a cess or fee or any other consideration. Further, the overall receipts during the financial year under the consideration are in excess of the threshold limit of Rs.10.00 lakhs and therefore, the first and second provisos

to Section 2(15) are clearly and distinctly applicable in the case of the assessee's organisation. The very fact that 'Receipts' relating to Kalyana Mandapam and Gnanavapi are received, goes to show that the amended provisions of Section 2(15) are clearly attracted. “

9. Aggrieved by the order of the Assessing Officer, the appellant society filed appeal before the Commissioner of Income Tax (Appeals). The CIT (Appeals), by common order dated 31.12.2014, cited the judgment of Madras High Court in the case of *Ramalingam Charities Vs. CIT* wherein it is held that if the objects of the trust are composite in nature, it cannot be held to be wholly existing for the purpose of education. The contention of the assessee that the surplus from the other activities was only going to meet the shortfall in the income of the educational institution was rejected by the CIT (Appeals) by holding that a perusal of income and expenditure accounts of the school for the FY 2008-09 to 2010-11 reveals that it results in surplus for the three consecutive years. The amendment to Section 2(15) of the Act with effect from 01.04.2009 makes business income taxable even if it is incidental to the objects as long as such objects are of general public utility. The CIT (Appeals) held that the letting out of halls is a business activity and not incidental to the objects as required u/s.11(4A) of the Act to merit exemption u/s.11 of the Act.

10. The CIT (Appeals) held that the activity of letting out of halls is covered by the residuary limb of definition u/s.2(15) of the Act and hit by proviso to Section 2(15) of the Act and liable to lose exemption u/s.11 and 12 of the Act. Thus, the CIT (Appeals) confirmed the order of the Assessing Officer for the Assessment Years 2010-11 and 2011-12.

11. Aggrieved by the order of the CIT(Appeals), the appellant/assessee filed appeal before the Income Tax Appellate Tribunal. By common order dated 06.04.2016, the ITAT, in paragraph 9, cited the decision of the Supreme Court in the case of *Additional CIT Vs. Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR 1*, wherein it is held that under trust for a charitable purpose, the income therefrom would be entitled to the exemption u/s.11(1) of the Act. The ITAT pointed out that the finding of the CIT (A) is that running of community hall Kalyanamandapam and funeral ceremony hall were not held under trust, but it was business commenced/carried on by the Society, subsequent to the formation of the trust; though the business was commenced by the Society, it was carried on by the Society after its formation, it cannot be said to constitute property held under trust. U/s.11(4), it is only the business which is held under the trust that would enjoy exemption in respect of

its income u/s.11(1) of the I.T.Act and there is a distinction between the objects of a trust and the powers given to the trustees to effectuate the purpose of the trust. The ITAT thus held that the assessee is not entitled for any exemption u/s.11 of the I.T.Act.

12. Aggrieved against the order of the ITAT, the appellant/assessee filed the present Tax Case Appeals. The present Tax Case Appeals are admitted on the following substantial questions of law:-

*“(i) Whether Section 2(15) of the Income Tax Act, 1961 would be attracted to the assessee case where the earned income from letting out of Kalyana Mandapam, Gnanavapi utilizes the entire revenue derived there from towards charitable objects such as Education and Medical relief to the poor?”*

*“(ii) Would the activity of letting out Kalyana Mandapam not be incidental to the attainment of the objectives of the trust thereby entitling the assessee to the exemption under Section 12AA by virtue of the exemption carved out under Section 11(4A)?”*

13. Among various grounds of appeal raised by the learned counsel for the appellant/assessee, it is stated that the ITAT failed to apply the well settled

proposition of law as observed by the Supreme Court in ACIT Vs. Thanthi Trust reported in 247 ITR 785 that “all that is required for a business income of a Trust or Institution to be exempt is that the business should be incidental to the attainment of objectives of the trust or institution.” The appellant is an educational trust and its objects are predominantly educational in character and falls within the first three limbs of section 2(15) of the Act. The ITAT has failed to recognize that the surplus income generated from running the mandapams and gnanavapi is pumped back into the society and utilized solely for running the educational institution, which is the primary objective of the society.

14. The learned Senior counsel for the appellant in support of his submissions relied on the decision of the High Court of Delhi reported in **(2015) 371 ITR 333 [India Trade Promotions Organization Vs. Director General of Income-Tax (Exemptions) and Others]**. The learned Senior counsel relied on Paragraphs 48, 49 and 50 of the said decision, which is as under:-

“48. With this in mind, it is to be seen as to what is meant by the expressions "trade", "commerce" or "business". The word "trade" was considered by the Supreme Court in its decision in the case of [Khoday Distilleries Ltd and Others v. State of Karnataka and Others](#): 1995 (1) SCC 574, whereby the Supreme Court held that "the primary meaning of the word 'trade' is the exchange of goods for goods or goods for money". Furthermore, in [State of Andhra Pradesh v. H. Abdul Bakhi and](#)

**Bros:** 1964 (5) STC 644 (SC), the Supreme Court held that -the word "business" was of indefinite import and in a taxing statute, it is used in the sense of an occupation, or profession which occupies time, attention or labour of a person, and is clearly associated with the object of making profit". This court, in ICAI (I) (supra) held that, while construing the term "business" as appearing in the proviso to [Section 2\(15\)](#), the object and purpose of the Section has to be kept in mind. It was observed therein that a very broad and extended definition of the term "business" was not intended for the purpose of interpreting and applying the first proviso to [Section 2\(15\)](#) of the Act so as to include any transaction for a cess, fee or consideration. The Court specifically held that:-

-An activity would be considered 'business' if it is undertaken with a profit motive, but in some cases, this may not be determinative. Normally, the profit motive test should be satisfied, but in a given case activity may be regarded as a business even when profit motive cannot be established / proved. In such cases, there should be evidence and material to show that the activity has continued on sound and recognized business principles and pursued with reasonable continuity. There should be facts and other circumstances which justify and show that the activity undertaken is in fact in the nature of business.

49. In Bureau of Indian Standards (supra), this court, while considering whether the activities of the Bureau of Indian Standards (supra) in granting licences and trading certificates and charging of fee amounted to carrying on business, trade or commerce, held as under:-

73. ... In these circumstances, -rendering any service in relation to trade, commerce or business? cannot, in the opinion of the Court, receive such a wide construction as to enfold regulatory and sovereign authorities, set up under statutory enactments, and tasked to act as agencies of the State in public duties which cannot be discharged by private bodies. Often, apart from the controlling or parent statutes, like the BIS Act, these statutory bodies (including BIS) are empowered to frame rules or regulations, exercise co-ercive powers, including inspection, raids; they possess search and seizure powers and are invariably subjected to Parliamentary or legislative oversight. The primary object for setting up such regulatory bodies would be to ensure general public utility. The prescribing of standards, and enforcing those standards, through accreditation and continuing supervision through inspection etc., cannot be considered as trade, business or commercial activity, merely because the testing procedures, or accreditation involves charging of such fees. It cannot be said that the public utility activity of evolving, prescribing and enforcing standards, -involves? the carrying on of trade or commercial activity.?

50. In ICAI(II) (supra), while considering whether the activities of ICAI fell within the proviso to [Section 2\(15\)](#) as introduced with effect from 01.04.2009, this court, after considering the Supreme Court decision in the case of [Commissioner of Sales Tax v. Sai Publication Fund](#): (2002) 258 ITR 70(SC) held:-

"Thus, if the dominant activity of the assessee was not business, then any incidental or ancillary activity would also not fall within the definition of business."

51. This court also observed in ICAI(II) (supra) that:-

51. This court also observed in ICAI(II) (supra) that:-

64. ... It is not necessary that a person should give something for free or at a concessional rate to qualify as being established for a charitable purpose. If the object and purpose of the institution is charitable, the fact that the institution collects certain charges, does not alter the character of the institution. ...This court in ICAI (II) (supra) held:-

67. The expressions -trade?, -commerce? and -business? as occurring in the first proviso to [section 2\(15\)](#) of the Act must be read in the context of the intent and purport of [section 2\(15\)](#) of the Act and cannot be interpreted to mean any activity which is carried on in an organised manner. The purpose and the dominant object for which an institution carries on its activities is material to determine whether the same is business or not. The purport of the first proviso to [section 2\(15\)](#) of the Act is not to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee. The object of introducing the first proviso is to exclude organizations which are carrying on regular business from the scope of -charitable purpose?. The purpose of introducing the proviso to [Section 2\(15\)](#) of the Act can be understood from the Budget Speech of the Finance Minister while introducing the Finance Bill 2008. The relevant extract to the Speech is as under:-

.....Charitable purpose? includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purposes would also fall under -charitable purpose?. Obviously, this was not the intention of Parliament and, hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected.' The expressions -business?, -trade? or -commerce? as used in the first proviso must, thus, be interpreted restrictively and where the dominant object of an organisation is charitable any incidental activity for furtherance of the object would not fall within the expressions - business?, -trade? or -commerce. "

15. The learned Standing counsel for the Respondent-Department supported the order passed by the Income Tax Appellate Tribunal.

16. Heard both sides.

17. The appellant is the Trust and the said fact is not in dispute. But the CIT (Appeals) as well as the ITAT found that the activity of letting out of halls is covered by the residuary limb of definition u/s.2(15) of the Act and hit by the proviso to Section 2(15) of the Act and exempted u/s.11 and 12 of the Act.

18. The first substantial question of law raised by the appellant is that as to whether Section 2(15) of the Act would be attracted to the assessee case where the earned income from letting out of Kalyana Mandapam, Gnanavapi is utilized and the entire revenue derived therefrom is used to offset the cost in maintaining schools run by the Trust, thus, towards charitable objects such as Education and Medical relief to the poor. The contention of the assessee before the CIT (Appeals) is that the surplus income from Community Hall, Kalyana Mandapam and Gnanavapi was utilized only to meet the shortfall in the income of the educational institution and that contention was rejected by the CIT (Appeals).

19. On a perusal of the entire records, it is apparent that even though the appellant trust is running Kalyana Mandapam, Gnanavapi and Community

Hall, the income derived therefrom cannot be construed as business income as the very object of the Trust is for charitable purpose and it should be incidental for the Trust.

20. The fact remains that there is no records to show that all the income derived from Kalyana Mandapam, Gnanavapi and community hall are not used for the objects of the trust but whereas the fact remains that they spent all the income from the Kalyana Mandapam, Gnanavapi and Community Hall only for the educational purpose and medical relief to the poor, which are the objects of the trust. Under these circumstances, the appellant is entitled for exemption and income derived from Kalyana Mandapam, Gnanavapi and Community Hall cannot be treated as business of the trust. The trust has not conducted any business. Whatever income earned from the Kalyana Mandapam, Gnanavapi and Community Hall, is utilised for the educational purpose and the society is running Educational Institution, which is the primary object of the trust; on the other hand, running Kalyana Mandapam, Gnanavapi and Community Hall is not a primary object. The question is whether the entire income derived from Kalyana Mandapam, is utilized for the primary object of the Society. In this regard, it is necessary to look into the object of the Trust. The objects of the Trust as given are as under:-

*“(a) To promote and encourage Bharathiya Culture, Art and Philosophy and to conduct periodical meetings and functions.*

*(b) To establish and maintain well equipped library to promote Bharathiya culture, Art and Philosophy.*

*(c) To organize conferences, lectures, meetings, classes, receptions competitions, discourses to promote Bharathiya culture, Art and Philosophy.*

*(d) To establish, maintain and subsidise dispensaries to give or aid in giving free medical treatment to peer and deserving.*

*(e) To feed and to give clothes, free of cost to the poor and needs, without any distinction of caste or creed.*

*(f) To establish schools, colleges, universities, research institutions and public libraries as centers of learning and education.*

*(g) To institute and award fellowships, scholarships, school or college fees, gift of school or college books to poor and deserving students.*

*(h) To provide for establishment of buildings with facilities for performance of customary and traditional rites connected with funeral obsequies to poor and needs irrespective of caste, creed or religion.*

....

*(l) To provide facilities for conduct of marriages and such other auspicious functions according to Bharathiya cultural and traditional requirements at reasonable rates for the poor and needy without any profit motive.*

.....

*(t) To perform Sri Rama Navami Mahotsavam every year with traditional solemnity and fervour for the purpose of promoting Ramaneeyam and other ancient cultural values as contained in ancient Indian Puranas.”*

21. The contention of the appellant/assessee is that in view of the above objects of the trust to be fulfilled, which is for a charitable purpose, the income therefrom would be entitled to exemption u/s.11(1) of the Act.

22. Whether the income derived from letting out of Kalyana Mandapam, Community Hall and Gnanavapi owned by the appellant/assessee is the income from the House property or business income and whether the same is liable to be taxed or exempted is the other question. The contention of the assessee is that since utilization of the surplus income from the running of Kalyana Mandapam, Community Hall and Gnanavapi are for the objects of the trust, it is exempted from tax.

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23. It is to be noted herein that both the CIT (Appeals) and the ITAT have not discussed about the facts in respect of the surplus income having been utilized for the objects of the trust viz., Running educational institution, providing medical relief to the poor etc., Absolutely there is no discussion of

the facts relating to the utilization of earned income from letting out of Kalyana Mandapam and Gnanavapi towards charitable objects such as Education and Medical relief to the poor as given in the objects of the trust. Further, the Assessing Officer has not looked into the fact as to whether the entire income from Community Hall, Kalyana Mandapam and Gnanavapi are utilised for fulfilling the objects of the trust that is being education Medical relief and relief to the poor. In such circumstances, the order dated 06.04.2016 passed by the Income Tax Appellate Tribunal, Chennai 'D' Bench in ITA.Nos.665 and 664/Mds/2015 for the Assessment year 2010-11 and 2011-12 is set aside. The matter is remitted back to the Assessing Officer for de novo consideration as to whether the entire revenue derived from letting out of Kalyana Mandapam, Gnanavapi and Community Hall are utilized for charitable objects of the Trust and also to consider as to whether the income received from the properties of the Trust namely, Community Hall, Kalyana Mandapam and Gnanavapi to be classified as "income from House Property" or "business income" since the income therefrom is utilized for charitable purpose of the trust. The Assessing Officer shall consider the above said questions and decide the matter on merits.

24. With the above observation, the Tax Case Appeals stand allowed and the order passed by the Income Tax Appellate Tribunal, Chennai 'D' Bench, in

ITA.Nos.665 & 664/Mds/2015 for the Assessment Year 2010-11 and 2011-12, dated 06.04.2016, is set aside and the matter is remitted back to the Assessing Officer for de novo consideration. The substantial questions of law are left open to be decided by the Assessing Officer by considering the issue afresh. No costs.

INDEX:Yes/No

[N.K.K.,J] [P.V.,J]

Internet:Yes/No

15.09.2020

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To

1.The Joint Director of Income Tax (Exemptions)  
Chennai-600 034

2.The Commissioner of Income Tax  
(Appeal)-17 , Chennai-34.

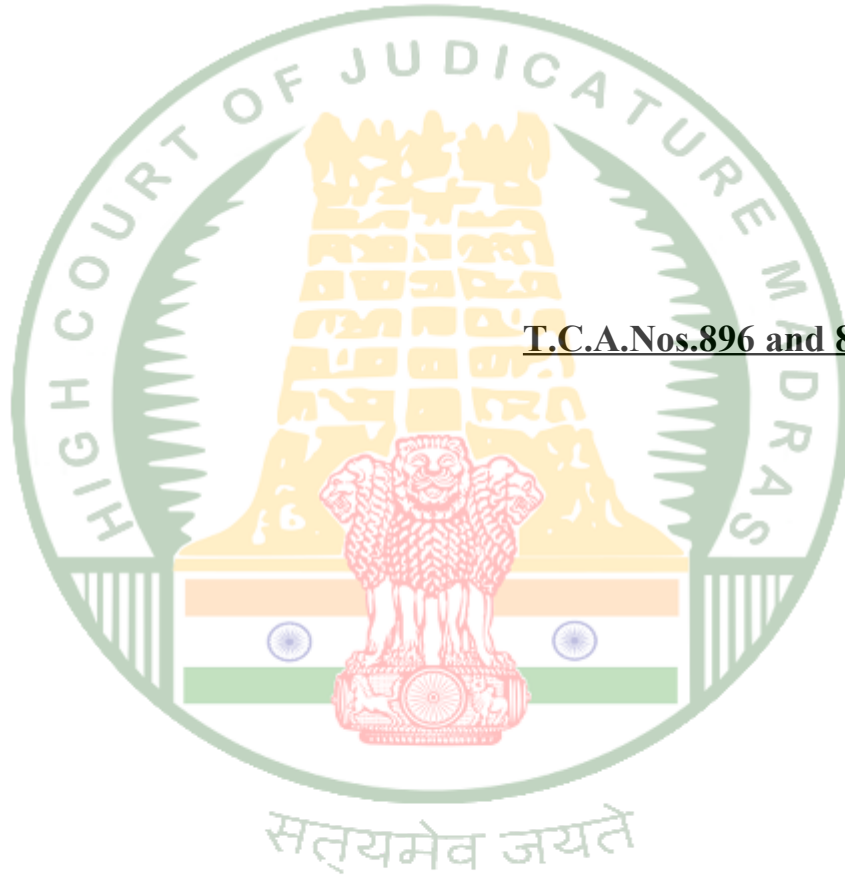
3.The Income Tax Appellate Tribunal  
“D” Bench, Chennai.

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