

2009] SUBHARAM TRUST V. DIRECTOR OF INCOME-TAX (BANGALORE) 65

[2009] 317 ITR (AT) 65 (Bangalore)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — BANGALORE BENCH]

**SUBHARAM TRUST**

v.

**DIRECTOR OF INCOME-TAX (EXEMPTIONS)**

N. L. KALRA (*Accountant Member*) and  
GEORGE GEORGE K. (*Judicial Member*)

March 25, 2009.

SS ▶ ITA 1961, ss 2(15), 11, 13, 80G

AY ▶ 2009-10

HF ▶ Department

SPECIAL DEDUCTION—DONATION TO CHARITABLE INSTITUTION—APPROVAL OF INSTITUTION—AUTHORITY ENTITLED TO SEE IF INSTITUTION PRIMA FACIE ENTITLED TO EXEMPTION UNDER SECTION 11—CHARITABLE PURPOSE—DEFINITION—AMENDMENT WITH EFFECT FROM 1-4-2009—LEASE OF KALYANA MANTAPAM—ACTIVITY NOT ENTIRELY CHARITABLE—LEASE OF LAND BY TRUSTEE TO TRUST AND INVESTMENT OF HUGE SUM BY TRUST FOR CONSTRUCTION OF BUILDING THEREON—LEASE BACK TO TRUSTEE—TRUSTEE ENABLED TO DERIVE ADVANTAGE—TRUST NOT ENTITLED TO EXEMPTION UNDER SECTION 11—NOT ENTITLED TO RENEWAL OF REGISTRATION—INCOME-TAX ACT, 1961, ss. 2(15), 11, 13, 80G.

WORDS AND PHRASES—“IN RELATION TO”.

*The authors and the trustees of the assessee-trust were one SR, his wife and two brothers. The activities of the trust included running educational institutions, free medical camps, feeding the poor during festival seasons, teaching yoga, running hostels for students, women and senior citizens, free dispensary. SR in his capacity as the karta of a Hindu undivided family leased out certain land to the assessee-trust which constructed a community hall on the site at a cost of Rs. 1,42,30,000 and leased it to the Hindu undivided family for a monthly rent of Rs. 1,00,066. The assessee-trust filed an application with the Director of Income-tax (Exemptions) for renewal of approval under section 80G of the Income-tax Act, 1961 from April 1, 2008, i.e., for the previous year relevant to the assessment year 2009-10. The Director of Income-tax (Exemptions) refused approval on the findings that construction and maintenance of the community hall was a business activity and a commercial act, that the trust having enabled SR to run a business activity in which there was an investment of Rs. 1,42,30,000 by the trust without any investment by SR, a benefit had been provided to interested persons, that fixing the lease*



rent at the market value of the building ignoring the business capacity of the building had given undue benefit to persons specified in section 13(2)(b), that the trust deed did not confer any powers to the trustees to lease out the trust property to others or to themselves, and that the activities of the trust of running hostels for students, women and senior citizens lost their charitable nature in view of the proviso to section 2(15) inserted with effect from April 1, 2009. On appeal :

Held, dismissing the appeal, (i) that the definition of "charitable purpose" in section 2(15) of the Act relevant for the assessment year 2009-10 (financial year 2008-09) contained a proviso 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 from such activity. Section 12(1) of the Act provides that voluntary contributions received by a trust created only for charitable or religious purposes are to be deemed as income under section 11. If some of the objects of the trust are charitable and some of the objects are not charitable, such a trust will not be covered under section 12. The amended definition of charitable purpose was applicable to the assessee's case. Some of the objects of the trust included relief of the poor, education and medical relief but some of the objects were advancement of any other object of general public utility. One of the objects was to provide facilities for the training of students in cultural activities. Another object, which could be termed as an object of general utility was to establish a community hall open to all communities irrespective of any religion. The construction of a kalyana mantapa by the trust was in the nature of activity of trade. From the narration in the lease deed, it was clear that the convention centre was constructed for earning income for the trust and the activity of giving the convention centre on lease was part of the nature of activity in the form of trade or commerce. Therefore, it could not be said that the trust existed wholly for charitable purposes in view of the amended definition of charitable purpose.

(ii) That if the trust was found to be violating the provisions of section 13, then the authority concerned was required to deny exemption under section 80G. Though the actual assessment for that previous year may be made subsequently by the Assessing Officer, the authority concerned has to take a decision on the basis of the facts as available on the date of application and the Director of Income-tax (Exemptions) was correct in looking into the provisions of section 13 while considering the application of the trust for renewal



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of approval under section 80G. The Hindu undivided family of SR was a person covered under section 13(3) of the Act. Thus, investing such a huge amount in the construction of a kalyana mantapa without having adequate arrangement for retaining the land for a sufficient long period, resulted in a benefit to SR, Hindu undivided family, a person covered under section 13(3) of the Act. Moreover, no basis had been provided for fixing the monthly rent of Rs. 1,00,066 to satisfy that the lease rent adequately compensated the trust, which had constructed the kalyana mantapa on the land leased out to it. In view of the fact that the benefit was available to a person specified in section 13(3) of the Act, the income of the trust was not exempt under sections 11 and 12 and the Director of Income-tax (Exemptions) was right in not allowing renewal of approval under section 80G.

Any activity, which directly or indirectly facilitates the rendering of any service in relation to any trade, commerce or business, will be covered under the proviso to section 2(15) of the Income-tax Act, which provides that the activity of rendering any service in relation to trade, commerce or business will make such an object of general public utility as not qualifying for charitable purpose.

Cases referred to :

Action for Welfare and Awakening in Rural Environment (AWARE) v. Deputy CIT [2003] 263 ITR 13 (AP) (para 15)

CIT v. Halai Nemon Association [2000] 243 ITR 439 (Mad) (paras 5, 13, 29)

CIT v. Sengunthar Thirumana Mandapam [2008] 298 ITR 330 (Mad) (paras 13, 29)

CIT (Deputy) v. S. G. Investments and Industries Ltd. [2004] 89 ITD 44 (Kolkata) (para 27)

CIT v. Sri Rao Baghadur ADK Dharmaraja Educational Charity Trust [2008] 300 ITR 365 (Mad) (para 13)

CIT v. Venkateswara Hatcheries (P.) Ltd. [1999] 237 ITR 174 (SC) (para 26)

DIT v. Bharat Diamond Bourse [2003] 259 ITR 280 (SC) (para 14)

Doypack Systems (P.) Ltd. v. Union of India [1989] 65 Comp Cas 1 (SC) (para 26)

ITO v. Daga Capital Management P. Ltd. [2009] 312 ITR (AT) 1 (Mumbai) [SB] (para 26)

Kirti Chand Tarawati Charitable Trust v. DIT (Exemption) [1998] 232 ITR 11 (Delhi) (para 31)

Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior (H. H.) v. Union of India [1971] 1 SCC 85 (para 26)

Marwar Textiles (Agency) P. Ltd. v. ITO [2008] 307 ITR (AT) 19 (Mumbai) (para 13)

Ram Bhawan Dharamshala v. CIT [2002] 178 CTR (Raj) 88 (paras 14, 29)

Reliance Motor Co. P. Ltd. v. CIT [1995] 213 ITR 733 (Mad) (para 31)

I. T. A. No. 1381/Bang/08.

S. Krishnaswamy for the appellant.

Harsha Prakash for the respondent.

#### ORDER

1 N. L. KALRA (Accountant Member).—The assessee has filed an appeal against the order of the learned DIT (Exemptions), Bangalore dated September 30, 2008.

2 The grounds of appeal raised by the appellant are as under :

“(i) The order of the learned Director of Income-tax (Exemptions), Bangalore, is against law and facts ; the trust was eligible for recognition.

(ii) Objects includes community hall : The learned Director of Income-tax (Exemptions), Bangalore, erred in holding the possession of a convention hall is a pointer to the carrying of trade business or commerce without appreciating that the trust chose to lease it out once for all and therefore such income is the only income from property.

(iii) Benefit to interested person : The learned Director of Income-tax (Exemptions), Bangalore, erred in holding that the lease out of the property to a trustee constituted ‘undue benefits’ to the specified persons as per section 13(2)(b) ; he ought to have appreciated that

(i) the land belonged to the said trustee which was valuable and hence there was a contribution.

(ii) the building was constructed by the trust and the rent fixed at Rs. 100,066 and advance paid Rs. 10 lakhs was more than the market value.

(iii) the rent for the land was not being paid by the trust to the lessee; payment had ceased.

(iv) the monthly rent of Rs. 100,066 plus the deposit afforded a recurring reasonable return on the capital invested by the trust.

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The assessee-trust filed in 2008 for renewal of approvals) has mentioned that the order dated 12, 1979. The authors of the order dated 12, 1979 were Shri S. Ramaiah and two brothers of Shri S. Ramaiah running of educational institutions during festival seasons, to women and senior citizens.

Shri S. Ramamurthy in the land/site measuring 7 acres Bangalore on April 1, 2008. The assessee-trust constructed a building for Rs. 1,42,30,000 and again the undivided family capacity of the assessee-trust for DIT (exemptions) during the period of approval under section 13(2)(b) details and on the basis of the same framed the following five questions:

(a) Whether the construction of community halls is an eligible activity for the insertion of the proviso to section 13(2)(b)?

(b) Whether any part of the income of the trust which is income from property?

(c) Whether the income of the trust is the kalyana mantap or other income?

(d) Whether the income is to others or to themselves?

(e) Whether the income is of the assessee-trust, women and senior citizens, for the insertion of the proviso to section 13(2)(b)?

(a) Running of community halls.

The learned DIT (Exemptions) allowed the maintenance of community halls as a commercial act. The Hon'ble Madras High Court in [2000] 243 ITR 439, held that the community hall used for the purpose of the assessee-trust. The learned DIT (Exemptions) erred in holding that the income of the trust is the kalyana mantap or other income.