

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos.923 & 996/Bang/2023

Assessment year : 2016-17 & 2017-18

The Asst. Commissioner of Income-tax(Exemption), Circle-1, Bangalore.	Vs.	The MYMUL Raitha Kalyana Trust, Siddarath Nagar, 14 MYMUL Raitha Kalyana Trust, Male Mahadeshwara Road, Siddarathanagar. Mysore. PAN – AACTM 1497 P
APPELANT		RESPONDENT

ITA Nos.913 & 978/Bang/2023

Assessment year : 2016-17 & 2017-18

The MYMUL Raitha Kalyana Trust, Siddarath Nagar, 14 MYMUL Raitha Kalyana Trust, Male Mahadeshwara Road, Siddarathanagar. Mysore. PAN – AACTM 1497 P.	Vs.	The Asst. Commissioner of Income-tax(Exemption), Circle-1, Bangalore
APPELANT		RESPONDENT

Assessee by	:	Shri V Srinivasan, Advocate
Revenue by	:	Shri Parithivel, JCIT(DR)

Date of hearing	:	02.01.2024
Date of Pronouncement	:	02.01.2024

ORDER

Per Chandra Poojari, Accountant Member

These cross appeals for the assessment years 2016-17 and 2017-18 are directed against the different orders of the NFAC, Delhi dated 05/10/2023 and 22/09/2023 respectively passed u/s 250 of the Act.

2. The issue involved in these appeals are common except for the figures, hence these appeals are clubbed together, heard together and disposed of by this common order for the sake of convenience.

3. For the assessment year 2016-17, the assessee filed return of income on 02/02/2017 declaring Nil income and assessment has been completed after giving notice u/s 143(2) of the Act dated 18/09/2017 while framing the assessment u/s 143(3) of the Act dated 22/12/2018. Similarly, for the assessment year 2017-18, the assessee filed return of income on 10/10/2017 declaring Nil income. The case was selected for scrutiny and notice u/s 143(2) of the Act was issued on 10/08/2018 and

assessment order passed u/s 143(3) of the Act vide order dated 15/12/2019. For these assessment years, the assessee claimed exemption u/s 11 of the Act. However, the AO denied the exemption by observing that the assessee is not performing any charitable activity within the meaning of sec. 2(15) of the Act and he considered the contribution received from MYMUL as income of the assessee from 'other sources' by denying exemption u/s 11 of the Act.

4. The assessee carried appeal before the NFAC, New Delhi. The NFAC, New Delhi observed that the assessee covered in the 4th limb of sec. 2(15) of the Act i.e advancement of any other objects of "general public utility" and assessee is entitled for exemption u/s 11(1) of the Act on gross receipts consisting of contribution received from MYMUL, hence it is not to be considered as 'income from other sources'. Further, for assessment year 2016-17, the NFAC, New Delhi observed that the amount incurred by the assessee is of Rs.11,05,950/- towards giving mementos to presidents and secretaries of milk producers association is not in accordance with the objects of the assessee trust and also does not qualify for expenditure for charitable activities and such office

bearers are covered under 'persons' referred in sec.13(1)(c) r.w.s 13(2) and 13(3) of the Act and it has to be taxed separately for granting exemption u/s 11 of the Act.

5. The assessee is in appeal before us for assessment year 2016-17 for holding by CIT(A), that amount spent at Rs.11,05,950/- for giving mementoes to Presidents and Secretaries of Milk Producers Association is an expenditure falls under the purview of sec. 13(1)(c) r.w. sec. 13(2) and 13(3) of the Act and similarly at Rs.14,67,492/- in assessment year 2017-18.

6. The Revenue is in appeal before us for granting exemption u/s 11 of the Act.

7. Similarly, the Revenue is also in appeal before us for assessment year 2017-18 for granting exemption u/s 11 of the Act. The assessee is in appeal before us for not allowing the expenditure spent on mementoes given to Presidents and Secretaries of Milk Producers Association holding that such expenditure falls under the purview of sec. 13(1)(c) r.w. sec 13(2) and 13(3) of the Act and also the Revenue is in appeal before us for holding that the assessee trust is eligible for exemption u/s 11 of the Act

and also in respect of granting exemption u/s 11(d) of the Act on corpus donation of Rs.4,34,13,684/-.

8. First, we will take up the Revenue appeal in ITA No.923/Bang/2023 and 996/Bang/2023 with regard to granting exemption u/s 11 of the Act in both the assessment years.

9. The Id.DR submitted that the assessee in the present case is formed for the benefit of its members which will not fall u/s 2(15) of the Act and not carried out any activities which are in the charitable nature for the benefit of public at large. He relied on the judgment of Hon'ble Supreme Court in the case of ACIT Vs. Ahmedabad Urban Development Authority 449 ITR 1 (SC), wherein, it is held that :

“The paradigm change achieved by section 2(15) of the Income-tax Act, 1961 after its amendment in 2008 and as it stands today, is that firstly a charity engaged in an object of general public utility cannot engage in any activity in the nature of trade, commerce, business or any service in relation to such activities for any consideration (including a statutory fee, etc.). This is emphasised in the negative language employed by the main part of section 2(15). Therefore, the idea of a predominant object among several other objects, is discarded. The prohibition is relieved to a limited extent, by the proviso which carves out the condition by which otherwise prohibited activities can be engaged in by charities carrying out objects of general public utility. The conditions are: (a) that such activities in the nature of trade, commerce, business or

service (in relation to trade, commerce or business for consideration) should be in the course of "actual carrying on" of the object of general public utility and (b) the quantum of receipts from such activities should not exceed 20 per cent. of the total receipts. Both parts of the proviso : (i) and (ii) (to section 2(15)) have to be read conjunctively, given the conscious use of "or" connecting the two. This means that if a charitable trust carries on any activity in the nature of business, trade or commerce, in the actual course of fulfilling its objectives, the income from such business, should not exceed the limit defined in sub-clause (ii) to the proviso."

10. Further, he submitted that the assessee's case cannot be said to be falls under the 4th limb of sec. 2(15) of the IT Act i.e "the advancement of any other object of general public utility"

11. The ld.AR submitted that the activities carried on by the assessee for the welfare of milk producers and their families and employees of milk producers societies comes within the ambit of "relief to the poor". The AO while passing the asst. order took the view that the assessee is only a private trust and its benefit do not enure to public at large and, therefore, denied the exemption u/s 11 of the Act. The ld.CIT(A) rightly held that it was not necessary for the assessee to cater to whole of mankind. Even a section of public that constitutes a class of persons would within the ambit of "public". However, considering that milk producers in villages are poor and

indigent person, the activities of the assessee would come within the ambit of “relief to the poor”. As the assessee assist such poor person by providing them benefit of group insurance, death cover, hostel facilities and the like. In fact, the entire funds of the assessee trust are provided by MYMUL, which is the union of milk producers and the income of the assessee cannot be considered as income from business or any other taxable sources and to be exempt u/s 11 of the Act.

12. We have heard both the parties and perused the material available on record. In this case, the assessee has been granted approval u/s 12AA of the Act and 80G of the Act by CIT(A), Mysore in F No.M-70/12AA & 80G/CIT/MYS/2008-09 dated 29/04/2008 after verifying the trust deed, which consists of following objects:-

“a. To provide educational facilities, to give health and medical services preventing health and including the services of eradication of diseases to members of Mysore Chamarajanagar District and Milk Federation Member and members of Milk Producers Societies and to the employees working in the Societies and their families

b. Services and as per the availability of finance, to provide health and education services to all the member of the Societies

c. To Open educational institution and residential schools for the benefit of producers and employees of the societies

d. By opening the stationery shop, and out of the income derived out of it, to conduct the affairs of this Trust

e. Through the trust by taking up the work for the welfare of producers and employees of the Societies and to decide the other matters regarding mutual interest of the members.

f. To take up rural development programmers, all the activities supplemental to the above objectives

g. If the milk producer/Member dies to give financial assistance from the Trust to the husband/wife of his/her family.

h. If the milk producer/cows of the Member dies accidentally or if dies from other reasons, to provide insurance facility.”

13. It is to be noted that at the time of granting approval u/s 12AA competent authority was aware of fact that the assessee has catering the needs of particular class of public and accordingly, approval authority found that objects of the trust constitutes “charitable purpose” within the meaning of 2(15) of the Act. The objects listed in the above trust deed have been continuously and consistently carried on by the assessee from year to year and there was no dispute on these facts by the AO. On the other hand, only objections of the AO is that the above objects carried on by the assessee is not beneficial to the public at large or for whole mankind in society. In our opinion, this is not the requirement of sec. 2(15) of the Act. This issue was come up for consideration before the various Courts and it was held that to serve a charitable purpose, it is not necessary that the objects should

benefit the whole of mankind or all persons in a country or a state. It is sufficient if the intention to benefit a section of the public as distinguished from a specified individual is present. The section of community sought to be benefited must be sufficiently definite and identifiable by some common quality of a public or impersonal nature. This view is fortified by the following judgments:-

- 1) Ahmedabad Rana Caste Association reported in (1971) 82 ITR 704 (SC)
- 2) CIT Vs. Surji Devi Kunji Lal Jaipuria Charitable Trust 186 ITR 728 (Allahabad HC)
- 3) CIT Vs. Andhra Pradesh Police Welfare Society 148 ITR 287 (Andhra Pradesh HC)
- 4) Tax Practitioners Benevolent Fund Vs. CIT reported in 266 ITR 561 (Bombay HC)

14. In view of the above, in our opinion the ld.CIT(A)/NFAC is taken a correct view in granting the exemption under sec. 11 of the Act to the assessee and same is confirmed. This ground of the appeals of the Revenue is dismissed in both the assessment years.

15. Next ground in Revenue appeal in ITA No.923/Bang/2023 is with regard to observing that

corpus donation of Rs.4,34,13,684/- is entitled for exemption u/s 11 of the Act without calling for remand report from the AO in violation of Rule 46A of the IT Rules.

16. Facts of the issue are that the assessee received a corpus fund of Rs.4,34,13,684/- and claimed exemption on the same on the reason that such donations are used towards the activities of the assessee trust. The CIT(A) granted the exemption by placing reliance on the order of the Tribunal in the case of Bhaktavatsalam Memorial Trust (2014) 51 taxmann.com 248 (Chennai), wherein held that voluntary contributions made with a specific direction that it shall form part of corpus of the trust should not be treated as income of the previous year, that the provision did not say that the purpose for which such donation is given should be specified and hence the requirement of the section shall be satisfied once the donation is specifically for the corpus fund. Accordingly, the CIT(A) granted the exemption u/s 11 of the Act.

17. The ld.DR submitted that the CIT(A) not verified the records, the purpose for which the donation has been given and also not called for the remand report from the

AO. The Id.AR relied on the judgment of Karnataka High Court in the case of Director of Income-tax Vs. Sri Ramakrsihna Seva Ashsram 357 ITR 731, wherein held that -

“The word "corpus" used in the context of the Income-tax Act, 1961, is to Ye Understood, in the context of capital, as opposed to an expenditure. If a voluntary contribution is made with a speck direction, it shall be treated as the capital of the trust for carrying on its charitable or religious activities. Then such an income falls under section 11(1)(d) and is not liable to tax. Therefore, it is not necessary that a voluntary contribution should be made with a specific direction to treat it as corpus. If the intention of the donor is to give that money to a trust to keep in trust the account in deposit and utilize the income there from for carrying on a particular activity, it satisfies the definition part of the corpus. The assessee would be entitled to the benefit of exemptions from payment of tax. to view of the language employed in clause (d) of sub-section (1) of section 11, the requirement is that the voluntary contributions have to be made with a specific direction. The lair does not require that the direction should be in writing.”

18. We have heard both the parties and perused the material available on record. In this present case, the CIT(A) granted the exemption without verifying the records and also not called for remand report from the AO. In our opinion, it is appropriate to remit the issue to the file of AO to examine the issue afresh in the light of the judgment of jurisdictional High Court in the case of Sri Ramakrishna Seva Ashram cited supra and decide it accordingly.

19. The ground in assessee's appeal in ITA No.913/Bang/2023 and 978/Bang/2023 is with regard to finding of NFAC, New Delhi that the amount incurred by the assessee is at Rs.11,05,950/- for giving mementoes to President and Secretaries of Milk Producers Association as an expenditure fall under the purview of section 13(1)(c) r.w.s 13(2) and 13(3) of the Act assessment year 2016-17 and 14,67,492/- in assessment year 2017-18.

20. The contention of the ld.AR is that the above expenditure has not been incurred for the benefit of President and Secretaries of assessee trust. On the other hand it has been incurred to give mementoes to President and Secretaries of other Milk Producers Association and that expenditure has not been claimed as application towards the objectives of the trust. It has been spent by the assessee out of tide up grants which is evident from the Receipts and Payments account of both the assessment years. Accordingly, he submitted that the provision of section 13(1)(c) r.w.s 13(2) and 13(3) cannot be applied.

21. On the other hand, the ld.DR submitted that the above amount does not spent any charitable purpose and

it has been given for the personal benefits of the President and Secretaries of other Milk Producers Association even though it is out of tide of grants, the said amount to be taxed separately.

22. We have heard both the parties and perused the material available on record. In this case the assessee has spent the impugned amount for the benefit of President and Secretaries of other Milk Producers Association out of tide up grants. The claim of the assessee is that it has not been claimed as application of fund, the said amount cannot be taxed in the hands of the assessee. In our opinion, whether it was spent out of tide up grants or from assessee's corpus fund, it has not been used for charitable purpose and the benefit has been gone to the President and Secretaries of other Milk Producers Association. In our opinion, this is covered u/s 13(1) of the Act, as such, provision of sec. 11 or 12 cannot be applied. Since there was a contravention, this amount spent on mementoes given to President and Secretaries of Milk Producers Association to be taxed in the hands of assessee and the same was brought to tax by the NFAC, Delhi and we do not find any infirmity in the order of the

NFAC, New Delhi and the same is confirmed and this ground of assessee in both the appeals is dismissed.

23. The assessee raised the grounds in both the appeals with regard to levy of interest u/s 234B of the Act, which is consequential and mandatory in nature to be charged accordingly.

24. In the result, the appeal of the Revenue in ITA No.996/Bang/2023 is dismissed and 923/Bang/2023 is partly allowed for statistical purposes and the assessee's appeal in 978/Bang/2023 and 913/Bang/2023 are partly allowed.

Order pronounced in the open court on 2nd January, 2024.

Sd/-

(BEENA PILLAI)
Judicial Member

Sd/-

(CHANDRA POOJARI)
Accountant Member

Bangalore,
Dated, 2nd January, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore