

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI**

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

**BEFORE SHRI MANU KUMAR GIRI, HON'BLE JUDICIAL MEMBER  
AND SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: **699 & 700/Chny/2024**

निर्धारण वर्ष / Assessment Years: 2013-14 & 2014-15

Income Tax Officer  
(Exemptions),  
Ward-3,  
Chennai.

v. Tamilnadu Advocate Welfare  
Fund, High Court Campus,  
High Court,  
Chennai – 600 104.

**[PAN: AAATT-6317-K]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. D. Hema Bhupal, JCIT

प्रत्यर्थी की ओर से/Respondent by

: Shri. M.K. Rangaswamy, CA

सुनवाई की तारीख/Date of Hearing : 04.07.2024

घोषणा की तारीख/Date of Pronouncement : 24.07.2024

**आदेश /ORDER**

**PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:**

These appeals by the revenue are filed against the common order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment years 2013-14 & 2014-15, vide order dated 17.01.2024. Since, facts are identical and issues are common, for the sake of convenience these appeals are disposed off by this consolidated order.

2. The main ground of the appeal raised by the revenue is that the Id.CIT(A) erred in holding that the assessee is eligible for

exemption u/s. 11 of the Income Tax Act, 1961 (hereinafter referred to as 'The Act') and the provisions of section 2(15) of the Act are not attracted income derived by the assessee even though it is in the nature of 'trade or business' when the gross receipts exceeds Rs.25 lakhs.

**ITA No: 699/Chny/2024:**

3. The brief facts of the case are that, the Tamil Nadu Advocates Welfare Fund (TNAWF) was created u/s. 6(2) of the Advocates Act 1961 and constituted by the state legislature under the Tamil Nadu Advocates Welfare Fund Act 1987(Act No.49 of 1987) as Tamil Nadu Advocates Welfare Fund Trust Committee. The Welfare fund committee was constituted to provide for welfare fund to advance the Profession of advocacy in the state of Tamil Nadu by extending the benefit to the advocates on cessation of practice and for other instances and matters connected therewith. Tamil Nadu state was one of the first to introduce such a fund arising from clause (a) of Sub sec (2) of sec 6 and clause (a) of Sub sec (2) of sec 7 of the advocates Act 1961. The respondent Fund is a benevolent and welfare fund with no intent or objective of profit or motive of profit. Later on 14 September 2001 the Parliament enacted the Advocates Welfare Fund Act, 2001 (Act No. 45 of 2001) to provide for and bring in special provisions for the

state sponsored Advocates Welfare Fund. After the Central Enactment, Act No. 45 of 2001 the TNAWF has deemed to become one and forming part of the Central Scheme. The major income of the fund as enshrined in the TNA WF Act 1987 r.w the Advocates Welfare Fund Act, 2001 comprises of sale of welfare fund stamps, Life Time Subscription from members, Interest on corpus and earmarked deposits, grants from state and other incidental and related miscellaneous income.

4. The assessee had filed return of income for the assessment year 2013-14 on 29.09.2013, declaring a total income of Rs. Nil. The gross income earned by the assessee was Rs.2.79 crores against the revenue expenditure of Rs.3.54 crores. The case was selected for scrutiny u/s. 143(2) of the Act and concluded the assessment by passing an order by the Assessing Officer on 23.03.2016 u/s. 143(3) of the Act, by denying the exemption u/s. 11 of the Act by invoking the proviso to section 2(15) of the Act for the reason that the assessee has involved in the nature of trade or business by selling the welfare funds stamps to the tune of Rs.1,53,85,600/-, by holding as under:

*"6.1 Since the proviso to section 2(1) is invoked, the provisions of sections 11 & 12 become inoperative. The entire receipts including voluntary contribution is the income of the society. While the revenue expenditure corresponding to such income earning activity is alone allowed, expenses of capital nature and*

*expenditure not connected to the income earning activity like accumulations for future use by the Trust, disbursements of charity In the form of Settlement of Claims (Rs.3,34,11,976), Voluntary Cessation claims (Rs.5,72,000) and Medical Aid (Rs.72,500) are not eligible to be allowed as expenditure. This is because, Section 11 has become redundant In the case under consideration. Also, depreciation is not allowable, since, the assessee claimed the value of the asset (on which depreciation has been preferred) as application of income in the earlier assessment years and allowing depreciation on such assets will result in double deduction.*

*6.2 The taxation of income is not confined to the income derived from sale of Welfare Stamps. Section 13(8) prohibits applicability of section 11 & 12 in respect of any income of the society and is not restricted to the business activity of the Trust. Therefore, the surplus derived by the Trust is entirely brought to taxation.*

*Based on the discussion made above, the taxable income is re-computed as under:*

**Computation of Total income**

<i>Income from Business &amp; other Activity</i>	<i>Rs.2,79,41,528</i>
<i>Expenditure in relation to the income reported</i>	<i>Rs.14,41,714</i>
<b><i>Taxable Income</i></b>	<b><i>Rs.2,65,99814</i></b>

Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Id.CIT(A).

5. The Id.CIT(A), considering the submissions made by the assessee and relying on the co-ordinate bench decision in ITA Nos. 2616 to 2620/Mds/2016 dated 29.12.2016 allowed the exemption u/s. 11 of the Act and also accepted the claim of the assessee that the sale of welfare funds stamps to its members are even to the general public would render the activity to be advancement of other object of general public utility in terms of section 2(15) of

the Act. Aggrieved by the order of the Id.CIT(A), the revenue is in appeal before us.

6. The Id.DR, assailing the action of the Id.CIT(A) stated that the Id.CIT(A) has erred in allowing the exemption u/s. 11 of the Act to the assessee even though the sale of welfare fund stamps to the members as well as general public that overriding the profit motive is inconsonance with first proviso to section 2(15) of the Act. The Id.CIT(A) failed to appreciate that the assessee has received an amount of Rs.1.53 crores in the form of trading receipts and sale of welfare fund stamps during the period without incurring much expenditure on the same. Therefore, the order of the Id.CIT(A) is bad in law and prayed for setting aside the order and to confirm the order of the Assessing Officer.

7. Per contra, the Id.AR stated that the Tamilnadu Advocates Welfare Fund has been established u/s. 6(2) of Advocate Act, 1961 constituted by the State Legislature dated 07.12.1987 (Act No.49 of 1987). The said Act has been enacted for providing death benefits to the family members of the deceased Advocates, who has joined as member in the said scheme, other instances and matters connected therewith and a sum of Rs.7 lakhs is being provided as death benefits which is now increased to Rs.10 lakhs,

as per the order passed by the Government in G.O.(MS) No. 465, dated 27.08.2022. The source of income for the said scheme is income generated through sale of welfare fund stamps, life time subscription from members, interest and corpus deposits and Government grant.

8. The Id.AR further stated that, the Tamil Nadu Advocate's Welfare Fund was a pioneer in forming the welfare fund in the state of Tamilnadu and nearly after 14 years of the implementation of the Tamilnadu Advocate's Welfare Fund Act, 1987, the Central Act namely Advocate Welfare Fund Act, 2001 (Act No. 45 of 2001) was enacted by the parliament. The Tamilnadu Advocate's Welfare Fund Act, 1987 comes under Schedule II in Serial No.7 of the provisions of the Advocate Welfare Fund Act, 2001 which is enacted and is functioning for the welfare of the Advocates at large even much prior to the enactment of the Central Act. In view of this Clause, there is no prior approval is required in the case of Tamilnadu Advocate's Welfare Fund Act as saving Clause is provided u/s. 38 of the Advocate Welfare Fund Act, 2001, there is an exemption for the applicability of the Central Act to the State of Tamilnadu. Therefore, as per section 23 of the Central Act, the Advocate's Welfare Fund is exempt from Income-tax and prayed for

dismissing the appeal of the revenue and confirm the order of the Id.CIT(A).

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. It is an admitted fact that the Tamilnadu Advocate's Welfare Fund Act, 1987 was created by the State Legislature dated 07.12.1987 (Act No. 49 of 1987) for providing death benefits to the family members of the deceased advocates, who have joined as member in the said scheme. The source of income for the said scheme is income generated through sale of welfare fund stamps, life time subscription from members, interest on corpus deposits and Government grant. Further, the Central Act namely 'Advocate Welfare Fund Act, 2001 (Act No. 45 of 2001) was enacted by the Parliament with the saving Clause as below:

*"Sec.38 Saving – The provisions of this Act shall not apply to the States in which the enactments specified in Schedule II are applicable."*

Wherein, the Tamilnadu Advocate's Welfare Fund Act, 1987 comes under Schedule II in Sl.No. 7, the provisions of the Advocate Welfare Fund Act, 2001 shall not apply to the State of Tamilnadu, where already Tamilnadu Advocate's Welfare Fund Act, 1987 is enacted and is functioning for the welfare of Advocates at large, even much prior to the enactment of the Central Act. In view of

this clause, there is no prior approval is required in the case of Tamilnadu Advocate's Welfare Fund. Further, section 16 of the Advocate's Welfare Act, 2001 deals with the Recognition of the Association by the State Bar Council and nothing has been mentioned therein regarding the prior approval from the Bar Council of India before forming a welfare fund. Since, the assessee fund is enacted prior to the formation of the Central Act namely Advocate's Welfare Fund Act, 2001 and the saving clause is provided u/s. 38 by the Advocate's Welfare Fund Act, 2001, there is an exemption for the applicability of the Central Act of the State of Tamilnadu. Since, section 23 of the Central Act provides for exemption of Income-tax to the Advocates Welfare Fund of the State against the provisions of section 11 and section 2(15) of the Act is not applicable to the Tamilnadu Advocates welfare Fund. Therefore, we are of the considered view that the assessee is exempted from income-tax and uphold the order of the Id.CIT(A) and hence, dismiss the appeal of the revenue.

**ITA NO: 700/CHNY/2024:**

10. An identical issue has been considered by us in ITA No. 699/Chny/2024 for assessment year 2013-14. The facts are identical for the impugned assessment year 2014-15 also. The reasons given by us in preceding paragraph in ITA No.



699/Chny/2024 for assessment year 2013-14, shall *mutatis mutandis* apply to this appeal as well. Therefore, for similar reasons, we dismiss the appeal filed by the revenue.

11. In the result, appeals filed by the revenue for assessment years 2013-14 and 2014-15 are dismissed.

Order pronounced in the open court on 24<sup>th</sup> July, 2024 at Chennai.

**Sd/-**  
(मनु कुमार गिरि)  
**(MANU KUMAR GIRI)**  
न्यायिक सदस्य/**Judicial Member**

**Sd/-**  
(एस. आर. रघुनाथा)  
**(S. R. RAGHUNATHA)**  
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 24<sup>th</sup> July, 2024

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT- Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF