

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री एसएस विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस.आर. रगुनाथा, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri S.R. Raghunatha, Accountant Member

आयकर अपील सं./I.T.A. No.263/Chny/2024
निर्धारण वर्ष/Assessment Year: 2016-17

Sri Karpaga Vinayagar Educational
and Charitable Trust, 1, Thalayuthu,
Palani 624 618.

Vs. The Income Tax Officer,
Exemptions Ward,
Madurai.

[PAN: AAGTS7098L]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by

: Shri R. Thulasi Ram, Advocate &
Shri B.K. Gopilal, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri R.V. Aroon Prasad, Addl. CIT

सुनवाई की तारीख/ Date of hearing

: 25.07.2024

घोषणा की तारीख /Date of Pronouncement

: 31.07.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order dated 14.11.2023 passed by the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi for the assessment year 2016-17.

2. The assessee raised 10 grounds of appeal amongst which, the only issue emanates for our consideration is whether the Id. CIT(A) is justified in confirming the order of the Assessing Officer in denying exemption

under section 11 of the Income Tax Act, 1961 ["Act" in short] in respect of value of car purchased in the name of trustee in the facts and circumstances of the case.

3. The assessee is a trust conducts its activities under the name and style of M/s. Sri Karpaga Vinayagar Educational & Charitable Trust. The objects of the assessee are in carrying out charitable activities, i.e., education, relief to poor, etc. The assessee filed its return of income admitting NIL income and under scrutiny notices under section 143(2) and 142(1) of the Act issued in response to which, the assessee uploaded the details as called for through e-proceeding facility. On examination of details of capital expenses, the Assessing Officer found a vehicle by name "Jaguar XF 3.0 L Premium Luxury" purchased in the name of managing trustee for a value of ₹.62,68,647/- along with insurance of ₹.1,64,923/-. The Assessing Officer issued show-cause notice to the assessee asking to explain why violation under section 13(1)(c) of the Act should not be quantified and exemption under section 11 & 12 of the Act should not be denied. The assessee offered explanation which was found by the Assessing Officer as not acceptable. Accordingly, value of the above said car for ₹.62,68,645/- was charged to tax by denying exemption to that extent.

4. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal before the Id. CIT(A). We note that same submissions as submitted before the Assessing Officer were reiterated before the Id. CIT(A). The Id. CIT(A) requested the assessee to file a response to the queries which were reproduced in page 6 of the impugned order as there was no response, the Id. CIT(A) proceeded to confirm the order of the Assessing Officer in denying exemption under sections 11 and 12 of the Act. The relevant portion in para 3 to 3.2.5 are reproduced for ready reference:

“Decision

3. *The grounds of appeal are discussed as under:*

3.1 *Ground No. 2: The appellant claimed that the car was purchased in the name of the managing trustee with the sole objective of saving considerable amount of road tax and insurance. The appellant was clearly asked, vide notice dated 01/11/2023, to give details of the savings made following this methodology – no response has been filed by the appellant and it is evident that it has nothing to state in the matter. Therefore, the ground is dismissed.*

3.2 *Grounds No. 3,4,5 and 6: The appellant states that the Assessing Officer (AO) has failed to note that the car loans and all other related expenses or accounted for in the books of the assessee and therefore it is the real and effective owner of the asset. It is seen that the appellant has relied on certain case laws which have no relevance to the issue at hand. In fact, it is the worst kind of misuse of funds collected for the purpose of charity, where a luxury asset is bought in the name of a trustee and all related expenses are also paid for by the trust, especially since it is nowhere proved by the appellant as to what use this asset was put to by the trust in the work of the trust and for the purposes for which the trust has been set up. The appellant was asked to file a copy of the resolution passed regarding the luxury vehicle being purchased in the name of the trustee, however, nothing has been filed.*

3.2.1 *The appellant was asked a pointed question vide notice dated 01/11/2023 as to why these vehicle related expenses should not be clubbed along with the cost of the car and taxed at the maximum marginal rate. The appellant has filed no response to the query, and it is quite clear that it has no explanation to offer in this regard.*

3.2.2 The AO has rightly pointed out in the assessment order that, "The objects of assessee trusts are carrying out of charitable activities like education, relief to poor etc, the fund collected for this charitable purposes was utilized for the enjoyment of trustees by means of purchase of luxuries car "Jaguar XF 3.0 L Premium Luxury" in the name of the managing trustee is a clear violation u/s 13(1)(c) of the I.T. Act.

3.2.3 Further, the case laws cited by the assessee trust were related to the companies and not on purchase of vehicle in the name of the trustee by utilizing the trust fund and hence, not squarely applicable to the facts of this case.

3.2.4 Further, it is clear from the above transaction that the income or property of trust was diverted in favour of the managing trustee of the trust Smt. S Jayalakshmi, who is person referred u/s 13(3) of the I.T. Act, and the above transaction is a clear violation as per clause (g) of sub-section (2) of section 13 r.w.s. 13(1)(c) of the I.T. Act."

3.2.5 The situation remains the same, the usefulness of this asset in connection with the activities of the trust or how it has dominion over this asset, as claimed, remain a mystery. The AO is directed to further disallow all the related expenses- loan repayments, driver salary, fuel and maintenance and enhance the income of the appellant accordingly. It is relevant to point out that the details of these expenses were sought vide notice dated 01/11/2023 but the same have not been furnished by the appellant. The grounds are dismissed."

5. As not satisfied with the order of the Id. CIT(A), the assessee is in appeal before the Tribunal for the above mentioned grounds.

6. Heard both the parties and perused the material available on record. We note that the assessee is a trust having objects in carrying out charitable activities like education, relief to poor, etc., which is clear from the assessment order and the impugned order. The case of the Assessing Officer was that the assessee purchased the above said vehicle and registered in the name of the trustee is a clear violation under section 13(1)(c) of the Act. Further, the case of the Assessing Officer was that the income or property of the assessee was diverted in favour of the

managing trustee of the assessee and it is a clear violation as per clause (g) of sub-section (2) of section 13 r.w.s. 13(1)(c) of the Act. The submissions as made before the Assessing Officer are reproduced herein below for ready reference:

“In response to the show cause notice, the assessee filed submission dt. 18.12.2018 the details of the same are as below

a) The new car was purchased in the name of the Managing Trust Ms. S. Jayalakshmi for the simple reason that it gave us considerable relief by way of lower road/life tax and insurance charges. It may be mentioned that the road/life tax and insurance charges payable for a new car registered as a commercial vehicle is much more compared to a ownership car.

b) The new car purchased is accounted for in the books of our trust and is shown as an asset in the Balance sheet as at 31.03.2016.

For the purchase of the new car, we had taken a loan from ICIC Bank Ltd., Palani Branch for which Ms. S. Jayalakshmi and our Trust are applicant and co-applicant respectively.

c) The car loan from Bank is duly accounted for in the books of our Trust and appears as a liability in the Balance Sheet as at 31.03.2016.

d) The Loan repayments to the Bank are duly accounted for in the books of our Trust.

e) All expenses in relation to the new car such as driver salary, fuel, maintenance/ repairs etc. are duly accounted for in the accounts of our trust.

The assessee also cited the following case laws in its support,

i) CIT v. Podar Cement P. Ltd. 1997 226 ITR 625 (SC)

ii) CIT v. Oswal Agro Mills Ltd. (2012) 341 ITR 467 (Del)

iii) CIT v. Jawahar Kala Kendra (2014) 362 ITR 515 (Raj)”

7. On an examination of the above, it is clear that the car was purchased in the name of the managing trustee for the simple reason that it gave relief by way of lower road/life tax and insurance charges, by contending that road/life tax and insurance charges payable for a new car

registered as a commercial vehicle is much more compared to a ownership car.

8. The Id. DR Shri R.V. Aroon Prasad, Addl. CIT drew our attention to the decision of the Hon'ble Supreme Court in the case of Biharilal Jaiswal v. CIT (1996) 84 Taxman 236 (SC) and vehemently argued that one arm of the law cannot be utilized to defeat the other arm of law, doing so would be opposed to public policy and bring the law into ridicule. On careful reading of the decision of the Hon'ble Supreme Court, we note that the submissions made by the assessee are not acceptable in registering the vehicle in managing trustee's name by utilizing the funds of the assessee, in order to save road/life tax and insurance charges which are meant for charitable purposes. We note that the Id. CIT(A) rightly confirmed the view of the Assessing Officer in denying exemption under sections 11 and 12 of the Act to the extent of value of that car.

9. Further, on perusal of the impugned order, we note that the Id. CIT(A) asked the assessee to furnish the details therein, but, however, no details filed before the first appellate authority and even before us. When we asked for the log book for verification to find out as to whether the said vehicle was used for purpose of assessee's activities, the Id. AR could not produce anything in support of his argument to show that the said vehicle

was utilized for the purpose of charitable activities. The submission of the Id. AR that the log book of the vehicle was filed before the Assessing Officer/Id. CIT(A) is not acceptable, because, a mere statement cannot be taken into consideration without there being any corroborative evidence. Thus, we find no infirmity in the order of the Id. CIT(A) and we completely agree with the reasons given in para 3.2.1 to 3.2.5 of the impugned order. Thus, the ground raised by the assessee fails.

10. In the result, the appeal filed by the assessee dismissed.

Order pronounced on 31st July, 2024 at Chennai.

Sd/-
(S.R. RAGHUNATHA)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 31.07.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.