

## **Case remanded to AO for deciding fate of sec. 11 relief after considering nature of receipts and objects of trust**

**Summary – The High Court of Madras in a recent case of Young Men's Christian Association, (the Assessee) held that where Tribunal remanded matter back for purpose of considering assessee's claim under section 11, assessing Officer shall consider nature of receipts keeping in mind objects of institution to find out as to whether income earned is incidental to objects of association and or whether income could only be treated as a separate business carried on by assessee.**

### **Facts**

- The assessee society was a Charitable Institution registered under section 12AA. The main objects of the society were to provide education, medical relief to the poor and objects of general public utility. It was running lodging accommodations at two places and had two auditoriums and a ground, which had a commercial value to be let out for public functions, exhibitions, etc. The society maintained a swimming pool, recreation centers and gymnasium. Two schools and a home were also formed and maintained for the deprived children. Relief activities in times of flood and other natural calamities were also being carried out by the society. The Auditorium and the hall were let out to members and non-members. Rooms were also let out to members and non-members, which included providing of food.
- The Assessing Officer held that the assessee was carrying on business activities. As regards the letting out of the Auditoriums, the ground and letting of rooms the society was charging rent as well as providing food and beverages to the persons, who were occupying such rooms. The assessee took contention that the income from these activities was not business income but income from the property. However, the contention of the assessee was rejected holding the view that letting out of the hall and the open space and hiring out rooms amounted to business and, hence, the income therefrom was assessable as business income. Thus, the Assessing Officer viewed that the assessee would be ineligible for exemption under sections 11 and 12.
- On appeal, the Commissioner (Appeals) agreed with the assessee that the receipts from letting off of the rooms and the Auditorium constitute income from a house property and thus directed the Assessing Officer to grant the benefit under section 11.
- On second appeal the Tribunal held that the question as to whether the assessee was earning income as incidental to the activities of the society or whether the assessee was really engaged in business activity was required to be examined by the Assessing Officer and for this the matter was deserved to be remitted back to the Assessing Officer to examine afresh in all these aspects.
- On appeal to High Court the assessee contended that the Tribunal had not considered the view of the Commissioner(Appeals) that the income earned was an income from house property and the remand order had not referred to this but ordered an open remand, such open remand would prejudice the assessee and hence submitted that the same may be clarified herein by directing the Assessing Officer to consider the question as to whether the income earned had to be assessed as income from house property or of business income, keeping in mind the objects of the trust.

## Held

- It was found from the perusal of the order passed by the Tribunal that the Tribunal itself has pointed out in its order that the question as to whether the assessee was earning this income as incidental to the objects of the society for the purpose of determining this case and in the event the Assessing Officer was to hold the view that it is incidental to the object of the assessee, the consequence flowing thereon would be in terms of the order of the Commissioner as the Commissioner (Appeals) himself has felt that this is an income from house property. Thus, having gone through the order, in order to avoid future controversy arising, while confirming the order of the Tribunal remanding the matter back to the Assessing Officer to examine the issue afresh, it was held that the Assessing Officer shall consider the nature of receipts keeping in mind the objects of the institution to find out as to whether the income earned is incidental to the objects of the association and, hence, income from the house property or whether the income could only be treated as a separate business carried on by the assessee. If the Assessing Officer has to treat that the income earned as only incidental to the objects of the association, and income from the property, then the consequences to flow would have to be considered in terms of section 11.
- Except for the clarification as mentioned above, there was no further elaboration required while confirming the order of the Tribunal. Consequently, the Assessing Officer shall consider the case of the assessee in the context of the nature of activity *vis-a-vis* the objects of the trust/association to decide on the nature of receipt for the purpose of considering the assessee's claim under the provisions.
- It is seen that the order passed by the Tribunal was an *ex-parte* order and there was no representation by the assessee. Consequently, the assessee filed miscellaneous application before the Tribunal seeking rectification of the order. The Tribunal rejected the petition holding that there was no mistake apparent on record, which needed rectification. Since the said order was only based on the remand order to consider whether the income is from letting out of the property is incidental to the objects of the association or altogether a separate activity, nothing further need to be seen thereon. Thus aggrieved by this the assessee filed TC (A) No.36 of 2014.
- However, considering the fact that the order of the Tribunal in the main appeal filed in Tax Case (Appeal) No. 35 of 2014 has been confirmed by making it as a open remand, nothing survives in T.C. (A) No.36 of 2014 for adjudication.
- In the result, Tax Case (Appeal) No.35 of 2014 is disposed of and T.C. (A) No.36 of 2014 is dismissed.