

No sec. 11 relief if trust was doing supermarket business on commercial lines, being not incidental to its objects

Summary – The Cochin ITAT in a recent case of Ashish Super Mercato., (the Assessee) held that w here assessee trust carried on supermarket business for and on behalf of trust on commercial basis and there was no nexus between supermarket business and activity incidental to attainment of objects of assessee, assessee would be disentitled for exemption under section 11

Facts

- The assessee was a Public Charitable Trust with registration under section 12A. The institution filed its return of income declaring *nil* income.
- While making the addition, the Assessing Officer had gone into the details of the main activities of the Trust, its main objects and the nature of the activities under various head. On observing that the major income and expenditure of the assessee trust was by running a super market on commercial basis and not by charitable and religious activities, he disallowed exemption claimed under section 11(4A).
- On appeal, the Commissioner (Appeals) also observed that since, the major activity of charitable organization was running of a super market, the same could not be treated as charitable or religious activity as it was being carried out on commercial principles of business expediency for earning profit and running of this super market could also not be treated as business incidental to the attainment of the objectives of the trust. The Commissioner (Appeals) also observed that the receipts derived from such running of super market were not exclusively used for charitable purpose rather majority of the expenses were towards establishment and running of the super market. The super market was also not selling various articles on any subsidized rates to benefit the poor as they are selling it at profit as any other general merchant does. Therefore, the Commissioner (Appeals) also disallowed said exemption claimed.
- On appeal:

Held

- In instant case, the supermarket business was carried on by the assessee for and on behalf of the trust and it was not business held under trust. Section 11(1) confers exemption from tax only where the property is itself held under trust or other legal obligation; it does not apply to cases where a trust or legal obligation is not created on any property but only the income derived for a charitable or religious purpose. Merely carrying on business for and on behalf of the trust and applying the profits of the same for the object of the trust does not entitle for exemption under section 11(4) unless the business is incidental to the attainment of the objects of the trust.
- There is no connection between the carrying on the supermarket business and the attainment of the objects of the trust, which are basically to promote cause of charity, mission activities, welfare,

employment, diffusion of useful knowledge, upliftment and education and to create an awareness of self-reliance among the members of the public and other objects enumerated in the preceding paragraph. The mere fact that whole or some part of the income from supermarket business is earmarked for charitable purposes would not render the business itself being considered as incidental to the attainment of the objects. The application of income generated by the business is not relevant consideration and what is relevant is whether the activity is so inextricably connected or linked with the objects of the trust that it could be considered as incidental to those objectives.

- In the case of *Asstt. CIT v. Thanthi Trust* [\[2001\] 247 ITR 785/115 Taxman 126 \(SC\)](#) wherein the trust carried on the business of a newspaper and that business itself was held under trust. The charitable object of the trust was the imparting of education which falls under section 2(15). The newspaper business was incidental to the attainment of the object of the trust, namely that of imparting education and the profits of the newspaper business are utilized by the trust for achieving the object of imparting education. In this case, there is no such nexus between the supermarket business and the objects of the assessee that can constitute the carrying on of the supermarket business, an activity incidental to the attainment of the objects, namely, to promote cause of charity, mission activities, welfare, employment, diffusion of useful knowledge, upliftment and education and to create an awareness of self-reliance among the members of the public etc. The observations of the Supreme Court must be understood and appreciated in the background of the fact in that case and should not be extended indiscriminately to all cases. Being so, the assessee is not entitled for exemption under section 11.