**(2011) 06 MAD CK 0358**

**In the Madras High Court**

**Case No :** TC (A) . No''s. 109 to 112 of 2005

Director of Income Tax APPELLANT

Vs

Samyuktha Gowda RESPONDENT

**Date of Decision :** 28-06-2011

**Acts Referred:**
Finance Act, 1998 — Section 10
Income Tax Act, 1961 — Section 10, 11, 11(4), 11(4)(A), 12(A)
Wealth Tax Act, 1957 — Section 5(1)

**Citation :** (2011) 06 MAD CK 0358

**Hon'ble Judges :** P.P.S. Janarathana Raja, J;Chitra Venkataraman, J

**Bench :** Division Bench

**Advocate :** K. Subramaniam, for Income Tax, for the Appellant;

**Final Decision :** Dismissed

## Judgement

Chitra Venkataraman, J.—The following substantial question of law is raised by the Revenue in respect of the above tax case appeals for the assessment years 1986-87, 1987-88, 1988-89 and 1990-91:

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the Assessee Society was exempt u/s 5(1)(i) of the Wealth Tax Act in respect of its assets consisting of the land and buildings comprised in the Kalyana Mandapam owned by it?.

2. The Assessee herein is a registered society, registered as a Trust u/s 12A of the Income Tax Act, 1961. The objects of the Assessee Trust, as seen by the bye-laws, are as follows:

(i) Education and Relief of the poor including medical aid,

(ii) the intellectual, physical, social, moral and cultural advancement of the united Gowda Saraswat community and

(iii) promotion of any other objects of general utility but not involving the carrying on of any activity for profit except such as is incidental to these objects.

Evidently, the society''s income consists of Membership subscriptions, interest on fixed deposits and income from running Kalyana Mandapam. In the income tax return filed for the above-said assessment years, the Assessee claimed that the income earned on the letting out of the kalyana mandapam was an income from property and it claimed exemption u/s 11 of the Income Tax Act. As regards the Wealth Tax assessment, the Assessee took the same contention and claimed exemption u/s 5(1)(i) of the Wealth Tax Act. The Wealth Tax Officer viewed that running of the kalyana mandapam constituted business activity. Hence, in the income tax assessment for the assessment year 1987-88, as the provision of Section 11(4A) of the Income Tax Act was invoked in respect of the income arising from running the kalyana mandapam and the decision of the Tribunal in the Assessee''s case for the assessment year 1987-88 was pending in appeal before this Court, the Assessing Authority viewed that the Society was not eligible for exemption u/s 5(1)(i) of the Wealth Tax Act. After hearing the Assessee, on the basis of the report of the Department Valuation Officer, the Assessing Authority finalised the assessment, rejecting the claim for exempting the property viz., Kalyana Mandapam under the provisions of the Wealth Tax Act.

3. Aggrieved by the same, the Assessee went on appeal before the Commissioner of Income Tax (Appeals). Reiterating the contentions that the Assessee was entitled to the benefit of exemption, the receipt of income being one from house property, the Assessee pointed out that the property was exploited only to derive maximum benefit for the purpose of carrying out the charitable objects of the Society. Based on the decision of the Income Tax Appellate Tribunal holding that the receipt of income was not business income but income from house property and hence the Assessee was entitled to the benefit of exemption u/s 11 of the Income Tax Act, the Commissioner of Income Tax (Appeals) accepted the Assessee''s contention that the kalyana mandapam was entitled to exemption u/s 5(1)(i) of the Wealth Tax Act. The Revenue went on appeal as against this order before the Income Tax Appellate Tribunal. Following the decision of this Court in Commissioner of Income Tax Vs. Samyuktha Gowda Saraswatha Sabha, , the Tribunal rejected the appeals filed by the Revenue. Hence, the present appeals by the Revenue.

4. Learned standing counsel appearing for the Revenue has filed written submissions before this Court, contending therein that the Tribunal went wrong in following the decision of this Court and that the assessment under the Income Tax Act did not conclude the issue under the Wealth Tax Act. Commenting on the correctness of the decision of this Court in Commissioner of Income Tax Vs. Samyuktha Gowda Saraswatha Sabha, , he submitted that this Court had merely passed a summary order, without any finding, holding that the income derived therein was not business income and that the property was let out only to fulfill the objects of the Trust. Learned standing counsel placed heavy reliance on the decisions reported in Commissioner of Income Tax Vs. Halai Nemon Association, ,

 

Director of Income Tax (Exemptions) Vs. AVM Charities, , Assistant Commissioner of Income Tax Vs. Thanthi Trust, and C.K. Gangadharan and Another Vs. Commissioner of Income Tax, Cochin, and pointed out that even though the Revenue had not gone on appeal as against the earlier decision reported in Commissioner of Income Tax Vs. Samyuktha Gowda Saraswatha Sabha, , in view of the decision reported in 330 ITR 24 - DIT (Exemptions) v. Willington Charitable Trust, rendered by this Court, the above decision be referred to a Larger Bench, as held in the decision reported in C.K. Gangadharan and Another Vs. Commissioner of Income Tax, Cochin, , or in the alternative, to follow the decision reported in 330 ITR 24 - DIT (Exemptions) v. Willington Charitable Trust, holding the income as business income. He also relied on the decision reported in The Commissioner of Wealth-tax Vs. Fagun Co. P. Ltd., , wherein the Full Bench of this Court held that the computation under the Income Tax Act and the Wealth Tax Act are different and that the claim of the Assessee would have to be considered only as per the provisions of the Wealth Tax Act. Thus going by the decision reported in Commissioner of Wealth-tax Vs. Gangabai Charities, , wherein the Division Bench of this Court held that the Assessee is bound to prove his claim of exemption, in the absence of any materials, the proper course would be to remand the matter back to the Assessing Officer to look into the given facts to find out the character of the receipt and the eligibility for exemption.

5. The sum and substance of the arguments of the learned standing counsel for the Revenue is that the Assessee is not entitled to exemption u/s 5(1)(i) of the Act merely on the score of the decision of this Court in TC. No. 901 of 1995 dated 15th October, 2001 held in favour of the Assessee, following the decision the Assessee''s case reported in Commissioner of Income Tax Vs. Samyuktha Gowda Saraswatha Sabha, . Thus, the Assessee could not claim that the receipt was not business income to fall u/s 5(1)(i) of the Wealth Tax Act.

6. Per contra, learned Counsel appearing for the Assessee brought to our attention the order of the Assessing Authority in respect of the assessment year 1987-88, wherein this Court had upheld the Assessee''s case that the income from Kalyana Mandapam was not business income, since the activity was not a business activity. She also pointed out to the intimation notice given u/s 143(1) of the Income Tax Act in respect of the assessment years 1989-90 and 1990-91 and submitted that in respect of the following years too, the assessment had been made accepting the case of the Assessee that the income from kalyana mandapam was only income from property and not business income, to reject the claim of exemption u/s 5(1)(i) of the Wealth Tax Act. Referring to the decision of this Court reported in 330 ITR 24 - DIT (Exemptions) v. Willington Charitable Trust, she pointed out that the income from the property held in trust was business income. Even otherwise, this Court had held that when a business income was used towards the achievement of the object of the Trust, when a business income was used towards the achievement of the object of the Trust, it would be incidental to the achievement of the object of the Trust, notwithstanding the profit and gain involved therein. She further pointed out that

 

in the background of the said facts, this Court held that the Assessee would have to satisfy the authorities as to the actual utilisation of the income for charitable purpose to qualify for the exemption. In the context of the same, to consider the claim for exemption, this Court remanded the matter to the Assessing Authority to find out the actual entitlement of the exemption by considering the materials placed before him on the question of exemption u/s 11 of the Income Tax Act. Hence, contrary to the assertion of the learned standing counsel, there is nothing in the said decision which is in conflict with the decision of this Court in the Assessee''s case decided earlier, wherein this Court affirmed the findings of the Tribunal that the receipt of the income was not business income but income from house property.

7. Referring to the provisions of Section 5(1)(i) of the Wealth Tax Act, she pointed out that even though the provisions of the Income Tax Act and the Wealth Tax Act are different, yet, for the purpose of considering the claim for exemption u/s 5(1) of the Wealth Tax Act, the Wealth Tax Act does not ignore the treatment u/s 11(4A) of the Income Tax Act. Thus going by the proviso u/s 5(1)(i), no exception could be taken to the decision of the Tribunal in following the orders of this Court under the Income Tax Act, holding that letting of the kalyana mandapam is not a business activity and the income thereon was not business income. She pointed out that there cannot be any disturbance to the consistent tax treatment on the receipts of income on letting out the Kalyana Mandapam unless there are materials enough to hold otherwise that the income had to be treated as a business income. Thus when the Revenue itself had treated the income as income from the property and that the same was applied to carry out the objects of the Trust, hence exempted u/s 11 of the Income Tax Act, rightly the Tribunal granted the relief. Even going by sub Clause (1) of Section 5 of the Wealth Tax Act, in respect of the property held under the Trust for charitable purpose, the claim merits to be accepted.

8. Heard the learned standing counsel appearing for the Revenue and the learned Counsel appearing for the Assessee.

9. Before going into the rival submissions of the learned Counsel for the Assessee as well as the Revenue, the provisions u/s 5(1)(i) of the Wealth Tax Act, as it stood then, reads as follows:

5. Exemptions in respect of certain assets - (1) Subject to the provisions of Sub-section (1A) Wealth-tax shall not be payable by an Assessee in respect of the following assets, and such assets shall not be included in the net wealth of the Assessee-

(i)any property held by him under trust or other legal obligation for any public purpose of a charitable or religious nature in India:

Provided that nothing contained in this clause shall apply to any property forming part of any business, not being a business referred to in Clause (a) or Clause (b) of Sub-section (4A) of Section 11 of the income tax Act in respect of which separate books of account are maintained or a business carried on by an institution, fund or trust referred to in Clause (22) or Clause (22A) or Clause (23B) or Clause (23C) of Section 10 of that Act

10. It is not denied by the Revenue that the decision of this Court accepting the decision reported in Commissioner of Income Tax Vs. Samyuktha Gowda Saraswatha Sabha, relating to the assessment years 1977-78, 1978-79 and 1979-80 as well as for the assessment year 1987-88 in TC. No. 901 of 1995, holding that the income from the property let out for Kalyana Mandapam was income from property and not business income, have not been challenged till this day and have become final. In all subsequent years too, the Revenue has been consciously holding the view that receipt on letting of the kalyana mandapam was assessable as income from property and not as business income. The benefit of Section 11 of the Income Tax Act had been consistently applied in the case of the Assessee throughout. Thus, as pointed out by the learned Counsel for the Assessee, as far as the Assessee''s case is concerned, admittedly, the Revenue had no grievance consistently in treating the income earned on letting of the kalyana mandapam as income derived from the property held under Trust wholly for charitable purpose and hence, the Assessee was entitled to exemption u/s 11 of the Income Tax Act. Thus, with the receipts from letting of kalayana mandapam treated as income from property and not as business income, we do not find any acceptable ground in the submissions of the learned standing counsel that for the purpose of considering the claim for exemption u/s 5(1)(i) of the Wealth Tax Act, the property held under Trust would have to be treated differently as business assets and the decision of this Court under the Income Tax Act had to be ignored, as having no relevance to the assessment under the Wealth Tax Act. On the other hand, as rightly pointed out by the learned Counsel for the Assessee, once the property held by the Trust is used for any public purpose of a charitable or religious nature, and consistently income from the property is treated as a property income, in the absence of any other materials shown, the claim of the Assessee for exemption, merits to be upheld. Thus, as far as the case of the Assessee is concerned as it stands today, the Assessee''s case for this year cannot be treated differently so as to deny the exemption u/s 5(1)(i) of the Wealth Tax Act. We do not find any good ground to accept the Revenue''s case that the assessment in question falls under the proviso to Section 5(1)(i) of the Wealth Tax Act.

11. As far as the reliance placed on the decision of this Court reported in 330 ITR 24 - DIT (Exemptions) v. Willington Charitable Trust is concerned, the facts therein were that the Assessee itself offered the income from the marriage halls and auditoriums as business income. The assessment years therein relate to 1995-96 to 1998-99, 2000-01, 2002-03 and 2005-06. The Assessee claimed exemption u/s 11 of the Income Tax Act and the same was rejected by the Assessing Officer, holding that the Assessee was carrying on a commercial activity which was not incidental to the object of the Trust as required u/s 11 of the Income Tax Act. Hence, the exemption could not be granted. The Revenue

also took the plea that the Assessee had not complied with the provisions contained u/s 11(4A) of the Act requiring maintenance of separate books of account in respect of its income assessable under the head of business. On appeal before this Court by the Revenue, this Court applied the decision reported in Assistant Commissioner of Income Tax Vs. Thanthi Trust, and pointed out that on facts, when a business income was used towards the achievement of the object of the Trust, it would be incidental to the achievement of the object of the Trust, notwithstanding the profit and gain involved therein.

12. As regards the provisions of Section 11(4) and 11(4A) of the Income Tax Act, this Court held that Section 11(4A) of the Income Tax Act does not exclude Section 11(4). Exemption u/s 11(4A) would be available only when the business is incidental to the attainment of object of the Trust and when it is not the case, then such an income cannot be exempted. Thus, only such income which is used towards the object of the Trust stands exempted. The said view was taken in consonance with Section 11(4) as it stood then. In any event, this Court held that Section 11(4) and 11(4A) of the Act, being complementary to each other, Section 11(4A) does not restrict Section 11(4). As regards the compliance of the maintenance of separate books of accounts, this Court pointed out that the Assessee would have to satisfy the authorities by producing materials to show that the income derived from the business was utilised to fulfil the object of the Trust. Since the said question had not been gone into by the authorities, this Court thought it fit to remand the matter back to the Assessing Officer to find out the actual entitlement of the Assessee by considering the materials placed before them.

13. There is nothing in the decision reported in 330 ITR 24 - DIT (Exemptions) v. Willington Charitable Trust which could be said to be in conflict with the decision of this Court in the Assessee''s case. The reported decision has to be seen with reference to the facts prevailing therein. As already pointed out, the case of the Revenue therein in the reported decision was that considering the scope of Section 11(4) and 11(4A), unless the business is connected either directly or indirectly to any of the objectives of the Trust, the same cannot be declared as incidental to such objectives. As the business activities were commercial, the Revenue contended that the Assessee was not entitled to the benefit of Section 11(4A) of the Income Tax Act. In the light of the said claim, this Court, following the decision reported in Assistant Commissioner of Income Tax Vs. Thanthi Trust, , considered the claim and held that so long as the income held in trust was utilised towards the attainment of the objectives, it was irrelevant if the business was run on commercial expediency with a profit motive. Thus holding that the business income was used towards the achievement of the object of the trust and hence incidental to the achievement of the object of the trust, it thought it fit to remit the matter to find out the extent to which the income was applied to the achievement of the object of the Trust that the claim of the Assessee u/s 11(4A) of the Income Tax Act for exemption could be considered. Thus a reading of the judgment does not, in any manner, say anything in conflict

 

with the earlier decision. Thus in understanding the relevancy of the said decision, one cannot lose sight of the facts prevalent in the said decision and in the present decision.

14. The proviso to Section 5(1)(i) was inserted by the Finance Act, 1985, with effect from 1.4.1986; thereafter substituted by Direct Tax Laws (Amendment) Act, 1987, with effect from 1.4.1989 and again restored by the Direct Tax Laws (Amendment) Act 1989, with effect from 1.4.1989. It is stated that the substitution had not come into force. The proviso to Section 5(1)(i) seeks to exclude the assets forming part of any business. However, this exclusion will not apply to the business referred to in Clause (a) or (b) of Section 11(4A) of the Income Tax Act in respect of which separate books of accounts are maintained or that the business is carried on by the institution. This is referred to in Clause 22 or 22A or 23B or 22C of Section 10 of the Income Tax Act. The said provisions were introduced in conformity with the amendment made in the Income Tax Act u/s 11(4A) by which exemption from Income Tax Act in respect of profits and gains of business of public charitable or religious Trusts was withdrawn, except in the case of Trusts falling under the specified categories. Thus, in line with the provision contained in the Income Tax Act, assets held in business are to continue to be exempt from Wealth Tax Act in the following cases, viz.,

(i) where the business is carried on by a trust wholly for public religious purposes and the business consists of printing and publication of books or publication of books or the business is of a kind notified by the Central Government in this behalf in the Official Gazette;

(ii) where the business is carried on by an institution wholly for charitable purposes and the work in connection with the business is mainly carried on by the beneficiaries of the institution; and

(iii) where the business is carried on by an institution, fund or trust referred to in s.10(22), (22A), (23B) or (23C) of the income tax Act.

and where separate books of accounts are maintained by the trust or the institution in respect of such income.

15. In order to apply exemption provisions u/s 5(1) of the Wealth Tax Act, the assets must be held under trust or other legal obligation for a public purpose. This public purpose must be of a charitable or religious nature, confined to India. However, the business assets of religious Trusts and Institutions enjoy exemption only in tune with the provisions of the Income Tax Act. Thus in respect of business assets forming part of the Trust, where the Trust maintained separate books of accounts in respect of the business as is referred to in Clause (a) or Clause (b) to Section 11(4A) of the Income Tax Act or business carried on by an institution fund or trust referred to in Clause 22 or Clause 22A as it stood then (omitted by Finance Act 2 of 1998 with effect from 01.04.1999), Clause 23(B) or 23(C) of Section 10 of that Act also qualify for exemption under the provisions of the Act.

 

16. The facts herein are totally different. The Assessee before us took a consistent plea that the income from the letting out of the kalyana mandapam was income from property and it has maintained separate books of accounts to evidence the application towards the charitable objects. Going through the records, admittedly, the Income Tax Officer, in the income tax proceedings, accepted the Assessee''s case that the income was from property and that the Assessee was entitled to exemption u/s 11 of the Income Tax Act. Given the fact that the Assessee is a Trust and the income from the letting out of the kalyana mandapam was treated as income from house property and the Trust was held to be qualified for exemption u/s 11 of the Income Tax Act, we have no hesitation in holding that the Assessee''s case falls for consideration u/s 5(1)(i) of the Wealth Tax Act, qualifying for grant of exemption from Wealth Tax Act. In so considering the claim, it is not necessary to consider whether the assets could be held as business assets to go for further considering the application of Section 11(4A) of the Income Tax Act.

17. There is absolutely no dispute on the proposition of law that the provisions under the Income Tax Act and Wealth Tax Act are totally different. Given the fact that the income from kalyana mandapam is treated as income from property and that the property had been admittedly held by the Assessee under trust for public purpose of a charitable nature, one need not advert to the applicability of the provision herein to the facts of the case. In any event, it is not the case of the Revenue that the case of the Assessee falls u/s 11(4A) of the Income Tax Act, a plea which the Revenue cannot take at this stage, having regard to the income tax assessment granting exemption u/s 11 of the Income Tax Act. Thus, the decision of this Court rendered in T.C. No. 901 of 1995 for the assessment year 1987-88 binding on the Revenue, so too the treatment under the Income Tax Act for the year under consideration granting exemption, the income by letting out the Kalyana Mandapam as income from the property is also binding on the Revenue and it is not now open to the Revenue to take a different view. Hence, we do not find any acceptable ground to accept the case of the Revenue that 20 the income has to be assessed only as income from business.

18. As far as the plea for referring the matter to the Full Bench is concerned, we do not see any ground made on the argument of the learned standing counsel appearing for the Revenue. Except to insist on applying the decision reported in 330 ITR 24 - DIT (Exemptions) v. Willington Charitable Trust to the case of the Assessee, learned standing counsel could not make any argument touching on the correctness of the Commissioner of Income Tax Vs. Samyuktha Gowda Saraswatha Sabha, . Except for a mere statement that the decision was given wrongly, no legal basis was argued by the Revenue to support its submission seeking reference to the Full Bench in the event of this Court not applying the decision reported in Director of Income Tax (Exemptions) Vs. AVM Charities, . Thus the assessment under the Income Tax Act staring on the face of the Revenue and the relevancy of the same thus of material consequence in considering the claim for exemption, we do not find any ground to accept the

 

contention of the Revenue to refer the matter to the Full Bench.

19. It must also be pointed out that in accepting the case of the Assessee, we are not following the decision of the Assessee''s own case mechanically. With the findings of the Tribunal that the income from letting out of the kalyana mandapam being assessed as income from house property, that the Assessee was qualified for exemption u/s 11 of the Income Tax Act, the consistency in the treatment of the receipt as income from house property by the Revenue in the Assessee''s assessment for the relevant year under the Income Tax Act and the orders of this Court, we have no hesitation in confirming the order of the Tribunal. The plea of the Revenue for remand as had been done in the decision reported in 330 ITR 24 - DIT (Exemptions) v. Willington Charitable Trust stands rejected for the reason that the case of the Assessee does not fall for consideration under proviso to Section 5(1)(i) of the Wealth Tax Act that it was never the case of the Revenue that there was no material to substantiate the application of income for charitable purpose. In the above circumstances, we reject the Revenue''s appeal.

20. In the circumstances, all the appeals are dismissed. No costs.

 