

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, बी.मुंबई ।**

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**MUMBAI BENCHES "B", MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं**

**श्री रमित कोचर, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and  
Shri Ramit Kochar, Accountant Member**

**आयकर अपील सं./I.T.A. No.602/Mum/2012**

**(निर्धारण वर्ष / Assessment Year: 2009-10)**

MIG Cricket Club MIG Colony Bandra(East) Mumbai-400051	<b>बनाम/</b> v.	Director of Income- tax(Exemption) Mumbai
स्थायी लेखा सं./PAN : AAATM4779J		
(अपीलार्थी /Appellant)	..	(राजस्व / Revenue)

**आयकर अपील सं./I.T.A. No 4638/Mum/2013**

**(निर्धारण वर्ष / Assessment Year : 2009-10)**

MIG Cricket Club MIG Colony Bandra(East) Mumbai-400051	<b>बनाम/</b> v.	Assistant Director of Income- tax(Exemption)-1(1), 5 <sup>th</sup> Floor, Piramal Chambers, Lalbaug Mumbai
स्थायी लेखा सं./PAN : AAATM4779J		
(अपीलार्थी /Appellant)	..	(राजस्व / Revenue)

निर्धारिती की ओर से / Assessee by	Sh. Arvind Sonde and Sh. Jayant Gokhale
राजस्व की ओर से / Revenue by	Shri N P Singh , CIT-D.R.

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>04/04/2017</b>
<b>आदेश की तारीख /Date of Order:</b>	<b>18/04/2017</b>

### **आदेश / ORDER**

#### **Per Joginder Singh, Judicial Member**

The appeal, filed by the assessee, being ITA No. 602/Mum/2012, is directed against the order dated 29<sup>th</sup> December, 2011 passed by learned Director of Income-tax(Exemption), Mumbai (hereinafter called “the DIT(E)”), for the assessment year 2009-10 u/s 12AA(3) of Income-tax Act, 1961 (hereinafter called “the Act”) cancelling registration of the appellant which was earlier granted by Revenue u/s 12A of the 1961 Act. The other appeal in ITA no. 4638/Mum/2013 is filed by the assessee against the appellate order dated 31.03.2013 passed by learned Commissioner of Income Tax(Appeals)-1, Mumbai (hereinafter called “the CIT(A)”), for the assessment year 2009-10, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 30<sup>th</sup> December, 2011 passed by learned Assessing Officer (hereinafter called “the AO”) u/s 143 (3) of the 1961 Act. The assessee has raised the following grounds of appeal:-

*“1 .The Learned DIT(E) erred in fact and in law in passing the impugned order:*

*a) without granting a 'reasonable' opportunity of being heard as mandated by proviso to Sec 12AA(3) and also in violation of principles of natural justice, thereby effectively denying the Appellant its right of legal representation*

*b) without considering the binding precedents cited by the Appellant in this regard.*

*c) without appreciating fully the facts of the case and arriving at an independent satisfaction re: activities being non-genuine or in breach of objects of the Trust.*

*2. The Learned DIT(E) erred in fact and in law in treating the activity of the Appellant as not Charitable in nature on the basis of Proviso to S. 2(15) - Definition of "Charitable purpose*

*3. The Learned DIT(E) erred in fact and in law in treating the activity of the Appellant non-genuine on the basis of erroneous appreciation of facts and concluding that activity of the Association constitutes business activity.*

*4. The Learned DIT(E) erred in fact and in law in cancelling registration by an order u/s 12AA(3) giving retrospective effect in regard to the date of the cancellation, which is*

*a) a date prior to the date of the order effecting such cancellation and*

*b) a date prior to the authority for passing such order being vested by Finance Act 2010.”*

2. First, we shall take appeal in ITA no. 602/Mum/2012 wherein assessee registration u/s 12A of 1961 Act was cancelled by learned DIT(E) vide orders dated 29-12-2011 passed u/s 12AA of 1961 Act.

3. At the outset learned Senior Counsel for the assessee submitted that ground no. 1 is not pressed and the same should be dismissed as 'Not pressed'. The learned CIT-DR raised no objection to the dismissal of ground no. 1 as contended by learned Senior Counsel for the assessee. After considering the submissions of both sides, we are inclined to dismiss Ground no. 1 as not being pressed. We order accordingly.

4. The Brief facts of the case are that earlier the assessee was granted registration by the Revenue on the grounds that the assessee is carrying on the activities which are in the nature of advancement of objects of general public utility. Later on, a proposal was received by learned DIT(E) from learned ADIT(E)-1(2), Mumbai for cancellation of registration as the activities of the assessee are in the nature of trade, commerce or business , and gross receipts are in excess of Rs. 10 lacs and hence newly inserted proviso to Section 2(15) of 1961 Act, w.e.f. assessment year 2009-10, is hit, consequentially, applicable for the impugned assessment year 2009-10. The learned DIT(E) sent show cause notice, dated 20-12-2011, to the assessee asking to explain why registration earlier granted to the assessee by the Revenue u/s 12A of 1961 Act should not be withdrawn on the above grounds. The assessee during the previous year relevant to the impugned assessment year 2009-10 has shown receipt from Banquet Hall Hiring Charges of Rs.

87.59 lacs and receipt of Rs. 132.90 lacs from Hospitality (Restaurants) and Rs. 35.53 lacs from Permit Room(Bar).

4.1. The assessee made written submissions vide letter dated 28-12-2011 contesting the show cause notice. However, no personal hearing was attended by the assessee on the date fixed for hearing i.e. on 26-12-2011. The assessee mainly contended that Revenue has in earlier years considered the similar activities of the assessee as charitable in nature vide assessment orders framed u/s 143(3) of 1961 Act and allowed exemption u/s 11 of 1961 Act to the assessee. It was also submitted that for the assessment year 1998-99, the matter travelled up-to Hon'ble Bombay High Court which has allowed the claim of the assessee for exemption u/s 11 of 1961 Act on similar receipt by confirming the order of Mumbai-tribunal which earlier upheld the claim of the assessee for exemption u/s 11 of 1961 Act. The assessee also submitted, without prejudice, that the withdrawal of exemption can only take place w.e.f. 01-06-2010 and not before the said date. The assessee relied upon the decision of Hon'ble Allahabad High Court in the case of Oxford Academy for Career Development v. CCIT (2009) 315 ITR 383(All.) which was subsequently followed in Kapoor Educational Society v. CIT (2010) 44 DTR 97. The assessee also contended that reasonable opportunity of heard should be granted to the assessee before cancelling registration to the assessee, which was granted in earlier year by the Revenue u/s 12A of 1961 Act.

4.2. The learned DIT(E) rejected the contentions of the assessee and cancelled the registration by invoking newly inserted proviso to Section 2(15) of 1961 Act by holding that the assessee's main object is not for advancement of any other object of general public utility as the assessee is carrying on the activities which are in the nature of trade, commerce or business for consideration, therefore, in view of amended provisions of Section 2(15) of 1961 Act. Section 2(15) of 1961 Act, the assessee is not entitled for exemption u/s 11 of 1961 Act, which is reproduced hereunder:-

**“ The following clause (15) shall be substituted for clause (15) of section 2 by the Finance Act, 2008, w.e.f. 1-4-2009 :**

*(15) “charitable purpose” includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility:*

**Provided** *that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;”*

*Following Proviso is inserted by Finance Act , 2010 w.e.f. 01-04-2009*

**[Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year;]**

4.3. The assessee, during the previous year relevant to the impugned assessment year, shown receipt from Banquet Hall Hiring Charges of Rs. 87.59 lacs, Rs. 132.90 lacs from Hospitality (Restaurants) and Rs. 35.53 lacs from Permit Room(Bar), which in view of learned DIT(E) are clearly in the nature of business income and they are in excess of monetary limits as laid down in the above proviso and hence proviso to Section 2(15) of 1961 Act (which has come into force w.e.f. assessment year 2009-10 is clearly hit). The learned DIT(E) relied upon the decision of Hon'ble Supreme Court in the case of Shambhu Investments 263 ITR 143 (Supreme Court) and also held that newly inserted proviso to Section 2(15) of 1961 Act is applicable from assessment year 2009-10 as provided by statute. Thus, the learned DIT(E) held that the claim of the assessee has become non genuine, for the purposes of claiming exemption u/s 11 of 1961 Act as for allowing exemption to trust/institution, the same should be charitable / religious which the assessee has ceased to be due to newly inserted proviso to Section 2(15) of 1961 Act and hence registration granted to the assessee was cancelled by learned DIT(E) w.e.f. assessment year 2009-10, vide orders dated 29-12-2011 passed u/s 12AA (3) of 1961 Act.

5. Aggrieved by the orders dated 29-12-2011 passed by learned DIT(E) u/s 12AA(3) of 1961 Act, the assessee filed appeal before the Tribunal.

6. The learned Senior Counsel for the assessee has strenuously argued against the cancellation of registration of the assessee u/s 12A of 1961 Act by learned DIT(E) by passing an order u/s 12AA(3) of 1961 Act. It was submitted that the assessee is engaged in activities of advancement of objects of general public utilities and was rightly granted exemption u/s 12A of 1961 Act by Revenue since 1980's. It was argued that the assessee was consistently and continuously allowed exemption u/s 11 of 1961 Act for past several years since 1980's and the same cannot be denied to the assessee. It was also argued that Hon'ble Bombay High Court in assessee's own case, after considering the activities of the assessee, had held in assessee's favour and hence exemption was allowed by Revenue in earlier years. The orders of Hon'ble Bombay High Court in DIT v. MIG Cricket Club in ITA(L) no. 2378-81 of 2009, orders dated 30-11-2009 for assessment years 1998-99 to 2001-02 are placed on record. It was submitted that no doubt that the assessee had during the previous year relevant to the impugned assessment year, shown receipt from Banquet Hall Hiring Charges of Rs. 87.59 lacs, Rs. 132.90 lacs from Hospitality (Restaurants ) and Rs. 35.53 lacs from Permit Room(Bar), which exceed threshold limit of Rs.10 lacs as stipulated u/s 2(15) of 1961 Act, but that cannot be ground for cancellation of registration u/s 12AA(3) of 1961. It was submitted that at best the Assessing Officer can deny exemption on these activities while framing assessments u/s



143(3) r.w.s. 143(2) of 1961 Act which are found to be hit by newly inserted proviso to Section 2(15) of 1961 but the registration u/s 12A of 1961 Act cannot be cancelled, if it is found that the activities of the assessee are not genuine or that activities are not carried out in accordance with the objects of the assessee as contemplated u/s 12AA(3) of 1961 Act. It was pleaded that identical activities are carried out by assessee for last several years which is known to the Revenue. The learned counsel also relied upon the provision of Section 13(8) of 1961 Act. It was submitted that in earlier years matter travelled upto Hon'ble Bombay High Court in the case of the assessee itself and claim of the assessee for exemption u/s 11 of 1961 Act was upheld. It was submitted that no doubt now Section 2(15) of 1961 Act is amended but the activities and objects of the assessee being identical in the instant year as were in preceding years, therefore, registration u/s 12A of 1961 Act cannot be cancelled by learned DIT(E). It was submitted that merely because Section 2(15) of 1961 Act is amended w.e.f. assessment 2009-10 (year under consideration) that does not mean that the objects of the assessee have ceased to be genuine. Thus, under no circumstances, registration of the assessee u/s 12A of 1961 Act can be cancelled by Revenue and at best while framing assessments u/s 143(3) of 1961 Act, the Revenue can deny exemption u/s 11 of 1961 Act on the activities which are hit by proviso to Section 2(15) of 1961 Act. The learned senior counsel relied upon CBDT circulars no 11 dated 19-12-2008 and

circular no. 21/2016 dated 27-05-2016. Reliance was also placed on following judicial precedents in support of above contentions:

1. *Hon'ble Bombay High Court in the case of DIT(E) v. Khar Gymkhana( (2016) 70 taxmann.com 181(Bom.HC))*

2. *Mumbai Cricket Association v. DIT(E) (2012) 24 taxmann.com 99(Mum.-trib)*

3. *Bombay Presidency Golf Club Limited v. DIT(E) (2012) 23 taxmann.com 319(Mum.)*

4. *Khar Gymkhana v. DIT(E) in ITA no. 373/Mum/2012(Mum-trib.) for assessment year 2009-10*

5. *DIT v. MIG Cricket Club in ITA(L) no. 2378-81 of 2009, orders dated 30-11-2009 of Hon'ble Bombay High Court*

7. The learned CIT-DR contended that the assessee was granted registration u/s 12A of 1961 Act by Revenue w.e.f. 04-12-1979 and the assessee was claiming exemption u/s 11 of 1961 Act. Now, w.e.f. assessment year 2009-10, Section 2(15) of 1961 Act was amended and the activities of the assessee which are far in excess of threshold limit of Rs 10 lacs are hit by first proviso to Section 2(15) of 1961 Act, as the activities of the assessee of hiring banquet hall, restaurant, Bar are clearly in the nature of trade, commerce and business and hence the assessee's activities are no longer charitable in nature. It was

submitted that the assessee has lost its charitable character, if its activities are considered in conjunction with amended provisions of Section 2(15) of 1961 Act. It was submitted that the services offered by the assessee, being banquet hall, restaurant and Bar are also used by non-members, therefore, the assessee is not entitled for exemption u/s 11 of 1961 Act and hence registration was rightly cancelled by learned DIT(E) by orders passed u/s 12AA(3) of 1961 Act. Plea was also raised that if the assessee is allowed to continue with registration, whole purpose of amendment in Section 2(15) of 1961 Act will be defeated and the amendment carried out in statute in Section 2(15) of 1961 Act would be a dead words. It was submitted that reliance on CBDT circular no 21/2016 dated 23-05-2016, by the assessee, is misplaced as the assessee turnover is not marginally higher than minimum threshold limit prescribed u/s 2(15) of 1961 Act, rather it is significantly higher than minimum threshold limit of Rs 10 lacs which was later enhanced to Rs 25 lacs and then to 20% from time to time by carrying amendment to Section 2(15) of 1961 Act. He also tried to distinguish the case laws relied upon by Senior counsel for the assessee.

7.1. At this stage a very recent decision from Hon'ble Bombay High Court in the case of DIT(E) v. North India Association ( 2017) 79 taxmann.com 410(Bom.) dated 14-02-2017 came into notice, which was brought to the notice of both the parties, wherein, Hon'ble Bombay High Court has made a

very significant observations and contemplated that if the transactions are of the nature of trade, commerce and business, consistently and continuously on regular basis, exceeded threshold limit as prescribed by statute u/s 2(15) of 1961 Act, then it is a matter of probe/investigation to come to the conclusion that the activities of the trust/institution is not genuine. Both the parties submitted their contentions as to the afore-stated very recent decision of Hon'ble Bombay High Court in the case of North India Association(supra)which has come to notice during the course of hearing.

8. We have considered rival submissions and perused the material available on record. We find that the assessee was registered u/s 12A of the Act since 1980's as the assessee's activities were considered to be for advancement of objects of general public utilities u/s 2(15) of 1961 Act. The Revenue was allowing exemption to the assessee u/s 11 of 1961 Act consistently since 1980's considering the activities of the assessee charitable in nature. The matter for assessment year 1998-99 to 2001-02 travelled to Hon'ble Bombay High Court wherein claim for exemption of the assessee u/s 11 of 1961 Act was allowed, by affirming the appellate order of Mumbai-Trib. in ITA no 2378-81 of 2009. Similarly, claim for exemption of the assessee u/s 11 of 1961 Act for assessment year 2003-04 to 2005-06 was allowed by Hon'ble Bombay High Court in ITA No2416 & 2538 of 2011 and 98 of 2012. However, an amendment was made in Section 2(15) of 1961 Act w.e.f.

assessment year 2009-10, wherein first proviso was added to Section 2(15) of 1961 Act w.e.f. assessment year 2009-10. There was further amendment which is also relevant for us was by Finance Act, 2010 wherein second proviso was added to Section 2(15) of 1961 Act w.e.f. assessment year 2009-10. Section 2(15) of 1961, as amended, is reproduced hereunder:-

**“ The following clause (15) shall be substituted for clause (15) of section 2 by the Finance Act, 2008, w.e.f. 1-4-2009 :**

*(15) “charitable purpose” includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility:*

**Provided** *that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity;”*

*Following Proviso is inserted by Finance Act , 2010 w.e.f. 01-04-2009*

**[Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year;]**

8.1. The assessee had shown receipts of Rs.87.59 lakhs from Banquet Hall Hiring charges, Rs.132.90 lakhs from Hospitality (Restaurants) and Rs.35.53 lakhs from Permit Room (Bar). The Ld. DIT(E) has observed that the assessee’s objects

are not in the nature of advancement of any other objects of general public utility and the activities as carried out, by way of banquet hall hiring, restaurant and permit room(bar) are in the nature of trade, commerce, business, etc. and further the receipts are far in excess of monetary threshold limit as laid down in the aforesaid proviso to Section 2(15) of 1961 Act i.e. exceeding Rs 10 lacs, which has led to the contravention of section 2(15) of 1961 Act read with two newly inserted proviso w.e.f, which had come into effect from assessment year 2009-10. It was further found by the Ld. DIT(E) that assessee's activity are no longer charitable in nature, consequently, the assessee was deemed to be not carrying out activities for charitable purposes as the activities are non-genuine for the purpose of section 11 of the Act as it loses its charitable status. Thus, the assessee was held to be non-charitable w.e.f. Assessment Year 2009-10 and registration earlier granted by Revenue u/s 12A of 1961 Act was cancelled by learned DIT(E). The ld. Counsel took a plea before us that Hon'ble Bombay High Court in assessee's own case, after considering the activities of the assessee, has held in assessee's favour and hence exemption was allowed by Revenue in earlier years. The orders of Hon'ble Bombay High Court in assessee's own case in DIT v. MIG Cricket Club in ITA(L) no. 2378-81 of 2009 for assessment year 1998-99 to 2001-02, orders dated 30-11-2009 of Hon'ble Bombay High Court have been perused by us, wherein Hon'ble Bombay High Court has affirmed the claim of

the assessee for exemption u/s 11 of 1961 Act. Similarly, claim of exemption of the assessee u/s 11 of 1961 Act for assessment year 2003-04 to 2005-06 was allowed by Hon'ble High Court in ITA No2416 & 2538 of 2011 and 98 of 2012. It was submitted that no doubt that the assessee had during the previous year relevant to the impugned assessment year 2009-10 had shown receipt from Banquet Hall Hiring Charges of Rs. 87.59 lacs Rs. 132.90 lacs from Hospitality (Restaurants ) and Rs. 35.53 lacs from Permit Room(Bar) , which exceed threshold limit of Rs 10 lacs as stipulated u/s 2(15) of 1961 Act, but that cannot be ground for cancellation of registration u/s 12AA(3) of 1961 and it was submitted that at best Assessing Officer can deny exemption on these activities while framing assessment u/s 143(3) r.w.s 143(2) of 1961 Act which activities are found to be hit by newly inserted proviso to Section 2(15) of 1961 but the registration cannot be cancelled as the same could have only been cancelled if it is found that the activities of the assessee are not genuine or if it is found that activities are not carried out in accordance with the objects of the assessee as contemplated u/s 12AA(3) of 1961 Act, which is not the case here as identical activities are carried out by assessee for last several years which is known to the Revenue. The Reliance was placed on provisions of Section 12AA(3) of 1961 Act and Section 13(8) of 1961 Act and CBDT circulars no 11 dated 19-12-2008 and 21/2016 dated 27-05-2016. The learned senior counsel for

the assessee had also relied on following judicial precedents to bring home his above contentions:

1. *Hon'ble Bombay High Court in the case of DIT(E) v. Khar Gymkhana( (2016) 70 taxmann.com 181(Bom.HC))*
2. *Mumbai Cricket Association v. DIT(E) (2012) 24 taxmann.com 99(Mum.-trib)*
3. *Bombay Presidency Golf Club Limited v. DIT(E) (2012) 23 taxmann.com 319(Mum.)*
4. *Khar Gymkhana v. DIT(E) in ITA no. 373/Mum/2012(Mum-trib.) for assessment year 2009-10*
5. *DIT v. MIG Cricket Club in ITA(L) no. 2378-81 of 2009, orders dated 30-11-2009 of Hon'ble Bombay High Court*

8.2. We find that the Hon'ble Bombay High Court in a recent decision in *DIT(Exemption) v. North Indian Association, (2017) 79 taxman.com 410 (Bom.)* dated 14-2-2017, wherein, a significant observations in context of amended provisions of Section 2(15) of 1961 Act in para-9 was made contemplating that if the transactions are in the nature of trade, commerce and business are consistent and continuous/regular basis and exceeds threshold limit, as prescribed by statute u/s 2(15) of 1961 Act , then it is a matter of probe / investigation to come to conclusion that the activities of the trust/institution is not



genuine, in the light of amended provisions of Section 2(15) of 1961 Act., which is reproduced hereunder:-

*“9. However, the issue of the trust not being genuine cannot be concluded by merely giving a finding in one year that income earned from activities of trade, business or commerce are in excess of the limit specified in the proviso to Section 2(15) of the Act. This is so held by us in Khar Gymkhana (supra). However, if this happens on continuous / regular basis, it could justify further probe / inquiry before concluding that the trust is not genuine.”*

8.3. In the light of the above observation and respectfully following the same, we are prima facie of the opinion that the activities of the assessee of Banquet Hall Hiring, Hospitality (Restaurants) and Permit Room (Bar) are in the nature of carrying on trade, commerce, or business for consideration, which are hit by proviso to Section 2(15) of 1961 Act. We further observe that the receipts from these activities, during the previous year relevant to the impugned assessment year 2009-10, are far in excess of minimum prescribed threshold limit. This requires detailed enquiry and examination by the Ld. DIT(Exemption) as to the various activities undertaken by the assessee over a period of time and its nexus with activity of rendering of trade commerce or business as contemplated and mandated by amended Section 2(15) of 1961 Act read in conjunction with significant observations made in the above

order dated 14-2-2017 in North Indian Association(supra). Thus, enquiry and examination by learned DIT(E) is further required to arrive at a conclusion whether activities of the assessee are genuine or not in context of Section 11 of the Act read with amended Section 2(15) of the Act and breach of threshold limit over a period of time. The learned DIT(E) shall also examine whether services were only rendered to members or was it also rendered to non-members. The learned DIT(E) shall also examine every activity carried on by the assessee before concluding on merits as to whether activities of the assessee are hit by amended provisions of Section 2(15) of the Act. We would like to clarify that the learned DIT(E) shall de-novo adjudicate this issue and give its finding on merits uninfluenced by our prima-facie findings as given by us in this order. Thus this matter/issue needs to be restored to the file of the Ld. DIT(Exemption) for denovo determination of the issue on merits in the light of the amended Section 2(15) of the Act read with Section 11 of the Act, considering the decision of Hon'ble Bombay High Court in the case of DIT(Exemption) v. North Indian Association (supra). We order accordingly.

9. In the result, appeal in ITA no 602/Mum/2012 filed by the assessee is allowed for statistical purposes.

10. Now, we shall take the appeal in ITA No.4638/Mum/2013 for assessment year 2009-10. In this appeal, the Ld. Assessing Officer has denied the benefit of exemption u/s 11 and 12 of 1961 Act, pursuant to the

cancellation of registration of the assessee u/s 12AA(3) of the Act by the Ld. DIT(Exemption) vide order dated 29/12/2011, which was subject matter of the appeal in ITA No.602/Mum/2012, which has been adjudicated by us in preceding paras and the issue of registration was restored to the file of the Ld. DIT(E) for denovo determination, therefore, this appeal in ITA no. 4638/Mum/2013 is consequential in nature and hence the issues in this appeal are also restored to the file of the Ld. Assessing Officer to be adjudicated de-novo in the light of the fresh decision to be passed by the Ld. DIT(E) in accordance with our directions in ITA No.602/Mum/2012 . We order accordingly.

12. In the result, appeal in ITA no 4638/Mum/2013, filed by the assessee for assessment year 2009-10, is allowed for statistical purposes.

Finally, appeal in ITA no 602/Mum/2012 and in ITA No 4638/Mum/2013, are allowed for statistical purposes only.

This order was pronounced in the open court on 18<sup>th</sup> April, 2017.

**Sd/-**

**Sd/-**

(Ramit Kochar)

(Joginder Singh)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 18/04/2017

*Shekhar, P.S./नि.स.*

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant

2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**