

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)

I.T.A. No.4940/Mum/2019 - Assessment Year-2011-12
I.T.A. No.4941/Mum/2019 - Assessment Year-2013-14

All India Federation of Tax Practitioners, 215, 2 nd Floor Rewa Chambers, 31, New Marine Lines, Mumbai-400 020 PAN : AAATA1331L	vs	Income-tax Officer(E) I(2), Mumbai
APPELLANT		RESPONDENT

Appellant by	Dr. K. Shivram, AR
Respondent by	Smt. Smita Verma, DR

Date of hearing	10-02-2021
Date of pronouncement	07-05-2021

ORDER

Captioned appeals by the same assessee arise out of a common order dated 10-05-2019 of learned Commissioner of Income Tax (Appeals)-3, Mumbai for the assessment years 2011-12 and 2013-14.

2. The core issue in both the appeals revolves around denial of assessee's claim of exemption under section 11 of the Income Tax Act, 1961 and bringing to tax the income earned by the assessee from interest and donation from non members by applying the principles of mutuality. Apart from these, there is an additional issue in assessment year 2011-12 relating to disallowance of Rs.1 lakh on account of alleged non utilization of accumulated funds.

3. Briefly the facts are, the assessee is a society established on 01-11-1976 and registered, both, under The Societies Registration Act, 1860 and Bombay Charitable Trust Act, 1950. Further, the assessee is also registered with the Charity Commissioner, Bombay and has also been granted registration under sections 12A as well as 80G of the Act. In the returns of income filed for the impugned assessment years, the assessee had claimed exemption under section 11 of the Act. In course of assessment proceedings, the assessing officer while verifying the claim of exemption under section 11 of the Act was not convinced with the same. He was of the view that the assessee's activities are mainly of providing benefits to its members. Hence, it has to be treated as a concern governed by the principles of mutuality. Having held so, he proceeded to treat the interest income earned on deposits as well as a part of the donation received as taxable, since, they were received from non member; hence, outside the purview of mutuality. In the process, the assessing officer also disallowed assessee's claim of exemption under section 11 of the Act. The assessee contested the aforesaid decision of assessing officer by filing appeals before learned Commissioner of Income Tax (Appeals).^{*} However, by the impugned order, learned Commissioner of Income Tax (Appeals) upheld the decision of the assessing officer. While doing so, he observed that merely because the assessee has been granted registration under section 12A of the Act, exemption under section 11 of the Act cannot be allowed, unless, the conditions of sections 11, 12 & 13 are fulfilled. Further, referring to the proviso to section 2(15) of the Act, learned Commissioner of Income Tax (Appeals) observed, since the assessee has earned income from commercial activities, it cannot be treated as a charitable organization.

Accordingly, he upheld the disallowance of exemption under section 11 of the Act.

4. Dr. K. Shivram, learned counsel appearing for the assessee submitted, both the assessing officer and learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the assessee is engaged in the activity of providing education; hence, will come within the definition of "charitable purpose" under section 2(15) of the Act. Without prejudice, he submitted, assessee's objects and activities also are of such nature that assessee can be said to be engaged in the 'advancement of any other object of general public utility'. Proceeding further, he submitted, the activities of the assessee are not confined to its members only, but, also for the general public at large. Drawing our attention to various documentary evidences furnished in the paper book, he submitted, the assessee regularly conducts seminars on tax laws which are accessible to all including professionals. Therefore, the assessee is disseminating knowledge in the field of tax laws, other laws and accountancy, both to the members and non members. He submitted, both the assessing officer and learned Commissioner of Income Tax (Appeals) erred in denying the assessee's status of charitable organization. He submitted, the assessing officer has misconceived the facts and treated the assessee as a company registered under section 25 of the Indian Companies' Act which is factually incorrect. He submitted, from its very inception in the year 1997, the assessee, all along had been filing returns of income as a charitable organization and claiming exemption under section 11 of the Act. He submitted, except the impugned assessment year, in all other assessment years assessee's claim of exemption under section 11 of the Act has been accepted by the department. He submitted, the objects of the trust have remained same and the

bonafide of its activities have never been doubted. Therefore, there is no valid reasons for holding that assessee does not fulfill the conditions of charitable purpose as per section 2(15) of the Act and disallowing the exemption claimed under section 11 of the Act. He submitted, only because of amendment to section 2(15) of the Act by inserting a Proviso, the assessee would not lose its status as a charitable organization. He submitted, since the assessee is governed by a special law which overrides the general principles of law. He submitted, both the assessing officer and learned Commissioner of Income Tax (Appeals) have erred in not appreciating that principle of mutuality is not applicable to the assessee as it is a charitable trust and its income has to be computed as per sections 11, 12 and 13 of the Act. Refuting the claim of the departmental authorities that the assessee has not brought any evidence to demonstrate that it has rendered any direct services to the public at large, learned counsel submitted, number of documentary evidences was submitted before the departmental authorities to demonstrate that various seminars and conferences were held at different locations. He submitted, the assessee has also held moot court competition amongst law students at all India level. He submitted, during the lockdown period of lockdown arising due to Covid-19, the assessee has conducted more than hundred webinars on tax and other laws and accountancy, which were completely free and accessible to all. He submitted, the assessee maintains a free website which anyone can access and publications/materials available there can be freely downloaded. Drawing my attention to the memorandum of association, he submitted, on dissolution of the society the corpus will not go to any of the members, but, will go to a trust/society with similar charitable object. Thus, he submitted, when the objects of the assessee have not changed and it is carrying

on its activities in the same manner over the years, rule of consistency would apply and assessee is eligible to claim exemption under section 11 of the Act. He submitted, once it is held that assessee is a charitable organization entitled for exemption under section 11 of the Act, all its income including income earned from non member, would be exempt and in that event, the assessee would not be governed by the principle of mutuality. In support of his contention, learned counsel for the assessee relied upon the following decisions:-

1. CIT vs St. Mary's Malankara Seminary (2014) 48 taxmann.com 387 (Kerala)(HC)
2. CIT vs Bombay Presidency Golf Club Ltd (2019) 264 Taxman 55 / 182 DTR 454 / 311 CTR 578 (Bom)(HC)
3. Institute of Chartered Accountants of India vs. DGIT(E) (2013) 35 taxmann.com 140 (Delhi)(HC)
4. Institute of Chartered Accountants of India vs. DGIT(E) (2011) 13 taxmann.com 175 (Delhi)(HC)
5. CIT vs. Jodhpur Chartered Accountants Society (2002) 258 ITR 548 (Raj)(HC)
6. CIT vs Andhra Pradesh Police Welfare Society (1984) 148 ITR 287 (AP)(HC)
7. CIT vs Bar Council of Maharashtra (1981) 130 ITR 28 (SC)
8. Tax Practitioners Benevolent Fund, A Public Charitable Trust vs CIT (2004) 266 ITR 561 (Bom)(HC)
9. DIT (E) VS Chartered Accountants Study Circle (2012) 347 ITR 321 (Mad)(HC)
10. Radhasoami Satsang vs CIT (1992) 193 ITR 321 (SC)
11. Tata Education and Development Trust vs ACIT (2020) 117 taxmann.com 946 (Mumbai- Trib)
12. Union of India vs India Fisheries (P) Ltd (1965) 57 DTR 331 (SC)
13. DIT vs Chembur Gymkhana (2012) 346 ITR 86 (Bom)(HC)
14. DIT (E) vs Goregaon Sports Club (2012) 347 ITR 338 (Bom)(HC)
15. CIT(E) vs India Habitat Centre (2020) 114 taxmann.com 84 (Del)(HC)
16. DIT(E) vs Gemological Institute of India (2019) 105 taxmann.com 179 / 263 Taxman 349 (Bom)(HC)

SLP of revenue is dismissed on the ground of low tax effect in

- DIT(E) vs. Gemological Institute of India (2019) 263 Taxman 348 (SC)
17. CIT vs Sun Engineering Works (1992) 198 ITR 297 (SC)
 18. ADIT vs Jeevan Vidya Mission [2015] 64 taxmann.com 62 (Mum)
 19. CIT vs United Way of Baroda [2020] 423 ITR 596 (Guj)

5. The learned Departmental Representative relying upon the observations of the assessing officer and learned Commissioner of Income Tax (Appeals) submitted, the activities of the assessee are mostly confined to its members; hence, has to be treated as a mutual concern. Further, she submitted, the assessee was unable to demonstrate that it is carrying out any educational activity or activity of general public utility benefiting the public at large. She submitted, assessee's activities are not only confined to members but they are of commercial nature as the assessee is charging fees for membership as well as for its publications. Thus, she submitted, the assessee not being a charitable organization, cannot be granted exemption under section 11 of the Act.

6. I have considered rival submissions in the light of decisions relied upon and perused the materials on record. It is evident, the assessing officer has denied assessee's claim of exemption under section 11 of the Act primarily on the reasoning that the assessee exists only for its members and its activities are directed only to the members; hence, it is a mutual concern. Therefore, applying the principles of mutuality, the assessing officer has disallowed assessee's claim of exemption under section 11 of the Act and has brought to tax all such income which were received from non-members. Whereas, learned Commissioner of Income Tax (Appeals), while accepting the aforesaid reasoning of the assessing officer has went a step further by holding that assessee cannot be considered to be existing for charitable purpose as it is engaged in commercial activities by collecting subscription from its members and earning income from sale of

publications. Therefore, he has held that the proviso to section 2(15) of the Act will disqualify the assessee as a charitable organization. Further, he has held that the assessee has not produced any documentary evidence to support its claim that it has rendered any services to public at large. He has further held that mere grant of registration under section 12A of the Act would not entitle the assessee for exemption under section 11 of the Act.

7. Keeping in view the aforesaid findings of the departmental authorities, it is necessary to examine the relevant facts. Undisputedly, the assessee is a society registered under the Societies Registration Act, 1860, copy of which has been placed at page 38 of the paper book. Additionally, the assessee has also been registered as a trust under the Bombay Public Trust Act, 1950 in the year, 1997, a copy of such registration certificate has been placed at page 39 of the paper book. Thus, the aforesaid documentary evidences clearly establish that the assessee is not a company registered under section 25 of the Indian Companies Act as erroneously observed by the assessing officer. Therefore, prima facie, the assessing officer has not appreciated the facts correctly. Though, it can be said that registration granted under section 12A r.w.s 12AA of the Act does not automatically entitle a trust/institution for availing exemption under section 11 of the Act, as such exemption is subject to sections 11, 12 & 13 of the Act, however, some sanctity has to be attached to the registration granted under section 12A of the Act. More so, if such registration granted to assessee still continues. This presupposes that the department continues to treat the assessee as an organization existing for charitable purpose.

8. In the facts of the present case, undisputedly, registration under section 12A of the Act has been granted to the assessee vide order dated 29-01-1999

passed by the Director of Income-tax (Exemption), Mumbai. A careful perusal of memorandum of association of the assessee, a copy of which is placed at page 1 of the paper book, it is seen that the main object of the assessee is as under:-

“To spread education in matters relating to tax laws, other laws and accountancy.”

9. Of course, the assessee has various other objects mentioned in the memorandum of association. However, all such objects are ancillary and incidental to its main object. Though, a couple of such ancillary and incidental objects speaks of providing facilities/help to the members; however, in no way the objects of the assessee can be interpreted to mean that the activities/objects are only for the benefit of the members and not for general public at large. In any case of the matter, after perusing the objects of the assessee, learned Director of Income Tax (Exemption) was satisfied that the assessee is a charitable organization existing for charitable purpose. Hence, he granted registration under section 12A of the Act. It is further to be noted, in the registration certificate granted under section 12A of the Act, a copy of which at page 407 of the paper book, the learned Director of Income Tax (Exemption) has noted the objects of the assessee, as under:-

“ to educate members and public to better compliance of Direct Tax Laws and also to provide effective forum for the discussion of the matters concerning to tax laws and other laws and accountancy and their administration for the collection and dissemination of information relating thereto.”

10. Thus, these facts clearly reveal that the assessee qualifies the test of a charitable organization existing for charitable purpose. It is also pertinent to observe, the registration granted by learned Director of Income Tax (Exemption)

under section 12A of the Act is still in force. It is also a fact on record that the objects of the assessee have not undergone any change from the date of registration granted under section 12A of the Act. Therefore, the charitable objects of the assessee remain intact. It is the allegation of the departmental authorities that the assessee has failed to demonstrate that it has carried out any activity in furtherance of its object of general public utility. However, the aforesaid allegation of the departmental authorities is without any basis. It is seen from material on record that assessee is continuously engaged in disseminating knowledge on commercial law, tax laws by holding seminars, conferences, workshops, etc. which are not confined to its members only. Anyone interested in the subject including professionals are free to participate and access the seminars, workshops, conference, etc. to gain knowledge in the field of taxation and accountancy. It is also a fact on record that the assessee has conducted more than hundred webinars on tax laws and accountancy during the lockdown period arising out of the pandemic which was freely accessible to all. Further, the material on record shows that the assessee regularly conducts moot court competition amongst law students at All India level. By holding such competition, assessee immensely helps in building the skill set of the students in the field of law in becoming legal professionals. Further, the assessee also maintains a free website accessible to all. All publications and periodicals are available in the website which can download free of cost. All these facts and evidence on record clearly demonstrate that the assessee has carried out activities to promote its objects of providing education and towards advancement of its object of general public utility. There is nothing on record to suggest that

the assessee's activities are confined only to its members so as to treat it as a mutual concern.

11. The next issue which needs to be addressed is, whether the assessee loses its character as 'charitable organisation' due to applicability of Proviso to section 2(15) of the Act. It is relevant to observe, by Finance Act 2008 section 2(15) was amended with effect from 01-04-2009 by inserting the following Proviso:-

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

12. Undisputedly, the aforesaid proviso is applicable from assessment year 2010-11. At the cost of repetition, it must be reiterated that from the date of its registration as a society, the objects of the assessee as per the memorandum of association have not changed. On the basis of such objects, the assessee all along has been treated as a charitable organization fulfilling the conditions of section 2(15) of the Act. Therefore, merely because the proviso to section 2(15) came into force with effect from 01-04-2009, the assessee would not automatically lose its character as a charitable organisation. Further, as regards applicability of the aforesaid proviso to the assessee, it is very much clear that the said proviso would be applicable to the last limb of 'charitable purpose' as defined under section 2(15) of the Act, i.e. any other activity or object of general public utility. As per the main object, the assessee is engaged in educational activity. Therefore, strictly speaking, the proviso to section 2(15) of the Act would not apply to the assessee. Even otherwise also, assuming that the assessee is having the object of general

public utility, before applying the proviso to section 2(15) of the Act, the dominant purpose test has to be applied. It has to be seen, what is the main object of the assessee. Whether to carry out the object of general public utility or earn profit by way of trade, commerce and business. In the facts of the present case, a reading of the objects of the assessee contained in memorandum of association vis-à-vis the activities carried on by the assessee would certainly demonstrate that the dominant purpose of the assessee is to carry out its object of general public utility and not to earn profit by engaging itself in any trade, commerce or business. Therefore, while carrying out its charitable objects, if, the assessee incidentally earns some profit from any commercial activity to supplement its main object, certainly, it cannot be said that the assessee has engaged itself in trade, commerce and business so as to attract the proviso to section 2(15) of the Act.

13. In the facts of the present case, it is very much clear that the assessee has carried out activities in furtherance of its objects. In the process, the assessee might have earned some income by way of subscriptions, sale of publications, etc. However, this income earning activities of the assessee cannot be treated to be in the nature of trade, commerce or business. In any case of the matter, from its very inception the assessee has been granted exemption under section 11 of the Act. Only, in the impugned assessment years its claim of exemption has been denied. Though, it may be a fact that while granting exemption in earlier as well as subsequent assessment years no scrutiny assessment has been made; however, fact remains that assessee's claim of exemption has been accepted over the years. Further, the activities/objects on the basis of which claim of exemption under section 11 of the Act was accepted in other assessment years have not

changed in the impugned assessment years. In fact, the registration granted under section 12A of the Act still continues. That being the case, even applying the rule of consistency, assessee's claim of exemption under section 11 of the Act has to be allowed. The decisions relied upon by the learned counsel for the assessee clearly supports this view.

14. In view of the aforesaid, I hold that the assessee having maintained its status as charitable organization is entitled for exemption under section 11 of the Act, subject to fulfillment of conditions prescribed under sections 11, 12 and 13 of the Act. However, in the facts of the present appeals there is no allegation by the departmental authorities that the assessee has violated any of the conditions of the aforesaid provisions, except, the allegation that the assessee is a mutual concern. That being the case, all its income including the interest and donations received from non-members would also be exempt from taxation.

15. In view of my decision above, the only issue which survives is ground 4 in ITA No.4940/Mum/2019. This ground relates to addition of Rs.1 lakh to the income on the allegation that the surplus funds accumulated in assessment year 2005-06 has not been utilised before 2010-11. It is the contention of the learned counsel for the assessee that the assessee has already offered the amount of Rs.1 lakh as income in the return of income filed for the assessment year 2010-11. Therefore, no further addition should have been made. The learned counsel for the assessee has further submitted that though the assessee has filed a rectification application under section 154 of the Act pointing out the aforesaid fact; however, it is still pending.

16. Having considered rival submissions, I direct the assessing officer to verify assessee's claim and in case it is found that the assessee has already offered the

amount of Rs.1 lakh as income in assessment year 2010-11, addition should be deleted. This ground is allowed for statistical purpose.

17. In the result, ITA No.4940/Mum/2019 is partly allowed and ITA No.4941/Mum/2019 is allowed.

Order pronounced on 07/05/2021.

Sd/-

SAKTIJIT DEY
JUDICIAL MEMBER

Mumbai, Dt : 07/05/2021

Pavanan

Copy to :

1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
6. Guard File

By Order

Asstt. Registrar, ITAT, Mumbai

