

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

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.293/Mum./2022
(Assessment Year : 2017-18)

The Indian Institute of Architects
5th Floor, Prospect Chambers Annexe
D.N. Road, Fort, Mumbai 400 001
PAN – AAATT5904C

..... Appellant

v/s

Income Tax Officer
Ward-2(4), Mumbai

..... Respondent

Assessee by : Shri K. Shivaram a/w
Shri Mandar Vaidya
Revenue by : Shri B.K. Bagchi

Date of Hearing – 19/05/2022

Date of Order – 19/05/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 17/12/2021 passed under section 250 of the Income Tax Act, 1961 (*'the Act'*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [*'learned CIT(A)'*], for the assessment year 2017-18.

2. In its appeal, the assessee has raised following grounds:

"1. The Ld. CIT(A) fell in error of law in declining to the assessee the benefit of section 11, on the ground that the activities of the benefit its own member/professionals. The view of the Ld. CIT(A) runs contrary to the ratio laid down by the Hon'ble Bombay High Court in Bar Council of Maharashtra V/s. CIT 126 ITR 27 (Bom.).

2. The Ld. CIT(A) erred in rejecting the assessee's claim for exemption u/s. 11 r/ws.2(15) on the ground that its activities do not qualify as 'education' within the meaning of sec.2(15) of the Act.

3. The Ld. CIT(A) failed to consider the assessee's eligibility for exemption u/s. 11 r/w s.2(15) under the residual category viz advancement of any object of general public utility.

4. The Ld. CIT(A) was not justified in not considering the various decisions of the High Courts, including the Hon'ble Bombay High Court, placed before him.

5. The Ld. CIT(A) failed to independently analyse the facts & evidences on record and erred in not returning an independent finding."

3. The only grievance of the assessee in the present appeal is against denial of claim of exemption under section 11 of the Act on the basis that assessee's activities do not qualify as 'education' within the meaning of section 2(15) of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a trust registered with Charity Commissioner under the Bombay Public Trust Act, 1950. The assessee also holds registration section 12A(a) of the Act by the Commissioner of Income Tax (Exemptions). For the year under consideration the assessee filed its return of income on 30/10/2017 declaring total income at Rs. Nil. The return was further revised on 14/11/2018. During the course of assessment proceedings, upon perusal of the income and expenditure account, for the year under consideration, filed by the assessee along with

return of income, it was observed that the assessee has shown income from membership fees, advertisement, sale of publication, sponsorship fees etc. Accordingly, assessee was asked to show cause as to why exemption claimed under section 11 should not be denied as the aforesaid receipts are in the nature of trade, commerce or business. In reply, assessee submitted that its membership is, inter-alia, recognised as requisite qualification under the provisions of the Architects Act, 1972 and the assessee institute plays a major role in promoting the profession of architecture by organising and uniting the Architects of India to promote aesthetic, scientific and practical efficiency of the profession in practice and in education. Accordingly, the assessee submitted that its primary objective is 'education', and therefore it is covered within the meaning of section 2(15) of the Act. The Assessing Officer vide order dated 05/12/2019 passed under section 143(3) of the Act held that the assessee is an organisation of professionals who are in the architecture business to study and promote the latest development in the field of architecture, and therefore no charitable benefits results in favour of the society. The Assessing Officer further held that the word "education" used in section 2(15) of the Act is the systematic instruction, schooling or training given to the young in preparation for the work of life and the assessee institution is predominantly a mutual Association and non charitable objects, thus its activities are not educational in nature. Accordingly, the Assessing Officer denied claim of exemption under section 11 of the Act.

In appeal, learned CIT(A) vide impugned order dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

5. During the course of hearing, Shri K. Shivaram, learned Senior Counsel submitted that assessee conducts examinations/seminar for the Architects and its membership has been recognised as a qualification for the purpose of the Architects Act, 1972. The learned Senior Counsel submitted that Associate Membership of the assessee institute has been recognised by the Ministry of Human Resource and Development at par with the Bachelor's Degree in Architecture and therefore, the sole objective of the assessee is education and thus, covered within the provisions of section 2(15) of the Act.

6. On the other hand, learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

7. We have considered the rival submissions and perused the material available on record. The Constitution of the assessee, forming part of the paper book, enumerates following objects of the assessee:

"3. OBJECTS

(a) To continue the work of the Bombay Architectural Association founded as the Architectural Students' Association in 1917, and to take over from the Trustees or other person or persons all the property of the said Bombay Architectural Association, which can legally be vested in the Institute, and to assume the liabilities and obligations thereof with power, authority to sell, alienate, discharge, vary or otherwise dispose of the said property or any part thereof.

(b) To organise and unite in fellowship the architects in the Republic of India.

(c) *To combine the effort of the Architects so as to promote aesthetic, scientific and practical efficiency of the profession.*

(d) *To encourage the science and the art of planning and building the standards of architectural education, training and practice, by making grants to Technical Institutions, or by paying or assisting to pay the fees and expenses of students, or by providing and giving scholarships, prizes or other rewards to such students, or by any or all such methods.*

(e) *To devise and impose the means for testing the qualifications of candidates for admission to membership of the Institute, by examination in theory and in practice, or by any other tests, or to arrange with any technical Institute or Institutions for the imposition of any such tests;*

(f) *To consider all questions, affecting the practice of architecture and to initiate and watch over measures affecting, or likely to affect, the practice of Architecture, and to procure such changes of, and amendments in the law relating to or affecting the practice of Architecture;*

(g) *To hold conferences or meetings for the discussion of, and the exchange of news on matters affecting or relating to Architecture, the reading of papers and the delivery of lectures, and hold congresses or exhibitions (either jointly with any other body or Institution or otherwise) for the exposition of any matters affecting or relating to the theory or practice of Architecture or any allied subject, and to award medals, certificates/pres or diplomas in connection therewith;*

(h) *To co-ordinate the activities of the building industry and of the Profession of Architecture, and to amalgamate or combine or act temporarily or otherwise, in conjunction with any other body or bodies, Institution or Institutions, having like or similar objects;*

(i) *To purchase, lease, rent, hold and dispose of any land or property, and any building or hall, and to erect any such building or buildings to be used as a place of meeting for the members of the Institute, or as a College, School, or Reading Room or Library for the advancement of the objects of the Institute, and to provide accommodation for any meeting, conference, exhibition or congress, whether promoted wholly or partly by the Institute or which, in the opinion of the Council, may conduce to or assist in the carrying on with the objects of the Institute or tend to do so:*

(j) *To form or acquire by purchase, donation, request or otherwise a library and collection of models, drawings, designs or other materials, and to maintain, extend and improve the same.*

(k) *To ascertain, formulate and notify the law and practice relating to Architecture to members and the public, and to compile, collect, collate, revise, print and publish statistics, professional records or periodicals relating to any of the objects of the Institute:*

(l) *To issue appeals for funds in furtherance of the objects of the Institute, to accept any gift, endowment or bequest made to the Institute, and to*

carry any trust attached to any such gift, endowment or bequest, and to borrow moneys, if required for the purposes of the Institute, provided such gifts, endowments, bequests or loans shall be accepted if they are not accompanied by conditions inconsistent or in conflict with the objects for which the Institute is established;

(m) To ensure the advancement of the living standards of our people through their improved environment and to make the profession of ever increasing service to Society;

(n) To constitute various classes of members including Honorary Fellows;

(o) To do all such lawful things are incidental or conducive to the attainment of the above objects or any of them;"

8. From the perusal of the aforesaid objectives of the assessee, it is evident that the assessee conducts architecture examinations, publishes journals, conducts seminar, conferences for promoting the profession of Architects as well as dissemination of latest updates in the field of architecture. Further, from the perusal of Bye-Laws of the assessee, forming part of the paper book, it is evident that the assessee also has library facility which is open to all members and students of the assessee institute, who shall have the right to pursue and inspect all the books, papers, maps, plans, drawings or models, belonging to the Institute and kept in the library. Further, it is also evident that on request by an educational institution, the assessee also imparts training in architecture, for recognition of its examination. At this stage, it is also pertinent to note that under section 14 read with the Schedule to the Architects Act, 1972, the membership of the assessee is, inter-alia, recognised as qualification for the purpose of the Architects Act, 1972. Further, vide Notification No. 53, dated 30/03/1998, issued by the Ministry of Human Resource and Development, Government of India, qualification of Associate Membership

of the assessee institute (by examination) is recognised for the purpose of employment to post and services under the Central Government. Further, we find that the Associate Membership of the assessee institute (by examination) is also considered at par with the Bachelor's Degree in architecture of a recognised Indian University. Thus, in view of the above, we are of the considered opinion that the dominant object of the assessee, in the present case, is imparting of 'education' in the field of architecture, which is covered within the provisions of section 2(15) of the Act. Further, its activities are recognised statutorily as well as by the Government of India for the purpose of employment.

9. The Assessing Officer as well as learned CIT(A) denied the claim of exemption under section 11 of the Act also on the basis that no charitable benefits accrues in the favour of the society, as the assessee is an organisation of professionals who are in the architectural business to study and promote the latest development in the field of architecture. In this regard, it is relevant to note following observations of Hon'ble Supreme Court in Ahmedabad Rana Caste Association v/s CIT: [1971] 82 ITR 704 (SC):

"It is well-settled by now and the High Court also has rightly taken that view that an object beneficial to a section of the public is an object of general public utility. To serve a charitable purpose it is not necessary that the object should be to benefit the whole of mankind or all persons in a particular country or State."

10. Further, it is also now trite that the mere fact that there is a surplus arising as a result of charitable activities cannot suggest that institution is

not a charitable institution. Before concluding, it is relevant to note that Hon'ble jurisdictional High Court in CIT v/s Indian Institute of Banking and Finance, [2018] 408 ITR 558 (Bom.), while holding that activities in respect of banking and related subjects by conducting courses and also distributing knowledge by lectures, discussions, book correspondence with public bodies and individuals etc. is educational in nature, as per section 2(15) of the Act, observed as under:

"7. On further appeal, the impugned order of the Tribunal allowed the respondent-assessee's appeal. The impugned order of the Tribunal after examining the object clause as given in the memorandum of association gave a finding that the respondent institute has been created for the purpose of development of banking personnel for/in the banking industry. The institute imparts education to the candidates who are connected with the banking industry. It has library facility, organizes lectures, seminars and undertake examinations for promoting bank officers. In the aforesaid context, the impugned order of the Tribunal concluded on facts which were before the Revenue Authorities that it exists for advancement of learning in the field of banking. Besides, on facts it found the fee structure of the institute for these courses was not on the higher side. Further, the impugned order places reliance upon the decision of this court in DIT (Exemption) v. Samudra Institute of Maritime Studies Trust [2014] 49 taxmann.com 510/226 Taxman 297/369 ITR 645 to inter alia hold that the activity which is carried out by the respondent-assessee is educational in nature. This is for the reason that it imparts education to the members of the banking industry and prepares them to discharge their duties as bankers more efficiently. Further, with regard to the objection of the Assessing Officer that as the benefit of the respondent-institute is restricted only to the persons working in the banking industry, it is not available to the public at large was negated by placing reliance upon the decision of the apex court in Ahmedabad Rana Caste Association v. CIT [1971] 82 ITR 704. In the above case, it has been held that the object beneficial to a section of the public is an object of general public utility and to serve a charitable purpose it is not necessary that the object should be to benefit the whole of mankind or all persons in a country or State. In the above view, it was, held that the petitioners were an institute for a charitable purpose as defined in section 2(15) of the Act.

8. The grievance of the Revenue before us is that the activity carried out by the respondent-assessee is in the nature of running coaching classes or centre and therefore the benefit of section 11 of the Act cannot be extended to the respondent.

9. We find that this objection/grievance of the Revenue has been taken up for the first time across the bar. There is no such objection taken before the authorities by the Revenue. Besides, nothing has been shown to us why it should be considered as a coaching class. Further, we find that the impugned order of the Tribunal has only applied the decision of this court in Samudra Institute of Maritime Studies Trust (supra) to conclude that the activities which are run by the respondent-institute is an educational activity and not in the nature of running a coaching centre or a class. The Revenue is not able to point why it would not apply. We may also point out that the grant or refusal to grant exemption under section 10(22) and/or (23C) of the Act cannot govern the application of section 11 of the Act. In any case, we are informed that no appeals in respect of section 10(22) and/or (23C)(vi) of the Act are pending disposal.

10. In the above view, the question as proposed does not give rise to any substantial question of law as the impugned order has only applied the decision of this court in Samudra Institute of Maritime Studies Trust (supra) to the facts of the present case.”

11. In view of the above, plea of the assessee is upheld. Accordingly, the Assessing Officer is directed to allow exemption under section 11 in respect of income of the assessee. As a result, grounds raised by the assessee are allowed.

12. In the result, appeal by the assessee is allowed.

Order pronounced in the open court on 19/05/2022

Sd
PRAMOD KUMAR
VICE PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 19/05/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

By Order

Assistant Registrar
ITAT, Mumbai