

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI  
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI RAVISH SOOD, JM**

ITA No. 1265/Mum/2012  
(निर्धारण वर्ष / Assessment Year:2009-10)

NCDEX Institute of Commodity Market and Research; 1 <sup>st</sup> Floor, Akruti Compound, LBS Marg, Kanjur Marg (W), Mumbai-400078.	<b>बनाम/ Vs.</b>	DIT (Exemption) 6 <sup>th</sup> floor, Piramal Chambers, Parel, Mumbai-400012
स्थायी लेखा सं./जीआइआर सं./PAN No. AACCN6147Q		
(अपीलार्थी / <b>Applicant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओर से / <b>Applicant by</b>	:	Shri. Sunil Nahta
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	Shri. N.P. Singh (CIT DR)

सुनवाई की तारीख / <b>Date of Hearing</b>	:	06.12.2016
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	28.02.2017

आदेश / ORDER

**PER RAVISH SOOD, JM:**

The brief facts of the case are that the assessee is a wholly owned subsidiary of National Commodity & Derivatives Exchange Limited (NCDEX), registered as a company which was incorporated as on 08.09.2007 under Sec. 25 of the Companies Act, 1956 (No. 1 of 1956). The assessee had been registered under Sec. 12AA(1)(b)(i) of the Income-tax Act, 1961 (for short ‘Act’) by the Director of Income-tax (Exemption), Mumbai, vide his order dated. 31.03.2009, w.e.f

01.04.2008. The main objects of the assessee as stands gathered from its 'Memorandum of Association' (Page 25 of 'APB') are:-

*“To operate as a Charitable, Statistical Research Institution carrying on activities to promote knowledge and research relating to commodity markets and associated derivatives and disseminate information for the benefit of the participants in markets for products, goods or commodities, currency, bonds, fixed income, intangibles, indices.”*

2. That a proposal was received by the DIT(Exemption), Mumbai, from the office of the ADIT(E)-II(2), Mumbai, therein recommending cancellation of registration granted to the assessee under Sec. 12AA, for the reason that it was carrying on activities in the nature of trade, commerce or business etc., and the gross receipts from the same were in excess of the stipulated limit of Rs. 10 lac as stood contemplated under the *first proviso* of Sec. 2(15). The DIT(Exemption) referring to the 'Income & Expenditure A/c' of the assessee therein observed that the latter had during the year earned income by way of running courses and franchisee fees of Rs. 18,56,401/-. The DIT(Exemption) being of the view that as the activities carried on by the assessee were in the nature of trade, commerce, business etc., therefore the assessee would be hit by the *first proviso* to Sec. 2(15), and as per the mandate of law it would be deemed that the assessee trust was not existing for a charitable purpose. The DIT(Exemption) in the backdrop of his aforesaid observations thus concluded that once it was held that the assessee was not for charitable purpose, then it would no more stand entitled for claim of exemption under Sec. 11 of the 'Act'. The DIT(Exemption) thus being of the view that the assessee had become non-genuine for the purpose of Sec. 11, therefore proceeded with and

passed an order under Sec. 12AA(3) and cancelled the registration granted to the assessee, w.e.f Assessment Year: 2009-10.

3. That the assessee being aggrieved with the order passed by the DIT(Exemption) under Sec. 12AA(3), therein cancelling the registration which was granted to it under Sec. 12AA(1)(b)(i), had thus carried the matter in appeal before us.

4. That during the course of the hearing of the appeal, the Ld. Authorized representative (for short 'A.R') for the assessee had assailed the order passed by the DIT(Exemption) under Sec. 12AA(3), for reasons, which are culled out as under:-

(i). That the DIT(Exemption) while concluding that the assessee would be hit by the *first proviso* of Sec. 2(15), had failed to appreciate that the receipts by way of running courses and franchisee fees of Rs. 18,56,401/- were received by the assessee in furtherance of its objects by operating as a Charitable, Statistical Research Institution, carrying on activities to promote knowledge and research relating to commodity markets and associated derivatives and disseminating information for the benefit of the participants in markets for products, goods or commodities, currency, bonds, fixed income, intangibles, indices etc., for which it was established, and thus had wrongly held that it was systematically generating income from activities which were in the nature of trade, commerce or business.

(ii). That without prejudice to above, the DIT(Exemption) had gravely erred in law by concluding that on being hit by the *first proviso* of Sec. 2(15), it would be deemed that the assessee trust was no more existing for a charitable purpose, which would lead to cancellation of its registration under Sec. 12AA(3).

The Ld. A.R in support of his aforesaid contentions had relied on certain case laws and averred that the order of the DIT(Exemption) passed under Sec. 12AA(3), therein cancelling the registration granted to the assessee u/s Sec.12AA(1)(b)(i) could not be sustained in the eyes of law, and was thus liable to be vacated. That on the other hand the Ld. Departmental representative (for short 'D.R') heavily relied on the order of the DIT(Exemption) and submitted that as the assessee after being hit by the *first proviso* of Sec. 2(15) was thus no more existing for charitable purpose, therefore the DIT(Exemption) vide his order passed under Sec. 12AA(3) had rightly cancelled the registration that was granted to the assessee trust u/s Sec. 12AA(1)(b)(i).

5. We have heard the Ld. Representatives of both the parties, perused the order of the DIT(Exemption), and the material placed on our record. We find that the DIT(Exemption) referring to the 'Income & Expenditure A/c' of the assessee had therein observed that the latter had earned income by way of running courses and franchisee fees of Rs. 18,56,401/-during the year. The DIT(Exemption) being of the view that as the earning of income by the assessee from running of courses and franchisee fees was in the nature of a systematic generation of income from activities which were in the nature of trade, commerce or business, therefore the assessee was hit by the *first proviso* of Sec. 2(15), and as a fall out of the same it was to be deemed that the assessee was not existing for a charitable purpose and had become non-genuine, and as such ineligible for claim of exemption under Sec. 11. Thus, in the backdrop of his aforesaid observations, the DIT(Exemption) holding that the assessee was no more existing for charitable purpose, and as such having become non-genuine,

therefore, vide his order passed under Sec. 12AA(3) cancelled the registration granted to the assessee w.e.f Assessment Year: 2009-10.

6. We would now advert to the contentions of the assessee which have been raised before us in the backdrop of the findings of the DIT(Exemption). We are of the considered view that though Sec. 2(15) and Sec. 11 are inextricably interlinked and rather interwoven, however the same is to the limited extent that where the case of an assessee falls within the sweep of *first proviso* of Sec. 2(15), then the same would lead to exclusion of the activities from the definition of the term 'Charitable purpose' contemplated in Sec. 2(15), as a result whereof the assessee would stand disentitled for raising a claim under Sec.11. However, the same cannot be stretched to lead to an interpretation that on being hit by the *first proviso* of Sec. 2(15), the very continuation of the registration of the assessee would stand jeopardized, and on the said count would lead to cancellation/withdrawal of the registration granted to the assessee under Sec. 12A/12AA of the 'Act'. We find substantial force in the contention of the Ld. A.R that even if an assessee is hit by the monetary limits contemplated under Sec. 2(15) w.e.f 01.04.2009, the same would only adversely affect the entitlement of the assessee towards claim of exemption during the year under Sec. 11 of the 'Act', however the same cannot lead to cancellation/withdrawal of registration granted to the assessee under Sec.12A/12AA of the 'Act'. We are of the considered view that the circumstances which would lead to cancellation of the registration of a Trust are loudly spelt out in Sec. 12AA(3), which reads as under:-

*“(3). Where a trust or an institution has been granted registration under clause (b) of sub-section (1) [or has obtained registration at any time under section 12A as it stood before its amendment by*

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*the Finance (No.2) Act, 1996 (33 of 1996)] and subsequently the [Principal Commissioner or] Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution:*

***Provided*** that no order under this sub-section shall be passed unless such trust or institution has been given a reasonable opportunity of being heard.”

7. We are of the considered view that in the absence of anything being provided in Sec. 12AA(3) that the registration granted under Sec.12A/12AA would stand cancelled/withdrawn where the assessee is hit by the *first proviso* of Sec. 2(15), we are thus unable to persuade ourselves to subscribe to the findings of the DIT(Exemption) who had concluded to the contrary and had cancelled the registration of the assessee on the said count. We are not oblivious of the settled position of law that while interpreting the scope and gamut of a statutory provision, no violence can be done to its plain literal interpretation in the garb of giving effect to the underlying legislative intent. Thus in case if we subscribe to the observations of the DIT(Exemption), who we can safely conclude had transposed and read into Sec. 12AA(3) the narrowed definition of ‘Charitable purpose’ as stands contemplated in Sec. 2(15) and therein broadened the scope of Sec. 12AA(3), then the same would tantamount to nothing less than assuming upon ourselves the powers of legislation, which we are afraid strictly and exclusively fall within the jurisdictional domain of the legislature. Thus to be brief and explicit, reading the scope of Sec. 12AA(3) in the manner done by the DIT(Exemption) would inescapably lead to distortion of the plain meaning of the said statutory provision, which

would be in absolute violation of the basic rule of strict literal interpretation. We are further of the considered view that the purposive, conscious and intentional usage of the term 'Previous year' in the *second proviso* of Sec. 2(15), therein leaves no scope of doubt that on being hit by the provisions of Sec. 2(15), even the entitlement of the assessee towards claim of exemption u/s 11 would stand adversely effected only in the 'Previous year' in which the monetary parameters contemplated therein are found to have exceeded. Thus to be brief and explicit, an assessee on being hit by Sec. 2(15) would not lead to jeopardizing of the very existence of its registration u/s 12A/12AA. We find that our aforesaid view stands fortified by the order of the **ITAT, 'G' Bench, Mumbai**, in the case of : **Ghatkopar Jolly Gymkhana, Mumbai Vs. DIT(E), Mumbai (ITA No. 882/Mum/2012)**, wherein it was held as under:-

5.2 *We may observe that the tax exemption or benefits are granted to a trust or institution because its activities fall within the definition of charitable purposes as defined u/s. 2(15) of the Act. Under section 12AA(3) the registration of such trust/ institution can be cancelled if its activities have become non genuine or it is not carrying out activities as per objects of the institution. Once the activities of a registered charitable institution cease to be charitable or do not fall within the purview of definition of 'charitable purpose' as per the relevant provisions/ definitions given under the Act, then, such institution would not be entitled to tax exemption or benefits granted under the Act. Even despite the fact that such an institution, otherwise, is carrying out charitable activities.*

5.3 *Now, the question before us is as to whether the registration of the Assessee as a charitable institution is liable to be cancelled because of*

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*the reason that the total receipts exceeded the limit of Rs.10.00 lacs as provided under the second proviso to section 2(15) of the Act. In our view the word "previous year" mentioned in the second proviso to section 2(15) is more relevant. It has not been mentioned that the first proviso, which as observed is a rigorous proviso, will not apply if the total receipts from the charitable activities exceeds the limit of Rs.10.00 lacs during "any year" rather, the word is "previous year". That means the benefits will not be available to the Assessee for the assessment year in which the gross receipts of income exceeds the limit of Rs.10.00 lacs, however, that does not mean that such benefits will not be available to the institution for all other assessment years during which its receipts does not cross the limit of Rs.10.00 lacs. The word "previous year" mentioned in the second proviso makes it liberal to get an interpretation that it is not the registration of the institution as charitable institution which is affected, rather, it is the eligibility of the said institution to get tax exemption/ benefits which is affected that too for the relevant year during which the gross receipts of the institutions cross the limit of Rs.10.00 lacs. The insertion of second proviso has not made the definition restrictive or rigorous rather with the insertion of second proviso to section 2(15) of the Act, the rigor or restrictive nature of the definition has been diluted and has been made wide enough to include related business activities of the trust/institution, as described in the first proviso to section 2(15) of the Act, also within the scope of definition of charitable purposes. The limit of receipt upto Rs.10.00 lacs during the 'previous year' as mentioned in the second proviso, has made the section further liberal mandating to observe the charitable character of the concerned trust/ institution from year to year basis. For the previous year, during which the gross receipt*

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*income crosses limit of Rs.10.00 lacs, the trust will not get exemption or benefit of its being charitable in nature despite its carrying out charitable activities. However, it will get such benefit if it is registered as charitable institution and income from business activities, as mentioned in first proviso to section 2(15), does not cross limit of Rs.10.00 lacs. Our view in this respect is fortified from the judgment of the co-ordinate Bench decision of the Tribunal in the case of Rajasthan Housing Board vs. CIT (2012)21 Taxmann.com77(Jp).*

5.4 *Thus, the action of the CIT(A) relying upon the newly inserted proviso from 01.04.2009 in cancelling the registration of the trust, in our view, is not correct or justified. The only effect will be that the Assessee will not be entitled for exemption or tax benefits which otherwise would have been available to it being registered as charitable institution, for the relevant year during which its income has crossed the limit of Rs.10.00 lacs. Subject to our above observations cancellation of registration granted to Assessee u/s. 12A is hereby set aside and same is hereby ordered to be restored.”*

8. We are thus of the considered view that now when it is neither the case of the revenue that the assessee which after verification of the genuineness of its objects and activities had been granted registration by the department u/s Sec.12AA(1)(b)(i), had during the year embarked on to any such new activities, which can safely be characterized as non-genuine activities, nor is it the claim of the revenue that the assessee subsequent to its registration is found to be carrying out activities which are not in accordance with its objects, therefore in the absence of satisfaction by the assessee of either of the aforesaid preconditions which forms the very foundation for exercising of the jurisdiction by the DIT(Exemption) for cancelling the registration

of the assessee under Sec. 12AA(3), it can safely be concluded that the DIT(Exemption) had wrongly cancelled the registration of the assessee vide his order passed u/s 12AA(3) of the 'Act'. We thus in light of our aforesaid observations thus set aside the order passed by the DIT(Exemption) u/s 12AA(3) and therein restore the registration granted to the assessee u/s Sec.12AA(1)(b)(i).

9. We may however clarify that as we have set aside the cancellation of the registration of the assessee by the DIT(Exemption) vide his order passed under Sec. 12AA(3), which was assailed before us by the assessee, therefore we refrain from adjudicating the issue as to whether the activities of the assessee, viz running courses and being in receipt of franchisee fees would be hit by the provisions of Sec. 2(15), or not, which thus is left open, and the assessee shall remain at a liberty to raise and contest the same before the A.O. Thus the 'Ground of appeal No. 2' is disposed of by us in terms of our aforesaid observations, and as such is partly allowed.

10. The appeal of the assessee is partly allowed in light of our aforesaid observations.

Order pronounced in the open court on 28/02/2017.

Sd/-

(D.Karunakara Rao)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 28.02.2017

Sd/-

(Ravish Sood)

न्यायिक सदस्य / Judicial Member

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल /Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.  
Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**