

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'डी' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

श्री बी. आर. बास्करन, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI B.R.BASKARAN, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.2511/M/13
(निर्धारण वर्ष / Assessment Year: 2013-14)

M/s. Rugby Association of Maharashtra 214/18, Raheja Center, Free Press Journal Marg, Nariman Point, Mumbai, Maharashtra - 400021	बनाम/ Vs.	Director of Income Tax (Exemption) 5 th Floor, Piramal Chambers, Lalbaugh, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECR6771J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Ajay R. Singh
Department by:	Shri K. B. Shukla

सुनवाई की तारीख / Date of Hearing: 08.09.2015
घोषणा की तारीख /Date of Pronouncement: 24.02.2016

आदेश / ORDER

PER AMARJIT SINGH, JM:

This is an appeal against the order dated 30.01.2013 passed by the Director of Income Tax (Exemptions), Mumbai [hereinafter referred to as the "DIT(E)"] u/s. 12AA(1)(b)(ii) r.w.s. 12A of the

Income Tax Act, 1961(in short “the Act”) relevant to the assessment year 2013-14 wherein the application moved by the appellant has been ordered to be dismissed.

2. The appellant company has filed an application for registration u/s.12A of the Act in a prescribed Form No.10A on 23.07.2012. The appellant company was constituted u/s. 25 of the Companies Act, 1956 vide Certificate of Incorporation dated 03.03.2010. After receipt of an application, notice dated 19.10.2012 was sent to the applicant to appear before the authority for production of necessary documents. In response to the notice Shri Rajnikant Mistry, AR and Faizal Siddiqui, Director the proceeding attended and submitted the necessary documents for verification. The appellant application to register under the provision of section 12AA(1)(b) read with section 12A of the Act has been ordered to be dismissed. The application of the applicant has been rejected mainly on the two grounds which have been mentioned at serial no. B(12) and B(16) which are reproduced as under for ready reference:-

“B(12) To establish and support, or aid in the establishment and support of the associations, institutions, funds calculated to benefit and employees or ex-employees of the Company, or the dependents or connections of such persons, and to grant pensions and allowances to make

payments towards insurance, and to subscribe, donate or guarantee money for any charitable, patriotic or benevolent purposes for any exhibition or for any public, general or useful objects.

B(16) To arrange, visits of an Indian Rugby team (that is to say a national team) and any other team, whatsoever to countries that are members of the International Rugby Board or elsewhere in conjunction with the bodies governing Rugby in the countries to be visited.”

3. We have heard the arguments advanced by the learned representative of the parties and perused the record carefully. In the instant case the appellant has challenged the rejection of application u/s.12A of the Act. According to the Memorandum of Association the authority rejected the application of the appellant on the ground disclosed in the clause B(12) and B(16) which has been mentioned above. However further reproduced below for ready reference:-

“B(12) To establish and support, or aid in the establishment and support of the associations, institutions, funds calculated to benefit and employees or ex-employees of the Company, or the dependents or connections of such persons, and

to grant pensions and allowances to make payments towards insurance, and to subscribe, donate or guarantee money for any charitable, patriotic or benevolent purposes for any exhibition or for any public, general or useful objects.

B(16) To arrange, visits of an Indian Rugby team (that is to say a national team) and any other team, whatsoever to countries that are members of the International Rugby Board or elsewhere in conjunction with the bodies governing Rugby in the countries to be visited.”

3.1 The learned representative of the appellant has argued that the clause B(12) deals with the support of the associations, institutions, funds calculated to benefit and employees or ex-employees of the Company, or the dependents or connections of such persons, and to grant pensions and allowances to make payments towards insurance, and to subscribe, donate or guarantee money for any charitable, patriotic or benevolent purposes for any exhibition or for any public, general or useful objects which cannot be said against the charitable purposes objective of which has been mentioned in section 2(15) of the Act. In support of this contention the learned representative of the assessee has placed reliance on the law settled in Commissioner of Income Tax Vs. Agricultural Produce and Market Committee [2007]

163 Taxman 359 (Bom.) High Court of Bombay. It is also argued that the subsidiary objective to the main object cannot be considered as profit making specifically in view of the Memorandum of Association of the appellant on record, therefore, in the said circumstances learned DIT(E) has wrongly rejected the application of the appellant hence the order dated 30.01.2013 is wrong against law and facts and is liable to be set aside. It is also argued that in view of the clause B-16 also there is nothing contrary to the provision of section 12, 12AA & 2(15). It is also argued that visiting of an Indian Rugby team to the foreign countries nowhere make the circumstance contrary to the object of Memorandum of Association in view of the law settled in [2012] 21 taxmann.com 213 (Delhi) High Court of Delhi, in Director of Income Tax (Exemption) Vs. National Association of Software and Services Companies and [2012] 25 taxmann.com 217 (Mum.) Income Tax Appellate Tribunal Bench in CEO Club India Vs. Director of Income Tax (Exemption). It is also argued that the promotion of sports and games is required to be considered as charitable purpose in view of the law settled in [2013] 34 taxmann.com 168 (Chandigarh Trib) in the case titled as Professional Golf Tour of India Vs. Commissioner of Income Tax – II.

3.2. On the other hand learned representative of the department strongly relied upon the order dated 30.01.2013 and requested to dismiss the appeal.

3.3 By giving careful thoughts to the arguments advanced by the learned representative of the parties and perusing the record, it came into the notice that the Rugby Association of Maharashtra has no doubt moved an application 12AA(1)(b)(ii) r.w.s. 12A of the Act for the registration. The said application has been rejected by the DIT(E), Mumbai by virtue of order dated 30.01.2013 under challenge. The application has been dismissed on the basis of two ground which have been mentioned in clause B(12) and B(16) of the Memorandum of Association and has been produced above. So far as the clause B(12) is concern the appellant is going to establish and support, or aid in the establishment and support of the associations, institutions, funds calculated to benefit and employees or ex-employees of the Company, or the dependents or connections of such persons, and to grant pensions and allowances to make payments towards insurance, and to subscribe, donate or guarantee money for any charitable, patriotic or benevolent purposes for any exhibition or for any public, general or useful objects. The charitable purpose has been defined in section 2(15):

1. Relief of the poor
2. Education
3. Medical relief
4. Preservation of environment (including watersheds, forest and wildlife)
5. Preservation of monuments of places or objects of artistic or historical importance and
6. The advancement of any other objects of general utility.

3.4 No doubt the above mentioned parameters have been prescribed for the activity of charitable purpose but there is test also to consider the activities of charitable purpose which has been prescribed in case of Institute of Chartered Accountants of India Vs. Director General of Income Tax (Exemptions) [2011] 202 taxman 1/13 taxmann.com 175. The said law speaks about the test of business, trade or commerce for consideration the purpose of the Trust. It is specifically held that if the object of the trust comes within the purview of business, trade and commerce then in the said circumstances also the purpose of the trust would not be consider as charitable. In the instant case, nothing came into the notice that the object of the applicant is of the nature of trade, business and commerce. No doubt in the said circumstances and in now of the above mentioned law the application of the assessee has wrongly rejected on the ground. Now considering the para B (12) of the Memorandum of Association, we also nowhere found that this clause is also agreed the object of charitable purpose. In this regard we find support of the order passed by the co-ordinate bench of Chandigarh in [2013] 34 taxmann.com 168 (Chandigarh Trib) in the case titled as Professional Golf Tour of India Vs. Commissioner of Income Tax – II. 3.5 Now in the said circumstances the application of appellant is not liable to be rejected on this ground specifically in view of the law settled in Commissioner of Income Tax

Vs. Agricultural Produce and Market Committee [2007] 163 Taxman 359 (Bom.) High Court of Bombay and [2012] 25 taxmann.com 217 (Mum.) Income Tax Appellate Tribunal Bench in CEO Club India Vs. Director of Income Tax (Exemption). The other point of rejection of the application is that the clause B (16) mentioned in the Memorandum of Association is agreed the object of charitable purpose. The clause B (16) is hereby reproduced as under:-

B(16) “To arrange, visits of an Indian Rugby team (that is to say a national team) and any other team, whatsoever to countries that are members of the International Rugby Board or elsewhere in conjunction with the bodies governing Rugby in the countries to be visited.”

3.5 The said clause is required to be seen on the point of that it is sufficient to reject the application of the appellant or not. Here there is no need to repeat the provision contain in section 2(15) as well as to consider the application of the appellant on the point of trade, business and commerce. It is only to be seen whether the arrangement by the appellant for the visit of Indian Rugby Team or any other team to the foreign countries is hurdle for registration of the appellant u/s. 12AA(1)(b) or not. In this regard there are number of judicial pronouncements on record which speaks that said purpose does not come within the purview of trade, business and commerce and cannot

be considered a point of rejection of application. To arrive at this conclusion we find support of law settled in [2012] 21 taxmann.com 213 (Delhi) High Court of Delhi, in Director of Income Tax (Exemption) Vs. National Association of Software and Services Companies and [2012] 25 taxmann.com 217 (Mum.) Income Tax Appellate Tribunal Bench in CEO Club India Vs. Director of Income Tax (Exemption). In view of the said circumstance we are of the view that the learned DIT(E) has wrongly rejected the application of the appellant u/s. 12AA(1)(b)(ii) r.w.s. 12A of the Act on the ground of para B (12) and B (16) specified in the Memorandum of Association. Therefore we hereby ordered to be set aside the same and direct the DIT(E) to reconsider the matter and pass the order in accordance with law.

4. Accordingly, appeal of the assessee is hereby allowed.

Order pronounced in the open court on 24th February,
2016

Sd/-

Sd/-

(B.R.BASKARAN)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 24th February, 2016

MP

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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.