

आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI SHAILENDRA KUMAR YADAV, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.7247/Mum/2012

(निर्धारण वर्ष / Assessment Year : 2009-10)

Maritime Training and Research Foundation, Mackinnon Mackenzie Building, 1 st fl, Shoorji Vallabhadas Marg, Ballard Estate , Mumbai-400038	बनाम/ Vs.	Asstt. Director of Income Tax (Exemption) 1(1), 5th floor, Piramal Chambers, Parel, Mumbai-400012.
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स्थायी लेखा सं./ PAN : **AAATM5180H**

अपीलार्थी ओर से / Assessee by	Shri Prakash Jotwani
प्रत्यर्थी की ओर से/Revenue by	Shri G N Makwana

सुनवाई की तारीख / **Date of Hearing** : **9.8.2016**

घोषणा की तारीख / **Date of Pronouncement** : **22.8.2016**

आदेश / ORDER

PER RAJESH KUMAR, A. M:

This is an appeal filed by the assessee against the order passed by the Id.CIT(A)-1, Mumbai dated 29.10.2012 for the assessment years 2009-10.

2. The sole issue raised in the various grounds of appeal taken by the assessee is against the upholding the denial of exemption u/s 11 of the Income Tax Act, 1961 (hereinafter to referred to as the Act) as done by the AO on the ground that the assessee is engaged in the business of

activities not covered within the meaning charitable as defined in section 2(15) of the Act and that the activity of training of cadets was not qualified to be education and also that the assessee has been making profit on continuous basis and without any charitable object as provided under section 2(15) of the Act.

3. Facts of the case are that the assessee filed its return of income on 25.9.2009 declaring total income of Rs.26,94,806/- along with the income and expenditure account, balance sheet and Audit Report in form No.10B. The assessee trust is registered as a Charitable Trust with DIT(E), Mumbai u/s 12A vide Registration No.TR 29320/1992 and also with Charity Commissioner, Mumbai vide Registration No.E-13963/-. The assessee trust is engaged in charitable activities in the field of training of all categories of Nautical and other officers and ratings conducting training for employees of marine companies and claimed its income to be exempt under section 11 of the Act. Thereafter, scrutiny proceedings were initiated against the assessee and statutory notices under section 143(2) and 142(1) were issued and served upon the assessee. During the course of assessment proceedings, the AO observed that the activities of the assessee were beyond the scope of deduction as provided under section 2(15) of the Act and therefore came to the conclusion that the assessee was not entitled to claim deduction under section 11 of the Act. The AO specifically reproduced

the objects of assessee-trust in para 3.1.1 of the assessment order which are reproduced below for ready reference :

"5. Objects

a) The objects of the trust are as under:

i) To establish, maintain, conduct control and financially assist training establishments, in particular establishments for the raining of all categories of nautical and other offices and ratings for the merchant marine in Indian and to promote and provide for the technical and nautical education to all persons of India, Nationality with regard to all aspects of the shipping industry

b) And generally to do al such lawful acts and things as are incidental or conducive to the attainment of the aforesaid object"

4. Accordingly, the AO issued show cause notice to the assessee dated 14.10.2011 which was replied on 21.12.2011 and the detailed reply of the assessee is reproduced in para 3.12 of the assessment year. After perusing the reply of the assessee, the AO held that the assessee was engaged in the activities of training and not education as contemplated within the meaning of section 2(15) of the Act and thus the trust was doing the activities of commercial nature and clearly business activities and accordingly, the AO completed the assessment u/s 143(3) of the Act vide assessment order dated 24.12.2011 at an income of Rs.2,62,94,895/-. Aggrieved by the order of the AO, the assessee has preferred appeal

before the Id. CIT(A) who also dismissed the appeal of the assessee by *upholding the assessment order as under :*

"4. I find that the appellant is certainly engaged in the activities of training the cadets, which by itself cannot be qualified as the "education". There is no merit in the argument of the appellant that issuance of certificate after short term course and training for the same is "education". Respectfully following the order of jurisdictional Tribunal in the case of Gurship Education Trust, Mumbai Vs. ITO ITA No. 4788/Mum/2009 I hold that the activities of the appellant are in the nature of business activities regularly carried on and therefore outside the purview of section 2(15) of the act. It is further seen that the appellant is carrying out these activities with huge profit, on continuous basis and without any charitable object as contemplated u/s 2(15). I therefore do not find merit in the contention of the appellant and confirm the action of the AO in treating income of the appellant under the head income from business. Consequently even the capital expenditure claimed as exempt under section 11 by the appellant amounting to Rs.22,38,508/- is also rightly added by the AO. Grounds 1 to 3 of appeal are dismissed."

5. The Id.AR vehemently submitted that the case of the assessee is fully covered by the decision of Hon'ble Jurisdictional High Court in IT Appeal no.465 of 2012 in Director of Income tax V/s Samudra Institute of Maritime Studies Trust, order dated 7.8.2014 wherein an identical issue has been decided in favour of the assessee and prayed that following the ratio laid down in the said decision the order of the Id.CIT(A) be set aside and AO be directed to allow the deduction as claimed by the assessee under section 11 of the Act.

6. On the contrary, the Id.DR reiterated the facts of the case as submitted before the Id.CIT(A) and heavily relied on the order of Id.CIT(A).

7. We have carefully considered the submissions of the parties, perused the material placed before us including the orders of authorities below and case laws relied upon by the parties. We find that the assessee was denied exemption under section 11 of the Act on the ground that the assessee was engaged in imparting training to cadets and not education within the meaning of section 2(15) of the Act and motive of the assessee was earning profit from the said activities. We find that the similar issue has been considered by the Hon'ble Jurisdictional High Court in the case of Samudra Institute of Maritime Studies Trust,(supra)/ The operative part of the said judgment is reproduced below :

"3. We have perused the orders passed by the authorities including the Tribunal. We have also perused the two decisions, one of the Hon'ble Supreme Court and relied upon by both the counsel and equally a short judgment of the Division Bench of this Court in the case of DIT (Exemptions) v. National Safety Council [2008] 305 ITR 257 (Bom). We are of the opinion that the Tribunal has applied the correct test in concluding that the exemption under section 11 can be availed of by the Respondent - Assessee. In doing so, the Tribunal referred to the objects as set out in the Trust Deed of the Respondent - Assessee. They are to set up, administer and maintain technical training institution at various places in India for pre-sea and post-sea training for the ships and maritime industry as a Public Charitable Institute for education. That is to provide on-board and offshore training and continuing technical education for Officers, both on the deck and engine side. One of the object was to register with the Director General of Shipping and obtain other necessary approvals at the State and Central levels. We do not find that the ratio of the judgment of the Hon'ble Supreme Court or of this Court, which may be dealing with section 10(22), has been applied to such an extent as complained by Mr Malhotra. In the present case, the Tribunal in paragraph 9.6 of the impugned order concludes that the Assessee is giving training in the above area to seamen. All the

courses may not be approved by the Director General of Shipping but that by itself is no ground to hold that the purpose is not charitable. The exemption under section 11 can be claimed and bearing in mind the object of the Trust. We are of the opinion that the Tribunal and the CIT (Appeals) have approached the issue correctly and in the light of the definition so also the tests laid down came to a factual conclusion that the Respondent is entitled to exemption under section 11 of the Act. This is not a case where the purpose can be said to run a coaching class or a centre. This is an institution which imparts education in the area of pre-sea and post-sea training to seamen so as to prepare them for all duties. In such circumstances, we do not find that the concurrent findings of fact are vitiated by error of law apparent on the face of the record or perversity enabling us to entertain this Appeal. There is no substantial question of law. The Appeal is therefore dismissed with no order as to costs."

8. On perusal of the above judgement it is revealed that the assessee trust was set up to administer and maintain technical training institution at various places in India for pre-sea and post-sea training for the ships and maritime industry and was engaged to provide on-board and offshore training and also seems to be education and accordingly, held that there is no substantial question of law and dismissed the appeal of the revenue. We find that the case of assessee is squarely covered by the ratio laid down by the jurisdictional High Court in the case of Samudra Institute of Maritime Studies Trust,(supra). Respectfully following the above mentioned judgment of Hon'ble High Court we set aside the order of the Id.CIT(A) and direct the AO to allow the benefit an enumerated under section 11 of the Act by deleting the addition.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 22.08.2016.

Sd/-
(SHAIENDRA KUMAR YADAV)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई MUMBAI; दिनांक DATED : 22 .8.2016
Sr.PS:SRL:

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,

// True Copy //

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

		Date	Initials	
1.	Draft dictated on	9.8.2016		SPS
2.	Draft placed before author	18.8.2016		SPS
3.	Draft proposed & placed before the Second Member			JM
4.	Draft discussed/approved by Second Member			AM
5.	Approved Draft comes to the Sr. PS			SPS
6.	Kept for pronouncement on			SPS
7.	File sent to the Bench Clerk			SPS
8.	Date on which file goes to the Head Clerk			
9.	Date on which file goes to A.R.			
10.	Date of dispatch of order			