

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

ITA NO. 271/MUM/2016 : A.Y : 2012-13

All India Gems & Jewellery Trade Federation
Plot No. A-56, 5th floor, P&S
Corporate House, Road No. 1,
Behind Tunga International, MIDC,
Andheri (E), Mumbai 400 093.
PAN : AAFCA3001P (Appellant)

Vs. ITO (Exemption)-1(1),
Mumbai (Respondent)

Appellant by : Shri Firoze B. Andhyarujina

Respondent by : Shri Rajesh Kumar Yadav

Date of Hearing : 02/11/2017

Date of Pronouncement : 31/01/2018

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the assessee is directed against the order of CIT(A)-1, Mumbai dated 30.10.2015, pertaining to the Assessment Year 2012-13, which in turn has arisen from order dated 10.02.2015 passed by the Assessing Officer, Mumbai u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, although the assessee has raised multiple Grounds of appeal, but substantively speaking, the dispute arises from the action of Assessing Officer in determining the taxable income at Rs.1,08,15,428/-

representing interest earned on fixed deposits with banks of Rs.1,05,55,085/- and interest on income-tax refunds of Rs.2,60,343/- as against NIL income declared in the return of income.

3. At the time of hearing, it was a common point between the parties that the disputes raised by the Assessing Officer in this year are primarily in line with the stand of the assessing authority for Assessment Year 2011-12, which has since travelled to the Tribunal and, vide order in ITA No. 5532/Mum/2015 dated 11.01.2017, the matter has been remanded back to the file of the Assessing Officer with certain directions. So, however, in order to impart completeness to this order, the following discussion is relevant. The appellant before us is a Company licensed u/s 25 of the Companies Act, 1956 and is a non-profit organisation and is also registered with the Director of Income-tax (Exemptions), Mumbai u/s 12A of the Act. Broadly speaking, the assessee is a trade association existing for the benefit of Gems & Jewellery industry. For the assessment year under consideration, the assessee filed a return of income declaring NIL income after claiming exemption under Sections 11/12 of the Act. The discussion in the assessment order reveals that assessee was show-caused as to why it was not hit by the newly inserted proviso to Sec. 2(15) of the Act w.e.f. 01.04.2009 since it could be construed that assessee was engaged in the business of trade, commerce or was engaged in providing services in relation to trade, business or commerce. The assessee resisted the action of the Assessing Officer by referring to its stated objects, which according to it, showed that it was engaged in activities of charitable purpose. So far as the income credited on account of fixed deposits with banks was concerned, assessee pointed out that the same is also eligible for exemption. The

Assessing Officer, however, took the stand that assessee was constituted for the benefit of various Members, and their activities among themselves constituted a mutual association, and it attracted taxation on the principles of mutuality, and that it was not a charitable organisation. So far as the interest income was concerned, the Assessing Officer held that the principles of mutuality would not govern it, and the same was, therefore, taxable. Thus, the Assessing Officer concluded by holding that assessee was not a charitable institution, but a mutual association and, since the interest income did not fall within the principles of mutuality, the total income was assessed at Rs.1,08,15,428/-. The CIT(A) merely noted that similar issue had been decided by him in assessee's own case for Assessment Year 2011-12 and following the same, he upheld the action of the Assessing Officer. Further, the CIT(A) also directed the Assessing Officer to treat the "advertising charges" also as not falling within the mutuality principle and directed the Assessing Officer to modify the assessment accordingly. Not being satisfied with the order of the CIT(A), assessee is in further appeal before us.

4. Before us, the learned representative for the assessee not only referred to the decision of the Tribunal dated 11.01.2017 in assessee's own case for Assessment Year 2011-12, but also relied upon the decision of the Mumbai Bench of the Tribunal in the case of *Bombay Presidency Golf Club Ltd vs. ITO (Exemptions)-1(1)*, [2016] 159 ITD 1050 (Mumbai-Trib.) to point out that the act of depositing money in a scheduled bank was not an activity in the nature of trade, commerce or business so as to constitute a non-charitable activity and that such income was also eligible for being considered as a charitable activity. It has been canvassed that assessee is to

be understood as a charitable institution as it was not hit by the proviso to Sec. 2(15) of the Act having regard to the nature of its activities, and that at no stage, it was the case of the assessee that it was basing its claim of exemption from income on the principles of mutuality. It was submitted that the principles of mutuality has been brought out by the Assessing Officer on his own and, as an alternate plea, assessee pointed out that even going by the principles of mutuality, the entire income was exempt and not hit by the proviso to Sec. 2(15) of the Act.

5. On the other hand, the Id. DR has reiterated the stand of the lower authorities, which we have already noted in the earlier paras and is not repeated for the sake of brevity.

6. We have carefully considered the rival submissions. Ostensibly, in the instant case, it is neither the case of CIT(A) nor of the Assessing Officer that the registration granted to the assessee u/s 12A of the Act has been altered or withdrawn. Thus, we proceed further in the background that the registration of the assessee as a charitable institution u/s 12A of the Act continues to survive. So, however, the case sought to be made out is that the amended proviso to Sec. 2(15) of the Act w.e.f. 01.04.2009 makes the assessee an institution whose activities cannot be construed to be of 'charitable purposes' on account of the activities being tainted by 'commerciality'. Instead, in the order of Assessing Officer, which has been upheld by the CIT(A), assessee has been held to be an organisation existing for mutual benefit and, therefore, the income has been found to be exempt on the principles of mutuality excepting the incomes earned on interest on fixed deposits with banks and from income-tax refund, as the same are

derived from non-Members. The entire assessment by the Assessing Officer and the adjudication by the CIT(A) in this year is based on their respective stands for Assessment Year 2001-12, which had come up before the Tribunal in its order dated 11.01.2017 (supra). Since the matter has been sent back by the Tribunal to the Assessing Officer in the earlier year, we refrain from dealing with the dispute in detail. As the lead year itself is not final as yet, and is pending adjudication in the hands of the Assessing Officer following the remand by the Tribunal vide its order dated 11.01.2017 (supra), under these circumstances, it would be appropriate that the matter in this year is also remanded back to the file of the Assessing Officer for a *de novo* assessment. So, however, we may qualify that the Assessing Officer shall deal with the stand of the assessee by way of a speaking order, firstly, as to the claim of assessee of being a charitable organisation and eligible for the claim of exemption u/s 11 & 12 of the Act. The assessee's plea for benefit under the principles of mutuality, as an alternate plea, shall also be addressed by the Assessing Officer bearing in mind the stand that the assessee may take before him. Needless to say, we direct the Assessing Officer to allow the assessee a reasonable opportunity of being heard and only thereafter, pass an order afresh in accordance with law.

7. In the result, appeal of the assessee is allowed, as above.

Order pronounced in the open court on 31st January, 2018.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 31st January, 2018

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "A" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai