

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “F”, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
PAWAN SINGH, JUDICIAL MEMBER**

ITA No. 6545 /Mum/2016 (Assessment Year- 2009-10)

Fragrance and Flavours Association of India, 2-B, Court Chambers, 25, Sir Vitthaldas Thackersey Marg, Churchgate, Mumbai-400020 PAN:AAAAF0029K	Vs.	DDIT(E)-1(2) Mumbai.
(Appellant)		(Respondent)

Assessee by : Shri Anil Sathe (AR)

Revenue by : Shri Ram Tiwari (DR)

Date of hearing : 22.03.2018

Date of Pronouncement : 22.03.2018

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee under section 253 of Income Tax Act ('the Act') is directed against the order of Ld. Commissioner of Income-Tax (Appeals)-1, Mumbai, [for short the ld. CIT(A)] dated 31.08.2016 for Assessment Year 2009-2010. The assessee has raised the following grounds of appeal:

1. The Learned Commissioner of Income Tax (Appeals) erred in not appreciating that reopening of assessment was bad in law.

2. The Learned Commissioner of Income Tax (Appeals) erred in confirming the denial of exemption u/s 11 to the appellant trust by holding that the activities of the appellant are commercial in nature.

3. The Learned Commissioner of Income Tax (Appeals) failed to appreciate that the object of the trust for conducting the seminars was to impart knowledge, spread awareness and develop the sector of Fragrances &

Flavours, and not to earn surplus and that the resulting surplus is only incidental.

4. The Learned Commissioner of Income Tax (Appeals) erred in holding that the main activity of the appellant is sponsoring of events, without appreciating that while the appellant may receive sponsorship/ advertisement for its programs, it does not sponsor events.

5. The learned Commissioner of Income Tax (Appeals) erred in considering one single seminar to draw an adverse conclusion, and in not considering the entire activities of the Association in a holistic manner.

6. In the alternative and without prejudice to the above grounds, The Learned Commissioner of Income Tax (Appeals) erred in not allowing the alternative plea of the appellant for benefit of principle of mutuality.

7. The Learned Commissioner of Income Tax (Appeals) erred in placing reliance on the decision of Supreme Court in Bangalore Club vs. CIT facts of which case are distinguishable from the case of the appellant.

2. At the outset of hearing, the Ld. Authorized Representative (AR) of the assessee submits that the grounds of appeal raised in the present appeal is covered in favour of assessee in assessee's own case for Assessment Year 2011-12 in ITA No. 5453/Mum/2015. After going through the order of Tribunal, the Ld. Departmental Representative (DR) for the Revenue conceded that the facts of the year under consideration are not at variance and issue is covered against the revenue.
3. We have considered the submission of both the parties and find that similar ground of appeal was raised by assessee in appeal for Assessment Year 201-11 in assessee's own case for Assessment Year 2011-12 in ITA No. 5453/Mum/2015. The co-ordinate Bench of the Tribunal decided the assessee's appeal vide order dated 08.12.2017 passed the following order:

“9. We have given a thoughtful consideration to the issue before us. We find that the assessee is registered as a Charitable organization under Sec. 12A with the Director of Income-tax (Exemption), Mumbai. That as the activities of the assessee were primarily in the nature of "advancement of any other object of general public utility", therefore, the A.O. being of the view that as per the post amended definition of the term 'Charitable purpose' in Sec. 2(15) the commercial activities of the assessee could no more be held as being for charitable purpose, as a result whereof the assessee stood disentitled for claim of exemption under Sec. 11 of the Act. We find that the assessee had declined that it was carrying on any commercial activities and had rather by referring to its activities which had been taken cognizance of by the A.O, viz. (i). Subscription received; (ii). Sale of publications; (iii). Fafai Journal; (iv). Workshop & Conference; (v). Bangalore Seminar; and (vi) Directory receipts, submitted that the said respective activities were for the furtherance of the general public utility object of the assessee, which by no means could be construed as commercial activities.

10. We have deliberated on the observations of the lower authorities and find that the A.O had concluded that the assessee was carrying on commercial activities, primarily for the reason that it had generated substantial revenue from the seminar held at Bangalore. We have given a thoughtful consideration to the issue before us and have deliberated at length on the contentions of the Ld. A.R in the backdrop of the facts of the case. We find that the activities of the assessee trust were directed towards providing knowledge, information, awareness, demonstrations etc. to the members of the Fragrance and Flavours industry. The activities of the assessee were essential to understand the development of the said industry in India. We have deliberated on the nature of activities of the assessee trust and are of the considered view that all of its activities, viz. receipts by way of subscriptions from the members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts and holding of the seminar at Bangalore, were activities which were aimed for furtherance of the very object of the assessee trust, viz. providing knowledge, information,

awareness, demonstrations etc. to the members of the Fragrance and Flavours industry. We are of the considered view that the providing of the aforesaid services were indispensably required to facilitate the furtherance of the very interest of the Fragrance and Flavours industry. Rather, we are of a strong conviction that in the absence of the aforesaid activities of the assessee trust, which as observed by us hereinabove can safely be held to have been indispensably required for the growth of the industry and giving its members an exposure to the developments in the industry and keeping pace with the day to day changes and innovations in the industry, the objects of the assessee trust would have been frustrated and rendered as merely dumb and name sake in nature, defeating the very purpose for which it was set up. We find that a perusal of the orders of the lower authorities reveals that their view that the assessee was involved in carrying on of commercial activities within the meaning of Sec. 2(15), was primarily guided by the fact that the products of the sponsors from whom sponsorship fees were received by the assessee were displayed at the seminar held at Bangalore. We are of the considered view that the holding of the seminar at Bangalore was in furtherance of the main object of the assessee trust of empowerment, betterment and creating awareness amongst the industrialists in order to bring about the development of the Fragrance and Flavours industry in India. We further find that the assessee was not by way of a regular and systematic activity carrying on such seminars, and as observed by us hereinabove, the seminar at Bangalore was the only international seminar held by the assessee trust. We are further of the considered view that no such inextricable nexus between the receipt of sponsor fees by the assessee and display of the products of the sponsors does emerge, on the basis of which the same could safely be characterised as a commercial activity.

11. We are of the considered view that the fact that holding of the seminar at Bangalore by the assessee was in furtherance of the dominant object of the assessee, viz. empowerment, betterment and creating awareness amongst the industrialists of the Fragrance and Flavours industry, and display of the products of the sponsors can safely be concluded to be for furtherance of

and in the interest of the members of the trade. We are unable to persuade ourselves to be in agreement with the view of the A.O that as the products of the sponsors were displayed at the seminar held at Bangalore, therefore, on the said stand alone basis the assessee was to be held to have carried on commercial activities. We are of the considered view that on a close analysis of the aforesaid activities of the assessee trust, which if viewed in a broader perspective and pitted against the dominant object of the assessee to hold a seminar for furtherance of and in the interest of the members of the industry, cannot be characterised as a commercial activity. We find that the Hon'ble Jurisdictional High Court in the case of Director of Income-tax Vs. Womens India Trust (2015) 379 ITR 506 (Bom) had upheld the observations of the Tribunal that where a trust formed to carry out the object of education and development of natural talents of the people having special skills, more particularly the women in the society, had in the course of imparting to them training in the field of catering, stitching, toy making, etc., therein carried out sale of certain finished products, viz. pickles, jams, etc. which were in the course of such training produced by them, through shops, exhibitions and personal contracts, the same could not be held to be activities in the nature of trade, commerce or business as contemplated in the proviso of Sec. 2(15). We find that the view of the Tribunal that as the dominant object of trust was to teach or impart skills and to instill confidence, therefore, the sale of the goods or articles produced in the course of such training could not be construed as carrying on of trade, commerce or business, did find favour with the Hon'ble High Court. We find that in the case of the assessee before us, the holding of the seminars and carrying on of other activities, viz. receipt of subscriptions from the members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts etc., were activities which were carried out in order to facilitate the furtherance of the dominant object of the assessee trust, viz. providing knowledge, information, awareness, demonstrations etc. to the members of the Fragrance and Flavours industry, therefore, neither the carrying on of either of the aforesaid activities, specifically the display of the products of the sponsor members of the industry in the course of the

seminar at Bangalore, which we find had been emphasized by the revenue as the primary reason for concluding that the assessee was carrying on commercial activities could be held as such and brought within the sweep of the first proviso of Sec. 2(15). We further find that the Hon'ble High Court of Madras in the case of Director of Income Tax. (Exemption) Vs. The Chartered Accountant Study Circle (2012) 250 CTR 70 (Mad), had the occasion to deliberate on the scope and gamut of the first proviso of Sec. 2(15) in the case of an assessee trust whose objects among other things was to conduct periodical meetings on professional subjects. The High Court observed that the publishing and sale of books, booklets etc. on professional subjects related to audit and not on any other subject by the assessee. The sale of the books was primarily made to the members of the society, as well as made available to the general public, with the aim to help the society to get better, well-equipped and skilled set of Chartered Accountants for maintaining audit quality, which however could not be construed as a trade or commerce or business. Thus, the High Court observed that the activities of the assessee trust in publishing and selling books of professional interest, which were meant to be used as a reference material even by the general public as well as the professionals in respect of Bank Audit, Tax Audit, etc., could not be construed as a commercial activity. We are of the considered view that in the case of the present assessee before us, the services, viz. receipt of subscriptions from the members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts etc., were provided for facilitating the dominant object of the assessee trust, viz. providing knowledge, information, awareness, demonstrations etc. to the members of the Fragrance and Flavours industry. We further find that even the display of the products of the sponsors of the seminar at Bangalore, who were primarily the members of the industry, was also in furtherance of the interest of the members of the industry, i.e. both by facilitating the very holding of the seminar, as well as providing them knowledge and information of the wide range of products available in the industry. We are thus of the view that the aforesaid activities of the assessee trust before us, in the backdrop of the aforesaid observations of the High Court of Madras

can safely be held to be in the course of furtherance of the dominant object of the assessee trust, and would not fall within the realm of commercial activities. We further find that a similar view had also been taken by the Hon'ble High Court of Delhi in the case of The Institute of Chartered Accountants of India Vs, Director General of Income (Tax (Exemption)) (2013) 260 CTR 1 (Del). The High Court held that no doubt the assessee institute was holding classes and- providing coaching facilities for the members and articled clerks etc. who wanted to appear in the examination conducted by the Institute of Chartered Accountants, but these classes were not held for coaching or for appearance in an examination conducted by some other entity. The High Court observed that as conducting of coaching classes was with the predominant object of maintaining and upholding the standards of the accountancy profession and in furtherance of the object and purpose for which the institute was established, i.e., professional excellence and promotion of accountancy as a preferred profession, and to sharpen the skills and knowledge of the members of Institute who would attend the courses/lectures etc., therefore, the activities of providing coaching classes or undertaking campus placement interviews for a fee were in relation to the main object of the assessee institute, which could not be held to be trade, business or commerce. The High Court while concluding as hereinabove, had observed as under:

"After going through the provisions of the ICAI Act and the Regulations framed therein as well as various activities carried on by the petitioner, we are of the view that the petitioner institute does not carry on any business, trade or commerce. The activity of imparting education in the field of accountancy and conducting courses both at pre-qualification as well as post-qualification level are activities in furtherance of the object for which the petitioner has been constituted. Activities of providing coaching classes or undertaking campus placement interviews for a fee are in relation to the main object of the petitioner which as stated earlier cannot be held to be trade, business or commerce. Accordingly, even though fees are charged by the petitioner institute for providing coaching classes and for holding interviews with respect to campus placement, the said activities cannot be stated to be rendering service in relation to any trade, commerce or business as

such activities are undertaken by the petitioner institute in furtherance of its main object which as held earlier are not trade, commerce or business.”

We are further of the considered view that the proviso to Sec. 2(15) is not aimed at excluding genuine charitable trusts of general public utility, but rather, a trust would not be held to be for 'Charitable purpose', if it is engaged in any activity in nature of trade, commerce or business or renders any service in relation to trade, commerce or business for a cess, fee and/ or any other consideration. We find that our aforesaid view is fortified by the judgment of the Hon'ble High Court of Gujarat in the case of DIT (Exemption) Vs. Sabarmati Ashram Gaushala Trust (2014) 362 ITR 539 (Guj).

12. We thus in the backdrop of our aforesaid observations are of the considered view that activities of the assessee trust which was set up for a charitable purpose within the meaning of Sec. 2(15) of the Act, viz. advancement of an object of the general public utility were well within the realm of charitable purpose for which it was set up. We are of the view that as deliberated by us at length hereinabove, the holding of the seminar at Bangalore and the other activities of the assessee trust, viz. receipt of subscriptions from the members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts were incidental to and in furtherance of the main object of securing the advancement and development of the Fragrance and Flavours industry in India. We are further of the considered view that the aforesaid activities of the assessee trust are neither in the nature of trade, commerce or business, nor an activity rendered in relation to any trade, commerce or business. We further find that the activities of the assessee trust are not with any motive to earn profit, which though we are not oblivious would not conclusively determine as to whether an activity is in the nature of a trade, commerce or business, but then, the same undoubtedly remains a crucial factor for characterising an activity, as one. We find that the surplus arising to the assessee is only incidental and ancillary to the dominant object of the assessee, viz.

advancement and development of the Fragrance and Flavours industry in India. We further find that the surplus generated by the assessee trust was utilized only for the purpose of feeding its dominant object, and no part of such surplus was distributed amongst its members. We have deliberated on the records pertaining to the nature of the activities of the assessee trust, and have observed that the generation of the surplus in its hands was merely a by product of its main object, which had incidentally resulted in the course of furtherance of its dominant object, viz. advancement and development of the Fragrance and Flavors industry in India. We are further of the view that as the international seminar at Bangalore was held by the assessee for the very first time, and the assessee was neither holding such type of seminars by way of a regular and systematic activity, nor for the general public at large, therefore, on the said count also the same can safely be held as not being in the nature of a commercial activity. We have also deliberated on the order of the ITAT, Kolkata, in the case of Indian Chamber of Commerce Vs. Income Tax Officer (2015) 167 TTJ 1 (Kolkata) as had been relied upon by the Ld. A.R, and find that a similar view in context of the issue before us was taken by the coordinate bench of the Tribunal.

13. We thus, in the backdrop of our aforesaid observations are unable to persuade ourselves to be in agreement with the view of the lower authorities that the assessee was involved in carrying of commercial activities. We thus being of the view that as the assessee is carrying on its charitable activities, which are in the nature of advancement of the object of general public utility and is not carrying on any commercial activity, therefore, uphold the entitlement of the assessee towards claim of exemption under Sec. 11 of the Act. We thus in terms of our aforesaid observations set aside the order of the CIT(A).

14. The appeal of the assessee is allowed.”

4. Considering the decision of Tribunal in assessee's own case for subsequent Assessment Year when the facts of the case in the year under consideration are not at variance, we find that grounds of appeal raised by

assessee is covered in favour of assessee and against the Revenue. Thus, respectfully following the decision of Co-ordinate Bench, the grounds of appeal raised by assessee is allowed.

5. In the result, appeal filed by assessee is allowed.

Order pronounced in the open court on 22nd day of March 2018.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated 22/03/2018

S.K.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

BY ORDER

(Asstt.Registrar)
ITAT, Mumbai