



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"I" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI DR. A.L. SAINI, ACCOUNTANT MEMBER**

ITA no.846/Mum./2017  
(Assessment Year :2012-13)

Income Tax Officer (E)  
Ward-2(4), Mumbai

..... Appellant

v/s

The Institute of Marine Engineer (India)  
1012, Maker Chamber  
Veer Nariman Point  
Mumbai 400 021  
PAN – AAATT3254B

..... Respondent

Revenue by : Shri Saurabh Kumar Rai  
Assesseeby : Shri Keyur Dalala/w  
Shri Karthik Natrajan

Date of Hearing – 20.06.2018

Date of Order – 27.06.2018

**ORDER**

**PERSAKTIJIT DEY, J.M.**

Aforesaid appeal by the Revenue is against order dated 11<sup>th</sup> November 2016, passed by the learned Commissioner (Appeals)-1, Mumbai, for the assessment year 2012-13.

2. The only effective ground raised by the Revenue reads as under:-

*"Whether on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in allowing the appeal of the assessee by relying on the decision of the Hon'ble ITAT in assessee's own case for A.Y. 2009-10 ignoring the fact that the Hon'ble ITAT set aside the order of the learned CIT(A) and restored the matter to the file of the A.O. which is not yet finalised."*

3. Brief facts are, the assessee claiming itself to be a trust engaged in educational activity filed its return of income for the impugned assessment year on 30<sup>th</sup> September 2012, declaring nil income after claiming exemption under section 11 of the Act. The assessee is also registered as a charitable organization under section 12A of the Income Tax Act, 1961 (for short "*the Act*"). The Assessing Officer in course of assessment proceedings after examining assessee's claim of exemption under section 11 of the Act concluded that the objects of the assessee are not for charitable purpose but it is in the nature of trade, commerce or business and accordingly, rejected assessee's claim of exemption under section 11 of the Act. Being aggrieved of the assessment order so passed assessee preferred appeal before the first appellate authority.

4. The learned Commissioner (Appeals) taking note of the fact that in assessment year 2009-10, the Tribunal has restored the issue to the Assessing Officer for fresh adjudication, he directed the Assessing Officer to follow the observations of the Tribunal in assessment year 2009-10.

5. We have heard the learned Counsels appearing for the parties. At the outset, the learned Authorised Representative submitted that while considering identical dispute in assessee's own case for assessment year 2009-10, the Tribunal has restored the issue to the Assessing Officer for fresh adjudication and the Assessing Officer decided the issue against the assessee in the fresh proceedings which was challenged by the assessee before the learned Commissioner (Appeals). He submitted, when assessee's appeal involving identical dispute for the assessment year 2011-12 came up before the Tribunal, the Tribunal considering the fact that similar issue for assessment year 2009-10 was pending before the learned Commissioner (Appeals) restored the issue to the learned Commissioner (Appeals) for fresh adjudication along with the appeal for assessment year 2009-10. A copy of the order passed in ITA no. 1271/Mum./2016, dated 17<sup>th</sup> January 2018, was submitted before the Bench. Thus, the learned Authorised Representative submitted, the issue may be restored to the learned Commissioner (Appeals).

6. The learned Departmental Representative agreed with the aforesaid submissions of the learned Authorised Representative.

7. Having considered rival submissions, we find that learned Commissioner (Appeals) while deciding identical issue in the impugned

assessment year has restored it to the Assessing Officer with a direction to follow Tribunal's observations in assessment year 2009-10. However, as could be seen from the facts on record, in assessment year 2009-10, the Assessing Officer again disallowed assessee's claim of exemption under section 11 of the Act, against which, the assessee has preferred an appeal before the learned Commissioner (Appeals). Notably, when identical dispute arising in assessee's own case for assessment year 2011-12 came up for consideration before the Tribunal, the Tribunal taking note of the fact that similar issue is pending before the learned Commissioner (Appeals), restored the matter back to him for re-adjudication along with the appeal for assessment year 2009-10. Facts being identical, consistent with the view taken by the Tribunal while deciding assessee's appeal for assessment year 2011-12 (supra), we restore the issue back to the learned Commissioner (Appeals) with similar direction. The ground is allowed for statistical purposes.

8. In the result, Revenue's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 27.06.2018

**Sd/-**  
**DR. A.L. SAINI**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 27.06.2018**

*Copy of the order forwarded to:*

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

(Sr. Private Secretary)  
ITAT, Mumbai