IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI G.MANJUNATHA, AM AND SHRI RAVISH SOOD, JM

ITA No. 1185/Mum/2017
(**निर्धारण वर्ष** / Assessment Year:2012-13)

M/s. Powerloom Development & Export Promotion Council, C/o Shankar Lal Jain & Associates, 12, Engineer Building, 265, Princess Street, Mumbai 400 002.	**बनाम**/ Vs.	ITO (Exemption)-2(2), 4th Floor, Piramal Chambers, Lal Baug, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN No. AAATP0271E		
(अपीलार्थी /**Appellant)**	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओर से / **Appellant by**	:	Shri. S.L Jain , A.R
प्रत्यर्थी की ओर से/**Respondent by**	:	Shri. Rajat Mittal, D.R

सुनवाई की तारीख / **Date of Hearing**	:	10.07.2018
घोषणा की तारीख / **Date of Pronouncement**	:	24.07.2018

आदेश / **O R D E R**

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-1, Mumbai, dated 15.12.2016, which in itself arises from the order passed by the A.O under Sec. 143(3) of the Income-tax Act, 1961(for short 'Act'), dated 20.03.2015 for A.Y. 2012-13. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal:-

> *"1. The Ld. Commissioner of Income Tax (Appeals) erred in confirming the order of the Ld. Income Tax Officer upholding taxation of interest earned by appellant during the year of Rs. 83,44,789/- without granting exemption u/s. 11 and considering the fact that appellant is a*

company registered under the provisions of section 25 of the companies act. 1956 prohibiting any distribution of income amongst the members and complies with all the requirements of section 2(15) of the Income-tax Act hence whole of the income of the appellant is entitled for exemption u/s. 11.

2. *The Ld. Commissioner of Income Tax (Appeals) erred in denying exemption u/s. 11 to the appellant without considering the fact that dominant object of the appellant is charitable, appellant being trade association, acting for the purpose of development of power loom industry and its export.*

3. *The Ld. Commissioner of Income Tax (Appeals) erred in holding that in view of the CBDT Circular No. 11 of 2008 as part of the income of the appellant is exempt under the principle of mutuality, interest income not being covered under principle of mutuality is taxable in the hands of the appellant without considering the fact and law that appellant being a charitable trust is entitled for exemption under the provisions of section 11 even if part of the income is exempt on the principle of mutuality.*

4 *The Ld. Commissioner of Income Tax (Appeals) erred in not considering the fact that even if certain part of income is exempt on the principle of mutuality, such income is also exempt under the provision of section 11. Thus whole of the income is exempt u/s. 11 of the act.*

5. *The Ld. Commissioner of Income Tax (Appeals) erred in distinguishing case laws relied upon on facts and holding case laws as inapplicable without properly appreciating the ratio of law laid down that even if part of the income is exempt on the principle of mutuality, balance income be exempt under the provision of section 11, as appellant complies with all the requisite conditions thereof.*

6. *Appellant pray that appellant being a company registered under the provisions of section 25 of the companies act and object being development and promotion of trade dominant purpose being charitable is entitled for necessary exemption u/s. 11 of the Act for whole of its income.*

7. *The appellant crave Hon'ble Tribunal leave to add, alter or amend any ground of appeal at the time of hearing or before.*

2. Briefly stated, the assessee had filed its return of income for A.Y. 2012-13 on 28.09.2012 along with the Income & Expenditure A/c, Balance Sheet and Audit Report in Form 10B, declaring total income at Rs. Nil. The case of the assessee was taken up for scrutiny assessment under Sec. 143(2) of the Act. On perusal of the records, it was gathered by the A.O that the assessee had during the year under consideration earned following incomes :-

Sr. No.	Nature of Income	Amount
1.	Membership Fees	1570000
2.	Interest on Investments	8344789
3.	Miscellaneous Income	1134719
4.	Prior Period Income	87000
5.	Income from Design Centre	82500
6.	Grant for Integrated Powerloom development Scheme	10996237
	Total	22215245

The A.O holding a conviction that the activities carried out by the assessee were in the nature of trade, commerce, business etc., thus called upon it to explain as to how the same were not hit by the *first proviso* of Sec. 2(15) of the Act, taking it beyond the scope of charitable activities contemplated therein. The explanation tendered by the assessee in order to impress upon the A.O that its activities were in the nature of charitable activities and did not fall within the sweep of the exclusions contemplated in the *first proviso* of Sec. 2(15), however did not find favour with the A.O. On a perusal of the objects of the assessee trust, it was observed by the A.O that its activities being in the nature of "advancement of any other objects of general public utility" were admittedly restricted to catering to the needs of its members only. In the backdrop of his aforesaid observations, the A.O concluded that the principle of mutuality applied to the case of the assessee. On the basis of his aforesaid deliberations, the A.O relying on the judgment of the Hon'ble Supreme Court in the case of Bangalore Club Vs. CIT (2013) 350 ITR 509 (SC) observed that the interest income earned by the assessee fell beyond the scope and gamut of the income that would be covered by the principle of mutuality. The A.O on the basis of his aforesaid observations concluded that the interest income of Rs. 83,44,789/- earned by the assessee by parking its surplus funds by way of deposits with the banks, being clearly in the nature of interest income earned from third parties would thus not be covered by the principle of mutuality. In the backdrop of the aforesaid facts the A.O subjected the interest income earned by the assessee on the fixed deposits with the banks to tax and assessed its total income at Rs. 83,44,789/-.

3. Aggrieved, the assessee carried the matter in appeal before the CIT(A). It was observed by the CIT(A) that involving identical facts, the A.O while framing the assessment in the case of the assessee for A.Y. 2011-12 had held the activities carried out by it as not being in the nature of charitable activities as per the *first proviso* of Sec. 2(15). It was further observed by the CIT(A) that the A.O while framing the assessment for A.Y. 2011-12, had by placing reliance on the judgment of the Hon'ble Supreme Court in the case of Bangalore Club Vs. CIT (2013) 350 ITR 509 (SC), had further concluded that the interest income on the funds parked by the assessee by way of fixed deposits with the bank would not be covered by the principle of mutuality. The CIT(A) observed that on appeal the assessment framed by the A.O for A.Y 2011-12 in context of the aforesaid issues was upheld by him, vide his order dated 04.02.2016, observing as under :

> *"i. The Appellant submitted that it has not carried out any activity with profit motive and hence proviso to section 2(15) is not applicable to it. In this regard it is mentioned that the AO has mentioned in Para 5 of its order that he had allowed an opportunity to show cause for the same for which no explanation was filed by the appellant. This fact has been admitted by it in the submissions.*
>
> *ii. Appellant argued that it is registered u/s. 12A hence exemption u/s. 11 cannot be denied to it. In this regard it is mentioned that Registration u/s 12A is an eligibility condition for computation of income for the purpose of exemption available and provided u/s 11 and subject to fulfilment of other conditions as provided therein. However, it can bbe said precisely that Registration u/s 12A is a pre-condition for claim of computation of income u/s 11 r.w.s. 12 and 13 of the I.T. Act and it is not an 'entitlement'. Registration u/s 12A being not an entitlement, is also not overriding to other provisions in this behalf like section 11 and 13 of the I.t. Act, as provided u/s 12A of the I.T. Act, The grant of Registration and its existence in particular year by itself is not sufficient for availing exemption u/s 11 of the I.T. Act unless the conditions and its stipulations u/s 11 read with applicable provisions in this behalf are fulfilled. Registration u/s 12A would not ipso facto entitle the assessee to claim exemption u/s 11 as was held in the case of Surat Tenis Club vs. CIT (2000) 75 ITD (Ahd.). This argument of the appellant has therefore no force.*
>
> *iii. Appellant contended that it has been granted exemption u/s. 11 in all earlier years and since there is not change in circumstances in the current year, exemption u/s. 11 should have been alloed by the assessing officer. In this regard it is mentioned that the principle of resjudicata does not apply to income tax proceedings. Thus leal position is settled and clear that 'Rule of Consistency'/ re-judicata is not applicable and each*

assessment year is a separate proceedings, as also affirmed in the decision of the Apex court in Bharat Sanchar Nigam Ltd. Vs. Union of India (S.C) 282 ITR. In another case of CIT Vs. Seshasayee Industries Ltd. (Mad) 242 ITR 691, it was further held that the fact that its claim was not questioned in earlier year does not entitle the assessee to contend that the law should not be applied during the current A.Y. and in the case of Ace Investments (P) Ltd. Vs. CIT (Mad) 244 ITR 166 it was held that facts can be reconsidered in later year and record different finding for earlier year not conclusive. The legal position is finally settled that each assessment year is a separate unit. Also in the case under consideration, the legal issue as regards to the applicability of proviso to section 2(15) mutuality is involved. In the case of Oswal Agro Mills (313 ITR 24), the Hon'ble Supreme Court has held that where question of law is involved, the rule of consistency will not prevail. Similar observations were made by Hon'ble Apex Court in 313 ITR 363, 307 ITR 338, 300 ITR 336. Contention of the appellant is therefore, not acceptable.

iv. The appellant has relied upon several case laws. However,, the facts in these cases are different as compared to the appellant. Further it is noted that the AO has relied upon the Circular No. 11/2008 dated 19.12.2008 issued by CBDT and has accordingly held the appellant as a mutual association. Accordingly he was allowed exemption to the grants received and membership fee. For the sake of ready reference the relevant part of circular is reproduced as under :

> *"3.1 There are industry and trade associations who claim exemption from tax under section 11 on the ground that their objects are for charitable purpose as these are covered under any other object of general public utility. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants. Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality."*

From above it may be noted that the appellant is a trade association and is claiming both to be charitable institution as well as mutual association. Consequently, as per the above circular its case will be covered by the principle of mutuality. Accordingly the findings of the AO in this regard are upheld.

v. Further, it is also noticed that the assessee has also earned interest income which cannot be said to have been received from its members. Accordingly, same is not covered by the principles of mutuality. Precisely, this is what has been held in the judgments of Hon'ble Supreme Court in the case of Bangalore Club and of Hon'ble Bombay High Court in Common

> *Affluent Treatment Plant (supra) referred to by the assessing officer, Thus, it is held that the interest income has rightly been taxed by the AO as income of the appellant during the year under consideration. Further, since exemption u/s. 11 has been denied, the consequential grounds raised by the appellant cannot be allowed. Ground No. 1 of appeal is therefore, dismissed."*

On the basis of his aforesaid deliberations, the CIT(A) observing that the facts involved in the case of the assessee for the year under consideration were in absolute *parity* with those for A.Y. 2011-12, thus followed his earlier order and dismissed the appeal.

4. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Learned Authorized Representative (for short 'A.R') for the assessee submitted that the assessee was registered under the provisions of Sec. 25 of the Companies Act, 1956 on 08.09.1985. In order to fortify his aforesaid contention, the Ld. A.R took us through the certificate of incorporation and the license granted to the assessee under Sec. 25 of the Companies Act, 1956 at Page 2-3 of the assesses 'Paper Book' (for short 'APB'). The Ld. A.R further drew our attention to the objects of the assessee as were provided in its 'Memorandum of Association' at Page 6 of 'APB'. The Ld. A.R referring to the main objects of the assessee, submitted that it was setup to promote, support, develop, advance and increase powerlooms and export of powerloom fabrics and made-ups thereof, and to carry on any such activity in such manner as may be necessary. It was further submitted by the Ld. A.R that the assessee in furtherance of its main object was undertaking activities by way of research in methods, designs etc. in order to improve the efficiency of the powerloom sector. The Ld. A.R further submitted that government nominees were there on the board of the assessee. The Ld. A.R further took us through the bye laws, profit & loss account for the year under consideration, notes forming part of the financial statements, bifurcated details of the amounts received by way of subscriptions from the members and the details of the grants received from the Ministry of Textile, Government of India. In the backdrop of the aforesaid contentions, it was submitted by the Ld. A.R that the assessee was duly entitled for claim of exemption under Sec. 11 of the Act. On a query raised

by the bench as to whether the order passed by the CIT(A) in its case for A.Y. 2011-12 was further carried in appeal, the Ld. A.R fairly submitted that on appeal the Tribunal had vide its order passed in M/s Powerloom Development & Export Promotion Council Vs. ITO(E), II(1), Mumbai (ITA No. 2869/Mum/2016, dated 28.07.2017), after deliberating at length on the issue under consideration had set aside the order of the CIT(A) and restored the matter to the file of the A.O for making a fresh assessment after giving a reasonable opportunity of being heard to the assessee. However, it was submitted by the Ld. A.R that the facts involved in the case of the assessee for the year under consideration were distinguishable as against those involved in its case for A.Y. 2011-12. Per Contra, the Learned Departmental Representative (for short 'D.R') relied on the order of the CIT(A). It was submitted by the Ld. D.R that the CIT(A) after observing that the facts involved in the case of the assessee remained the same as were there before him in its case for A.Y. 2011-12, had thus followed the view taken by him in the said year and dismissed the appeal of the assessee.

5. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that on a perusal of the orders of the lower authorities, it emerges that by characterizing the activities of the assessee as not being charitable as per the *first proviso* of Sec. 2(15) of the Act, the assessee has been held as ineligible for claim of exemption under Sec. 11. We find that involving identical set of facts the assessee was divested of its entitlement as regards claim of exemption under Sec. 11 in the assessment framed in its case for A.Y. 2011-12. It further emerges from the record that the A.O while framing the assessment for A.Y. 2011-12 had observed that as the assessee was catering to the needs of its members only, thus it was a mutual association and the principle of mutuality would be applicable in its case. However, the A.O relying on the judgment of the Hon'ble Supreme Court in the case of Bangalore Club Vs. CIT (2013) 350 ITR 509 (SC) had concluded that earning of interest on amounts parked by the assessee in FDR's with the banks, having been received from a third party, would thus fall beyond

the sweep of the principle of mutuality. The order passed by the A.O was thereafter upheld on appeal by the CIT(A). We further find that the Tribunal, vide its order passed while disposing off the appeal of the assessee for A.Y. 2011-12 viz. M/s Powerloom Development & Export Promotion Council Vs. ITO(E), II(1), Mumbai [ITA No. 2869/Mum/2016, dated 28.07.2017] (Copy placed on record) had set aside the order of the CIT(A) and restored the matter to the file of the A.O for making a fresh assessment after giving a reasonable opportunity of being heard to the assessee, observing as under :

> *"7. We have heard the rival submissions and perused the relevant material on record. We are of the considered view that in the instant appeal the following facts are to be ascertained.*
>
> *(i) Whether there is complete identity between the contributors and participant?*
>
> *(ii) Whether trading has taken place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in his respect they have no dealings or relations with any outside body?*
>
> *7.1 We find that the facts delineated at para 7 here-in-above have not been examined either by the AO or the Ld. CIT(A). Therefore, we set aside the order of the Ld. CIT(A) and restore the matter to the file of the AO to make a fresh assessment after giving a reasonable opportunity of being heard to the assessee. We also direct the assessee to file the relevant details before the AO. As the matter has been restored to the file of the AO, we are not adverting to the case laws referred by both sides."*

6. We have deliberated at length on the issue under consideration in the backdrop of the facts involved therein. We are of the considered view that the facts and the issue involved in the case of the assessee for the year under consideration remains the same, as against those which were involved in its case for A.Y. 2011-12. We are unable to persuade ourselves to subscribe to the claim of the Ld. A.R that the facts for the year under consideration are distinguishable as against those which were involved in the case of the assessee for A.Y. 2011-12. The Ld. A.R had failed to draw our attention to any such material fact on the basis of which it could safely be concluded that the facts for the year under consideration before us are found to be distinguishable as in comparison to those of the immediately

preceding year. Be that as it may, we are of the considered view that in the backdrop of the aforesaid facts, it can safely be concluded that the facts and the issue involved in the case of the assessee for the year under consideration remains the same, as were involved in its case for A.Y. 2011-12. We find that the Tribunal while disposing off the appeal of the assessee for A.Y. 2011-12 had set aside the order of the CIT(A) and restored the matter to the file of the A.O for fresh adjudication. We have perused the order of the Tribunal and find ourselves to be in agreement with the view taken therein that certain material aspects viz (i) whether there is a complete identity between the contributors and the participants; and (ii) whether trading has taken place between persons who are associated together and contribute to a common fund for the financing of some venture or object to the exclusion of any dealings or relations with any outside body, though are issues which have a strong bearing on the adjudication of the exigibility to tax of the income of the assessee during the year under consideration, however the same had not been adverted to and therein adjudicated upon by the lower authorities. We thus, on similar terms restore the matter to the file of the A.O with a direction to make a fresh assessment after giving a reasonable opportunity of being heard to the assessee. The A.O shall during the course of the *denovo* assessment adjudicate upon the aforesaid issues. Needless to say, the assessee shall be at a liberty to support its claim that its income for the year under consideration is not exigible to tax by advancing fresh submissions and documents. We thus, set aside the order of the CIT(A) and restore the matter to the file of the A.O in terms of our aforesaid observations.

7. The appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 24.07.2018

Sd/-	Sd/-
(G. Manjunatha)	(Ravish Sood)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 24.07.2018

व.नि.स./ *PS. Rohit Kumar*

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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai