



IN THE INCOME TAX APPELLATE TRIBUNAL " SMC", BENCH  
MUMBAI

BEFORE SHRI R.C.SHARMA, AM  
&  
SHRI RAM LAL NEGI, JM

ITA No.6793/Mum/2016  
(Assessment Year :2009-10)

M/s. Indian Plastics Institute 30, Sarvoday Industrial Estate Off. Mahakali Caves Road Near Paper Box Factory Andheri (E) Mumbai – 400 093	Vs.	The Assistant Director of Income Tax Officer – (E)- II(1), Mumbai
<b>PAN/GIR No.AAAT10215K</b>		
<b>Appellant)</b>	<b>..</b>	<b>Respondent)</b>

Assessee by	Shri. B V. Jhaveri
Revenue by	Ms. N. Hemalatha
<b>Date of Hearing</b>	<b>04/06/2018</b>
<b>Date of Pronouncement</b>	<b>30/07/2018</b>

**आदेश / O R D E R**

**PER R.C.SHARMA (A.M):**

This is an appeal filed by the assessee against the order of CIT(A)-1, Mumbai dated 23/08/2016 for A.Y.2009-10 in the matter of order passed u/s.143(3) of the IT Act.

2. The following grounds have been taken by the assessee:-

***A) Denial of exemption u/s.11***

*1) The learned Commissioner of Income Tax (Appeals) - 1, Mumbai [CIT(A)] erred on facts and in law in confirming the order passed by the Assistant Director of Income Tax (E)-II(1), Mumbai (AO) rejecting the appellant's claim of exemption u/s. 11,*

*2) The learned CIT(A) erred on facts and in law in holding that the appellant had not made any submission with reference to the*

*applicability of section 11 (4A) either during the assessment proceedings or during the appellate proceedings.*

*3) The learned CIT(A) erred in holding that the receipts of the appellant do not fall under the definition of education or under any other object of general public utility.*

*4) The learned CIT(A) erred in holding that the receipts of the appellant were in the nature of business income.*

*5) The appellant prays that your honour hold that the appellant has fulfilled all the conditions for exemption u/s. 11 and denial of the same by AO and confirmation of the same by CIT(A), is not as per law.*

***B) Not dealing with the issue regarding mutuality***

*6) Without prejudice to the above, the learned CIT(A) erred on facts and in law in not dealing with the alternative contention of the appellant that if exemption u/s. 11 is not available to the appellant, the income of the appellant is exempt on the principles of mutuality.*

***C) General***

*7) The above Grounds of Appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above Grounds of Appeal.*

3. Rival contentions have been heard and record perused.
4. Facts in brief are that the assessee trust is registered under the Bombay Public Trusts Act, 1950 on 18<sup>th</sup> June, 1985. The assessee trust is also registered under section 12A of the Income-tax Act, 1961 on 14<sup>th</sup> August, 1985. The income of Indian Plastics Institute (IPI) is exempt u/s.11 of the Act since inception till A.Y. 2008-09.
5. During the year under consideration, there was excess of income over expenditure of Rs.13,48,140/- which was transferred to the Education Fund. Prior to the completion of the assessment for A.Y. 2009-10, the DIT(E) had vide order dated 16<sup>th</sup> December, 2011 withdrawn the registration u/s. 12A granted to the assessee. The A.O. treated the total receipts of Rs. 38,08,614/- as income of the assessee trust.

6. The Hon. Tribunal, Mumbai Bench vide para 5 on page 5 of its order dated 21<sup>st</sup> February, 2014 allowed the appeal of the assessee for A.Y. 2009-10 and restored the registration U/S.12A of the Act granted to the assessee.

7. However, Tribunal in its order in para 7 & 8 observed that receipt on account of international conference and interest on deposit was in the nature of business income. Thereafter, the assessee filed miscellaneous petition against its order of the Tribunal. The Hon'ble Appellate Tribunal had partly allowed the Rectification Application of the assessee-trust and deleted the words "interest on deposit at Rs.16,14,824/- for being treated as Business Income in para 7 of its order.

8. Thereafter, the assessee-trust had filed a Writ Petition against the order of the Hon'ble Appellate Tribunal dated 21<sup>st</sup> February, 2014 to the High Court at Bombay. Allowing the Writ Petition, the Hon'ble Bombay High Court held as under (page 158 of Volume II):

*"17. Once the Tribunal came to the conclusion that the Director had no jurisdiction to cancel the exemption for the assessment years prior to the amendment, which came in the Act from 1<sup>st</sup> June, 2010, that being the essential conclusion, the other two arguments noted by the Tribunal and dealt with may have been found in the same order which was not interfered with by this Court, but what we find is that the decision of the coordinate Bench which was followed in rendering the subject decision by the Tribunal and essentially on the point of jurisdiction, was enough to conclude the controversy. The arguments of the assessee's representative on the applicability of proviso to Section 2 Clause (15), therefore, were strictly not required. They were not necessary for the decision on the point involved. Once on jurisdiction, the petitioner was on a sound footing, then, we do not think that the observations of the Tribunal would have any bearing on the assessments that have been framed for the*

*same and subsequent assessment year. In challenging that assessment orders if they are adverse to the petitioner's interest, and if such challenge is raised and is indeed pending, the Tribunal shall decide the issues or grounds in such Appeals pending before it on their own merits and in accordance with law. The Tribunal should not influence itself solely by the observations that have been made in paragraphs 7 and 8 of the order passed in Income Tax Appeal No.308/Mum/2012 for the assessment year 2009-2010. We clarify that all the arguments and of both sides, therefore, can be considered by the Tribunal. Once the Writ Petition is disposed of with this clarification, the Income Tax Appeal No. 100 of 2015 does not survive and the same is disposed of.*"

9. In view of the aforesaid order of the High Court of Bombay the reliance placed on the order of the Appellate Tribunal dated 21-2-2014 by the CIT(A) in para 5.2 of his order is incorrect and bad in law.

10. Considering that the activities of the assessee-trust are for advancement and development for the benefit of its members and public, the art, science, technology and engineering of plastics, natural and synthetic and other related materials which is achieved through regular technical lectures, seminars and workshop on topical interest, and international conference held in India by inviting foreign delegates and faculties, conducting one-year part-time Diploma Courses, conducting Plastics Processing Operators Training (PPOT) in 100 Govt. Industrial Training Institutes (ITI) all over India, conducting two-day short-term courses and publishing IPI Journals giving latest technological developments.

11. We observe that assessee trust it is not carrying on any activity which can be termed as "commercial activity" or an activity in the nature

of trade, commerce or business by conducting an International Conference. The assessee is disseminating knowledge on the subject of plastics by different ways and means like holding courses, holding conferences, holding lectures, publishing literature on new subjects, publishing its journal, conducting diploma course, etc. Thus the activities of the assessee are purely of a general public utility inasmuch as it helps all those classes of persons connected with the plastics and its application with a useful knowledge and information from time to time. Accordingly, we do not find any merit in the action of the lower authorities for decline of claim of exemption in respect of excess of income over the expenditure which was transferred to the education fund.

**12. In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on this                      30/07/2018

**Sd/-**  
**(RAM LAL NEGI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(R.C.SHARMA)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated                      30/07/2018

Karuna Sr.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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)  
**ITAT, Mumbai**