

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C", MUMBAI**

BEFORE SHRI R.C. SHARMA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 520/MUM/2016
Assessment Year: 2010-11**

**ITA No. 521/MUM/2016
Assessment Year: 2010-11**

&

**ITA No. 522/MUM/2016
Assessment Year: 2011-12**

The Cotton Textiles Export Promotion Council, Engineering Centre, 5 th Floor, 9 Mathew Road, Mumbai – 400004 PAN :AAAAT9241M	Vs.	The Income Tax Officer (Exemption)-I(1), Piramal Chambers, Lalbaug, Parel, Mumbai - 400012
(Appellant)		(Respondent)

Assessee by : Shri J.D. Mistry/Neeraj Sheth (AR)

Revenue by : Shri Abdul Hakeem M (DR)

Date of Hearing: 31/08/2018
Date of Pronouncement: 19/09/2018

आदेश / O R D E R

PER RAM LAL NEGI, JM

These appeals have been preferred by the appellant/assessee against the three orders dated 06.11.2015 passed by the Commissioner of Income Tax Appeals [for short CIT(A)] pertaining to the assessment years 2010-11 and 2011-12. Vide ITA No. 520/M/2016 and 522/M/2016 the assessee has challenged the orders passed by the Ld. CIT(A) pertaining to the assessment years 2010-11 and 2011-12

whereby the Ld. CIT(A) has partly allowed the appeals filed by the assessee against the assessment orders passed u/s 143(3) of the Income Tax Act, 1961 (for short 'the Act'), whereas vide ITA No. 521 the assessee has challenged the order passed by the Ld. CIT (A) whereby the Ld CIT(A) has dismissed the appeal filed by the assessee against order passed by the AO u/s 154 of the Act pertaining to the assessment year 2010-11.

2. Since all the three appeals pertain to the same assessee and related issues are involved, all the appeals were clubbed, heard together and are being disposed of by this common and consolidated order for the sake of convenience and brevity.

ITA No. 520/MUM/2016 (Assessment Year: 2010-11)

Brief facts of the case are that the assessee a Charitable Trust registered with DIT(E), Mumbai u/s 12A of the Act, filed its return of income for the assessment year under consideration along with the income and expenditure statement, Balance sheet and Audit Report in the Form 10-B, declaring 'Nil' income. Since the case was selected for scrutiny, AO issued notices u/s 143(2) and 142(1) of the Act. In response thereof, the authorized representative appeared (AR) before the AO and furnished the details called for. The AO after examining the details and hearing the AR, passed assessment u/s 143 (3) of the Act determining the total income at Rs. 2,82,79,789/-, denying the exemption claimed by the assessee u/s 11 of the Act in the light of the amendment in definition of charitable purposes u/s 2(15) of the Act as applicable w.e.f. assessment year 2009-10 and also making addition of Rs. 22,95,000/- on account of corpus donation u/s 11 (1)(d) of the Act.

The assessee challenged the assessment order before the CIT(A) *inter alia* raising the ground that the AO has erred in not granting the exemption u/s 11 of the Income Tax Act and further challenging the action of AO in considering erroneous figure of expenses during the year. The Ld. CIT (A) after hearing the assessee partly allowed the appeal and confirmed the action of AO of denying exemption u/s 11 of the Act. The assessee is in appeal before the Tribunal against the said findings of the Ld. CIT (A).

2. The assessee has preferred this appeal before the Tribunal on the following effective grounds:-

- 1:0 Re.: Non granting of exemption u/s 11 of the Income Tax Act, 1961
- 1:1 *The Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer of not granting the Appellant exemption u/s 11 of the Income Tax Act, 1961 as claimed by the Appellant.*
- 1:2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the Appellant is entitled to an exemption in terms of the section 11 and the Commissioner of Income-tax (Appeals) ought to have held as such.*
- 1:3 *The Appellant submits that the Assessing Officer be directed to grant the Appellant exemption u/s 11 and to re-compute its total income accordingly.*

Without prejudice to ground No. 1:

- 2:0 Re.: Considering erroneous figure of the expenses during the year:
- 2:1 *The Commissioner of Income-tax (Appeals) has erred in confirming the action of the Assessing Officer of considering the expenses*

incurred for the year at Rs. 5,09,05,980/- as against Rs. 6,92,79,821/- incurred by the Appellant as per its 'income and expenditure account' for the year.

2:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the expenses incurred during the year ought to have been considered at Rs. 6,92,79,821/- as per 'income and expenditure account' of the Appellant for the year as against Rs. 5,09,05,980/- considered by the Assessing Officer.

2:3 The Appellant submits that the Assessing Officer be directed to consider the expenses incurred during the year at Rs. 6,92,79,821/- and to re-compute its total income accordingly.

3. At the outset, the Ld. counsel for the assessee submitted that in the Director of Income Tax (Exemption) [DIT(Exemption)] Mumbai vide order dated 08.12.2011 passed u/s 12AAA(3) of the Act, cancelled the registration granted to the assessee u/s 12A of the Act. The assessee challenged the impugned order before the ITAT. The ITAT set aside the impugned order and ordered to restore the registration vide order dated 12.02.2014. In the same assessment year the Ld. CIT (A) confirmed the action of AO of not granting exemption u/s 11 of the Act to the assessee. The assessee challenged the order passed by the Ld. CIT (A) before the ITAT. The ITAT set aside the findings of the Ld. CIT (A) and directed the AO to allow the exemption to the assessee. Against the said order, the revenue preferred an appeal before the Hon'ble Bombay High Court. The Hon'ble High Court after hearing the parties dismissed the revenue's appeal holding that the question framed does not give rise to any substantial question of law. The Ld. counsel further submitted that

since the Hon'ble High Court has upheld the order passed by the ITAT, the issue in question is covered in favour of the assessee by the judgment of the Hon'ble High Court. The Ld. counsel further submitted that since the impugned order passed by the Ld. CIT(A) is not in accordance with the decision of the Hon'ble High Court rendered in the assessee's own case for the assessment year 2009-10, the same is liable to be set aside. So far as the activities of the assessee is concerned the Ld counsel relying on the decision of the ITAT Bench Kolkata rendered in the case of *Indian Chamber of Commerce vs. Income Tax Officer, Exemption* [2014] 52 taxmann.com52(Kolkata-Trib) and *Indo French Chamber of Commerce & Industries vs. Assistant Director of Income Tax, Exemption, Mumbai*, submitted that since the assessee being cotton promotion Councils is a non-profit making organization, income earned by it from any incidental activities would also be eligible for exemption u/s 11 of the Act.

4. On the other hand, the Ld. Departmental Representative (DR) submitted that the present appeal pertain to A.Y. 2010-11, whereas the order relied upon by the assessee pertains to the A.Y. 2009-10. Since, the AO had noted that assessee had shown the income from membership fees, advertisement, interest on long term investments, sundry income, rent, market development asst. for participation in fares grant receivable through legal and quota administration work, certificate of origin charges and out of the sources of income some of the sources are prima facie in the nature of trade and commerce and since the assessee failed to substantiate its claim, the Ld. CIT (A) has rightly confirmed the order passed by the AO and dismissed the appeal of the assessee.

5. We have heard the rival submissions and perused the material on record in the light of the rival contentions. As pointed out by the Ld.

counsel for the assessee, the assessee challenged the action of the Director of Income Tax (Exemption) in cancelling the registration granted to the assessee u/s 12A of the Act vide ITA No. 325/Mum/2012 for the A.Y. 2009-10. The co-ordinate Bench after hearing the parties set aside the order of the DIT (Exemption) and ordered to restore the registration granted to the assessee u/s 12A of the Act. Further, vide appeal ITA No. 317/Mum/2013, the assessee challenged the order passed by the Ld. CIT (A) in confirming the action of AO of not granting exemption u/s 11 of the Act to the assessee. The coordinate Bench set aside the findings of the Ld. CIT (A) holding as under:-

“5 We have carefully perused the assessment order and the order of the First Appellate Authority. We find that the Tribunal in ITA NO. 325/M/2012 has set aside the order of the DIT (Exemption) and restored the registration to the assessee granted u/s 12A of the Act. Since the registration has been restored by the Tribunal, we do not find any reason why exemption should not be allowed to the assessee. We, set aside the findings of the Ld. CIT (A) and direct the AO to allow the exemption to the assessee.”

6. The revenue challenged the order dated 28.01.2015 before the Hon'ble High Court. The Hon'ble High Court dismissed the revenue's appeal holding as under:-

“2. Our attention is invited to the order dated 14th February 2017 passed by the Division Bench of this Court in Income Tax Appeal No. 1479/2014 [Director of Income Tax (Exemption) v. M/s Cotton Textile Exports]. Admittedly, by the said order, the judgment and order passed by the Appellate Tribunal in Income Tax Appeal No. 325/M/2012 has been confirmed and, therefore, the order of restoration of registration granted to the respondent assessee under

Section 12A of the Income Tax Act, 1961 has been confirmed.”

7. It is amply clear from the aforesaid facts that the co-ordinate Bench has restored the registration granted u/s 12A of the Act by setting aside the order of the DIT (Exemptions) vide which the Ld. DIT (Exemption) had cancelled the registration granted to the assessee u/s 12A of the Act. The coordinate Bench has further decided the issue regarding exemption u/s 11 of the Act in favour of the assessee on the ground that since the co-ordinate Bench has restored the registration granted u/s 12A of the Act, there is no reason to disallow exemption u/s 11 of the Act.

8. We further notice that the authorities below have denied the exemption under the guise of amendment to section 2(15) applicable w.e.f. assessment year 2009-10. We notice that the Ld. DIT (Exemptions) had cancelled the registration of the assessee council u/s 12AAA(3) of the Act on the ground that the activities carried out by the assessee are in the nature of trade and commerce or business etc. and the gross receipts were more than the prescribed limit , however, the co-ordinate Bench set aside the order passed by the Ld.DIT (Exemptions) after examining the matter in the light of the amended brought by Finance Act, 2009 w.r.e.f., 01.04.09. Since, the coordinate Bench has set aside the findings of the Ld. CIT (A) and directed the AO to allow the exemption to the assessee u/s 11 on the basis of the Tribunal's order directing to restore registration granted to the assessee u/s 12A of the Act and the Hon'ble High Court has upheld the decision of the Tribunal, we find merit in the arguments of the Ld. counsel for the assessee. Moreover, the authorities below have not pointed out any activities during the assessment year under consideration which are different from the activities carried out by the assessee during the A.Y. 2009-10,

there is no reason to deny the exemption in question in the assessment year under consideration.

9. In view of the aforesaid facts and circumstances of the case and the light of judgment of Hon'ble Bombay High Court and the decision of the coordinate Bench rendered in the assessee's own case for the A.Y. 2009-10, and the other decisions relied upon by the Ld. counsel for the assessee, we hold that the issue involved in the present case is covered in favour of the assessee by the order passed by the Hon'ble Bombay High Court in assessee's own case discussed above. We accordingly set aside the order passed by the Ld. CIT (A) and direct the AO to allow the exemption u/s 11 of the Act to the assessee re-compute the total income accordingly.

10. Ground No. 2 is without prejudice to Ground No. 1. Since, we have decided Ground No. 1 of the appeal in favour of the assessee, Ground No. 2 has become academic. Hence, we do not consider it necessary to adjudicate the said ground.

ITA No. 521/MUM/2016 (Assessment Year: 2010-11)

Vide the present appeal, the assessee has challenged the order passed by the Commissioner of Income Tax (Appeals), whereby the Ld. CIT (A) has dismissed the appeal filed by the assessee against order passed by the AO u/s 154 of the I.T. Act.

2. The assessee has challenged the impugned order on the following effective grounds:-

Without prejudice to the grounds raised in the appeal filed against the Order dated 06 November 2015 passed by the Commissioner of Income-tax (Appeals) in an appeal against Order dated 20

March 2013 passed u/s 143 (3) of the Income-tax Act, 1961 for the year:

1: 0 Re.: Considering erroneous amount of the expenses incurred during the year:

1:1 *The Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer of refusing to rectify the error apparent on record viz. of considering the amount of expenses incurred for the year at Rs. 5,09,05,980/- as against Rs. 6,92,79,821/- incurred by the Appellant as per its 'income and expenditure account' for the year.*

1:2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the expenses incurred during the year ought to have been considered at Rs. 6,92,79,821/- as per 'income and expenditure account' of the Appellant for the year as against Rs. 5,09,05,980/- considered by the Assessing Officer which is the amount applied towards the charitable objects by the Appellant as per the return of income filed.*

1:3 *The Appellant submits that the Assessing Officer be directed to consider the expenses incurred during the year at Rs. 6,92,79,821/- and to re-compute its total income accordingly.*

3. Since, we have decided Ground No. 1 of the assessee's appeal for the A.Y. 2010-11 in favour of the assessee, the impugned order

confirming the order passed by the ITO u/s 154 of the Act has become infructuous. Hence, we dismiss the present appeal being infructuous.

ITA No. 522/MUM/2016 (Assessment Year: 2011-12)

The facts and the issues involved in the present appeal are identical to the facts and the issues involved in the assessee's appeal for the A.Y. 2010-11 discussed above, except the amount of exemption involved.

2. Since, we have decided the identical issue in favour of the assessee in the assessee's own appeal for the A.Y. 2010-11, consistent with our findings, we decide the first ground of appeal in this case in favour of the assessee.

3. Similarly, since the second ground is without prejudice to Ground No. 1 and since we have decided Ground No. 1 in favour of the assessee, we do not consider it necessary to decide this ground being academic.

In the result, appeals filed by the assessee pertaining to assessment years 2010-11 & 2011-12 against orders passed u/s 143 (3) of the Act are allowed and appeal against order passed u/s 154 pertaining to the assessment year 2010-11 is dismissed.

Order pronounced in the open court on 19th Sept, 2018.

Sd/-
(R.C. SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 19/09/2018

Alindra, PS

Sd/-
(RAM LAL NEGI)

JUDICIAL MEMBER

आदेश 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
यकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**