

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ “एक सदस्य” पुणे में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH “SMC”, PUNE

BEFORE  
SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No.1421/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2011-12

PYC Hindu Gymkhana,  
766, Bhandarkar Road,  
Shivajinagar, Pune – 411004

..... अपीलार्थी /  
Appellant

PAN : AAATP1121F

बनाम v/s

The Dy. Commissioner of Income Tax,  
Circle – 4, Pune

..... प्रत्यर्थी /  
Respondent

आयकर अपील सं. / ITA No.1888/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2011-12

The Dy. Commissioner of Income Tax,  
(Exemption) Circle, Pune

..... अपीलार्थी /  
Appellant

बनाम v/s

PYC Hindu Gymkhana,  
Vinchekar Pavalion,  
Deccan Gymkhana,  
Shivajinagar, Pune – 411004

..... प्रत्यर्थी /  
Respondent

PAN : AAATP1121F

Assessee by : Shri C.H. Naniwadekar  
Revenue by : Shri Ajay Agarwal

सुनवाई की तारीख / Date of Hearing : 03.10.2019	घोषणा की तारीख / Date of Pronouncement: 03.10.2019
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**आदेश / ORDER****PER ANIL CHATURVEDI, AM :**

1. These cross appeals filed by assessee and Revenue are against the order of Commissioner of Income Tax (Appeals) – 10, Pune for the assessment year 2011-12.

**ITA No. 1421/PUN/2017, (Assessee's Appeal)**

2. The relevant facts as culled out from the material on record are as under :-

Assessee is a Public Charitable Trust registered under the Bombay Public Trust u/s. 12AA of the Act. The assessee filed its return of income for A.Y. 2011-12 on 30-09-2011 declaring total income at Nil. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 26-03-2014 wherein the Assessing Officer concluded that the assessee was involved in carrying on various activities which are in the nature of trade, commerce or business and it was operating on commercial lines. He accordingly concluded that assessee was not entitled to claim exemption u/s. 11 or 12 of the Act in respect of its surplus income. He thereafter determined the total income at Rs.11,06,184/-. Aggrieved by the order of AO, assessee carried the matter before Ld. CIT(A), who vide order dated 19-05-2017 (in appeal No.PN/CIT(A)-10/DCIT.Cir.4/198/14-15) granted partial relief to the assessee. Aggrieved by the order of Ld. CIT(A), assessee and Revenue are now in appeal.

3. The grounds raised by the assessee in ITA No. 1421/PUN/2017 reads as under :

*“On facts and in law,*

- 1] *The learned CIT(A) erred in confirming the denial of exemption u/s. 11 to the assessee trust on the ground that the trust was carrying commercial activities and hence, the case of the assessee was clearly covered by the first proviso to Section 2(15).*
- 2] *The learned CIT(A) erred in not appreciating that the main object of the assessee trust was to promote sports which constituted an educational activity and therefore, the first proviso to Section 2(15) was not applicable to the assessee's case and hence, the exemption u/s.11 should have been allowed to the assessee trust.*
- 3] *The learned CIT(A) erred in holding that the exemption u/s.11 is not allowable to the assessee trust on the ground that the assessee trust was carrying out commercial activities in the form of running a restaurant, leasing conference hall etc. and charging hefty fees or the same and therefore, the exemption u/s.11 could not be allowed to the assessee.*
- 4] *The learned CIT(A) failed to appreciate that the assessee trust had not carried out any commercial activities and hence, the first proviso to Section 2(15) was not applicable to the assessee's case and thereby, the exemption u/s. 11 should have been allowed.*
- 5] *The learned CIT(A) ought to have appreciated that—*
  - a. *The various activities carried out by the assessee trust by charging fees were in order to achieve the objects of the trust and therefore, there was no reason to deny the exemption u/s. 11.*
  - b. *The assessee had not carried out any activities in the nature of trade, commerce or business and the fees were charged to meet the administrative and other expenses required for providing the various facilities and therefore, the first proviso to Section 2(15) was not applicable to the facts of the assessee's case.*
- 6] *The learned CIT(A) erred in not appreciating that the assessee was entitled to exemption u/s 11 and was entitled to claim deduction in respect of Capital expenditure of Rs.1,64,73,141/- as well as Rs.54,38,810/- (being 15% of Rs.3,62,58,733/-).*
- 7] *The CIT(A) erred in not granting deduction for payment of interest on service tax /VAT/ESIC of Rs.70,493/- while assessing Total Income of the Appellant Trust.*
- 8] *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

On other hand the Revenue in its appeal in ITA No. 1888/PUN/2017 has raised following grounds :

- “1. *Whether in the facts and in the circumstances of the case and in law the Ld. CIT(A) was right in allowing entrance fees received and membership fees under principle of mutuality when the assessee trust does not fulfill the conditions envisaged for claiming the benefit under principle of mutuality?*
2. *Whether in the facts and in the circumstances of the case and in law the Ld. CIT(A) was right in allowing entrance fees received and membership fees under principle of mutuality when the participator and contributors are not clearly identifiable?*
3. *Whether in the facts and in the circumstances of the case and in law the Ld. CIT(A) was right in allowing entrance fees received and membership fees under principle of mutuality when the assessee failed to establish that its activities are charitable in nature and separate books are not kept for members and non -members?*
4. *Whether in the facts and in the circumstances of the case and in law the Ld. CIT(A) was right in holding that exemption u/s 10(35) of the Act is available to the assessee in case it is eligible for exemption u/s 11 of the Act?”*

Since, the issues involved in both the appeals are interlined, both the appeals are considered together.

4. Before me, at the outset, Ld. A.R. submitted that the identical issue arose before the Tribunal in assessee’s own case in earlier assessment years and the Tribunal had remanded the issue of “profit motive”, surplus funds and related issue of exempt nature of profits for examination by the Assessing Officer in view of the “principle of mutuality” with necessary directions contained herein. In support of the contentions that the grounds raised in the earlier assessment years are similar to the year under consideration he pointed to the grounds raised by the assessee in assessment year 2011-12 and the grounds raised by the assessee in assessment year 2010-11 which are reproduced in the Tribunal’s order. He further submitted that assessee has also raised ground No. 7 which is with respect to non-

granting of deduction for payment of interest on service tax / VAT / ESIC. He submitted that along with other grounds, this ground be also remitted to Assessing Officer for adjudication. The ld. DR did not seriously object to the submissions made by the ld. AR.

5. I have heard the rival submissions and perused the material on record. I find that the issues in assessment year under appeal are similar to the earlier assessment years. In earlier years i.e. assessment years 2009-10, 2010-11 and for assessment year 2012-13, the Co-ordinate Bench has remanded the issue to the file of Assessing Officer for examination as per the directions contained herein. Before me, ld. AR has requested that ground No. 7 be also remitted to Assessing Officer. Considering the aforesaid facts, I deem it proper to remand the issues raised by the assessee in the present appeal to the file of Assessing Officer for fresh adjudication with similar directions as in earlier years. Needless to state that the Assessing Officer shall afford reasonable opportunity of hearing to the assessee. Thus, grounds raised by the assessee are allowed for statistical purposes.

**6. In the result, the appeal of assessee is allowed for statistical purposes.**

**ITA No. 1888/PUN/2017, (Revenue's Appeal)**

7. It is brought to my notice that the grounds raised in this appeal relating to principle of mutuality involving entrance fees and membership fees are identical to the additional grounds raised by assessee in assessment year 2010-11. In the aforementioned paras, I have decided to remand additional grounds raised by the assessee to

the file of Assessing Officer. Since the issues raised in assessee's appeal are remanded to the file of Assessing Officer for fresh consideration, the grounds raised by the Revenue are also remanded to the file of Assessing Officer for fresh consideration. Thus, grounds raised by Revenue are allowed for statistical purpose.

**8. In the result, the appeal of Revenue is allowed for statistical purpose.**

**9. To sum up, the appeals of assessee and Revenue are allowed for statistical purpose.**

Order pronounced on the 03<sup>rd</sup> day of October, 2019.

**Sd/-**

**(ANIL CHATURVEDI)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 03<sup>rd</sup> October, 2019.

RK

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT (A)-10, Pune
4. The CIT – Exemption, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" / DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER**

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.