

IN THE INCOME-TAX APPELLATE TRIBUNAL "C" BENCH MUMBAI  
BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH JUDICIAL MEMBER

ITA No. 4320/Mum/2019 (Assessment Year 2011-12)

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| M/s Indian Plastics Institute,<br>30, Servodaya Ind. Estate, Off.<br>Mahakali Caves Road, Near<br>paper Box Factory, Andheri (E),<br>Mumbai-400093.<br><b>PAN: AAATI0215K</b> | Vs. | ITO (Exemp.)-1(3),<br>Piramal Chambers,<br>Lal Baug,<br>Mumbai. |
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Appellant

Respondent

Appellant by : Shri B.V. Jhaveri (AR)

Respondent by : Shri Abi Rama Kartikiyen (DR)

Date of Hearing : 04.09.2019

Date of Pronouncement : 06.11.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee is directed against the order of Id. CIT(A)-3, Mumbai dated 08.05.2019 for Assessment Year 2014-15. The assessee has raised the following grounds of appeal:

1. The Commissioner (Appeals) erred in upholding the order of the AO of not granting benefits of sec. 11 of the I.T. Act, 1961 to the assessee trust.
2. The Commissioner (Appeals) erred in not following the decision of the Hon'ble Appellate Trust in the case of the assessee trust for A. Y. 2009-10 in ITA No.6793/Mum/20 16 dated 30th July, 2018 wherein the Tribunal observed as under:

"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."

3. The Commissioner (Appeals) erred In observing as Same as above follows:

"5.1 ..... However, during the course of appellate proceedings, the appellant had totally failed to demonstrate and had not brought any documentary evidence on record which could prove that the activities are of non-commercial nature and without a profit motive."

4. The Commissioner (Appeals) failed to appreciate that 1st and 2<sup>nd</sup> proviso to sec. 2(15) can be invoked only if the assessee trust is a Charitable Trust carrying on the activities of the "advancement of any other object of General Public Utility" and such trust is carrying on the business, but if such trust is not carrying on the business, the question of invoking 1<sup>st</sup> and 2<sup>nd</sup> proviso to sec.2(15) does not arise at all.

5. The Commissioner (Appeals) erred 10 observing as under:

"5.2 ..... Thus, it can be said that the appellant is carrying on the activity in the nature of commerce and the objects of the appellant is not to be considered as for charitable purpose."

6. The Commissioner (Appeals) erred 10 referring to, quoting and relying on the order of the Commissioner (Appeals) in the case of the assessee trust for A.Y. 2009-10 dated 23rd August, 2016 in para 5.3 of his order.

7. The Commissioner (Appeals) erred in observing as follows:

"In views of the above, I am in agreement with the findings of the CIT(A)-I, Mumbai for A.Y. 2009-10 reproduced at para 5.3 above. Accordingly, with due respects to the order of the ITAT, Mumbai, relied upon by the appellant, I hold that the

appellant's claim u/s.11 is not allowable for the year under consideration, i.e., for A.Y. 2011-12."

8. The Order of the Commissioner (Appeals) is bad in law and without jurisdiction.

2. Brief facts of the case are that the assessee is a Trust registered under the Bombay Public Trust Act (the Act). The assessee-trust is also registered under section 12A of the Act. The assessee filed its return of income for Assessment Year 2011-12 declaring Nil income. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that registration of assessee under section 12A was cancelled on 16.12.2011 which was restored by Tribunal vide order dated 21.02.2014. The Assessing Officer further noted that assessee earned income from conference of Rs. 15,50,200/-, sale of publication of Rs. 41,185/- and advertisement on web-site of Rs. 28,800/-. From the receipts shown by assessee, the Assessing Officer took the view that the assessee is doing regular activities which are in the nature of business by way of arranging seminars, collecting participation fees from the participants, interest income and income from sale of publication. The assessee is systematically generating its income through activities which is purely of business and not the incidental to the object of the assessee and hit by the proviso of section 2(15) of the Act. Thus, the Assessing Officer denied the exemption under section 11 of the Act and treated the surplus as income of the assessee.

3. On appeal before the Id. CIT(A), the action of Assessing Officer was upheld. Further, aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before this Tribunal.
4. We have heard the submission of Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the revenue and perused the material available on record. The Id. AR of the assessee submits that the grounds of appeal raised by assessee are covered by the decision of Tribunal in assessee's own case for Assessment Year 2009-10 in ITA No. 6793/Mum/2016, wherein the Tribunal vide its order dated 30.7.2018 on similar set of fact allowed the relief to the assessee. The Id. AR of the assessee submits that while passing the assessment order, the Assessing Officer relied on the observation of Tribunal in ITA No. 308/Mum/2012 dated 21.02.2014 and disallowed the benefit of section 11 to the assessee before the Id. CIT(A), the Id. AR of the assessee submitted that the assessee is entitled for the relief in view of the decision of Tribunal for Assessment Year 2009-10 in ITA No. 6793/Mum/2016 dated 30.07.2018. The Id. CIT(A) followed the order of predecessor for Assessment Year 2009-10 which was reversed by the Tribunal in ITA No. 6793/Mum/2016. The Id. AR of the assessee furnished the copy of order of Tribunal in ITA No. 6793/Mum/2016 for Assessment Year 2009-10.

5. On the other hand, the Id. DR for the revenue supported the order of lower authorities. The Id. DR submits that the object of assessee is promotion of plastics and how the promotion of plastic activity is a public utility service. The Id. DR submits that the assessee is not doing any charitable activities. The Id. DR prayed for restoring the issue to the file of Assessing Officer for passing the order afresh after examining the object and activities of the assessee.
6. We have considered the rival submission of the parties and perused the material available on record. We have also gone through the orders of Tribunal for Assessment Year 2009-10. We have noted that the Tribunal in assessee's own case for Assessment Year 2009-10 on by treating the surplus as income passed the following order. For appreciation and comparison of facts for Assessment Year 2009-10 and the order under consideration, the relevant part of order is extracted below:

“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 16th 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 21st 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 21st 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 1st 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.”

7. We have noted that against the cancellation/withdrawal of registration under section 12AA, the assessee filed appeal before the Tribunal; the Tribunal restored the registration under section 12A of the Act. However, the Tribunal made an adverse remark that holding an international conference by assessee amounts to carry on business as the

assessee had collected delegate fees. The assessee filed Write Petition before the Hon'ble Bombay High Court. The Hon'ble Bombay High Court while deciding the Writ Petition held that 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.

8. Considering the decision of Tribunal, we find that the grounds of appeal raised by assessee are covered in favour of the assessee. In the result the grounds of appeal raised by the assessee are allowed.
9. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 06/11/2019.

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

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

Mumbai, Date: 06.11.2019

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**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "C" Bench, ITAT, Mumbai
6. Guard File

**BY ORDER,**

**Dy./Asst. Registrar**  
**ITAT, Mumbai**