

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI 'D' BENCH, NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER,
AND**

SHRI M. BALAGANESH, ACCOUNTANT MEMBER,

**ITA No.1666/DEL/2016
[Assessment Year: 2010-11]**

ITO(E), Ward-1(2), Room No.2417, 24 th Floor, E-2 Block, Pratyaksh Kar Bhawan, Dr. Shyama Prasad Mukherjee Civic Centre, Jawaharlal Nehru Marg, New Delhi-110002	M/s Indian Ports Association, 19, Institutional Area, Lodhi Road, New Delhi-110003
	PAN- AAATI0349A
Appellant	Respondent

Appellant by	Shri Amit Kr. Jain Sr. DR
Respondent by	Shri Satyajeet Goyal

Date of Hearing	21/01/2020
Date of Pronouncement	23/01/2020

ORDER

PER M. Balaganesh, AM

This appeal has been filed by the Revenue against the order of the Ld. CIT(A)-40, New Delhi, dated 05/01/2016, for Assessment Year 2010-11.

2. The Revenue has raised following grounds of appeal:-

- i. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the appeal of the assessee by ignoring that assessee was receiving contribution from the*

contributor port on commercial lines and was providing consultancy services to the ports and contributors ports had deducted tax at source on contributions given to the assessee and accordingly, the AO rightly invoked first proviso to Section 2(15) of the Act and consequently, added back unspent expenses of Rs. 2,34,58,706/- to the total income by considering them surplus of the assessee.

- ii. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law in ignoring that plea of mutuality taken by the assessee is misplaced as the assessee was providing services of its guest house and staff car to the persons who were not the employees of the assessee society. The principle of mutuality is not applicable on the assessee in view of ratio laid down by Hon'ble Apex Court in the case of Bangalore Club Vs. CIT & Anr. wherein it has been held that there is a lack of identity of the contributors and the participators it went beyond the principle of mutuality.*

4. We have heard the rival submissions and perused the material available on record. The undisputed facts are that the assessee is an apex body of all major ports, which are centrally administered under, Ministry of Shipping, Government of India. All major ports of India are members of the assessee society. The main major ports are Jawaharlal Nehru Port Trust, Mumbai Port Trust, Kolkata Port Trust, Chennai Port Trust, Vishakhapatnam Port Trust, Kandla Port Trust, Cochin Port Trust, Mormugao Port Trust, Paradip Port Trust, New Mangalore Port Trust, Tutikorin Port Trust and Ennore Port Trust. The main object of the assessee is to undertake and promote engineering, technical, economic, financial, managerial and statistical studies and research into matters relating to the planning, organization, management operation maintenance and construction of ports and harbours and to provide a technical consultancy service

thereof. The assessee association is registered under section 12A of the Income Tax Act vide order dated 13/01/1997. We find that the assessee had filed nil return for AY 2010-11 by claiming exemption u/s 11 of the Act. Various receipts as per Income & Expenditure account of the assessee are as under:-

Heads	Income
Miscellaneous Income	Rs.57,50,364/-
Contribution received from major ports	Rs.4,62,25,128/-

5. A break up of miscellaneous income reported above are as under:-

Subheads	Income
Sale and advertisement on "Indian Ports"	Rs.1,77,955/-
Room rent received	Rs.5,02,545/-
Income from fixed deposits	Rs.41,13,516/-
Sundry income	Rs.9,56,618/-

6. We find that the assessee had incurred following expenditure in its Income and Expenditure account:-

Heads	Income
Staff expenses	Rs.3,14,65,143/-
Rest house expenses	Rs.30,11,044/-
Office expenses	Rs.56,24,103/-
General expenses	Rs.56,24,103/-
Grant to associated organizations	Rs.60,00,000/-

7. It is not in dispute that the activities of the assessee falls under the last limb of definition charitable of purpose u/s 2(15) of the Act i.e. “advancement of any other object of general public utility”. The Ld. AO sought to invoke the first proviso on the assessee by stating that it had derived commercial receipts which would make the assessee association ineligible for claim of exemption 11 of the Act. We find that the Ld. Assessing Officer had also observed that the assessee has shown unpaid expenses of Rs.2,34,58,706/- which includes (a) Major ports sports control Board Expenses of Rs.64,00,000/- (b) Indian Maritime University expenses of Rs.54,62,334/- (c) payments for pay and allowances of Rs.99,21,958/- and the balance of Rs.16,74,414/- under various heads, viz. Transport hire charges, audit fee, Sundry expenses etc. The assessee has shown expenditure as grant of Rs.60,00,000/- to associated organizations on Schedule XIII which is mere a book entry. The Ld. Assessing Officer proceeded to disallow these unpaid expenses of Rs.2,34,58,706/- by treating the same as surplus derived by the assessee and since the exemption u/s 11 of the Act has been denied to the assessee, this surplus was brought to tax by the Ld. Assessing Officer in the assessment.

8. We find that the assessee had pleaded before the CIT(A) that it is not engaged in any type of activity which in the nature of trade,

commerce or business. It was specifically pleaded that the holding of conference, providing consultancy services and management services are part of main objects of the association and these services are only provided to its members with the aim of no profit/loss basis and these members are contributing to the association for the same on the prefixed basis. Accordingly, it was specifically pleaded that these services are not provided for (a) any activity in the nature of trade commerce or business; (b) any activity or rendering any services in relation to any trade commerce or business; (c) for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity. The assessee also pleaded that the income of the assessee would also be exempted on principle of mutuality.

9. We find that the assessee specifically mentioned the list of unpaid expenses amounting to Rs.2,34,58,706/- mentioned by the Assessing Officer in the assessment order were never claimed in the income and expenditure account by the assessee. It was pleaded that once expenditure has not been claimed at all, there is no question of disallowance of the same in the assessment. We find that the Ld. CIT(A) had given a categorical finding that the assessee association is not involved in any trade, commerce or business so as to fall within the mischief of the first proviso of section 2(15) of the Act.

10. Per contra, the Ld. DR vehemently relied upon the order of the Ld. AO.

11. We find that the issue in dispute had been addressed by the decision of the Hon'ble jurisdictional High Court in the case of PHD Chamber of Commerce and Industry vs DIT(Exemption) reported in 357 ITR 296 (Del.), wherein, the relevant operative portion is reproduced herein:-

"The nice question as to whether by rendering specific services to members and non-members for a fee, a trade, professional or similar association can be said to be carrying on a business activity needs to be examined. The further question to be addressed, with reference to Section 11(4A), would be whether such activities (which amount to a business) were incidental to the attainment of the objectives of trust or institution and whether separate books of accounts were maintained in respect of such activities. There can be no doubt that the activities of the nature described above, in the case of an assessee such as the present one, which is a trade association-Chamber of Commerce and Industry, established to protect the interests of trade and industry in Punjab, Haryana and Delhi- were activities which are incidental to the attainment of the objects of the chamber. We do not think that the Tribunal is justified in taking the view that the assessee, which is a chamber of commerce and industry, is carrying on business activities which require compliance with the conditions of Section 11(4A). In CIT, Madras vs. Andhra Chamber of Commerce (1965) 55 ITR 722, it was held by the Supreme Court that advancement or promotion of trade, commerce and industry leading to economic prosperity enured for the benefit of the entire community; that prosperity would be shared also by those who engaged in trade, commerce and industry, but on that account the purpose was not rendered any the less an object of general public utility. Echoing these sentiments another Bench of equal strength of the Supreme Court in Commissioner of Income Tax, New Delhi vs. Federation of Indian Chambers of Commerce and Industries, New Delhi 1981) 130 ITR 186 held that where the main object of the assessee was the promotion, protection and development of trade, commerce and industry in India, its income from conducting a trade fair, rent for space allotted and sale of entry and gate tickets, fees for arbitration etc. would be exempted

from tax under Section 11 read with Section 2(15) of the Act. The "dominant purpose" test was applied to hold that the activities to earn income were not driven with the motive of profitmaking. In this judgment, separate opinions were expressed by each of the three learned judges and while Justice Pathak (as His Lordship then was) considered the matter to be covered by the majority opinion of the Supreme Court in Additional Commissioner of Income-tax, Gujarat vs. Surat Art Silk Cloth Manufacturers Association (1980) 121ITR page 1, Sen, J. and Venkataramiah, J, held different opinions but considered themselves bound by the majority opinion in Additional Commissioner of Income-tax, Gujarat vs. Surat Art Silk Cloth Manufacturers Association (supra). It would, therefore, appear that judicial thinking was never in favour of the view that the services performed by a trade, professional or similar association, such as a chamber of commerce and industry, were in pursuit of a business or trade with a profit motive."

12. We also find that the assessee is also covered by the decision of the Hon'ble Kerala High Court in the case of CIT vs Cochin Port Trust reported in 411 ITR 467 (Kerala) and the decision of the Hon'ble Gujarat High Court in the case of CIT vs Kandla Port Trust reported in 364 ITR 164 (Guj.). The relevant operative portions of the said judgments are not reiterated herein for the sake of brevity. We find that categorical finding given by the Ld. CIT(A) that the assessee in the instant case is not engaged in any activity of trade, commerce or business so as to fall within the mischief of first proviso of section 2(15) of the Act, is not controverted by the Revenue before us. Hence, in our considered opinion, exemption u/s 11 of the Act could not be denied to the assessee. In any case, we find that the assessee had not claimed any expenditure in the sum of Rs.2,34,58,706/- in its income and expenditure account which factual finding given by the Ld. CIT(A)

had also not been controverted by the Revenue before us. Hence, there cannot be any disallowance of the said sum of Rs.2,34,58,706/- treating the same as surplus in the assessment.

13. In view of our aforesaid observations and respectfully following the aforesaid judicial precedents, we do not find any merit in the grounds raised by the Revenue and accordingly the same are hereby dismissed.

14. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 23/01/2020.

Sd/-

**[AMIT SHUKLA]
JUDICIAL MEMBER**

Sd/-

**[M. BALAGANESH]
ACCOUNTANT MEMBER**

Delhi; Dated: 23/01/2020.

Shekhar, Sr. P.S

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, दिल्ली / DR, ITAT, Delhi
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सहायक रजिस्ट्रार/Assistant Registrar,
आयकर अपीलीय अधिकरण ,दिल्ली / ITAT, Delhi