



IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.2108/Mum./2019
(Assessment Year : 2015-16)

Asstt. Commissioner of Income Tax
(Exemp.), Circle-1(1), Mumbai

..... Appellant

v/s

All India Rubber Industries Association
601-B, Pramukh Plaza
Cardinal Gracious Road
Andheri (E), Mumbai 400 099
PAN - AAACA7076R

..... Respondent

Assessee by : Ms. Aarti Vissanji
Revenue by : Shri Michael Jerald

Date of Hearing - 10.09.2020

Date of Order - 17.09.2020

ORDER

PER SAKTIJIT DEY. J.M.

Captioned appeal has been filed by the Revenue challenging the order dated 28th January 2019, passed by the learned Commissioner of Income Tax (Appeals)-1, Mumbai, allowing assessee's claim of exemption under section 11 of the Income Tax Act, 1961 (for short "*the Act*") pertaining to the assessment year 2015-16.

2. Brief facts are, the assessee is a company registered under section 25 of the Companies Act, 1956. Additionally, the assessee has also been granted registration under section 12A of the Act by the Director of Income Tax (Exemp.), Mumbai, vide order dated 12th December 1985. For the assessment year under dispute, the assessee filed its return of income on 30th September 2015, declaring nil income after claiming exemption under section 11 of the Act. In course of the assessment proceedings, the Assessing Officer, on verifying the material on record noted that the assessee is a mutual trade association having the main object to safeguard the interest of the industry and trade amongst persons, companies, factories and firms engaged as manufacturer of rubber products made out of natural rubber, synthetic rubber and latex in India. According to the Assessing Officer, the assessee is a mutual trade association receiving membership contribution and, in turn, members are provided a common platform to avail the facilities provided to the rubber trade. He observed, though, the assessee has claimed itself to be a charitable institution, however, during the year under consideration, it has provided certain services including arranging of exhibition/seminar, etc., on receipt of fees to both members and non-members who are mainly in the business/trade associated to the rubber industry. Being of the view that the receipts from non-

members in course of an activity in the nature of business/trade is hit by the proviso to section 2(15) of the Act, the Assessing Officer called upon the assessee to explain as to why the receipts from non-members should not be charged to tax. Though, the assessee filed detailed submissions justifying its claim of exemption under section 11 of the Act, however, rejecting the submissions of the assessee and following the observations made in the assessment orders passed for the earlier assessment years, wherein, similar claim of exemption was rejected, the Assessing Officer proceeded to complete the assessment denying assessee's claim of exemption under section 11 of the Act by invoking the proviso to section 2(15) of the Act. Accordingly, he determined the total income at ₹ 3,94,81,450. Being aggrieved with the assessment order so passed, the assessee preferred appeal before the first appellate authority.

3. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) found that while deciding identical nature of dispute in assessee's own case in assessment years 2011-12, 2012-13 and 2013-14, the Tribunal has allowed assessee's claim of exemption under section 11 of the Act. Therefore, following the aforesaid decision of the Tribunal, learned Commissioner (Appeals) allowed assessee's claim of exemption under

section 11 of the Act, thereby, deleting the addition made by the Assessing Officer.

4. At the outset, Ms. Aarti Vissanji, learned Counsel for the assessee submitted that the issue is squarely covered by the decision of the Tribunal in assessee's own case in assessment years 2011-12, 2012-13 and 2013-14.

5. Shri Michael Jerald, the learned Departmental Representative, though, agreed that the issue is covered by the decision of the Tribunal in the preceding assessment years, however, he relied upon the observations of the Assessing Officer.

6. We have considered the rival submissions, perused the orders of the authorities below and the material placed on record. Undisputedly, the dispute in the present appeal is with regard to assessee's claim of exemption under section 11 of the Act. Undisputedly, the Assessing Officer has rejected such claim on the reasoning that the assessee is a mutual concern, hence, the receipts from non-members are taxable. While doing so, he has relied upon the observations made in the assessment orders passed for the preceding assessment years. Notably, similar claim of exemption made by the assessee in assessment years 2011-12, 2012-13 and 2013-14 was rejected by

the Assessing Officer while framing assessment for those assessment years. However, when the dispute ultimately reached before the Tribunal, the Co-ordinate Bench in order dated 12th October 2018, passed in ITA no.3994/Mum./2016, ITA no.1368/Mum./2016 and ITA no.247/Mum./2017 respectively for the assessment years 2011-12, 2012-13 and 2013-14 after examining all aspects of the issue and taking note of the submissions made by the parties ultimately concluded that the assessee is eligible to avail exemption under section 11 of the Act. The observations/finding of the Co-ordinate Bench in this regard is extracted hereunder in extenso for better clarity:-

"10. We have carefully considered the rival submissions. Before we proceed to address the specific objections raised by the Assessing Officer, we deem it fit and proper to refer to the objects for which the assessee association has been established. As noted earlier, assessee has been founded in 1945 and is further registered u/s 25 of the Companies Act, 1956. As per its Memorandum of Association, some of the important objects are as follows.

"(a) To promote co-operation among Persons, Companies, Factories and Firms, engaged as Manufacturers of rubber products made out of Natural Rubber, Synthetic Rubber & Latex in India with a view to adopting a common policy and collectively taking such steps, as may be deemed necessary or expedient to further and safeguard the interests of the Industry and Trade, provided that the Association shall not make or support any regulation or restriction which would make the Association a Trade Union.

(b) To regulate and standardise as far as possible business practices in the Rubber Manufacturing Industry and its allied Trades.

(c) To promote and safeguard the interests of the Indian Rubber Industry and Trade in all its branches and by all possible means and in particular by (1) providing a meeting place with facilities for exchange of views of Members and others interested in the Industry and Trade, (2) providing facilities for communication, co-ordination of interests or co-operation with similar or allied associations or societies in other countries, (3) arranging and providing facilities for conferences, exhibitions, demonstrations, lectures, and excursions and other functions relating to the Rubber Industry and Trade, (4) establishing, equipping and maintaining laboratories for Testing as well as Research and Libraries for the benefit of the Members and if possible of non-members also; (5) collection and dissemination of statistics and data related to the global rubber industry, particularly in respect of market situations with emphasis on exports; (6) educating the general public by all suitable means in the utility of Rubber Goods from the industrial as well as other points of view; (7) to provide fora for interaction with consumers of rubber products with a view to improving their quality; (8) to promote technical education related to Rubber Technology, training and retraining of manpower employed in rubber industry and in general to concern with the Human Resources Development for and in the rubber industry and (9) providing facilities and machinery for the settlement of disputes by arbitration.

.....

(j) To publish an official journal of the Association giving prominence to the aims, objects and activities and for the spread of knowledge and information relating to the Natural Rubber, Synthetic Rubber and Latex Goods Industry and Trade generally and to print and publish any advertisements, newspapers, periodicals, books, lectures or pamphlets that may be deemed desirable.

.....

(v) And generally to do all such other things as may be deemed incidental or conducive to the attainment of the above objects or any of them."

11. *The Memorandum of Association also prescribes by way of clause 4 that income and property of the association whensoever derived shall be applied solely towards the promotion of the objects of the Association as set forth in this Memorandum of Association and no portion thereof shall be paid or transferred directly or indirectly to the members of the Association except, of course, for payment of remuneration to the employees of the association. Clause 7 of the Memorandum of Association also brings out that upon winding up or dissolution of the Association, the surplus remaining after satisfaction of all debts and liabilities, if any, shall not be paid or distributed amongst the members of the Association but shall be given or transferred to some other Association or Institution having similar objects.*

12. *We are only referring to the aforesaid features of the assessee association to point out that the objects of the assessee-association are primarily revolving around promotion and safeguarding the interests of Rubber trade and industry. In fact, clause 3(a) specifically rules out making or supporting any regulation or restriction, which would make the assessee association a trade union. A perusal of the objects does lead to an inference that it is formed with the objects of promoting or protecting the interests of Rubber industry. Notably, assessee continues to be registered u/s 12A of the Act, and in that regard, its objects can be stated to be in the realm of 'advancement of objects of general public utility'. The Assessing Officer has made out a case that since the objects are not for the benefit of general public at large, but are for a section of public inasmuch as the benefits are limited to the members of the assessee-association, therefore, the same is not charitable. In our view, the aforesaid approach of the Assessing Officer is contrary to the accepted legal position on this subject, and more so, considering that in assessee's own case for Assessment Year 1997-98, the Tribunal in ITA No. 2057/Mum/2001 dated 14.01.2002 had considered an identical controversy. At the time of hearing, the learned representative had referred to the order of the Tribunal dated 14.01.2002 (supra) in this regard, whose relevant portion reads as under :-*

"4. It is to be noted that when an object seeks to promote or project the interest of a particular trade or industry, that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the said trade or industry. The distinction between projection of the interest of an individual and projection of the interest of an activity which is of

general public utility goes to the root of the whole problem. The advancement of an object of benefit to the public or a section of the public is distinguished from an individual or a group of individual would be of charitable purposes. This view was taken in the case of CIT vs Ahmedabad Rana Cast Association 140 ITR 1 (SC). The expression "object of general public utility" in sec. 2(15) prima facie includes all objects which permits the welfare of the general public. It cannot be said that a purpose would cease to be charitable if it includes taking of steps for the promotion of trade, commerce or manufacture. An object beneficial to a section of the public is an object of general public utility. To serve a charitable purpose, it is not necessary that the object must benefit the whole of mankind. It is sufficient if the intention is to benefit a section of the public. This view was taken by the jurisdictional High Court in the case of CIT vs Western India Chambers of Commerce Ltd. 13 ITR 67 (Bom.). The decision of the Gujarat High Court relied upon by the revenue authorities is not relevant in the facts of the present case. In that case distribution of property amongst members was permitted. Whereas in the present case it is not permitted. In my opinion, facts of the present are covered by the decision of the jurisdictional High Court rendered in the case of Western India Chambers of Commerce (supra). Respectfully following the precedent, I decide this issue in favour of the assessee and against the revenue.

[underlined for emphasis by us]"

13. Therefore, in our considered opinion, there is no justification for the Assessing Officer to hold that since the objects of the assessee seek to promote and protect the interests of a particular trade, industry, the same loses the character of being charitable.

14. The other and more substantive point made out by the Assessing Officer is based on the proviso to Sec. 2(15) of the Act which has been inserted by the Finance Act, 2008 w.e.f. 01.04.2009. In this context, the amended Sec. 2(15) of the Act as on the statute w.e.f. 01.04.2009 reads as under :-

"(15) "Charitable purpose" includes relief to the poor, education, medical relief and the advancement of any other object of general public utility"

The definition after the amendment reads as follows;

"Charitable purpose" includes relief of the poor, education, medical relief, (preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest and the advancement of any other object of general public utility;

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business 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".

15. *The impact of the aforesaid proviso inserted w.e.f. 01.04.2009 is that "advancement of any other object of general public utility" would no longer be considered as a charitable purpose if it involved carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or a fee or for any other consideration irrespective of the nature of use or application or retention of such income from such activity. The aforesaid proviso has been invoked by the Assessing Officer to say that as assessee's objects were of general public utility, and since in the course of carrying on its objects, it was receiving charges from its members as well as nonmembers, the activities could no longer be treated as charitable. In this context, one has to examine the import of the proviso inserted to Sec. 2(15) of the Act. Pertinently, the assessee continues to enjoy recognition u/s 12A of the Act; and, in any case, de hors the proviso to Sec. 2(15) of the Act, there is no dispute by the Revenue that the objects of the assessee fall within the scope of Sec. 2(15) of the Act on account of the same being in the nature of "advancement of any other objects of general public utility". Therefore, one has to examine as to whether the insertion of proviso to Sec. 2(15) of the Act would render the activities of the assessee to be of noncharitable purpose. The Hon'ble Delhi High Court in the case of India Trade Promotion Organisation (supra) as well as in the case of Institute of Chartered Accountants of India (supra) have extensively examined the nature and scope of the proviso to Sec. 2(15) of the Act. At this point, we may note that a similar issue came-up before our coordinate bench at Kolkata in the case of Indian*

Leather Products Association (supra). Therein also, the charge made by the Revenue was that the proviso inserted to Sec. 2(15) of the Act w.e.f. 01.04.2009 had rendered the activities of the assessee non-charitable. Our co-ordinate bench perused the detailed judgment of the Hon'ble Delhi High Court in the case of India Trade Promotion Organisation (supra) and culled out the principles laid down by the Hon'ble Delhi High Court for the interpretation of the proviso to Sec. 2(15) of the Act. The principles so culled out by our co-ordinate bench are quite illustrative and read as under :-

"(i) The proviso to Sec.2(15) of the Act introduced by virtue of the Finance Act, 2008 with effect from 01.04.2009 has two parts. The first part has reference to the carrying on of any activity in the nature of trade, commerce or business. The second part has reference to any activity of rendering any service in relation to any trade, commerce or business. Both these parts are further subject to the condition that the activities so carried out are for a cess or fee or any other consideration, irrespective of the nature or use or application or retention of the income from such activities. In other words, if, by virtue of a 'cess' or fee' or any other consideration, income is generated by any of the two sets of activities referred to above, the nature of use of such income or application or retention of such income is irrelevant for the purposes of construing the activities as charitable or not.

(ii) If an activity in the nature of trade, commerce or business is carried on and it generates income, the fact that such income is applied for charitable purposes, would not make any difference and the activity would nonetheless not be regarded as being carried on for a charitable purpose. If a literal interpretation is to be given to the proviso, then it may be concluded that this fact would have no bearing on determining the nature of the activity carried on by the petitioner. But, in deciding whether any activity is in the nature of trade, commerce or business, it has to be examined whether there is an element of profit making or not. Similarly, while considering whether any activity is one of rendering any service in relation to any trade, commerce or business, the element of profit making is also very important.

(iii) The meaning of the expression "charitable purposes" has to be examined in the context of "income", because,

it is only when there is income the question of not including that income in the total income would arise. Therefore, merely because an institution, which otherwise is established for a charitable purpose, receives income would not make it any less a charitable institution. Whether that institution, which is established for charitable purposes, will get the exemption would have to be determined having regard to the objects of the institution and its importance throughout India or throughout any State or States.

(iv) Merely, because an institution derives income out of activities which may be commercial, that does, in any way, affect the nature of the Institution as a charitable institution if it otherwise qualifies for such a character.

(v) Merely because a fee or some other consideration is collected or received by an institution, it would not lose its character of having been established for a charitable purpose. If the dominant activity of the institution was not business, trade or commerce, then any such incidental or ancillary activity would also not fall within the categories of trade, commerce or business. If the driving force is not the desire to earn profits but to do charity, the exception carved out in the first proviso to Section 2(15) of the said Act would not apply.

(vi) If a literal interpretation were to be given to the said proviso, then it would risk being hit by Article 14 (the equality clause enshrined in Article 14 of the Constitution). Courts should always endeavour to uphold the Constitutional validity of a provision and, in doing so, the provision in question may have to be read down, as pointed out above.

(vii) Section 2(15) is only a definition clause. Section 2 begins with the words, in this Act, unless the context otherwise requires. The expression "charitable purpose" appearing in Section 2(15) of the said Act has to be seen in the context of Section 10(23C)(iv). When the expression "charitable purpose", as defined in Section 2(15) of the said Act, is read in the context of Section 10(23C)(iv) of the said Act, we would have to give up the strict and literal interpretation sought to be given to the expression "charitable purpose" by the revenue.

(viii) The expression "charitable purpose", as defined in Section 2(15) cannot be construed literally and in absolute terms. The correct interpretation of the proviso to Section 2(15) of the said Act would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration. In both the activities, in the nature of trade, commerce or business or the activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. If the dominant and prime objective of the institution, which claims to have been established for charitable purposes, is profit making, whether its activities are directly in the nature of trade, commerce or business or indirectly in the rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a 'charitable purpose'. On the flip side, where an institution is not driven primarily by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an institution established for charitable purposes. (emphasis supplied)"

16. From the perusal of the aforesaid, what stands out is that in order to invoke the proviso to Sec. 2(15) of the Act, it is imperative for the Revenue to establish that there is an element of profit motive in the activities of the assessee. Notably, the fact that some of the activities carried out by an entity involving charging of fee, etc. have resulted in a surplus could not ipso facto be determinative of the fact that there was an element of profit motive.

17. At this point, we may also refer to the judgment of the Hon'ble Bombay High Court in the case of Shree Nasik Panchvati Panjrapole (supra). Though the said judgment is with regard to the registration u/s 12A of the Act, but the parity of reasoning laid down by the Hon'ble Bombay High Court in context of proviso to Sec. 2(15) of the Act is very eloquent. In the case before the Hon'ble Bombay High Court, the dominant activity being carried out by the assessee-trust for over 130 years was to take care of old, sick and disabled cows. An incidental activity of selling milk was being carried out, which resulted in receipt of money on the sale of milk. The contention of the Revenue was

that the activity of selling milk obtained from the cows was in the nature of trade, business or commerce and thus the charitable status was hit by the proviso to Sec. 2(15) of the Act. The aforesaid proposition advanced by the Revenue was squarely negated by the Hon'ble High Court. As per the Hon'ble High Court, the incidental activity of obtaining milk while taking care of the cows would not be hit by the proviso to Sec. 2(15) of the Act because selling of milk by itself could not be construed to be an activity in the nature of trade, commerce or business having regard to the facts of the case. It was noted that the dominant activity being carried out by the assessee was to take care of the old, sick and disabled cows, which fell within the purview of Sec. 2(15) of the Act and any incidental activity carried out, which resulted in receipt of money would not attract the proviso to Sec. 2(15) of the Act unless there was a profit motive. Quite clearly, in the factsituation before the Hon'ble High Court, the motive and the purpose of the activities was to take care of old, sick and disabled cows and not to earn profit by selling milk, which was only an incidental activity; and, accordingly, the assessee was found eligible for registration u/s 12A of the Act.

18. In this background, if we are to examine the case made out by the Revenue in the instant, we do not find any finding at all by the Assessing Officer or even by the CIT(A) that any of the activities of the assessee are with a profit motive so as to attract proviso to Sec. 2(15) of the Act. The stream of incomes noted by the Assessing Officer in para 10 of the assessment order on account of advertisement and subscription income, seminar income, sale of books and periodicals, etc. are not shown to be carried out with any profit motive and rather, the explanation consistently advanced by the assessee has been to the effect that such activities are only incidental to its object of promoting and safeguarding rubber industry. In fact, in para 6 of the assessment order, a portion of the submissions furnished by the assessee have been reproduced wherein assessee specifically asserted that dissemination of information and publication of magazine relating to Rubber industry in India and developments abroad was a substantive activity carried out, which was for the charitable purpose of promoting the interests of Rubber industry and trade. Therefore, in view of the aforesaid discussion, in our view, the Assessing Officer erred in invoking proviso to Sec. 2(15) of the Act to treat the activities of the assessee as being non-charitable specifically considering the fact that no material or evidence has been led to show that there was any profit motive in carrying out such activities. Pertinently, there is no rebuttal at any stage to the assertions of the assessee that its

activities in the instant years are similar to the activities in the past years.

19. Therefore, in view of the aforesaid discussion, we set-aside the order of CIT(A) and direct the Assessing Officer to allow the exemption u/s 12A of the Act to the assessee.

20. Before parting, we may also advert to the stand of the Assessing Officer that assessee was a mutual association as it was intended for the benefits of its members who were involved in rubber trade and industry. Being a mutual association, as per the Assessing Officer, it was entitled to the benefits of Principle of Mutuality and, therefore, any surplus remaining from the dealings with the members was exempt. Therefore, according to the Assessing Officer, such an institution could not be eligible for the benefits of Sec. 11/12 of the Act as it was a mutual association existing for promotion of interests of its members. In our considered opinion, the said approach of the Assessing Officer is clearly misguided. In this context, it would suffice for us to reproduce hereinafter the following extract from the judgment of the Hon'ble Delhi High Court in the case of PHD Chamber of Commerce & Industry (supra) :-

"16. A survey of the decided cases shows that trade and professional associations have been held entitled to the exemption under Section 11. An association of businessmen who sold goods on hire purchase [Add. CIT vs. South India Hire Purchase Association [1979] 116 ITR 793 (Mad.), an association of traders dealing in photographic and connected trades [CIT v. South Indian Photographic & Allied Trades Association [1987] 166 ITR 166/[1986] 26 Taxman 485 (Mad.) and an association consisting of Kirana Merchants (Madras Kirana Merchants Association v. CIT [1978] 111 ITR 156) were held by the Madras High Court to be eligible for the exemption under Section 11 notwithstanding that some of the associations charged their members fees for specific services rendered. Other cases on similar lines are:

NAME OF CASE	CITATION	ASSOCIATION OF
<i>CIT v. Banaras Brass Merchant and Manufacturers Association</i>	(2000) 241 ITR 70/117 Taxman 568 (All.)	Brass Merchant and Manufacturers
<i>CIT v. Gayathri Women Welfare Association</i>	(1993) 203 ITR 389/67 Taxman 528 (Kar.)	Women's Welfare

<i>CIT v. Silk and Art Silk Mills Association Ltd.</i>	<i>(1990) 182 ITR 38/48 Taxman 20 (Bom.)</i>	<i>Silk Mills</i>
<i>CIT v. A. P. Bankers & Pawnbrokers Association</i>	<i>[1988] 170 ITR 476/[1987] 34 Taxman 433 (AP)</i>	<i>Bankers & Pawnbrokers</i>
<i>CIT v. Bengal Mills and Steamers Presbyterian Association</i>	<i>[1983] 140 ITR 586/[1981] Taxman 78 (Cal.)</i>	<i>Mills and Steamers Presbyterian</i>
<i>CIT v. Nachimuthu Industrial Association</i>	<i>[1982] 138 ITR 585/ 14 Taxman 224 (Mad.)</i>	<i>Industrial Association</i>
<i>Add. CIT v. Madras Jewellers and Diamond Merchants Association</i>	<i>[1981] 129 ITR 214 (Mad.)</i>	<i>Jewellers and Diamond Merchants</i>
<i>Add. CIT v. Automobile Association of Southern India</i>	<i>[1981] 127 ITR 370/5 Taxman 77 (Mad.)</i>	<i>Automobile owners</i>

The predominant intention theory was applied in these decisions and it was found that none of these associations worked for a profit and they were essentially associations established for the protection of interests of businessmen carrying on a particular trade."

21. In fact, the Hon'ble Delhi High Court specifically considered the receipts derived by a Chamber of Commerce and Industry for performing specific services to its members. The following discussion in the order of the Hon'ble Delhi High Court would show that such income was found to be entitled for benefits of Sec. 2(15) r.w.s. 11 of the Act provided, of course, there was no profit element in such services.

*"15. CIT vs. Andhra Commerce of Chamber (supra) introduced the possibility of some of the trade, professional or other similar association being entitled to the exemption under Section 11. It seems to us that all that Section 28(iii) does is to constitute certain income of the association to be business income without affecting the scope of the exemption under Section 11. Section 2(15) which incorporates the definition of "charitable purpose" as including relief of the poor, education, medical relief and the advancement of any other object of general public utility, on the lines of what Sir Samuel Romilly suggested to the Court in *Morice v. Durham, Bishop of Durham (1805) 10 Ves Jr. 522*, shows that several mutual associations may also fall within the definition. On this basis, a Gymkhana Club formed to promote physical fitness, sports and games and social intercourse amongst the members has been held entitled to the exemption under Section 11 by the Madras High Court in *Commissioner of**

Income-tax v. Ootacamund Gymkhana Club (1977) 110 ITR392; an association formed for the general benefit of the members of the legal profession was held eligible for the exemption by the Supreme Court in Commissioner of Income-tax v. Bar Council of Maharashtra, (1981) 130 ITR 28; a public utility undertaking such as a State Road Transport Corporation was held eligible for the exemption by the Supreme Court in Commissioner of Income-tax v. Andhra Pradesh State Road Transport Corporation 159 ITR 1. In all these cases the common thread which was noticed to run through was the absence of any motive of private profit. These decisions do establish that the receipts derived by a chamber of commerce and industry for performing specific services to its members, though treated as business income under Section 28(iii) would still be entitled to the exemption under Section 2(15) read with Section 11, provided there is no profit motive."

22. Therefore, so far as the Principle of Mutuality is concerned, the same is with reference to the services vis-a-vis the members and qua the income received by assessee from non-members, the other provisions of the Act would govern. In any case, an entity cannot be denied charitable character merely because some element of its income is exempt from the Principles of Mutuality. Thus, on this aspect also, we find no reason to uphold the stand of the Revenue.

23. In the result, we hereby set-aside the order of CIT(A) and the Assessing Officer is directed to allow the benefit of Sec. 11/12 of the Act to the assessee and thereafter recompute the income, as per law."

7. In fact, learned Commissioner (Appeals) following the aforesaid decision of the Tribunal has allowed assessee's claim of exemption. There being no difference in material facts in the impugned assessment year, therefore, respectfully following the decision of the Co-ordinate Bench in assessee's own case as referred to above, we uphold the decision of learned Commissioner (Appeals) by dismissing the ground raised by the Revenue.

8. In the result, appeal is dismissed.

Order pronounced through notice board under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963, on 17.09.2020

**Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER**

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 17.09.2020

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai