



**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"SMC-II" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA no.566/Mum./2019  
(Assessment Year : 2013-14)

Indian Beauty And Hygiene Association  
504, Midas, 5<sup>th</sup> Floor, Sahar Plaza  
Complex, M.V. Road, Near Kohinoor  
Hotel, Andheri (E), Mumbai 400 059  
PAN – AAATHI1252J

..... Appellant

v/s

Income Tax Officer (Exemp.)  
Ward-3, Mumbai

..... Respondent

Revenue by : Shri Sanjay J. Sethi  
Assessee by : Shri Madhur Aggarwal

Date of Hearing – 09.11.2020

Date of Order – 25.11.2020

**ORDER**

Captioned appeal has been filed by the assessee challenging the order dated 30<sup>th</sup> November 2018, passed by the learned Commissioner of Income Tax (Appeals)-1, Mumbai, pertaining to the assessment year 2013-14.

2. The grievance of the assessee in the present appeal is with regard to denial of exemption under section 11 of the Income Tax Act, 1961 (for short "*the Act*").

3. Brief facts are, the assessee is a company with charitable object formed under section 26 of the Companies Act, 1956. The assessee has also been granted registration under section 12A of the Act by the Director of Income Tax (Exemp.), long back. For the assessment year under dispute, the assessee filed its return of income on 22<sup>nd</sup> August 2013, declaring deficit/loss of ₹ 28,92,292 after claiming exemption under section 11 of the Act. During the assessment proceedings, the Assessing Officer called upon the assessee to show cause as to why the assessee should not be treated as a mutual concern not having any charitable object and why proviso to section 2(15) of the Act should not apply to the assessee. Though, the assessee objected to the proposed disallowance of exemption claimed under section 11 of the Act, however, the Assessing Officer ultimately concluded that the assessee merely is a mutual concern having no charitable object. Therefore, insofar as income earned from the members, applying the principles of mutuality he did not bring it to tax. However, insofar as interest income earned from the Banks and staff loan amounting to ₹ 4,58,792, the Assessing Officer treated it as income of the assessee and brought to tax. While deciding assessee's appeal against such addition, learned Commissioner (Appeals) while agreeing with the decision of the Assessing Officer that the assessee is a mutual concern, hence, principles of mutuality would apply, further, held that

as per the proviso to section 2(15) of the Act, the assessee cannot claim exemption under section 11 of the Act as the assessee was involved in commercial activity.

4. The learned Counsel for the assessee submitted, the assessee was formed long time back and has been granted registration under section 12A for more than 50 years. He submitted, assessee's objects has remained same over the years and it is having the charitable object of 'advancement of any other object of general public utility' which is one of the limb of charitable purpose as per section 2(15) of the Act. The learned Counsel for the assessee submitted, the objects of the assessee would show that it is not only providing services to its members but others as well. Thus, he submitted, there is no justifiable reason for denying assessee's claim of exemption under section 11 of the Act. He submitted, though, the assessee had been claiming exemption under section 11 of the Act from its very inception, however, prior to the impugned assessment year the Department has never disallowed such exemption. Thus, he submitted, the assessee should be allowed exemption under section 11 of the Act. In support, he relied upon the following decisions:-

*i) DIT v/s Gemological Institute of India, [2019] 105 taxmann.com 180 (SC);*

*ii) ACIT v/s Surat City Gymkhana, [2008] 170 Taxman 612 (SC);*

*iii) ITO v/s Chembur Gymkhana, [2017] 80 taxmann.com 354 (Mum.) (Trib.);*

*iv) Confederation of Real Estate Developers Association of India v/s ACIT, [202-0] 119 taxmann.com 491 (Mum.) (Trib.); and*

*v) Fragrance & Flavours Association of India v/s DDIT, [2018] 92 taxmann.com 325 (Mum.)(Trib.).*

5. The learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

6. I have considered rival submissions in the light of decisions relied upon and perused the material on record. A perusal of the assessment order reveals that, though, in the show cause notice the Assessing Officer had raised the issue of applicability of proviso to section 2(15) of the Act, however, ultimately he has not denied assessee's claim of exemption under section 11 of the Act by applying the aforesaid proviso. He has simply disallowed assessee's claim of exemption under section 11 of the Act by treating the assessee as a mutual concern. Whereas, learned Commissioner (Appeals) apart from agreeing with the Assessing Officer that the assessee is a mutual concern has went a step ahead holding that the proviso to section 2(15) of the Act applies to the assessee.

7. A perusal of the observations of learned Commissioner (Appeals) in Para-6.3.1 would show that on the one hand he observes that it

cannot be said that the assessee's main object is 'advancement of any other object of general public utility', whereas, on the other hand he contradicts himself by stating that the proviso to section 2(15) applies to the assessee. A reading of section 2(15) of the Act would make it clear that the said proviso would be applicable in a case where the assessee is having the main object of 'advancement of any other object of general public utility', but, its activities are commercial in nature. In that eventuality, its object would not be regarded to be of charitable purpose. However, now it is fairly well settled that if the income derived from commercial activity is incidental to carrying out the objects, it will be regarded as charitable purpose.

8. Further, it is a fact on record that the assessee had been granted registration under section 12A of the Act long back and such registration continues till date. On a query, the learned Authorised Representative further stated that objects of the assessee have not changed. In case of DIT(E) Vs. Gemological Institute of India [2019] 105 taxmann.com 179 (Bombay) the Hon'ble Jurisdictional High Court has held that once registration under section 12A is granted to the assessee, then it is not open to the Assessing Officer to revisit the objects of the assessee again while examining the claim of exemption under section 11 of the Act. Therefore, if the objects on the basis of which the assessee was granted registration under section 12A of the

Act by considering them to be of charitable nature, then, in absence of any change in such objects of the assessee, it is not understood how it can lose its identity of a charitable institution in the impugned assessment year, that too, when the registration granted under section 12A of the Act is still in vogue. Undisputedly, the departmental authorities have disallowed assessee's claim of exemption under section 11 of the Act on the reasoning that it provides services only to its members. However, before us, referring to the objects learned counsel for the assessee has submitted that services are provided to others as well. This claim has not been factually verified by the departmental authorities. Therefore, in my view, assessee's claim of exemption under section 11 of the Act has to be considered properly having due regard to the relevant facts and more particularly after examining whether the objects of the assessee on the basis of which registration was granted under section 12A of the Act remains the same or has undergone any change in the meanwhile. With the aforesaid observations, I set aside the impugned order of learned Commissioner (Appeals) and restore the issue to the Assessing Officer for fresh adjudication after providing reasonable opportunity of being heard to the assessee. Grounds raised by the assessee are allowed for statistical purposes.

9. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open court on 25.11.2020

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 25.11.2020**

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