

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI**

**BEFORE SHRI M BALAGANESH, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 877/Mum/2017
(Assessment Years: 2012-13)**

Amateur Riders Club Mahalaxmi Race Course, Mahalaxmi, Mumbai – 400 034	बनाम/ Vs.	ITO (Exemption) – 1(1) Pirmal Chamber, Lalbaug, Mumbai – 400 012.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATA6630L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Neeraj Sheth, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Brajendra Kumar, DR

सुनवाई की तारीख / Date of Hearing	03/11/2020
घोषणा की तारीख/Date of Pronouncement	17/11/2020

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals) -1, Mumbai passed u/s. 143(3) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

“1. Re.: Non granting of exemption u/s. 11

- 2 -

1.1 *The CIT(A) has erred in confirming the action of the AO of not granting the Appellant Exemption u/s.11 of the IT Act as claimed by the appellant.*

1.2 *The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the Appellant is entitled to an exemption in terms of the section 11 and the CIT(A) ought to have held as such.*

1.3 *The appellant submits that the AO be directed to grant the appellant exemption u/s.11 and to re-compute its total income accordingly.*

Without prejudice to the foregoing and in the alternative:

2.0 *Re; computation of income by incorrect application of the principle of mutuality;*

2.0 *The CIT(A) has erred in not directing the A.O to compute the appellant's income by correctly applying the principle of mutuality.*

3.0 *Re.: General;*

3.1 *The Appellant craves leave to add, alter, amend, substitute and / or modify in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal”.*

2. The brief facts of the case are that the assessee is a trust registered with the Charity Commissioner of Mumbai and filed the return of income on 28.09.2012 with total income of Rs.Nil. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and

- 3 -

142(1) of the Act along with annexure were issued. In compliance, the Ld.AR of the Assessee appeared from time to time and submitted the details. The LdA.O perused the income and expenditure, balance sheet, books of accounts, profit and loss account, audit report. Further and also find that the registration u/s 12A of the Act with the Director of IncomeTax (Exemptions), Mumbai has been cancelled by DIT(E) Mumbai order dated 08.12.2011w.e.f A.Y. 2009-10. The A.O dealt on the main objects and rules at point No3(a) and 3(b) of the deed and material facts and observed that the activities carried out in the normal course are to be treated as business activities as per amended proviso to Sec. 2(15) r.w.s 13(8) of the Income Tax Act and further the assessee does not satisfy the conditions and the registration u/s 12A of the Act was revoked w.e.f A.Y 2009-10. Hence the assessee is not entitled for exemption u/s 11 of the Act and the income has to be determined as per the principles of mutuality. In response to the notices, the assessee has filed detailed submissions vide letter dated 24.02.2014 referred at para 5.2 of the order. The A.O considering the submissions and the facts is

- 4 -

of the view that the registration u/s 12A of the Act was cancelled on 08.12.2011 and trust has to be assessed under provisions of Sec. 2(15) based on the mutuality concept. Further the A.O also observed that, the assessee is running hotels, permit rooms and receipt of hire charges from marriage ceremonies and the ancillary objects. The A.O has dealt at para 5.3 of the order in respect of the activities of the assessee and the club is not open to general public. Entry into the club is also difficult for ordinary people and the assessee has not carried out any charitable activity. The A.O considered the various aspects of the memberships allotted to the public and observed that the assessee collecting membership fees and subscription fees depending on the category of members and getting membership into the club is a very difficult task. The A.O dealt on the judicial decisions and the circular of CBDT and observed that the assessee trust cannot be treated as a charitable and made the computation of the income as per the provisions of Sec. 2(15) of the Act and determined the total income of Rs. 1,75,92,900/- and passed the order u/s 143(3) of the Act dated 21.03.2015.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). In the appellate proceedings the Ld. CIT(A) considered the grounds of appeal, findings of the AO, and the written submissions. The assessee explained that the order of cancellation u/sec12A by the DIT(E) was challenged and the Hon'ble ITAT has set aside the order of cancellation. Whereas the CIT(A) considered the fact of registration and dealt on the judicial decisions and the assessee's own case for the A.Y 2009-10 and further relied on the predecessor order and accepted the view of the A.O on denial of exemption u/sec11 of the Act and partly allowed the appeal of the assessee. Aggrieved by the order of the CIT(A), the assessee has assailed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in not considering the facts, provisions of law and the decision of the Hon'ble ITAT. Where as the Hon'ble ITAT has set aside the cancellation order of registration u/sec12A of the Act. In the present appeal the only issue agitated being, granting of exemption u/s 11 of the Act. The assessee has been granted Registration from the year 1974

- 6 -

onwards and was withdrawn and cancelled by the DIT(E) vide order dated 08.12.2011. The Ld. AR submitted that the A.O has overlooked the provisions of law and dealt on the instructions of CBDT circular, where the benefit of exemption has to be granted to the institutions both mutual and charitable. While passing the order, the A.O has not followed the CBDT circular and denied exemption u/s 11 of the Act. The Ld.AR emphasized that the assessee's activities are charitable in nature and the Hon'ble ITAT for the A.Y 2009-10 and 2011-12 has set aside the order of denial of exemption of sec 11 of the Act and the same is applicable to the present assessment year and substantiated his arguments with judicial decisions and paper book and prayed for allowing the appeal.

5. Contra, Ld. DR relied on the orders of the Ld CIT(A).

6. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue in respect of the denial of exemption u/s 11 of the Act. The Ld. AR contends that the assessee activities are charitable in nature therefore the

exemption u/s 11 of the Act cannot be denied. The Ld. AR emphasized that the order of cancellation u/sec12A by the DIT(E) was challenged and the Hon'ble ITAT has set aside the order of cancellation. The contention of the Ld.AR that the provisions of Registration 12A of the Act are effectively applicable for the present Assessment year and the assessee is entitled for exemption u/s 11 of the Act considering the decision of the Hon'ble ITAT. The Ld. DR supported the order of the CIT(A) and submitted that the earlier year facts are different and cannot be considered for the present assessment year. The Ld. AR demonstrated the paper book referring to the order of rejection dated 08.12.2011 at page 93 to 99 cancelling the registration u/ 12A of the Act effective from A.Y 2009-10 and at page 100 to 107, on Appeal to Hon'ble ITAT in ITA No. 324/Mum/2012 order dt 3-3-2016. The coordinate bench of tribunal observed that the action of the DIT(E) in cancelling the registration is bad in law. We consider it appropriate to refer the observations of Hon'ble ITAT at page 7 *para 8 of the order as under:*

8. We have further noticed that the Ld. DR appearing on behalf of DIT has not placed on record any evidence to show or prove that these activities being carried out by the assessee trust is in violation of the object of trust. Ld. DR failed to point out any provision or any rules and regulations of assessee trust being violated by the assessee trust and further failed to demonstrate as to how and in what manner the activities of the assessee trust are not genuine. Ld. DR only relied upon the Tribunal

- 8 -

order in the case of "The Navi Mumbai Merchants Gymkhana (66 SOT 121) Vs. ADIT"47 Taxmann. Com 53 (Mumbai-Tri). Therefore after considering the totality of the facts and circumstances of the present case, we are of the considered view that the orders passed by the DIT exemption to the effect that the activities of the assessee trust has become non genuine are without any basis or foundations therefore, we hold the cancellation of registration w.e.f. 2009-10 is bad in law and the same is set aside, and the only ground of appeal raised by the assessee is allowed".

7. Further, the Ld. AR also relied on the order of the Hon'ble ITAT in the assessee's own case ITA No. 48/Mum/2013 &195/Mum/2013 for the A.Y 2009-10 and ITA 5610/Mum/2015 for the 2011-12 dated 13.01.2020. Where the assessee has challenged the order of the CIT(A) denying the claim of exemption u/s 11 of the Act for the A.Y 2009-10 and A.Y 2011-12. The Hon'ble Tribunal considered the facts and the earlier order of Tribunal dated 03.03.2016 setting aside the order of DIT(E) and restoration of registration u/s 12A of the Act. Further, the Tribunal observed that the CIT(A) in the appeals for AY 2009-10 and AY 2011-12 upheld the rejection of exemption u/s11 of the Act due to cancellation of registration granted u/s 12A of the Act by DIT(E) vide order dated 08.12.2011. On appeal to the Hon'ble ITAT the

- 9 -

Tribunal has set aside the order Ld. DIT(E) and restored the registration granted u/s 12A of the Act with specific observation that there is no proper reasoning and the basis of Ld. DIT(E) in rejecting the assessee's claim for the assessment year. We find the LdCIT(A) for the assessment years 2009-10 and 2011-12 has followed the same reasoning and denied the exemption u/sec11 of the Act. But the facts are that the assessee was restored with the registration u/sec 12A of the Act and it was very much before the appellate authorities. We consider it appropriate to refer to the observations of the Hon'ble Tribunal at page 9 para 8 of the order, which is read as under:

"8. On a careful reading of the relevant extract from learned Commissioner (Appeals)'s order, it is very much clear that the only reasoning on the basis of which she has upheld the rejection of assessee's claim of exemption under section 11 of the Act is due to withdrawal /cancellation of registration granted under section 12A of the Act, vide order dated 8th December 2011. Notably, against the aforesaid order of learned DIT (Exemp.) cancelling the registration granted under section 12A of the Act, the assessee approached the Tribunal and the Tribunal while deciding the issue in ITA no.324/Mum./2012, dated 3rd March 2016, set aside the order of learned DIT (Exemp.) and restored the registration granted under section 12A of the Act. It is relevant to observe, the reasoning on the basis of which

learned DIT (Exemp.) withdrew/cancelled assessee's registration under section 12A of the Act, were adopted by the Assessing Officer while rejecting assessee's claim of exemption under section 11 of the Act in the impugned assessment year. However, the Tribunal while deciding the issue has categorically held that nothing has been brought on record to show or to prove that the activities carried out by the assessee are in violation of its objects. Be that as it may, as observed earlier, the only reasoning on the basis of which learned Commissioner (Appeals) has upheld the disallowance of assessee's claim of exemption under section 11 of the Act is due to withdrawal/cancellation of assessee's registration under section 12A of the Act. However, after restoration of the registration granted under section 12A of the Act by virtue of the order passed by the Tribunal, as referred to above, the reasoning of learned Commissioner (Appeals) in rejecting assessee's claim of exemption under section 11 of the Act cannot be upheld. It is relevant to observe, in case of another assessee, viz. Cotton Textile Promotion Council, learned Commissioner (Appeals) had upheld rejection of claim of exemption under section 11 of the Act on identical reasoning for the very same assessment year. However, while deciding the appeal of the assessee in ITA no.317/ Mum./2013, dated 28th January 2015, the Tribunal having taken note of the fact that the registration granted under section 12A of the Act has been restored by the Tribunal, allowed assessee's claim of exemption under section 11 of the Act by setting aside the order of learned Commissioner (Appeals). Against the order of the Tribunal, though, the Revenue went in appeal before the Hon'ble Jurisdictional High Court in ITA no.1250/2015, however, in order dated 29th November 2017, the Hon'ble Jurisdictional High Court upheld the decision of the Tribunal. Facts in the present case are

- 11 -

identical as the only reasoning on the basis of which learned Commissioner (Appeals) has upheld the rejection of exemption under section 11 of the Act is due to cancellation of assessee's registration under section 12A of the Act. Once the cancellation of registration has been set aside and registration granted under section 12A of the Act has been restored by the Tribunal, learned Commissioner (Appeals)'s decision for disallowance of exemption under section 11 of the Act becomes redundant, hence, has to be set aside. Accordingly, we set aside the impugned order of learned Commissioner (Appeals) and allow assessee's claim of exemption under section 11 of the Act. In view of our decision above, we do not intend to deliberate further on various other arguments advanced by leaned Sr. Counsel for the assessee justifying the claim of exemption under section 11 of the Act.

8. We considering the factual aspects and restoration of Registration u/sec12A of the Act by the Hon'ble Tribunal in the year 2016 are of the view that at the time of passing the assessment order for this Assessment year the Assessing officer does not have the knowledge or information that the Hon'ble Tribunal has set aside the order of cancellation in the year 2016 as the Assessment order was passed for the present assessment year under 143(3) of the Act on 21.03.2015. Therefore, we are of the substantial view that the assessment without considering the restoration of registration u/s 12A of the Act is not a

valid assessment. Further, for the earlier assessment year 2009-10 and 2011-12 the Hon'ble ITAT in ITA No. 48/Mum/2013 and ITA No. 5610/Mum/2015 has set aside the order of the CIT(A) rejecting the exemption u/s 11 of the Act to the assessee. When the query was raised to the Ld. AR in respect of the passing of any order giving effect to the Hon'ble ITAT order dated 31.01.2020. The Ld. AR expressed that no action was initiated on order giving effect (OGE) by the A.O and is in the process. The ld. DR also could not give the correct position of the order giving effect (OGE) of the Hon'ble ITAT order. We considering the provisions of law and the judicial precedence are of the view that the matter has to be remitted to the file of A.O to consider the restoration of registration granted u/s 12A of the Act in the year 2016 and the order giving effect (OGE) for the A.Y 2009-10 and 2011-12 which is pending before the Assessing officer. Accordingly to meet the ends of justice, we restore the disputed issues in assessee's appeal to the file of the A.O for the limited purpose with the above directions and the A.O has to verify and examine the facts and do the assessment based on the Restoration of

- 13 -

registration under 12A of the Act and allow the grounds of appeal of the assessee for statistical purpose.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 17.11.2020

Sd/-

(M BALAGANESH)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated /11/2020

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai