IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

आयकर अपील सं/ I.T.A. No. 1614/Mum/2020
(**निर्धारण वर्ष** / Assessment Year: 2011-12)

Bombay Chamber of Commerce & Industry, Mackinnon Mackenzie Building, 4, Shoorji Vallabhdas Marg, Ballard Estate, Mumbai - 400001 PAN : AABCB2270M	**बनाम**/ Vs.	The Income Tax Officer (Exemption)-1(1), Room No. 508, 5th Floor, Piramal Chambers, Lalbaug, Parel, Mumbai - 400012
(अपीलार्थी /**Appellant**)	:	(प्रत्यर्थी) / **Respondent**)

Appearances

For the Respondent/ Assessee	:	Shri Niraj Sheth, Advocate
For the Appellant/Department		Shri C.T. Mathews, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	02.02.2022
घोषणा की तारीख /Date of Pronouncement	:	18.02.2022

आदेश / O R D E R

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Assessee has challenged the order dated 06.02.2020 passed by the Commissioner of Income Tax (Appeals) -1, Mumbai [hereinafter referred to as 'CIT(A)'] under section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] in appeal [CIT(A)-1, Mumbai-/10032/2018-19] for the assessment year 2011-12, whereby the Ld. CIT(A) had partly allowed the appeal filed by the Assessee against the rectification order, dated 29.03.2018, passed under section 154 of the Act.

2. Brief facts of the case relevant to the issue before us are that the Appellant is a company stated to have been formed, inter alia, for the purpose of promoting and protecting the trade commerce and manufacturers.

3. The Appellant filed return for the AY 2011-12 on 30.09.2011 declaring total income of INR 1,55,56,034/- in accordance with provisions of section 28 read with section 44A of the Act. However, in the notes forming part of computation of income, the Appellant contended that its activity were charitable in nature and were not affected by the amendment to the provisions of section 2(15) of the Act by the Finance Act, 2008. Further, the Appellant reserved its right to claim exemption u/s 11 of the Act. In the assessment framed vide assessment order, dated 13.01.2014, the AO denied exemption u/s 11 of the Act and computed income by applying the principles of mutuality. The appeal filed by the Appellant/Assessee before the Commissioner of Income Tax (Appeals)-1, Mumbai against the assessment order, dated 13.01.2014, was dismissed vide order, dated 19.12.2014. The Appellant, therefore, took the matter in appeal before the Tribunal.

4. Meanwhile, vide order, dated 29.03.2018, passed Section 154 of the Act, the assessment order, dated 13.01.2014, was rectified by the Assessing Officer and an addition of INR 1,36,26,000/- was made by invoking the provisions of section 11(3)(c) of the Act as the aforesaid amount was accumulated but not utilized with in specified period of 5 years. The appeal filed by the Appellant before the CIT(A)-1, Mumbai against rectification order, dated 29.03.2018, did not yield favorable results, as the CIT(A) sustained the addition of INR 1,36,26,000/-. Being aggrieved the Appellant has preferred the present appeal.

5. The Ld. Counsel appearing for the Appellant submits that the Tribunal has while disposing of a batch of four appeals (ITA No. 1174-1175/Mum/2015 and 5834-5835/Mum/2019) vide common order, dated 10.11.2021, held that the Appellant was entitled to exemption under Section 11 of the Act for the Assessment Year 2011-12 and as result the Assessment Order, dated 13.01.2014 has been set aside. Since, the Assessing Officer would now be required to grant benefit of exemption under Section 11 of the Act to the Appellant and quantify the same, the Ld. Counsel for the Assessee submitted that the issue in the present appeal pertaining to unutilized accumulated amount of INR.1,36,26,000/- may also sent back to the AO. While the Ld. Departmental Representative confirms that the Tribunal has granted the aforesaid relief to the Appellant, he submits that the addition has been made correctly as the amount that was accumulated/set apart under Section 11(2) in FY 2004-05 relevant to AY 2005-06 was not utilized. On the contrary, the counsel for the Appellant submitted that the Appellant/Assessee had utilized the accumulated amount of INR.1,36,26,000/- in the financial year 2010-2011 and this issue can be examined by the AO while quantifying the benefit available under Section 11 of the Act.

6. After hearing the above contentions and on perusing the records, it is clear that the issue for consideration before us has its roots in order, dated 29.03.2018, passed under Section 154 of the Act rectifying the Assessment Order, dated 13.01.2014. The aforesaid assessment order has already been set aside by the Tribunal vide common order, dated 10.11.2021. Therefore, we are of the view that it would be in the interest of justice that the issue before us pertaining to the utilization of accumulated amount of INR 1,36,26,000/- is also remanded to the file of Assessing Officer who would be at liberty to examine the same in terms of Section 11(3)(c) of the Act and the grant relief to the Assessee, if any, as per the applicable law. Accordingly, the issue is remitted to the

file of Assessing Officer and the present appeal is disposed off in terms of the aforesaid directions.

The appeal is allowed for statistical purposes.

Order pronounced in the open court on 18.02.2022.

Sd/-	*Sd/-*
(Shamim Yahya) Accountant Member	(Rahul Chaudhary) Judicial Member

मुंबई Mumbai; दिनांक Dated : 18.02.2022
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**