

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI

BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER)
AND
SHRI GAGAN GOYAL (ACCOUNTANT MEMBER)

I.T.A No.6160/Mum/2019 - A.Y. 2009-10
I.T.A No.6161/Mum/2019 - A.Y. 2011-12
I.T.A No.7710/Mum/2019 - A.Y. 2012-13

Navi Mumbai Sports Association vs ADIT (E) II(2), Mumbai
Sector 1A, Vashi,
Navi Mumbai-400 703
PAN : AAATN0547A
(Appellant) (Respondent)

Assessee represented by : Shri Prakash Pandit
Department represented by : Shri Anoop Hiwase, DR
Date of hearing : 08/02/2022
Date of pronouncement : /02/2022

ORDER

Per: Gagan Goyal (AM):

These three appeals have been filed by the assessee against the independent orders dated 16/08/2019, 20/08/2019 & 07/10/2019 passed by the Commissioner of Income-tax (Appeal)-1, Mumbai for the assessment years 2009-10, 2011-12 & 2012-13, respectively.

2. The assessee has raised as many as five common grounds of appeal in all the three appeals. But, in gist, the assessee agitates denial of exemption under

section 11 of the I.T. Act, 1961 by applying the provisions of section 2(15) of the I.T. Act, 1961 and in the alternative, if at all the assessee trust is held as a mutual concern, the income computed by the assessing officer and confirmed by the Ld. CIT(A) is not in accordance with law, arbitrary and without understanding the principle of mutuality.

3. Since facts and circumstances in all the appeals are identical, ITA No.6160/Mum/2019 is treated as the lead case.

4. Facts in brief : Assessee is claimed to be a trust carrying on activities of providing swimming pool facilities for aquatic events and training and facilities for other sports and squash, billiards and table tennis. Return of income for the assessment year 2009-10 was filed on 30/03/2010 declaring income at Nil after claiming exemption under section 11 of the Act. In the course of assessment proceedings, the assessing officer noticed that in addition to the above activities, the assessee was also imparting the facilities of playing cards and also having permit room bar and restaurant for catering and soft drinks. The assessing officer also noticed that the assessee was also imparting the facilities for playing cards. Because of this, the assessing officer was of the view that the assessee trust cannot constitute a trust, in view of provisions of section 11(4A) of the I.T. Act, 1961 and as a consequence, exemption under section 11 was denied by applying the Proviso to section 2(15) of the I.T. Act.

5. When appealed against, the Ld.CIT(A) upheld the order of the assessing officer by holding that the activities of the assessee have been found to be hit by the newly inserted Proviso to section 2(15) of the Act.

6. Further aggrieved, the assessee is in appeal before the Tribunal.

7. The learned AR of the assessee submitted that on a similar issue in the case of MIG Cricket Club, the Hon'ble Tribunal, while deciding the case for A.Y. 2009-10 in ITA No.602/Mum/2012 have observed that observed that the activity of banquet hall hiring, restaurants and permit room are in the nature of carrying on trade, commerce or business for consideration etc. which are hit by proviso to Sec.2(15) of the Act. The Ld.AR further contended that its registration u/s 12A of the Act has been restored and since it was granted exemption u/s 11 of the Act by the order of Hon'ble ITAT in their own case for A.Ys. 2000-01 & 2001-02, such exemption u/s 11 of the Act should be granted to it for the year under consideration as well. Further, for the A.Yrs, 2000-01 & 2001-02, the exemption u/s 11 was granted to it as in those years the proviso to sec.2(15) as is applicable to the year under consideration was not there in the statute. When such proviso is applicable for the year under consideration, the same has to be taken into view and the facts of the assessee's case are required to be examined vis-a-vis such newly inserted proviso to Sec.2(15) of the Act. The assessee in their submission have also placed reliance on the decision of Hon'ble Madras High Court in the case of Tamilnadu Cricket Association vs. DIT(E) (Supra). In respect of such reliance placed, it is stated that the said decision is in respect of cancellation of registration u/s 12AA(3) of the Act, when there is no dispute about the genuineness of the trust or the activities of the trust, in respect of such reliance placed by the assessee, it is stated that the matter when restored by the ITAT in the assessee's own case for AY. 2009-10, the registration u/s 12A has been granted by the Id. CIT(E) but the grant of registration per se does not entitle the

assessee to claim exemption under section 11 of the Act. The Ld.AR of the assessee before us relied upon a slew of decisions, which are –

1. CIT(E) vs Matunga Gymkhana 314 CTR 818(Mum)
2. CIT(E) vs The Bombay Presidency Golf Club Ltd 311 CTR 578 (Bom)
3. Otters Club vs ITO (E) ITA No.648/Mum/2014
4. Indian Merchant Chamber vs DDIT(E)
5. CIT(E) VS India Habitat Center ITA 424 ITR 325 (Del)
6. The Andheri Recreations Club vs ITO (E) ITA No.5059/Mum/2016
7. ITO (E) vs the Chembur Gymkhana ITA No.363/Mum/2016
8. Dahisar Sports Foundation vs ITO (E)
9. The Pransukhlal Mafatlal vs ITO (E) ITA No.1039 & 1040/Mum/2016

8. The Ld.DR, on the other hand, submitted that as per Proviso to section 2(15) of the Act, the assessee is not entitled for exemption under section 11 of the Act as the assessee is indulging in having permit room bar and restaurant for catering and soft drinks. The Ld.DR relied upon the following decisions:

1. Murasoli Trust vs ADIT (Exemptions IV), Chennai (2016) 65 taxmann.com 186 (Chennai-Trib)
2. Circular No.11/2008 dated 19/12/2008
3. Rajah Sir Annamalai Chettiar Foundation vs Chief CIT (2020) 116 taxmann.com 128 (Madras)

For the proposition that if assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose.

9. We have considered rival submissions and perused materials on record. The learned assessing officer denied the claim of exemption to the assessee on the ground that the exemption granted by the DIT(E) was subsequently withdrawn by him. In that background, the assessing officer proceeded to examine whether the assessee was a charitable trust or a mutual concern and found that the assessee was providing recreational activities, banquet hall hiring, restaurants and permit room, which are in the nature of carrying on trade, commerce or business for consideration etc. which are hit by proviso to Sec.2(15) of the Act. Therefore, the assessing officer, applying proviso to section 2(15), held the assessee trust as a mutual concern. The Ld.AR of the assessee before us submitted that the registration was eventually restored by the DIT(E) as per the direction of the ITAT, as per order dated 27.03.2017 (paper book page 65). The charitable nature of the assessee can be appreciated from the fact that not only it is registered with Charity Commissioner, Mumbai, but was also granted registration as a Charitable Institution under section 12A of the Act. The denial of exemption under section 11 of the Act was primarily for the reason that the activities of the assessee in providing services to members cannot be considered to be for charitable purpose. However, for assessment year 2001-02, under similar circumstances, the Tribunal dismissed the appeal filed by the revenue against the order passed by the Ld.CIT(A) granting exemption under section 11 to the assessee.

10. We have considered rival submissions and perused the material on record. We have also applied our mind to the decisions relied upon. Before adverting to

the issue in hand, it would be imperative for us to have a look at the object of the assessee trust. It reads –

“3. AIMS & OBJECTS:

The aims and objects of the Association shall be to promote and develop sports. Cultural and social activities and also provide Health/ Sports education in Navi Mumbai. With a view to achieve the said objectives the Association shall work to :-

- a. Provide facilities for indoor and outdoor games, Swimming pool and Recreation activities.
- b. Provide facilities for Physical activities,
- c. Organize Cultural programmes.
- d. Organize training camps for youngsters with a view to serve the national interest and also will provide necessary facilities.
- e. Utilize the funds to the maximum for developing the sports and other similar activities on no loss no profit basis.
- f. Promote all other activities as are necessary from time to time to further the aims and objects of the Association.
- g. Utilize the income and properties of the Association, whatsoever derived from solely towards the objects and business of the Association and no portion thereof shall be paid, transferred or distributed directly or indirectly by way of dividend, bonus or interest or otherwise whatsoever, by way of profit to the members of the Association.”

Thus, from the objects of the assessee trust it would be clear to us that the assessee trust was created with the charitable object to provide facilities for indoor and outdoor games. In addition to the aforesaid objects, the trust deed also provided for providing recreational activities. The charitable nature of the assessee can be appreciated from the fact that not only it is registered with Charity Commissioner, Mumbai, but was also granted registration as a Charitable

Institution under section 12A of the Act immediately after its creation in the year 12A of the Act, the assessee started claiming exemption under section 11 of the Act. The assessing officer denied the exemption under section 11 of the Act primarily for the reason that the activities of the assessee included facility of permit room, which, according to him, cannot be considered to be for charitable purpose. Therefore, applying the Proviso to section 2(15), the assessing officer held that the activity of providing bar room cannot be considered to be objects of general public utility. We find that the Special Bench of the Tribunal in *Breach Candy Swimming Bath Trust v/s ITO*, concluded that **except** the income derived from the activity of providing facilities for playing Cards at stake, all other income from Swimming Pool and other sport activities, Bar and Restaurants, etc., will be from the activities of carrying out the object of general public utility, hence, entitled to exemption under section 11 of the Act. (emphasis supplied by us)

11. The Hon'ble jurisdictional High Court in the case of *DIT(E) VS Chembur Gymkhana (2013) 33 taxmann.com 526 (Bom)* upheld the order of the Tribunal in granting exemption u/s 11 of the Act to the assessee, under similar facts and circumstances, which is abundant enough to hold that assessee is a charitable institution. The Hon'ble jurisdictional High Court observed as under:-

"Held that there was a finding of fact that the assessee was providing sports facilities as a part of its activities consisting of badminton, table tennis, billiards, cricket and skating among others. During the assessment year, the assessee had expended an amount of nearly Rs. 50 lakhs on constructing a swimming pool. The fact that the assessee provided service to its members did not detract from the position that it advanced a general public utility. The advancement of any object of benefit to the public or a section of the public as distinguished from a benefit to an individual or a group of individuals would be a charitable purpose. The membership of the society was drawn from a diverse cross-section of the society.

The assessee did not exist only for an individual or a group of individuals. Thus, it fulfilled the definition of the expression 'charitable organization' in section 2(15)."

Therefore, respectfully following the judgement of the jurisdictional High Court, we hold that the assessee trust is a charitable trust within the meaning of section 2(15) of the Income-tax Act, 1961.

12. Having found so, now the question remains whether providing of permit room would constitute 'objects of general public utility'. Here we find that the Special Bench of the Tribunal in the case of Breach Candy Swimming Bath Trust v/s ITO, concluded that except the income derived from the activity of providing facilities for playing Cards at stake, all other income from Swimming Pool and other sport activities, Bar and Restaurants, etc., will be from the activities of carrying out the object of general public utility, hence, entitled to exemption under section 11 of the Act. Hence, respectfully following the ratio of decision of the Special Bench of the Tribunal in the case of Breach Candy Swimming Bath Trust v/s ITO, we hold that the income derived from the activity of providing facilities for providing bar facility, etc. except the income derived from the activity of providing facilities for playing cards at stake, all other activities are incidental to the main object of the assessee; hence, not covered by Proviso to section 2(15) of the Act.

13. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 02nd March, 2022.

Sd/-

sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, Dt : February, 2022

Pavanan

Copy to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR
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Assistant Registrar / Senior Private Secretary
ITAT, Mumbai Benches