

THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Shri M. Balaganesh (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 987/Mum/2020 (A.Y. 2010-11)
I.T.A. No. 988/Mum/2020 (A.Y. 2011-12)
I.T.A. No. 989/Mum/2020 (A.Y. 2012-13)
I.T.A. No. 990/Mum/2020 (A.Y. 2013-14)

MIG Cricket Club MIG Colony, Bandra East, Mumbai-400 051. PAN : AAATM4779J (Appellant)	Vs.	DDIT(E), Circle 1(1) Room No. 504 Piramal Chambers 5 th Floor, Parel Mumbai-400012. (Respondent)
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Assessee by	Shri Anil Sathe
Department by	Shri S.N. Kabra
Date of Hearing	30.05.2022
Date of Pronouncement	30.05.2022

ORDER

Per Bench :-

These are appeals by the assessee arising out of the respective orders of learned CIT(A) for A.Y. 2010-11, 2011-12, 2012-13 & 2013-14.

2. Since identical issues are involved in these appeals, hence they are taken up together and disposed of by this common order.

3. At the outset, we find that there is delay in filing the appeals by the assessee by 91 days before this Tribunal. Affidavit filed by the assessee vide order dated 10.5.2022 is placed on record. The Affidavit contained detailed averments explaining reasons for delay. We are convinced with the said contentions raised in the affidavit and facts stated in the affidavit were not found to be false by the Revenue. Hence, we are inclined to condone the delay in filing the appeal before us and admit all the appeals of the assessee for adjudication.

4. With the consent of both the parties, appeals for A.Y. 2010-11 is taken as the lead case and the decision rendered thereon on those facts would apply mutatis mutandis for other assessment years also, except with variance in figures.

5. The only issue to be decided in this appeal is denial of exemption under section 11 & section 12 of the Income Tax Act and applicability of proviso to section 2(15) of the I.T. Act.

6. We have heard the rival submissions and perused the material available on record. We find that the main object of the assessee club is to promote cooperation amongst the members as well as to develop sportsmanship, sportsman spirit and social duty sense, to create an atmosphere of friendliness amongst members and also with similar institutions, to provide recreational facilities including indoor and outdoor games and for physical culture for the members as well as for the people in general, to promote, encourage, organize or conduct various sports meets, variety entertainment programmes, dramas and other cultural programmes, to do services to the society like organizing blood camp, free medical checkup etc. The learned Assessing Officer had observed that these objects have remained unchanged since inception of the club.

7. The assessee is registered under section 12A of the I.T. Act and the same was withdrawn by the Director of Income Tax (Exemption) [in short DIT(E)] vide order dated 29.12.2011.

8. Against this withdrawal order, the assessee had preferred an appeal before this Tribunal.

9. This Tribunal in ITA No. 602/Mum/2012 and ITA No. 4638/Mum/2013 for A.Y. 2009-10 dated 18.4.2017 had made certain observations with regard to applicability of proviso to section 2(15) of the Act but had finally restored the matter to the file of the learned DIT(E) for denovo adjudication on merits with a

clear direction that learned DIT(E) shall decide the issue uninfluenced by prima facie observations made by this Tribunal. In other words, this Tribunal had restored the issue of rejection of 12A registration to the file of learned DIT(E) for denovo adjudication in accordance with law. We find that learned DIT(E) had passed an order giving effect to the Tribunal's order on 24.12.2018 restoring the registration under section 12A of the Act to the assessee-club. Admittedly, the learned Assessing Officer did not have benefit of this giving effect order of DIT(E) restoring registration under section 12A of the Act, while passing the assessment order.

10. We find that though the learned Assessing Officer had not granted exemption under section 11 of Act to the assessee in the assessment proceedings, ultimately he had only sought to bring to tax interest income and ground hiring charges, after giving deduction for the expenses thereon. In respect of other receipts of the assessee club, be it members subscription, bar receipts etc, the same was treated as exempt on the principle of mutuality as admittedly the said receipts were only from the members of the assessee-club. When this assessment travelled up to learned CIT(A), benefit of giving effect order of learned DIT(E) dated 24.12.2018 restoring registration under section 12A of the Act was available. We find learned CIT(A) was carried away by the prima facie observations made by this Tribunal on certain receipts such as banquet hall hiring charges, restaurants receipts, permit room (bar) receipts as falling in the nature of advancement of any other object of general public utility and that the said activities are in the nature of trade, commerce, business etc and that the assessee club has received some consideration in lieu of rendering those services. Accordingly proviso to section 2(15) of the Act would come into operation. We find that though these observations were prima facie made by this Tribunal in its order dated 18.4.2017, the learned CIT(A) practically went beyond issues contended before him. This is so because in respect of permit room receipts, banquet hall hiring charges, restaurant receipts etc., received from the members, the learned Assessing Officer himself had exempted the same, on principles of mutuality, despite the fact that the

assessee club was not having registration under section 12A of the Act during the assessment proceedings. As stated supra, when the appeal was pending before the learned CIT(A), the assessee did have registration under section 12A of the Act. But adverse inferences were drawn by learned CIT(A) against the assessee on applicability of proviso to section 2(15) of the Act.

11. In view of the aforesaid facts, we deem it fit and appropriate to restore this appeal for A.Y. 2010-11 to the file of the learned Assessing Officer for denovo adjudication on merits uninfluenced by :

- (i) Earlier Tribunal order dated 18.4.2017
- (ii) Observations made by DIT(E) in its order dated 24.12.2018
- (iii) Order of learned CIT(A) dated 16.8.2019

12. We also direct the learned Assessing Officer to give a fresh finding whether amendment to provisions of section 2(15) of the Act would at all be applicable to the assessee club or not denovo on merits.

13. As stated earlier, the decision rendered hereinabove for A.Y. 2010-11 shall apply mutatis mutandis for A.Ys. 2011-12, 2012-13 & 2013-14 also, except with variance in figures.

14. With these observations, all the appeals of the assessee are restored to the file of the learned Assessing Officer for denovo adjudication subject to our above mentioned directions.

15. In the result, all the appeals are allowed for statistical purposes.

Order pronounced in the open court on 30.05.2022.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated : 30/05/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai