

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 197/JP/2022  
निर्धारण वर्ष / Assessment Year : 2012-13

The Jewellers Association 252, Johri Bazar Jaipur	बनाम Vs.	The ACIT Circle-1 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACAT 4183E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.R. Sharma, CA &  
Shri R.K. Bhatra, CA  
राजस्व की ओर से / Revenue by: Smt. Runi Pal, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 14/07/2022  
उदघोषणा की तारीख / Date of Pronouncement: 27/07/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal by the assessee is directed against the order of the ld. CIT(A) dated 11-04-2022, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2012-13 wherein the assessee has raised the following grounds of appeal.

“1. That on the facts and in the circumstances of the case the Ld. CIT (A) is wrong, unjust and has erred in law in confirming finding recorded by the Ld. A.O. that the appellant association is not entitled to exemption u/s 11 and 12 of the 11 Act, 1961 as its income allegedly constitute commercial activity and therefore

provisions of first proviso to clause (15) of Sec 2 r.w.s. 13 (8) becomes applicable to it.

2. That without prejudice to the ground No. (1) above on the case the Ld CIT (A) is wrong, unjust and has erred in law in upholding the action of LD. A.O. in rejecting plea of the appellant that it is a mutual organisation and has participation of only its members and therefore its income is exempt on principal of mutuality

3. That on the facts and in the circumstances of the case the Ld. CIT (A) is wrong, unjust and has erred in law in not accepting in entirety the contention of the appellant that life membership fees/corpus donation are receipts of capital nature not chargeable to tax and instead setting aside the addition for determination of capital and revenue component therein by the A.O

4. That the Ld. CIT(A) is further wrong and has erred in law in upholding disallowance of following expenses made by the Ld A.O

(a) Employees contribution to PF u/s 36 (1) (va): Rs 19064

(b) Prior period expenses: : Rs. 16545

5. That on the facts and in the circumstances of the case the Ld CIT (A) is wrong, unjust and has erred in law in not allowing deduction w/s 80G in respect of donation of Rs 40072 disallowed by the Ld. A.O in assessment.

2.1 Apropos Ground No. 1 and 2 of the assessee, brief facts of the case are that the assessee in the status of AOP filed the return of income for the assessment year 2012-13 on 28-09-2012 declaring total income as NIL. The return of the assessee was processed u/s 143(1) of the Act. The case of the assessee was picked up for the scrutiny and notice u/s 143(2) of the Act was issued on 6-09-2013 which was served upon the assessee. A Notice u/s 142(1) alongwith questionnaire was issue to the assessee on 03-01-2014 for which the ld. AR of the assessee attended the proceedings from time to time and details required as per query were placed on

record before the AO. The Id. AR of the assessee during the course of assessment proceedings produced the books of accounts on test check basis. It is noted from the records that the assessee-institution/society is registered under Rajasthan Non-Trading Companies Act, 1960. The assessee society is registered u/s 12A (a) vide order No. 1779 dated 10-9-1974. It is a trade association carrying out activities for upliftment of Gems & Jewellery trade and for carrying out that object is providing dharam kanta facility to trade members publishing Gems & Jewellery related journals, Gem & jewellery Bourse, organization of Gem & Jewellery trade shows and running and maintaining Janopyogi Bhavan for trade members. The assessee since its inception classified a Charitable Institution established for Charitable purpose i.e. towards advancement of general public utility within the meaning of Section 2 (15) of 1. T. Act, 1961 and recognizing this, the competent authority granted registration u/s 12 (A) (a) of 1. T. Act, 1961. The association since registration u/s 12A (a) is claiming its income as exempt u/s 11 & 12 of 1. T. Act, 1961 which was allowed to it till A.Y. 2009-10. In this year also, association continued to carry out same activities and had gross receipts from its activities amounting to Rs. 3,49,18,618/- and expenses incurred by it on carrying out its activities are Rs. 2,96,99,300/- resulting in surplus of Rs. 52,19,318/- which is being less than 15% of its income. The assessee as in earlier years claimed its income exempt u/s 11 & 12 of 1. T. Act, 1961 while filing return of income for this

A.Y 2010-11 declaring NIL taxable income. It is also noted from the assessment order that A.O. in assessment proceedings is of the opinion that the charitable purpose of the society is towards advancement of general public utility but the activities such as publication and sale of Journal, running a Janopyogi Bhawan, organizing Jewellery show etc. are in the nature of business or commerce. The A.O. therefore asked the assessee to explain as to why in view of amended provisions of Section 2 (15) appropriate action u/s 13 (8) be not taken. The assessee association filed its explanation which is reproduced in assessment order. The A.O. did not find reply of assessee association acceptable and after referring to provisions of Section 2 (15) & provisions of Section 13 (8) of I. T. Act, 1961 held that the assessee society has received an amount of Rs. 14,49,500/- as advertisement receipts and Rs. 1,22,165/- as subscription for journal Gem World published by the society; Rs.25,95,083/- as receipt from room facility and tourists, Rs.9,09,447/- as receipt from occasion of marriage and other functions organized at Janupyogi Bhawan and Rs.2,02,56,000/- from participation charges and Rs.4,37,996/- from advertisement amongst other income earned during Jewelles Association Show. These income constitute commercial activity and thus provisions of the first proviso to clause (15) of Section 2 read with section 13 (8) become applicable and the plea that the activities are charitable cannot be accepted in view of the amended provisions of section 2 (15) of the I. T. Act, 1961. Hence,

exemption available to the assessee-society u/s 11 and 12 is forfeited. The A.O. thereafter taxed the entire surplus of income over expenditure as worked out by him in assessment order amounting to Rs. 56,54,784/- as taxable income of assessee and taxed life membership fees of Rs. 26,41,000/- holding it as normal income and disallowed expenses totaling to Rs. 78,681/-. The present appeal is against said denial of exemption u/s 11 & 12 and subjecting to tax the entire surplus of association as taxable and other additions so made.

2.2 The assessee filed appeal against the said assessment order before Id. CIT (A), Jaipur and filed written submissions with supporting documents which submissions are reproduced in appeal order. The Ld. CIT (A) considered the submissions of assessee after discussion in appeal order and thus dismissed the grounds raised by assessee by holding at para no. 6.2.10 at page no. 22 of his as under:-

*'In view of foregoing discussions and also the factual and legal matrix in the care of the appellant and various decisions cited by the undersigned, I hold that the appellant was hit by the Proviso to section 2(15) of the Act even after the amendment of section 2(15) w.e.f 01/04/2016 i.e. effective from AY 2016-17, as the objectives of the assessee had fallen within the fourth limb of 'charitable purpose' i.e. advancement of any other object of general public utility as contemplated in the said section and it had predominantly carried out the activity of trade, commerce and business, and, therefore, the objects of the appellant could not be considered as dominant to such activities of earning profit rather the said objects were subservient to appellants business activities.*

*The appellant, therefore, was not eligible for exemption of its income u/s 11 of the Act irrespective of the fact that it was granted registration w/s. 12A of the Act by the CIT. As already stated above, various other criteria have to be fulfilled for considering the allow-ability of exemption u/s 11 of the Act, apart from the registration granted us. 12A. In view of the above, I hold that the appellant was not entitled to exemption u/s. 11 of the*

*Act in this relevant assessment year for infringement of the Proviso to section 2(15) of the Act, as discussed above. I do not find any infirmity in the observation and findings of the AO. The denial of exemption u/s 11 of the Act by the AO is therefore confirmed. Ground nos. 1 and 2 raised by the appellant are accordingly dismissed."*

2.3 Aggrieved by the order of the ld.CIT(A), the ld. AR of the assessee has prayed that the ld. CIT(A) has erred in denying the exemption u/s 11 of the Act for which the ld. AR of the assessee has filed the written submission on Ground No. 1 and 2 which are interconnected.

“(1)That on the facts and in the circumstances of the case the Ld. CIT (A) is wrong, unjust and has erred in law in confirming finding recorded by the Ld. A.O. that the appellant association is not entitled to exemption u/s 11 and 12 of the I.T. Act, 1961 as its income allegedly constitute commercial activity and therefore provisions of first proviso to clause (15) of Sec.2 r.w. Sec. 13 (8) becomes applicable to it.

In this connection it is submitted that section 2 (15) of I. T. Act, 1961 defines 'charitable purposes' though in an inclusive rather than an exhaustive manner. The section brought on statute book remained as it is till 1-4-1984. Vide Finance Act, 1983, and with effect from 1-4-1984, the words 'not involving the carrying on any activity for profit' were deleted from section 2 (15) and by Finance Act, 2008 w.e.f. 1-4-2009 a new proviso (i.e. first proviso) was added to this provision, carving out an exception in the cases of 'advancement of any other object of general utility', and, by the immediately following Finance Act, 2010, there was yet another proviso (i.e. second proviso) introduced to carve out an exception from the exception itself. In essence, the effect of these provisos was that even when an assessee was pursuing 'a charitable purpose' in the event of advancement of any other object of public utility it would cease to be for charitable purposes if it involves (a) carrying on an activity in the nature of trade, commerce or business; or (b) rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of nature of use or application or retention of the income from such activity. However, these provisions are not to apply when the activities are such a modest scale that the value of receipts in respect of the same are less than Rs. 10 lakhs. (raised to Rs. 25 Lacs by Finance Act, 2011 w.e.f. 1-4-2012).

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Therefore, as the legal position stands as in this previous year of assessee, even after the insertion of the above two provisos, as long as the object of general public utility is not merely a mask to hide true purpose or rendering of any service in relation thereto, and where such services are being rendered as purely incidental to or as subservient to the main objective of 'general public utility', the carrying on of bona fide activities in furtherance of such objectives of 'general public utility' cannot be hit by the proviso to section 2 (15). By the Finance Act, 2015, these two provisos also stand substituted, with effect from 1-4-2016, a new proviso to section 2 (15) was inserted. It may be noted while the earlier proviso simply stated that exclusion from 'charitable purposes' will come into play "if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business", the requirement of exclusion clause extends even to situations "in which such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility" In other words, the exclusion clause, by proviso to section 2 (15), was earlier triggered by "involvement in any activity in the nature of trade. commerce or business etc" but, post Finance Act, 2015 amendment, it will be triggered even if "such an activity in the nature of trade, commerce or business etc. is undertaken in the course of carrying out such advancement of any other object of general public utility". This substitution of proviso to section 2 (15), is thus a paradigm shift in the scope of the exclusion clause. So far as the scope of earlier provisos is concerned, the CBDT in Circular No. 11 of 2008 dated 19-12-2008 itself has, dealing with an assessee pursuing "the advancement of any object of general public utility", observed that "if such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in connection to trade, commerce or business, it would not be entitled to claim that its object is for charitable purposes" because "in such a case, the object of general public utility' will only be a mask or a device to hide the true purpose which is trade, commerce. or business or rendering of any service in relation to trade, commerce or business."

The advancement of any objects of general public utility and engagement in trade, commerce and business etc. were thus seen as mutually exclusive in the sense that either the assessee was pursuing the objects of general public utility or pursuing trade, commerce or business etc. in the garb of pursuing the objects of general public utility. As the CBDT circular itself demonstrates, there could not have been any situation in which the assessee was pursuing the objects of general public utility as well as also engaged in trade, commerce of business etc.

In the new proviso, however, even when the assessee is engaged in the activities in the nature of trade, commerce or business etc. and "such activity is

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undertaken in the course of actual carrying out of such advancement of any other object of general public utility" it is excluded from the scope of purposes only when "the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year. In other words, even when the activities are in the course of advancement of any other object of general public utility, but in the nature of trade, commerce or business etc. the proviso seeks to exclude it only when the threshold level of activity is not satisfied. The new proviso, with effect from 1-4-2016, seeks to exclude, from the scope of section 2 (15), the situations in which even in the course of pursuing advancement of any objects of general public utility when any activities in the nature of trade, commerce or business etc "is undertaken in the course of actual carrying out of such advancement of any other object of general public utility", unless, the activity level remains within the threshold limit i.e. receipts from such activities are less than twenty per cent of total receipts of that year. As the above provisions, which seeks to restrict the scope of section 2 (15) is effective from the assessment year 2016-17, these provisions are only prospective in effect. As a corollary to this legal position, even if the activities in the nature of trade, commerce or business etc are undertaken in the course of actual carrying out of advancement of any object of general public utility, till the end of the previous year relevant to the assessment year 2016-17, the activities will continue to be covered by the scope of section 2 (15).

The allegations of the Assessing Officer, that the activities of association from which receipts are there are in the nature of business or commerce is not correct, since these activities were carried out with the larger and predominant objective of general public utility. It is not even the case of Ld. A.O. that the activities of the trusts do not serve the objects of the general public utility but he is of the opinion that these activities are in the nature of business or commerce. The registration granted to the assessee evidences that the objects of the assessee trust were advancement of objects of general public utility, and there is nothing to demonstrate any shift from this fundamental position. The allegation is only of the business or commerce but that does not obliterate the overall objects of general public utility and the admitted facts of the case. In view of above position of law. even post insertion of proviso to section 2 (15) but before 1-4-2016, when business activities are carried by the assessee trust "in the course of actual carrying out of such advancement of any other object of general public utility", the benefit of section 11, read with section 2 (15) cannot be declined. Thus for this reason alone the action of Ld. A.O. denying exemption u/s 11 by invoking Section 13 (8) is unsustainable in law.

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Section 2 (15) defines 'charitable purposes. The introduction of the proviso to section 2 (15) was directed to prevent the unholy practice of pure trade, commerce and business entities from masking their activities and portraying them in the garb of an activity with the object of a general public utility. It was not designed to hit at those institutions, which had the advancement of the objects of general public utility at heart and were charity institutions. The attempt was to remove the masks from the entities, which were purely trade, commerce or business entities, and to expose their true identities. The object was not to hurt genuine charitable organizations. And, this was also the assurance given by the Finance Minister while introducing the Finance Bill, 2008. The correct interpretation of the proviso to section 2 (15) would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration. In both the activities, in the nature of trade, commerce or business or the activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. It is, where an institution is not driven primarily by a desire or motive to earn profits but to do the advancement of an object of general public utility, it cannot be regarded as an institution not carrying out charitable purposes.

The income received by the assessee was from running Dharam Kanta which is to provide. authenticate weight slip of gem stone & jewellery for the members of trade on a nominal fees, publishing of Gems & Jewellery Journal is for updating the members of trade on latest developments and education about the trade and income is by subscription and advertisement in journal, the Jewellers Association show is to give exhibition place for promotion of Gems & Jewellery trade of its members not only within India but Internationally where visitors know and assess the development of trade and Janopyogi Bhavan is to later social needs of members of jewellery trade such as function place etc on nominal charges. However the dominant and main object of the assessee is pursuing object of advancement of general public utility. The association is registered under Non Trading Companies Act, 1960 which specifically applies to entities which intend to apply their surplus or other income in promoting their objects and prohibits the payment of any dividend to its Members, it was to be utilized fully for the purposes of objects of the assessee. The assessee association has been recognized from last many years as an institution established for charitable purpose and thus had been done having regards to the objects of the association and its importance through out India which is not even disputed by Ld. A.O.

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In view of the above assessee association is primarily and mainly carrying out its activity for advancement of any other object of general public utility and any activity by it even if regarded as business or commerce if such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility cannot be held as that income received from such activity constitutes commercial activity and so provision of first proviso to clause (15) of Section 2 read with Section 13 (8) are inapplicable after 1-4-2009 but prior to 1-4-16 (A.Y 2016-17). The assessee for this A. Y 2012-13 do not fall in first proviso to section 2 (15) and therefore existed for charitable purpose within the meaning of Section 2 (15) and provisions of Section 13 (8) are not applicable to it. The assessee is entitled to exemption u/s 11 of I. T. Act, 1961 as in earlier years.

The Hon'ble Jurisdictional ITAT, Jaipur bench, Jaipur in the case of M/s Rajasthan Cricket Association Vs Add. CIT, Range-2, Jaipur (2017) 79 Taxmann.Com 464 dated 23-03-2017 held that" In the light of the above binding precedents, we are unable to affirm the view of the revenue. In the present case, material as placed before us suggests that the Assessing Officer is swayed by the figures and volume of receipts. The undisputed facts are that the assessee is registered under the Rajasthan Sports (registration, recognition and regulation) Act 2005 and formed with the objective of promoting the sports of cricket within the state of Rajasthan so main objective or activity of the assessee is promotion of the cricket. The association is organizing tournament like Ranji Trophy Irani Trophy. Dilip Trophy Maharana Bhagwat Singh Trophy Salim Durrani Trophy at the Assessing Officer or destroy these activities of the association It is also brought to our notice that in the international one day match between south Africa and India, the association suffered deficits of Rs 15 crores it it also brought to our notice that the RCA has also incurred in various other expenses with a view to promote the game of Cricket viz. on coaching camps of Rs 20,40,360/-, state crickets activities of Rs. 1,08,60,566/- Ground expense of Rs 33,97,415/- and international tournament expenses of Rs 2,09,16,911/ These facts go to demonstrate that the assessee has been predominantly engaged into the activity of promoting cricket match. The counsel for the assessee has placed reliance on the judgment of the Hon'ble Delhi High Court rendered in the case of Institute of Chartered Accountant vs Director General of Income Tax wherein the Hon'ble High Court held that even though fee are charged by the petitioner Institute for providing coaching classes and holding interviews with respect of campus placement, the said activity cannot be stated to be rendering of service in relation to any trade, commerce or business as such activities are undertaken by the petitioner institute in furtherance of its main object which has held earlier are not trade, commerce or business In the present case also the main activity of the assessee is conducting of the cricket match which falls under the category of

general public utility This fact is not disputed by the Revenue All these activities an ancillary to the main activity. Therefore, we are of the considered view that the Assessing Officer was not justified in declining the exemption.

Further the Hon'ble Surat ITAT Bench, Surat in a very recent case ACIT Vs Surat Cricket Association 139 Taxmann.Com 182 held that " There is no dispute that the assessee is a registered society having object of promotion of cricket and other sports in State as well as national level. The assessee is also having valid registration under section 12A(a) of Income tax Act. The registration under section 12A was granted way back in 1987. It is also settled legal position that the registration of institution or trust under section 12 is the foundation for seeking exemption of section 11, though not conclusive. In other words the registration under section 12A is sine qua non for eligibility of benefit of section 11.

The coordinate bench of Tribunal in Gujarat Cricket Association 15 JCCIT (E) [2019] 101 Taxmann.com 453 (Ahd-Trib) held that where predominant object of various cricket associations was to promote cricket and profit earning was not predominant purpose proviso to section 2 (15) could not have been invoked to decline benefit of sections 11 and 12. It was further held that amounts received under TV subsidy by assessee cricket association from Board of Control for Cricket in India (BCCI) being under a resolution which specifically stated that TV subsidies should henceforth be sent to Member Associations towards corpus funds and not under any legal obligation, were to be treated as corpus donations. It was also held that where infrastructure subsidy received by assessee cricket association from Board of Control for Cricket in India (BCCI) was relatable to a capital asset created by assessee on his own or by an eligible district cricket association; it was outside ambit of revenue receipt /taxable income.

The Hon'ble Gujarat High Court in DIT (E) Vs Gujarat Cricket Association (2020) 120 Taxmann.com 50/2019, 419 ITR 561 (Guj) while affirming the order of Tribunal held that where driving force of assessee-State cricket association was not desire to earn profit but object was to promote game of cricket and nurture best of talent merely because it put up tickets of international cricket matches for sale and earned some profit out of same and said profit was used in activities of promotion of game, it would not lose its character of having been established for a charitable purpose.

The Tribunal held, "We find that the predominant object of promotion of Cricket and other sports are not doubted by the assessing officer. There is no allegation of the assessing officer that the receipt shown under the head "income

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from other sources" was not utilised on the promotion of sports Or no activities for promotions of sports were undertaken by the assessee. Rather on careful examination of those disputed receipt we find that those receipt were generated from various activities undertaken in furtherance of various sports. It is also matter of fact that prior to the impugned assessment year the assessee was granted exemption under section 11 of the Act."

The assessee's main dominant and prime objective was to promote sports, not desire to earn profits but, object of promoting sports for Nation, it was clearly a charitable purpose.

The important elements of application of proviso are that the assessee should be involved in carrying on the activities of any trade, commerce or business or any activities of rendering service in relation to any trade, commerce or business, which is clearly missing in the present case Thus, the Tribunal affirmed the order of Id CIT(A), and the grounds of appeal raised by the revenue were dismissed

THE HON'BLE ITAT MUMBAI BENCH 'B' in case of Board of Control for Cricket in India (BCCI) Vs PCIT, Central Charge, Mumbai (2021) 132 Taxmann.Com 132 Dated 02-11-2021 held: Whether merely because IPL tournament was structured in such a manner that made it more popular, entertaining, resulting in more sponsorships and greater mobilization of resources, basic character of activity of popularizing cricket would not be not lost Held, yes Whether since operational model of IPL provided greater economic opportunities to all those associated with that tournament and mobilized greater financial resources for popularising cricket, as long as purpose for which all funds at disposal of assessee trust, BCCI, including additional funds generated from IPL, were employed for promoting cricket, activities of assessee could not be said to be of commercial nature Held, yes Whether, thus, assessee was entitled for continuation of registration under section 12A-Held, yes [Paras 29 and 30] [In favour of assessee]

The reliance is also placed on following judicial pronouncements:

In DCIT (Exemption) Vs. Sabarmati Gaushala (362 ITR 539) it was held that on interpretation of the proviso, to section 2 (15) introduced w.e.f. 01-04-2009 (A.Y. 2009-10) keeping in mind the intention of the legislature with which it was introduced, that merely because the trust is carrying out activities for the purpose of achieving the objects of the trust, certain incidental surpluses are generated, will not render the activity in the nature of trade, commerce or business. The legal terms "trade, commerce or business" in proviso mean activity undertaken with a

view to make or earn profit. The purport of the proviso is not to exclude entities which are essentially for charitable purposes but are conducting some activities for a consideration or a fee. Occasional sales and fund generating activity for furthering the object will not be indicative that the trust is in trade, commerce or business.

In the case of India Trade Promotion Organization Vs. DGST (2015) 371 ITR 335 the Delhi High Court has held as under:

The income received by the assessee was from letting out of space, sale of publications, sale of tickers and leasing out food and Beverages outlets in the Pragati Maidan. The dominant and the main object of the assessee was to organize trade fairs and exhibitions in order to promote trade, commerce and business not only within India but internationally. This is done through the organization for trade fairs, including the annual international trade fair and other exhibitions. It was for this purpose that the space was let out to various entities during the fairs and exhibitions. By a notification approval had been granted u/s 10 (23C) (iv) to the assessee for assessment year 2007-08 onwards. However, consequent as the amendment of Section 2(15) the exemption was withdrawn. On a writ petition for quashing the order and also the first proviso to Section 2(15)

Held, allowing the petition that it was clear from the faces of the case that profit making was not the driving force or adjective of the assessee. It was registered u/s 25 of the Companies Act, 1950, which specifically applies to entities which intend to apply their profits, if any, or other income in promoting the objects and prohibits the payment to any dividend to its members. This made it clear that any income generated by the assessee did not find its way into the pockets of any individuals or entities. It was to be utilized fully for the purposes of the objects of the assessee. Prior to the ending with effect from April 1, 2009, the assessee had been recognized as an institution established for charitable purpose and this had been done having regard to the objects of the institution and its importance throughout India''.

The assessee Association also upto and even for AY 2009-10 and in AY 2011-12 ) regarded as an institution established for charitable purposes and had graduated exemption having regard to the objects of the institution and its importance. Thus, assessee for this year also is entitled to exemption u/s 11 & 12 of I.T. Act, 1961 as claimed by it.

The Hon'ble ITAT, Delhi Bench in case of Society of India Automobile Manufacturers V. ITO (ITA No. 4837/Dell/2017) has held as under:-

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"Even if there has resulted some surplus in organizing these conferences and seminars etc. It cannot be said that the assessee carried out any trade, commerce or business or rendering any service in relation to any trade, commerce or business. It is manifest that none of the activities undertaken by the assessee was pursued with the prior object of earning income. All such activities were performed with the object of promotion of growth of the automobile industry in India which is an object of general public utility. The activities of the assessee, i.e., organizing seminars and conferences, can be seen de hors its main object of general public utility so as to bring the case within the ambit of first proviso to section 2 (15). Even if there has generated some excess of receipts over expenses in doing these activities, the same is a normal incidence of the activity of promotion of automobile industries and cannot be characterized as doing any business etc. or rendering of any services in connection with business etc. Since the AO has denied the benefit of sections 11 and 12 on the ground that the assessee did not fall within the scope of charitable purpose defined in section 2 (15) of the Act because of carrying on or rendering of any services in business, trade and commerce, which in our considered opinion is not a correct interpretation of the provision, we direct to grant such benefit to the assessee."

The Hon'ble ITAT Mumbai Bench in case of All India Rubber Industries Association Vs. Addl. DI (I.T. Appeal No. 1368, 3994 (Mum.) of 2016 and 247 (Mum) of 2017 vide order dated 12-10-2018 178 ITD 615 has held as under:

"Assessee company registered under-section 12AA, was formed with an object for promoting and safeguarding rubber industry. Assessing Officer noted that objects of assessee were not for benefit of general public at large, but were limited only to members of assessee-association, therefore, assessee was only a mutual association and not charitable. Further, assessee's receipts from non-members and other sources such as income received from advertisements, sale of books and periodicals, magazine subscription, interest income on fixed deposits and cumulative deposits, etc. was hit by amended proviso to section 2 (15). It was noted that Memorandum of Association of assessee prescribed that income and property of association whensoever derived would be applied solely towards promotion of objects of association and that no portion thereof would be paid directly or indirectly to members of association. Further, upon winding up or dissolution of association, surplus remaining after satisfaction of all debts and liabilities, if any, would not be paid or distributed amongst members of association but would be given to some other association or institution having similar objects - Whether there was no justification for Assessing Officer to hold that since objects of assessee sought to promote and project interest of a particular trade and industry, same lost character of being charitable-Held, yes-Whether on

fact that some of activities carried out by an entity involving charging of fee, etc. had resulted in a surplus could not ipso facto be determinative of fact that there was an element of profit motive-Held, yes -Whether, therefore, proviso to section 2 (15) could not be invoked in assessee's case"

The following are a few further judgements of Hon'ble High Courts also support and upheld the same view:

- (1) Institute of Chartered Accountants of India Vs. DGIT (Exemption) 347 ITR 99.
- (2) Bureau of Indian Standards Vs DGIT 358 ITR 78
- (3) DIT Vs. Womans India Trust 379 ITR 506
- (4) CIT (Ex) Vs. Rajasthan Cricket Association (2017) 164 ITD 212 (JP. Trib)
- (5) Indian Trade Promotion Organization Vs DGIT (Exemp) (2015) 371 ITR 333 (V) (Delhi)
- (6) Praxis Institute of Participatory Practices Vs. DIT 2015) 154 ITD 10 (Delhi)
- (7) Hoshiarpur Improvement Trust Vs. ITO (2015) 155 ITD 570 (Asr)
- (8) GVK EMRI (UP) Vs. DIT Exempt (2014) 63 SOT 195
- (9) IT.O. V. Society of Essential Health Action and training (2014) 63 SOT 133

In view of the above submissions the Jewellers Association fulfills all the condition of granting to it exemption u/s 11 & 12 of I. T. Act, 1961 and do not hit by provision to section 2 (15). The Ld. CIT(A) is wrong and has erred in law in confirming the action of Ld. A.O. in holding that assessee association is not entitled to exemption u/s 11 & 12 of I. T. Act, 1961 as its income constitute commercial activity and so proviso to clause (15) sub section 2 read with section 13 (d) becomes applicable.”

The ld. AR of the assessee during the course of hearing argued that the Janupyogi Bhawan in local terms is a Dharamshala and it is being used for the purpose of stay of attendants of mental hospital patients. It is also

submitted that the mental hospital is just opposite the Janupyogi Bhawan.

Besides the said general public utility of the Janupyogi Bhawan, the said place is being used by the association members for exhibition of jewellery, gems stones products and also stay of their staff members during the course of exhibition. The said place is also used for performing of marriages by the lower /middle class and the below poverty line people as they are not able to hire costlier place to perform their marriages of their relatives. The Dharamkanta is termed as weighing machine and used for weighing of gems stones and jewellery of the members of the association and the same services is provided as general public utility service because the general person has faith in weight if measured by the Association's Dharam Kanta. The Gem and jewellery journal is distributed free of cost to its members in order to acquaint them with new changes and development in such field. The cost of the journal is partly recovered from advertisement of the members of the association only. Gem and Jewellery Show is also organized once a year for the benefit of the gem and jewellery trade. The modus operandi is that Show is organized at a large secured placed which is hired by the Assocaiton and the hiring charges and other expenditure i.e. security, light, govt. permission etc. etc. are distributed to the total area available for exhibition and display of

the products of the members. Small places / booths are allotted to the members for display their products and the association charges the amount by taking average cost of the place and other expenditure as mentioned above. A Journal is also published for the show and the association meets partly expenditure from advertisement of the members in the said journal. The Id. AR further submitted that the receipts under the Gem Bourse are from the interest on FDR of the amount deposited by the members or allotment of business spaces in the proposed Gem Bourse Scheme of the Rajasthan State Govt. Separate books of accounts are being maintained for all the above mentioned activities. In view of the above facts, the Id. AR has strongly argued that all the activities are for advancement of General Public Utility and not of trade/ commerce for profit motive. The Id. AR has also derived support from the Speech of Hon'ble Finance Minister, CBDT Circular and the decided case laws.

2.3.1 As regards the issue of mutuality, the Id. AR has submitted that it is a mutual organisation and has participation only for its members and therefore its income is exempt on principal of mutuality. To this effect, the Id. AR of the assessee has placed on record the CBDT Circular No. 11 of 2008 dated 19.12.2008 which clarifies the said amendment in para 3.1 of the said circular.

## THE JEWELLERS ASSOCIATION VS ACIT, CIRCLE-1 JAIPUR

"There are industry and trade associations who claim exemption from tax under section 11 on the ground that their objects are for charitable purpose as these are covered under "any other object of general public utility". Under the principle of mutuality, if trading takes place between persons who are association together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then must be complete identity between the contributors and the participants. Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2 (15) owing to the principle of mutuality."

The ld. AR has also drawn our attention to the Speech of Hon'ble Finance Minister while piloting the Finance bill, 2008 in Lok Sabha has made following statement in Lok Sabha which is as under:-

"I once again assure the House that genuine charitable organizations will not in any way e affected. The CBDT will, following the usual practice, issue an explanatory circular be containing guidelines for determining whether an entity is carrying on any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business. Whether the purpose is a charitable purpose will depend on the totality of the facts of the case. Ordinarily, chambers of Commerce and similar organizations rendering services to their members would not be affected by the amendment and their activities would continue to be regarded as "advancement of any other object of general public utility"

The assessee association is an organization similar to Chamber of Commerce.

Thus, the appellant i.e. The Jewellers Association fulfills the above criteria and, therefore. owing to principles to mutuality its income is exempt, and these would not fall under the purview of the proviso to section 2 (15) of 1. T. Act, 1961.''

2.4 On the other hand, the ld. DR supported the order of the ld. CIT(A).

2.5 We have heard both the parties and perused the materials available on record. In this case, it is noted that the AO while making the assessment has denied

the exemption u/s 11 of the Act to the assessee holding that the activities of the assessee are purely commercial in nature and the provision of the first proviso to clause (15) of Section 2 read with Section 13(8) become applicable and the plea that the activities are charitable cannot be accepted in view of the amended provisions of Section 2(15) of the Act. However, in first appeal, the Id. CIT(A) has confirmed the action of the AO. It is noted from the record that the assessee society is registered under Rajasthan – Non Trading Companies Act, 1960 for which the Id. AR of the assessee has filed the Rules and Regulation of the Society. The Assessee society is also registered u/s 12A (a) vide order No. 1779 dated 10-09-1974 whose main objects are carrying out activities for upliftment of Gems and Jewellery trade. In order to clarify the position of charitable purpose, we take into consideration Section 2(15) as under:-

“Charitable purpose” includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

**Provided** that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;

It is noted from Section 2 (15) which defines 'charitable purposes' and its proviso to section 2 (15) was directed to prevent the unholy practice of pure trade, commerce and business entities from masking their activities and portraying them in the garb of an activity with the object of a general public utility. The object was not to hurt genuine charitable organizations and this assurance was also given by the Finance Minister while introducing the Finance Bill, 2008. The correct interpretation of the proviso to section 2 (15) would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration. In both the activities, in the nature of trade, commerce or business or the activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. It is, where an institution is not driven primarily by a desire or motive to earn profits but to do the advancement of an object of general public utility, it cannot be regarded as an institution not carrying out charitable purposes. During the course of argument, the Id. AR of the assessee emphasized that the institution is running a Dharam Kanta to provide authenticate weight slip of gem stone & jewellery for the members of trade on a nominal fees, publishing of Gems & Jewellery Journal is for updating the members of trade on

latest developments and education about the trade and income is by subscription and advertisement in journal, the Jewellers Association Show is to give exhibition place for promotion of Gems & Jewellery trade of its members not only within India but Internationally where visitors know and assess the development of trade and Janopyogi Bhavan is to later social needs of members of jewellery trade such as function place etc. on nominal charges. However the dominant and main object of the assessee is pursuing object of advancement of general public utility. The association is registered under Non Trading Companies Act, 1960 and it specifically applies to entities which intend to apply their surplus or other income in promoting their objects and prohibits the payment of any dividend to its Members which was to be utilized fully for the purposes of objects of the assessee society. During the course of hearing, the ld. AR further relied on following case laws.

- (1) ACIT (Exemption) vs Surat District Cricket Association (2022) 139 Taxmann.com 182 (Surat-Trib).
- (2) Board of Control for Cricket in India vs Pr.CIT, Central Charge-3, Mumbai, 132 Taxmann.com 132 (Bombay-Trib)
- (3) All India Rubber Industries Association vs ADIT (E), Mumbai (ITA No. 1368,3994 (Mum) of 2016 and 247 (Mum) of 2017 vide order dated 12-10-2018.
- (4) Rajasthan Cricket Association vs Addl. CIT, Range 2(3), Jaipur

From these judgements, it is noted that All India Rubber Industries Association vs ADIT(E) (supra) clearly hits on the issue wherein the ITAT Mumbai Bench has held as under:-

*"Assessee company registered under-section 12AA, was formed with an object for promoting and safeguarding rubber industry Assessing Officer noted that objects of assessee were not for benefit of general public at large, but were limited only to members of assessee-association, therefore, assessee was only a mutual association and not charitable. Further, assessee's receipts from non-members and other sources such as income received from advertisements, sale of books and periodicals, magazine subscription, interest income on fixed deposits and cumulative deposits, etc. was hit by amended proviso to section 2 (15). It was noted that Memorandum of Association of assessee prescribed that income and property of association whensoever derived would be applied solely towards promotion of objects of association and that no portion thereof would be paid directly or indirectly to members of association-Further, upon winding up. or dissolution of association, surplus remaining after satisfaction of all debts and liabilities, if any, would not be paid or distributed amongst members of association but would be given to some other association or institution having similar objects - Whether There was no justification for Assessing Officer to hold that since objects of assessee sought to promote and project interest of a particular trade and industry, same lost character of being charitable-Held, yes-Whether on fact that some of activities carried out by an entity involving charging of fee, etc. had resulted in a surplus could not ipso facto be determinative of fact that there was an element of profit motive-Held, yes -Whether, therefore, proviso to section 2 (15) could not be invoked in assessee's case"*

Taking into consideration the above facts, circumstances and case laws cited above, we feel that the issue raised by the assessee is fully covered by the decision of ITAT Mumbai Bench in the case of All India Rubber Industries Association vs ADIT(E), Supra. In this view of the matter, the above assessee association is primarily and mainly carrying out its activity for advancement of any other object of general public utility and any activity by it even if regarded as business or

commerce if such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility cannot be held as that income received from such activity constitutes commercial activity and so provision of first proviso to clause (15) of Section 2 read with Section 13 (8) are inapplicable. Accordingly the ground Nos. 1 and 2 of the assessee are allowed.

3.1 The ground No 3 of the assessee is regarding life membership fees/ corpus donation which are in the nature of capital receipt and not chargeable to tax. This issue has been decided by the Id. CIT(A) by observing as under:-

“7.2.3..... I hold that part of the life membership fees which is attributable towards subscription of magazines etc. which is otherwise charged to normal members, the entire life membership fees could not be attributed to revenue receipts. However, the necessary facts towards objective/ attribution of life membership fees needed to be brought on record. The lump-sum payment on account of life membership fees are to be dissected into two parts – one being entrance fee and the other being commuted payment in lieu of annual subscriptions. The element of entrance fee was to maintain parity with ordinary members, and the same was of return for investing the right of membership and hence it was the capital receipt, the other element was the consolidation of the revenue receipt and hence is taxable. The AO is therefore, directed to obtain necessary details and evidences from the appellant association in regard to life membership fees credited by the appellant as corpus/ capital receipt in the balance sheet and thereafter dissect the same in two parts as indicated above and accordingly treat one part as capital receipt and the other part as revenue receipt in the lines indicated in the decision cited and quoted above. The appellant association is requested to furnish the necessary details and evidences before the AO in this regard. Needless to say the order in this regard is to be passed by the AO after adequate opportunity of being heard to the appellant. Ground No. 3 raised by the appellant is accordingly allowed for statistical purposes.”

The Ld CIT(A) in his order accepted the fact that life membership fees is a capital receipt and accordingly not chargeable to tax.

3.2 On the other hand, the ld. DR supported the order ld.CIT(A)

3.3 After hearing both the parties and perusing the materials available on record, we noted that the issue in question is already mentioned in the Rules and Regulation of the Society which indicates that the fees like entrance fees as well as life membership are part of the corpus fund and accordingly are in the nature of capital receipt. As such, there is no relevance by the ld. C IT(A) to restore the same to the AO for verification. Keeping in view the rules and regulation of the society as well as submission of the ld. AR of the assessee, we do not concur with the findings of the ld. CIT(A) to restore the issue to the AO. Thus Ground No. 3 of the assessee is allowed.

4.1 As regards the Ground No. 4 and 5 of the assee wherein the ld. CIT(A) has confirmed the action of the AO as to disallowance of Rs.19,064/- towards late deposit of PF and Rs.16,545/- towards prior period expenses and not allowing deduction u/s 80G in respect of donation of Rs.40,072/-.

4.2 After hearing both the parties and perusing the materials available on record, the Bench has already allowed the exemption u/s 11 of the Act. Therefore, the issue of disallowance towards late deposit of PF, prior period expenses and disallowance of donation u/s 80G are only academic in nature and does not fall

under the law while computing the income u/s 11 of the Act. Thus Ground Nos. 4

and 5 of the assessee are allowed.

5.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27/07/2022

Sd/-

Sd/-

( राठोड कमलेश जयन्तभाई )

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:-

27/07/2022

**\*Mishra**

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

1. The Appellant- The Jewellers Association, Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle-1, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.197/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar