

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

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.6685/Mum./2019
(Assessment Year : 2013-14)

ITA No.6686/Mum./2019
(Assessment Year : 2014-15)

Goregaon Sports Club
Chincholi Bunder, Malad (West)
Mumbai 400 064 PAN – AAATG0279P

..... Appellant

v/s

Asstt. Commissioner of Income Tax (Exemp.)
Circle-1(1), Mumbai

.....Respondent

Assessee by : Ms. Priyanka Jain
Revenue by : Shri Hoshang B. Irani

Date of Hearing – 29/07/2022

Date of Order – 29/09/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeals have been filed by the assessee challenging the common impugned order dated 26/08/2019, passed under section 250 of the Income Tax Act, 1961 (*'the Act'*) by the learned Commissioner of Income Tax (Appeals)-3, Mumbai [*'learned CIT(A)'*], for assessment years 2013-14 and 2014-15.

2. Since both the appeals pertain to the same assessee and issues involved are also common, therefore these appeals were heard together as a matter of convenience and are being adjudicated by way of this consolidated

order. In both the appeals, grounds raised by the assessee are also identical. With the consent of both the parties, the appeal of the assessee for the assessment year 2013-14 was taken up as the lead case and the decision rendered therein would apply *mutatis mutandis* to the appeal for assessment year 2014-15, except with variance in figures.

ITA No. 6685/Mum/2019
Assessee's Appeal –A.Y. 2013–14

3. In this appeal, the assessee has raised following grounds:

"1. The Ld CIT (A) erred in confirming order of AO, denying the exemption of Income U/S 11 read with Section 2(15) ignoring the orders of Hon'ble Tribunal for last more than 10 years including that of AY. 2012-13 order dt. 16.05.2018, which were before him and facts of the case remaining same.

2. WITHOUT PREJUDICE TO THE ABOVE, the Ld. CIT(A) failed to appreciate that Navi Mumbai Merchant Gymkhana order dt. 21.05.2014 which was referred in his order on page 17 was already Ground No. 2 before Hon'ble Tribunal in the order dt. 16.05.2018 of AY. 2012-13.

3. The Ld. CIT (A) erred in not allowing set off of Deficits of the current year, earlier years & carried forward of balance amount, (in view of his denial of exemption U/S. 11) however set off of Deficits was allowed to the Appellant by Hon'ble High Court in their order dt. 03.12.2018 in the case of Appellant."

4. The issue arising in grounds no. 1 and 2, raised in assessee's appeal, is pertaining to denial of exemption under section 11 read with section 2 (15) of the Act.

5. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is a charitable trust registered under section 12A of the Act, vide Registration No. INS–13638. For assessment year 2013–14, assessee e-filed its return of income on 28/09/2013 declaring total

income at Rs. Nil. During the course of assessment proceedings, it was observed that the assessee was mainly a club which admitted persons as members on payment of fees and the membership were in the nature of lifetime membership, donor member, player member, service member, corporate member and other nominal membership nomenclature. It was further observed that the members get to use the facility of the club free of charge or at a nominal cost, whereas the corresponding rates for non-members were little higher. Further, the assessee had granted permission for two restaurants in the premises, for which it gets Royalty and the restaurants are stated to be used by members as well as non-members. Similarly, the assessee club has banquet halls, which are given on rent to the members as well as non-members. The assessee club also charges parking fees, catering royalty and decoration royalty from those persons booking the banquet hall. The assessee club also provided sports areas on rent to corporate, schools etc. for fees. It was further observed that the total receipts for the year was Rs. 13,90,60,955, which included receipts shown as operational income at Rs. 7,45,15,958 mainly on account of hiring charges at 4,36,47,624, Royalty from restaurant concern at Rs. 50.94 lakhs, daily activities utilisation charges of Rs. 62.08 lakhs, income from coaching at Rs. 82.28 lakhs, summer camp at Rs. 54.27 lakhs and income from sale of accessories at Rs. 16.60 lakhs. The other major income was from interest at Rs. 5.44 crores and membership fees at Rs. 88.49 lakhs. Accordingly, vide order passed under section 143(3) of the Act, Assessing Officer ('AO') observed that major operational activity of the assessee is letting its assets on hire mainly to non-members for purpose

other than sports including marriage, birthday parties, corporate get-together etc. The AO further held that the decision of Hon'ble jurisdictional High Court in assessee's own case pertains to assessment year 2003-04, which is much prior to the amendment brought in the statute to curb such linkage of taxable income gained by trust on account of commercial exploitation of properties. Accordingly, the AO disallowed the exemption claimed under section 11 of the Act in view of the proviso to section 2(15) of the Act.

6. In appeal, learned CIT(A) vide common impugned order dated 26/08/2019 dismissed the appeal filed by the assessee and upheld the conclusion reached by the AO. The learned CIT(A) held that the assessee earns revenue from activities, which are in the nature of trade, commerce or business and therefore proviso to section 2(15) of the Act is applicable to the assessee's case. Being aggrieved, the assessee is in appeal before us.

7. During the course of hearing, learned Authorised Representative (*'learned AR'*) submitted that this issue has already been decided in favour of assessee in preceding assessment years. The learned AR further submitted that non-sport activities were undertaken by the assessee in the course of its main objective and the revenue from non-sport activities is less than 20% of the total receipt and therefore both the conditions of proviso to section 2(15) of the Act are satisfied.

8. On the other hand, learned Departmental Representative (*'learned DR'*) vehemently relied upon the orders passed by the lower authorities and

submitted that the decisions rendered in assessee's own case for preceding assessment years, which are subsequent to the insertion of proviso to section 2(15) of the Act w.e.f. 01/04/2009, have relied upon the decision of Hon'ble jurisdictional High Court in assessee's own case, which pertains to assessment year 2003-04.

9. We have considered the rival submissions and perused the material available on record including the written submission filed on behalf of the assessee. From the perusal of Memorandum of Association of assessee club, which forms part of the paper book at page 135 - 148, we find that the objective of the assessee is to encourage physical education i.e. sports and games, imparting training and coaching in various games (outdoor as well as indoor). For achieving the aforesaid goal, it has been resolved to procure land for outdoor games, viz. cricket, football and athletic track, and indoor space for various games. Further, from the financials of the assessee, at page No. 35 - 54 of the paper book, we find that the assessee has earned its income from hiring, Royalty, daily activities utilisation charges, subscription for activities utilisation, coaching, summer camp and accessories. The assessee also earns subscription fees from its members apart from earning interest on fixed deposits and bonds. There are other miscellaneous incomes, which are referred at page 46 of the paper book.

10. As per the assessee, all the revenue earned by the assessee is eligible for exemption under section 11 of the Act, since the same pertains to the advancement of any object of general public utility as undertaken by the

assessee club. Before proceeding further, it is relevant to take note of the provisions of section 2(15) of the Act, which defines the term '*charitable purpose*', as under:

"charitable purpose" includes relief of the poor, education, 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 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 services 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;

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year"

11. In this regard, it is also pertinent to note that the aforesaid provisos were incorporated in the Act w.e.f. 01/04/2009, and the term '*object of general public utility*' was further qualified by few more conditions. During the course of hearing, learned AR referred to the two conditions, i.e. (i) such activities undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and (ii) aggregate received from such activity does not exceed 25% of the total receipts, and submitted that assessee satisfy both the conditions and therefore the proviso to section 2(15) is not applicable to the case of the assessee. We find that the aforesaid 2 conditions were incorporated in the proviso to section 2(15) of the Act with effect from 01/04/2016, and therefore, in our considered view, the same are not applicable to the assessment years under consideration. Thus,

to be included within the definition of '*charitable purpose*' provided in section 2(15) of the Act, as applicable in the years under consideration, the assessee needs to satisfy that it was not involved in any activity in the nature of trade, commerce or business or any activity of rendering any services in relation to above in lieu of cess or fee or any other consideration irrespective of nature of use or application or retention of the income from such activity. In the present case, it is the plea of the assessee that it provides its facilities for non-sporting activities, when they are not booked for sporting activities and the primary objective is to use the said amount for advancement of object of the assessee club. As noted above, the nature of use or application or retention of the income is not relevant for the purpose of the proviso to section 2(15) and it is to be seen whether the activity are in the nature of trade, commerce or business in lieu of cess or fee or any other consideration.

12. From the perusal of details of income from hiring at page 175 of the paper book, we find that the assessee earned income from various category of charges under both sports and non-sports head from members as well as non-members. As per the assessee, in preceding assessment years, assessee has been held to be eligible for claiming exemption under section 11 of the Act and activities were held to be in nature of '*charitable purpose*' within the meaning of section 2(15) of the Act. We find that Hon'ble jurisdictional High Court in CIT vs Goregaon Sports Club, in ITA No. 1311 of 2016, vide judgment dated 31/01/2019 held that the assessee club has been constituted for the advancement of any other object of general public utility and the

same is not formed for the benefit of an individual or group of individuals. We further find that the coordinate bench of the Tribunal in assessee's own case in ACIT vs Goregaon Sports Club, in ITA No.2139/Mum./2016, for assessment year 2011-12, vide order dated 06/03/2018, observed as under:

"7. Learned AR placed on record the order of Tribunal in assessee's own case for the A.Y 2010-11 dated 23/09/2015, wherein similar claim of assessee was allowed by dismissing the Revenue's appeal. Respectfully following the order of the Tribunal in assessee's own case, we do not find any infirmity in the order of the CIT(A) for allowing assessee's claim of exemption u/s 11 r.w.s. 2(15) of the I.T. Act."

13. At this stage, it is also pertinent to note that the details of income earned by the assessee in assessment year 2011-12 are neither mentioned in the aforesaid order nor available on record. We further find that the coordinate bench of Tribunal in another decision in assessee's own case in DCIT vs Goregaon Sports Club, in ITA No. 7033/Mum/2016, for assessment year 2012-13, vide order dated 16/05/2018 by referring to the aforesaid two decisions, directed the AO to allow benefit of exemption under section 11 of the Act to the assessee. Even in this decision, only reference is made to the incomes from hiring and royalty earned by the assessee, without further details.

14. In the present case, there is no dispute regarding the object of the assessee club, as noted above from the Memorandum of Association. Only basis on which exemption under section 11 of the Act has been denied is that assessee has undertaken certain activities, different from its object, which are in nature of trade, commerce or business. Further, in the present case,

assessee has also agreed to the fact that certain income has been earned by it from non-sporting activities. However, all the details pertaining to same are not available on record. It is also not evident that whether the receipts which are held to be eligible for exemption under section 11 of the Act, in assessee's own case for preceding assessment years, are similar to the receipts earned by the assessee in the assessment years under consideration and whether those receipts were also from non-sporting activities. It is no doubt true that the receipts from non-sporting activities earned by the assessee are covered under the proviso to section 2(15) of the Act and the same are also not covered under its objects as mentioned in the Memorandum of Association. Therefore, in view of the above, we deem it appropriate to remand the issue of determination of income eligible for exemption under section 11 of the Act to the file of AO for *de novo* adjudication. We also direct that the income which arose from trade, commerce or business or any activity of rendering any service in relation thereto be excluded for the purpose of allowing exemption under section 11 of the Act. We also direct the assessee to provide the clear breakup of the revenue which it has earned in relation to sporting activities and the revenue which has no relation whatsoever to the sporting activities undertaken at assessee's premises. Since, in preceding assessment years, assessee was held to be eligible for exemption under section 11, therefore, the aforesaid adjudication be made in light of decisions in the case of the assessee, after determining which receipts are similar in nature to the receipts held to be eligible for exemption under section 11 of the Act in preceding years and

relief be granted to the assessee to that extent. With the above directions, we remand the issue to the file of AO for consideration afresh. Needless to mention that no order shall be passed without affording opportunity of hearing to the assessee. Accordingly, grounds no. 1 and 2 raised in assessee's appeal are allowed for statistical purpose.

15. Insofar as ground No. 3 raised in assessee's appeal is concerned, same pertains to carry forward and set off of deficit of earlier years. We find that Hon'ble Supreme Court in CIT v/s Subros Educational Society, (2018) 303 CTR 001 held that any excess expenditure incurred by the trust / charitable institution in earlier assessment year would be allowed to be set-off against income of the subsequent years by invoking the provisions of section 11 of the Act. Since, the issue of exemption under section 11 of the Act has been remanded to the AO for *de novo* adjudication, therefore, we direct the AO to allow carry forward and set off of deficit of earlier years after determination of income eligible for exemption under section 11 of the Act. Accordingly, ground No. 3 raised in assessee's appeal is allowed for statistical purpose.

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

ITA No. 6686/Mum/2019
Assessee's Appeal – A.Y.2014-15

17. Since, identical grounds have been raised by the assessee in its appeal for assessment year 2014-15, arising out of the common impugned order, therefore, our findings / conclusions in aforesaid appeal for assessment year 2013-14 shall apply *mutatis mutandis* to this appeal.

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

19. To sum up, both the appeals by the assessee are allowed for statistical purpose.

Order pronounced in the open Court on 29/09/2022

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 29/09/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai