

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND  
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

**ITA NO. 6703/MUM/2017 (A.Y. 2016-17)**

**&**

**ITA.No. 7448/MUM/2018 (A.Y. 2017-18)**

IMC Chamber of Commerce and Industry IMC Building, IMC Marg, Mumbai - 400020  <b>PAN: AAATI0047H</b>	v.	CIT (Exemptions) Room No. 617 Piramal Chambers Lalbaug, Mumbai – 400 012
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Hiro Rai</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Jagdish Jangid</b>
<b>Date of Hearing</b>	<b>:</b>	<b>14.07.2022</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>27.09.2022</b>

**ORDER**

**PER S. RIFAUR RAHMAN (AM)**

**1.** These appeals are filed by the assessee against different orders of Learned Commissioner of Income Tax (Exemptions), Mumbai [hereinafter in short "Ld.CIT(E)"] dated 28.09.2017 and 31.10.2018 for the A.Y.2016-17 and 2017-18 respectively, passed u/s. 10(23C)(iv) of the Income-tax Act, 1961 (in short "Act").

**ITA.No. 6703/MUM/2017 (A.Y. 2016-17)**

2. Brief facts of the case are, assessee is registered as a non-profit company under section 25 of the Companies Act, 1956 and it is engaged in activities to promote and stimulate trade, commerce and industry in India. Assessee applied for 12A registration and granted certificate of registration dated 21.08.1974 and the same is valid as of date. It has a membership of over 2500 direct members, comprising a cross section of the business community, including public and private limited companies and over 225 trade and industry associations through which the Chamber reaches out to over 2,00,000 business establishments in the country. The objects of the assessee are as under: -

- a) *To promote, advance and protect trade, commerce and industry in India or in any part thereof,*
- b) *To add, stimulate and promote the development of trade, commerce and industry in India or any part thereof;*
- c) *To promote the interests of Indian Industry and business in matters of inland and foreign trade, industry and commerce;*
- d) *To watch over, protect and promote the general commercial and industrial interests of India or any part thereof and to secure the interest and well-being of persons engaged in trade, commerce and industry, directly or indirectly;*
- e) *To institute, finance, encourage, prosecute, develop and carry on, all kinds of scientific and economic research relating to trade, commerce and industry*

**3.** During analyzing of application filed in Form -56D seeking approval for exemption u/s. 10(23c)(iv) of the Act, Ld.CIT(E) asked the assessee to submit clarification regarding object clause that the trust is existing for promotion, benefit, promoting of trade, commerce and industry in India and such other purpose which are related to welfare of members of the trust and all the objects are related to trade, commerce and industry. In response assessee submitted vide letter dated 25.09.2017 that, it is established for charitable purpose and is an institution of national importance. The main activities were Issuing Certificate of Origin, Conducting Seminars, Training Courses & Commercial Examination, Publications, Holding of Exhibitions, apart from Revenue from aforesaid activities, the receipts are by way of Subscription, Admission, Life Membership & Patron Fees & Income from Investments. Further, it was submitted that the receipts of IMC arise purely in the course of carrying out its charitable activities, and are not on account of carrying out of any activity in the nature of trade, commerce or business and it is not any way tainted with commerciality. Any income earned is entirely incidental and the dominant object is to pursue its charitable objects without any intent to earn profits.

**4.** Further, considering the provision of proviso to section 2(15) of the Act, the assessee was asked as to why receipts from the issuance of certificate of origin be not treated as trade, commerce or business. In response, assessee submitted that in the case of the assessee the dominant object is charitable, therefore, any incidental activity for furtherance of the object would not fall within the expression trade, commerce and business. In this regard assessee also relied in the case of CIT *v.* Andhra Chamber of Commerce (1965) 55 ITR 722 (SC) in which it was held that the expression 'object of general public utility' is not restricted to objects beneficial to the whole of mankind. An object beneficial to a section of the public is an object of general public utility.

**5.** Ld.CIT(E) after considering the submissions of the assessee observed that the receipts of the assessee are as follows: -

- (i). *Certificate of Origin Fees Rs.2,60,92,510/-*
- (ii). *Seminar, Training Courses & Commercial Examination, Publications Rs.1,61,87,016/-*
- (iii). *Subscription from members Rs. 2,33,50,650/*
- (iv). *Income from investments & Misc. receipts Rs.1,85,77,101/*
- (v). *Exhibitions Rs.1,51,72,201/*
- (vi). *Surplus from LNM Trust Rs. 1,11,90,319/-.*

**6.** Further, he observed that assessee claiming exemption u/s.10(23C)(iv) of the Act by holding that it is a charitable trust involving

in the education and in the advancement of any other object of general public utility. However, he observed that on a perusal of the records, it was found that the assessee is involved in the certification of certain courses and organizing of the seminars only without imparting the formal education. Further, he observed that the activities of issuance of certification of the origin etc. are in the nature of trade, commerce or business, thereby, due to amendments brought in section 2(15) of the Act w.e.f. 01.04.2009, these activities cannot be termed as charitable in nature.

**7.** By relying on the amendments made to the section 2(15) of the Act and CBDT circular No. 11/2008, he observed that charges for the services rendered by the assessee are collected at the rate of ₹.80/- from Members and ₹.100/- from Non-Members. He also observed that this is as per DGFT guidelines as per which the charges should not exceed ₹.100 per certificate. Further, he observed that there are other chambers of commerce which charges much less than the charges collected by the assessee. Therefore, he came to the conclusion that assessee is earning huge profit from these activities.

**8.** By relying on the decision of the Hon'ble Delhi High Court in the case of ICAI v. DIT(E) in WP.No. 1927 of 2010 and CBDT circular, he came to the conclusion that the activities conducted by the assessee may be termed as business activity. Further, he analysed the receipts of funds from conducting seminars, training courses and commercial examinations are not an education within the definition appearing in section 2(15) of the Act.

**9.** Further, in Para No. 9 he observed that without prejudice to the above findings in his order, he observed that Assessing Officer in course of assessment proceedings for A.Y. 2010-11 and subsequent Assessment Years he held that the assessee is a mutual association servicing to members and non-members. In response, Ld. AR of the assessee alternatively requested to exclude the income earned from non-members are in the nature of trade or business by treating it as not exempt u/s. 11 and receipts from members net of expenses not chargeable to tax on the grounds of mutuality and to consider only the balance income as chargeable to tax.

**10.** With the above observations, Ld.CIT(E) held that assessee is not involved in charitable activities as required by the provisions of section 10(23C)(iv) of the Act. Hence the application filed by the assessee is not fit case of grant of approval u/s.10(23C)(iv) of the Act and accordingly, he rejected the application.

**11.** Aggrieved, assessee is in appeal before us raising following grounds in its appeal: -

**"Non-grant of exemption under Section 10(23C)(iv):**

*On the facts and circumstances of the case and in law, the learned CIT, has erred in:*

*1. holding that the Appellant is not involved in charitable activities as required under section 10(23C)(iv) of the Act and thereby rejecting the application under section 10(23C)(iv) of the Act;*

*2. not appreciating the fact that the Appellant is registered as charitable institution under section 12A of the Act and the main objects of the appellant are to promote, advance and protect trade, commerce and industry which are charitable in nature;*

*3. holding that Appellant's activities of issuing certificate of origin and holding seminars and conducting exams is not covered by definition of the expression 'charitable purpose' under section 2(15) of the Income Tax Act, 1961;*

*4. not appreciating the fact that the appellant does not carry out activities which are in nature of trade, commerce or business with intention of making profit.*

*5. holding that the proviso to section 2(15) of the Act is applicable to the appellant without taking into consideration the order passed by the Hon'ble Income Tax Appellate Tribunal in appellant's own case*

*for the Assessment Year 2009-2010 and 2011-2012 holding interalia that even after the amendment of section 2(15) of the Act w.e.f. 01.04.2009, Appellant Association having primary purpose of advancement of objects of general public utility. would remain charitable even an incidental or ancillary activity or purpose, for achieving the main purpose was profitable in nature;*

*6. erroneously placing reliance on assessment orders for AY 2010-11 and subsequent years, where the Assessing Officer has held that the appellant is a mutual association and hence not charitable in nature.*

*The Appellant craves, to consider each of the above grounds of appeal without prejudice to each other and craves leave to add, alter, delete or modify all or any of the above grounds of appeal.*

**12.** At the time of hearing, Ld. AR submitted as under: -

*"In this appeal for the AY 2016-17, all the grounds relate to the denial of approval under section 10(23C)(iv) which applies to a fund or institution established for charitable purposes. Basically, the impugned order has relied upon the proviso to section 2(15) to deny the claim of the appellant.*

*In the case of the appellant itself, reliance was placed upon the same proviso to section 2(15) while denying exemption under section 11 for the AY'S 2009-10 to 2012-13. The Hon'ble Tribunal has, in the appellant's own case, allowed the exemption under section 11 holding that the said proviso to section 2(15) is not applicable. The order of the Hon'ble Tribunal for the AY 2009-10 is enclosed at pages 42 to 61 of the Paper Book. The orders of the Hon'ble Tribunal for the subsequent three years, ie AY'S 2010-11, 2011-12 and 2012-13 are at serial nos. 10, 11 and 12 respectively of the Paper Book.*

*The main submission is that if the dominant object is charitable, the fact that some activity may result in a surplus does not mean that the proviso to section 2(15) applies. There should be a profit motive which should be dominant for the said proviso to apply. This is too well settled a proposition and the decisions referred to above in the appellant's own case also held the same. Further, a plethora of case law contained in the compilation submitted to the Hon'ble Bench also holds the same.*

*If required, as regards profit motive, Your Honour's kind attention is drawn at page 20 of the Paper Book which is the Income and Expenditure account for this year. Towards the center of the said page, it would be noted that the excess for this year is only Rs. 1,79,63,894/-. The second figure on the same page shows that other income is Rs. 1,85,77,101/ This is basically the interest income and certain other receipts as shown at page 22 of the Paper Book. This brings out that the excess of Rs. 1.79 crores is basically on account of this other income of Rs. 1.85 crores There is no surplus on account of the revenue from operations, the details whereof are at pages 20 and 21 of the Paper Book. These figures provide a complete answer to the learned CIT's point regarding profit motive. The dominant motive of the appellant is charitable and there is no profit motive. The registration under section 12A continues and has not been touched.*

*- If at all required, as regards certificate of origin fees, it must be noted that the same are capped by the Government at Rs. 100/-. This itself shows that there could be no profit motive therefrom. In any case, the fees charged by the appellant are same as the others in the case of non members. It may please be appreciated that the costs in Mumbai are high. This is all the more so since the appellant is a very old organization formed in 1907 and has long serving employees whose salaries are higher. The learned CIT has presumed that the appellant is earning huge profit without showing from where she arrives at this conclusion. Similarly, she states that the direct expenses are minimum. This is also a presumption without any basis whatsoever. It has already been demonstrated that the excess is only on account of the investment income which is the result of over 100 years of existence of the appellant. The activities of certificate of origin fees, etc. have not resulted in any surplus."*

**13.** On the other hand, Ld.DR supported the findings of the Ld.CIT(E) and further, submitted that assessee itself during the course of assessment proceedings made a request before the Assessing Officer to treat the receipt from non-members to be accepted as income of the

assesse. Therefore, it clearly establishes that the fees charged by the assessee is excessive as well as it is for the object for making profit.

**14.** In the rejoinder, Ld. AR submitted as under: -

*-The fact that the appellant is a section 25 company whereby no dividend can be distributed to its members also establishes the lack of profit motive. If at all required, as regards the point made by the learned CIT in para 9, it is submitted that the said claim regarding mutuality in AY 2010-11 was only a without prejudice, alternate claim. The letter dated 29-1-2013 at page 116 of the Paper Book is very clear to this effect. It does not mean that the appellant had accepted that the exemption under section 11 does not apply. In fact, for the said year, ie. AY 2010-11 the Hon'ble Tribunal has already decided the issue in favour of the appellant.*

**15.** Considered the rival submissions and material placed on record, we observe that assessee is registered u/s. 25 of Companies Act, 1956 with an object of non-profit. We observe that assessee is conducting seminars, training courses and commercial examinations and one of the main source of income is issuing certificate of origin to its members as well as non-members. It is also fact on record that assessee was also granted 12A registration and now it is seeking registration u/s.10(23C)(iv) of the Act. While processing application, Ld.CIT(E) invoked provisions of section 2(15) of the Act and asked the assessee to justify whether the activities carried by the assessee are with profit motive and at the same time he analysed the application filed by the assessee with the two criterias.

Firstly, the applicability of section 2(15) of the Act and also the activities carried on by the assessee for conducting seminars, training courses and commercial examinations, whether these activities are falling within the definition of "Education". The Ld.CIT(E) is of the opinion that the assessee charges fees for issuing certificate of origin and charges ₹.80/- for the members and ₹.100/- for non-members whereas other trade bodies are charging much less compared to the charges collected by the assessee. This is one of the reason that he came to the conclusion assessee made huge profit. However, we observe that the assessee collects fees from members/non-members within the limit prescribed by the DGFT i.e., not more than ₹.100/-.

**16.** Now the issue is whether the assessee charges fees for issuing certification is for making profit and whether the fees collected by the assessee are more than other trade bodies, can this be treated as motive for making profit. In our considered view assessee has liberty to charge fees for issuing certification within the limit fixed by the DGFT, just because other trade bodies are charging less than the fees collected by the assessee, it does not lead to presumption that assessee might have earned excess profit, it depends upon the setup and their broad objects.

We observe that in similar fact on record the Hon'ble Supreme Court reviewed the similar issue in ACIT v. Surat Art Silk Cloth Manufacturers Association dated 19.11.1979 and discussed the case of Indian Chambers of Commerce v. CIT in detail and they observed as under: -

*"We must, however, refer to the decision of this court in Indian Chamber of Commerce v. CIT [1975] 101 ITR 796 because that is the decision on which the strongest reliance was placed on behalf of the revenue. The question which arose for decision in that case was whether income derived by the Indian Chamber of Commerce from arbitration fees levied by the Chamber, fees collected for issuing certificates of origin and share of profit for issue of certificates of weighment and measurement was exempt from tax under s. 11, read with s. 2, cl. (15), of the Act. The argument of the Indian Chamber of Commerce (hereinafter referred as "the assessee") was that its objects were primarily promotional and protective of Indian trade interests and other allied service operations and they fell within the broad sweep of the expression "advancement of any other object of general public utility" and its purpose was, therefore, charitable within the meaning of s. 2, cl. (15), and its income was exempt from tax under s. 11. The revenue, on the other hand, contended that though the objects of the assessee were covered by the expression "advancement of any other object of general public utility", the activities of the assessee which yielded income were carried on for profit and the advancement or accomplishment of these objects of the assessee, therefore, involved carrying on of activities for profit and hence the purpose could not be said to be charitable and the income from these activities could not be held to be exempt from tax. These rival contentions raised the same question of interpretation of s. 2, cl. (15), which has arisen in the present case. Krishna Iyer J., speaking on behalf of the court, lamented the obscurity and complexity of the language employed in s. 2, cl. (15)- a sentiment with which we completely agree and after referring to the history of the provision, the learned judge proceeded to explain what according to him was the true interpretation of the last concluding words in s. 2, cl. (15). The learned judge said (pp. 803, 804):*

*"So viewed, an institution which carries out charitable purposes out of income 'derived from property held under trust wholly for charitable purposes may still forfeit the claim to exemption in respect of such takings or incomes as may come to it from pursuing any activity for profit.. Notwithstanding the possibility of obscurity and of dual meanings when the emphasis is shifted from advancement to 'object' used in section 2(15), we are clear in our minds that by the new definition the benefit of exclusion from total income is taken away where in accomplishing a charitable purpose the institution engages itself in activities for profit. The Calcutta decisions are right in linking activities for profit with advancement of the object. If you want immunity from taxation, your means of fulfilling charitable purposes must be unsullied by profit-making ventures. The advancement of the object of general public utility must not involve the carrying on of any activity for profit. If it does, you forfeit. The Kerala decisions fall into the fallacy of emphasizing the linkage between the objects of public utility and the activity carried on. According to that view, whatever the activity, if it is intertwined with, wrapped in or entangled with the object of charitable purpose even if profit results there from, the immunity from taxation is still available. This will result in absurd conclusions. Let us take this very case of a chamber of commerce which strives to promote the general interests of the trading community. If it runs certain special types of services for the benefit of manufacturers and charges remuneration from them, it is undoubtedly an activity which, if carried on by private agencies, would be taxable. Why should the Chamber be granted exemption for making income by methods which in the hands of other people would have been exigible to tax? This would end up in the conclusion that a chamber of commerce may run a printing press, advertisement business, market exploration activity or even export promotion business and levy huge sums from its customers whether they are members of the organisation or not and still claim a blanket exemption from tax on the score that the objects of general public utility which it has set for itself implied these activities even though profits or surpluses may arise therefrom. Therefore, the emphasis is not on the object of public utility and the carrying on of related activity for profit. On the other hand, if in the advancement of these objects the chamber resorts to carrying on of activities for profit, then necessarily section 2(15) cannot confer cover. The advancement of charitable objects must not involve profit making activities. That is the mandate of the new amendment."*

*It will thus be seen that Krishna Iyer J. accepted the contention of the revenue that the means of accomplishing or carrying out an object of general public utility must not involve the carrying on of any activity for profit or to use the words of the learned judge "must be unsullied by profit-making ventures" and even if a business is carried on by a trust or institution for earning profit to be applied wholly for an object of general public utility, the trust or institution would forfeit the claim for exemption from tax. The view taken by him was that the benefit of the exemption would be taken away where in accomplishing or carrying out an object of general public utility, the trust or institution engages itself in activity for profit or in other words, the trust or institution should not resort to carrying on of an activity for profit for the purpose of accomplishment or attainment of the object of general public utility. This view clearly supports the construction canvassed on behalf of the revenue for our acceptance, but, with the greatest respect to the learned judges who decided the Indian Chamber of Commerce case [1975] 101 ITR 796 (SC), we think, for reasons already discussed, that this view is incorrect and we cannot accept the same.*

.....

*The next question that arises is as to what is the meaning of the expression "activity for profit". Every trust or institution must have a purpose for which it is established and every purpose must for its accomplishment involve the carrying on of an activity. The activity must, however, be for profit in order to attract the exclusionary clause and the question, therefore, is when can an activity be said to be one for profit? The answer to the question obviously depends on the correct connotation of the proposition "for ". This proposition has many shades of meaning but when used with the active participle of a verb it means "for the purpose of" and connotes the end with reference to which something is done. It is not, therefore, enough that as a matter of fact an activity results in profit but it must be carried on with the object of earning profit. Profit-making must be the end to which the activity must be directed or in other words, the predominant object of the activity must be making of profit. Where an activity is not pervaded by profit motive but is carried on primarily for serving the charitable purpose, it would not be correct to describe it as an activity for profit. But where, on the other hand, an activity*

*is carried on with the predominant object of earning profit, it would be an activity for profit, though it may be carried on in advancement of the charitable purpose of the trust or institution. Where an activity is carried on as a matter of advancement of the charitable purpose or for the purpose of carrying out the charitable purpose, it would not be incorrect to say as a matter of plain English grammar that the charitable purpose involves the carrying on of such activity, but the predominant object of such activity must be to subserve the charitable purpose and not to earn profit. The charitable purpose should not be submerged by the profit making motive; the latter should not masquerade under the guise of the former. ....*

.....

*It is obvious that the exclusionary clause was added with a view to overcoming the decision of the Privy Council in the Tribune's case [1939] 7 ITR 415 (PC), where it was held that the object of supplying the community with an organ of educated public opinion by publication of a news paper was an object of general public utility and hence charitable in character even though the activity of publication of the newspaper was carried on on commercial lines with the object of earning profit. The publication of the newspaper was an activity engaged in by the trust for the purpose of carrying out its charitable purpose and on the facts it was clearly an activity which had profit-making as its predominant object, but even so it was held by the Judicial Committee that since the purpose served was an object of general public utility, it was a charitable purpose. It is clear from the speech of the Finance Minister that it was with a view to setting at naught this decision that the exclusionary clause was added in the definition of "charitable purpose". The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit-making is the predominant object of the activity, the purpose, though an object of general public utility, would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not*

*result in any profit. It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and there is no resulting profit."*

With the above observation the Hon'ble Supreme Court decided the issue on applicability of the section 2(15) of the Act in favour of the assessee and against the revenue.

**17.** From the above discussion it is clear that what is relevant is, it is not important how the assessee has charged the fees to the members or non-members, it is relevant to analyse whether these activities are carried with the sole object of making profit or mere these activities are carried to support its objects of charity. Further, it is also relevant that whether these surplus funds earned from these activities are applied for the object of the trust. In the given case there is no finding from the tax authorities that the assessee has not applied for the object of the trust nor it has reported any misuse of the funds of the trust. we further observed that the Ld.CIT(E) equated the formal education and the indirect education. The assessee conducts seminars, training courses and commercial examinations for the benefit of its members, it need not be a formal education to be considered as the charitable activity. The courts have

held that offering education through formal or informal are part of charitable activities.

**18.** Further, we observe that Ld.CIT(E) rejected the application with the observation that in the assessment proceedings in the A.Y. 2010-11 the Ld. AR of the assessee prayed before the Assessing Officer to exclude the receipts received from non-members as part of profit which should be excluded for the purpose of applying concept of mutuality. In our considered view this is only a proposition submitted during the assessment proceedings only in order to address the proposal to assess the income under concept of mutuality. It does not mean that the assessee is carrying this activity to earn profit or it does not propose the fact that the activities are carried only with the object of making profit. Therefore in our considered view the assessee is eligible for registration u/s.10(23C)(iv) of the Act since at the time of registration, the Ld.CIT(E) is expected to verify the objects for granting registration we observe that the revenue has already granted registration u/s. 12A of the Act. The evaluation process for registration u/s. 12A and u/s.10(23C)(iv) of the Act are exactly similar, once the 12A registration is granted after due process of verification, we do not see any reason not to grant registration

u/s.10(23C)(iv) of the Act. Accordingly, ground raised by the assessee is allowed. Accordingly, we direct the Ld.CIT(E) to consider to grant registration u/s.10(23C)(iv) of the Act. Grounds raised by the assessee are allowed.

**19.** Coming to the appeal in ITA.No. 7448/Mum/2018 relating to A.Y.2017-18, since facts in this appeal are mutatis mutandis, therefore the decision taken in A.Y. 2016-17 is applicable to this assessment year also. Accordingly, this appeal is allowed.

**20.** In the result, appeals filed by the assessee are allowed.

Order pronounced in the open court on 27<sup>th</sup> September, 2022.

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai / Dated 27.09.2022  
Giridhar, Sr.PS

**Sd/-**  
**(S. RIFAUH RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**