

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

**BEFORE SHRI S. RIFAUR RAHMAN, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.1413/Mum/2019
(Assessment Year: 2014-15)

M/s. Association of Mutual Funds in India 701, 7 th Floor, One Indiabulls Centre, Tower 2, Wing B, 841 Senapati Bapat Marg, Elphinstone Road, Mumbai-400 013	Vs.	Dy. Director Income Tax(E)1(1) Mumbai
PAN/GIR No. AAACA 5550 A		
(Appellant)	:	(Respondent)

Assessee by	:	Shri Nitesh Joshi
Revenue by	:	Shri Manoj Sinha

Date of Hearing	:	12.10.2022
Date of Pronouncement	:	05.01.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee as against the order of the learned Commissioner of Income Tax (Appeals)-3, Mumbai passed u/s.143(3) of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2014-15.

2. The assessee has challenged the following grounds of appeal:

1. *The learned Commissioner (Appeals) erred in confirming the order of the learned Deputy Commissioner of Income Tax (Exemptions)-I (1) on denial or exemption u/s 11 and 12 to your appellants.*
2. *The learned Commissioner (Appeals) was not justified in upholding the view of the Deputy Commissioner of Income Tax (Exemption) I (1), that the first proviso to section 2(15) applied to your appellants.*
3. *The learned Commissioner (Appeals) was not justified in upholding the view that your appellant was carrying on an activity in relation to trade Commerce or business.*
4. *The learned Commissioner (Appeals) erred in upholding the view that your appellant had not brought on record any documentary evidence in support of its claim that it had rendered*

services to the public at large, and in ignoring the indirect benefit to the public provided by your appellants.

5. *The learned Commissions (Appeals) has erred in upholding the view of the Assessing Officer that your appellant's activities are limited to its members.*

6. *The learned Commissioner (Appeals) failed to appreciate that the regulatory functions performed by your appellant proved that its activities were not in relation to trade, commerce or business.*

7. *The learned Commissioner (Appeals) failed to appreciate that CBDT Circular No 11 of 2008 did not preclude mutual associations from claiming the benefit of being treated as charitable organizations.*

8. *Without prejudice to the foregoing, the learned Assessing Officer and the learned Commissioner (Appeals) erred in not allowing deduction u/s 44A in respect of deficit of Rs.43,57,074 incurred in respect of transactions with members.*

9. *The Commissioner (Appeals) was not justified in rejecting the additional ground of appeal:*

9.1. *There was no basis for the non-satisfaction of the learned Commissioner (Appeals) that the omission of the additional ground was not willful.*

9.2. *The learned Commissioner (Appeals) failed to appreciate that the additional ground was a purely legal ground, for which the relevant facts were already on record.*

9.3. *The learned Commissioner (Appeals) failed to appreciate that the learned Assessing Officer ought to have allowed deduction u/s 44AA of Rs 43,57,054.*

Relief Sought

Your appellants pray that the order of the learned Deputy Commissioner of Income Tax (Exemption) 1 (1) be modified by allowing exemption u/s 11 and 12 to your appellants.

3. The brief facts of the case are that the assessee is a Trust registered with the Director of Income Tax (Exemption), Mumbai u/s. 12A of the Act and is also registered with the Charity Commissioner, Mumbai. The assessee trust filed its return of income dated 29.09.2014, declaring total income at Rs.Nil.

4. The assessee's case was selected for scrutiny and the assessment order u/s. 143(3) was passed dated 31.10.2016, where the Assessing Officer (A.O. for short) determined the total income of Rs.4,27,62,540/- as assessee's business income out of the receipts from non-members as per the proviso to section 2(15) of the I.T. Act and thereby rejecting the claim of exemption u/s. 11 of the Act.

5. Aggrieved by this, the assessee was in appeal before the Id. CIT(A), who confirmed the said addition on the ground that the assessee is a 'Mutual Association' and not a 'Charitable Trust' by relying on the decision of the Hon'ble Supreme Court in the case of *CIT vs. Bankipur Club Ltd.* 26 ITR 97 (SC) and also the Id. CIT(A)'s decision in assessee's case for A.Y. 2011-12, thereby treating the assessee's receipts from non members and other sources such as interest income and rent as income of the assessee.

6. The assessee is in appeal before us, challenging the order of the Id. CIT(A). It is observed that the assessee has been granted registration u/s. 12A and has been availing exemption u/s. 11 for the purpose of engaging in charitable activities and that the benefits derived by the assessee's trust members are ultimately for the benefit of the public. The assessee contends that the main object of the assessee is to create awareness about the mutual fund industry, to develop and to promote best practices amongst mutual funds. The assessee has submitted the memorandum of the association of the assessee in which the objects of the assessee are enumerated as under:

- a) *To recommend and implement healthy business practices, ethical code of conduct, standard principles and practices to be followed by the members of the company and others engaged in the activities of Mutual Funds and Asset management including agencies connected or involved in the field of capital markets and financial services.*
- b) *To promote high standards of commercial honour and encourage and promote among members and others the observance of securities laws including regulations and directives issued by Securities and Exchange Board of India and function in the best interest of the investing public.*
- c) *To help in setting up professional standards for providing efficient services and establishing standard practices for Mutual & Asset Management activities.*
- d) *To bring about better co-ordination in the field of Mutual Fund & Asset Management Industry.*
- e) *To promote and develop sound, progressive and dynamic principles, practices and conventions in the activities of Mutual Fund & Asset Management.*
- f) *To render assistance and provide common services and utilities to the persons engages in the field of Mutual Fund & Asset Management.*

In addition to the main objects mentioned above, there are objects incidental or ancillary to the attainment of the main object which is enlisted in the memorandum of association on page 1 within point III at para B of point 1 to 22.

7. The assessee further to this has made the following submissions:

- a. *The genuineness of our activities needs to be considered while deciding our eligibility and the provisions should not be applied mechanically. This is contrary to the intention of the legislature and the stated policy.*
- b. *The fact that our objectives have been scrutinized and have been accepted as charitable while granting us registration under section 12AA of the Act and section 25 of the Companies Act have to be given due weightage.*
- c. *There is no profit motive involved. Surpluses generated, if any cannot be distributed as dividend or otherwise, AMFI is bound to use the surpluses for the achievement of our objectives inter alia including investor awareness and protection.*
- d. *The fact that protection of the interest of the small investor and creating investor awareness is the dominant intention not profit motive needs to be given due weightage while determining whether or not our activities are in the nature of trade, commerce or business and for determining whether or not the 1 proviso to section 2(15) can be applied to us.*
- e. *The act of registration of distributor is not being carried out with the intention of earning any fees. AMFI does not grant registration because somebody is willing to pay the fees. Registration is granted only when certain conditions prescribed by SEBI are fulfilled.*
- f. *There is no contractual obligation on either party to obtain/ grant registration, the obligation if any, is a statutory obligation. Performance of a statutory obligation cannot be regarded as rendering of a service. To this extent the activity of obtaining / granting registration is involuntary upon the distributor and AMFI. Such activity may be characterized regulatory but to say that this activity tantamounts rendition of service for a fee is too farfetched and unwarranted*
- g. *We are an instrumentality of the State exercising the authority delegated to us. We are only acting on directions of SEBI*

8. The afore-mentioned submission of the assessee was not considered by the A.O. for the reason that the A.O. has held the assessee to be a 'mutual association' and not a 'charitable trust' by relying on the decision of the Hon'ble Supreme Court in the case of *Bankipur Club Ltd.* (supra), where doctrine of mutuality was applied and the assessee's receipts from non members and other sources such as interest income, rent, etc. were treated as 'income' of the assessee. Further to this, the A.O. held that the interest income received by the assessee was not shown to have been received from the members and by relying on the decision of the Hon'ble Supreme Court in the case of *M/s. Bangalore Club vs. CIT* and other (in Civil Appeal No. 124 of 2007 dated 14.01.2013), where the Hon'ble

Apex Court held that the interest shown by the assessee from banks will not fall under the purview of particulars of mutuality and was liable to be taxed. The Id. A.O. also relied on the decision of the Hon'ble Jurisdictional High Court in the case of *CIT vs. Common Effluent Treatment Plant (Thane-Belapur) Association* [2010] 328 ITR 362 (Bom), which held that the interest on surplus funds invested in banks is not said to have been received from third parties, thereby principle of mutuality is not applicable for such cases. The Id. A.O. further stated that the income from registration fees of Rs.9,30,58,066/- and other income of Rs.3,69,95,728/-, aggregating to Rs.13,53,794/- from investors awareness program fund for deducting expenditure amounting to Rs.8,72,91,258/- and amounting to Rs.4,27,62,536/- was added to the income of the assessee, as not being exempted under the Act for certified agents and other income are also not receipts from the members of the assessee. As being receipts from non members and the same was covered by the first proviso to section 2 clause 15 of the Act. The A.O. treated the impugned amount as 'business income' within the proviso to section 2(15) of the Act for non charitable purpose and had rejected the claim of the exemption u/s. 117 of the Act.

9. The Id. CIT(A) upheld the order of the A.O. on the ground that the assessee is a 'mutual association' and not a 'charitable one' by following the decision of Hon'ble Apex Court in the case of *Bankipur Club Ltd.* (supra) and that the assessee's response from non members and other source are treated as 'income' of the assessee by treating the same as 'assessee's income' as per the particulars of mutuality. The Id. CIT(A) further held that the interest income has not been received from the members and the interest earned by the assessee from banks will fall within the ambit of mutuality principle and was held to

be taxable in the hands of the assessee. The ld. CIT(A) also held that the interest on surplus invested in FD in banks, is not income from the receipts of the members of the assessee, but was received from third party for which the principle of mutuality does not apply. The ld. CIT(A) confirmed the addition made by the A.O. by treating the same as 'business income' of the assessee as per the provision of first proviso to section 2(15) of the Act for non charitable purpose and claim of exemption u/s. 11 of the Act was rejected in this context.

10. Aggrieved by the said order, the assessee is in appeal before us.

11. The ld. AR for the assessee contended that the ld. AR relied on the objects of the assessee and contended that the assessee was engaged in charitable activities for the benefit of public. The ld. AR further stated that similar issue was decided by the Tribunal for A.Ys. 2011-12 to 2013-14 in favour of the assessee and relied on the decision of the tribunal in ITA No. 5762 & 5761/Mum/2015 and 6888/Mum/2016.

12. The ld. Departmental Representative (DR for short) controverted the same and relied on the decision of the lower authorities.

13. Having heard the rival submissions and perused the materials available on record. It is observed that is assessee's case in ITA Nos. 5762/Mum/2015, 5761/Mum/2015, 6888/Mum/2016 for A.Ys. 2011-12 to 2013-14, the Tribunal on similar facts has decided this issue in favour of the assessee by holding that the assessee is engaged in 'charitable activity' and was not established with the object of earning profits, thereby allowing

exemption u/s. 11 of the Act. The relevant extract of the said decision is hereunder for ease of reference :

“17. Keeping in view the facts of the present case, we are of the view, that the Appellant is engaged in charitable activity. We have examined the objects of the Appellant. The Appellant has not been established with the objects of earning profits. The Appellant was registered under Section 25 of the Companies Act, 1956, which specifically applies to entities which intend to apply their profits, if any, and/or other income in promoting its objects, and prohibits the payment of any dividend to its members. In the present case, there is no dispute regarding the nature of activities undertaken by the Appellant. The genuineness of the activities undertaken by the Appellant has not been doubted by the Revenue. It is not the case of the Revenue that the activities of the object of 'general public utility' carried on by the Assessee in the present case is only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. For the preceding assessment years the activities undertaken by the Appellant were accepted as being for the benefit of general public and therefore, for advancement of general public utility. However, for the relevant assessment year the Revenue has taken a stand that the activities undertaken by the Appellant are for the benefit of members resulting in indirect benefit to the general public even though, admittedly, there has been no change in the facts as compared to preceding assessment years. The case of the Revenue is that on account of amendment to Section 2(15) of the Act the objects/activities of the Appellant have become non-charitable even though there has been no change in the facts as the objects/activities of the Appellant continue to be the same. In our view, the approach of the Revenue cannot be countenanced. Circular No. 11 of 2008 issued by the CBDT clearly provides that whether an assessee has for its object 'the advancement of any other object of general public utility' is a question of fact to be examined keeping in view the facts of each case. It is admitted position that the Appellant was registered under Section 12A of the Act since 09.01.1996 and was granted the benefit of exemption in terms of Section 11 of the Act in the preceding assessment years even though the Appellant had receipt registration fee for certified agents, certification test fee etc. It is admitted position that the registration and certification activities were carried out by the Appellant as per the directives of SEBI. Further, the Appellant has been holding investor education camps and publishes material/information. In our view, the aforesaid activities of the Appellant are directed towards the benefit of investors and potential investors forming part of the general public and are not limited to the benefit of its members. The Appellant has also maintained separate accounts in respect of these activities. As regards activities of the Appellant directed towards the benefit of its members are concern, the Assessing Officer has granted the benefit of principle of mutuality in respect of the same.

18. In view of the above, the Assessing Officer is directed to allow exemption under Section 11 of the Act to the Appellant. Ground No. 1 to 7 raised by the Appellant are, therefore, allowed. Ground No. 8 is disposed off as being infructuous.”

14. From the above observation, we are of the considered view that the facts of the present case is also identical as that of assessee's case in previous years and as there has been no change in circumstances, we are inclined to allow the assessee's claim of exemption u/s. 11 of the Act. As the Tribunal has already held that the assessee is engaged in charitable activity and not profit earning, we find no justification in

interfering with the said decision. Ground Nos. 1 to 7 are, therefore, allowed and ground nos. 8 and 9 being alternative grounds needs no adjudication as relief has been granted to the assessee in ground nos. 1 to 7, we hereby dismiss ground nos. 8 and 9.

15. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 05.01.2023

Sd/-

Sd/-

(S. Rifaur Rahman)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 05.01.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai