

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

SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 2745/MUM/2022  
(Assessment Year: 2015-16)

National Payment Corporation of India,  
1001A, B-Wing, 10<sup>th</sup> Floor, The Capital,  
Bandra Kurla Complex, Bandra (East),  
Mumbai - 400051  
[PAN: AACCN9852G] .....

Appellant

Deputy Commissioner of Income Tax  
(Exemption), 2(1), Mumbai,  
Piramal Chambers, Lal Baug, Parel,  
Mumbai

Vs

..... Respondent

ITA No. 2746/MUM/2022  
(Assessment Year: 2016-17)

National Payment Corporation of India,  
1001A, B-Wing, 10<sup>th</sup> Floor, The Capital,  
Bandra Kurla Complex, Bandra (East),  
Mumbai - 400051  
[PAN: AACCN9852G] .....

Appellant

The Assistant Commissioner of Income Tax  
(Exemption), Circle 2, Mumbai,  
Piramal Chambers, Lal Baug, Parel,  
Mumbai - 400012

Vs

..... Respondent

ITA No. 2747/MUM/2022  
(Assessment Year: 2017-18)

National Payment Corporation of India,  
1001A, B-Wing, 10<sup>th</sup> Floor, The Capital,  
Bandra Kurla Complex, Bandra (East),  
Mumbai - 400051  
[PAN: AACCN9852G] .....

Appellant

The Assistant Commissioner of Income Tax  
(Exemption), Circle 1, Mumbai,  
Piramal Chambers, Lal Baug, Parel,  
Mumbai - 400012

Vs

..... Respondent

ITA No. 2748/MUM/2022  
(Assessment Year: 2018-19)  
&  
ITA No. 2749/MUM/2022  
(Assessment Year: 2019-20)

National Payment Corporation of India,  
1001A, B-Wing, 10<sup>th</sup> Floor, The Capital,  
Bandra Kurla Complex, Bandra (East),  
Mumbai - 400051  
[PAN: AACCN9852G]

..... Appellant

The Additional/Joint/Deputy/Assistant  
Commissioner of Income Tax/Income Tax  
Officer, National E-Assessment Centre,  
Delhi

Vs

..... Respondent

For the Appellant/Appellant : Shri Niraj Sheth  
For the Respondent/Department : Dr. Mahesh Akhade

Date of conclusion of hearing : 06.02.2023  
Date of pronouncement of order : 08.02.2023

**ORDER**

**Per Bench:**

1. These are five appeals filed by the Assessee pertaining to the Assessment Years 2015-16 to Assessment Year 2019-20. Since the appeals involve identical issue, the same were heard together and are being disposed by way of a common order. We would first take up appeal for the Assessment Year 2015-16.

**ITA No. 2745/MUM/2022 (Assessment Year 2015-16)**

2. By way of the present appeal the Appellant has challenged the order, dated 01.09.2022 passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)'] for the Assessment

Year 2015-16, whereby the CIT(A) had dismissed the appeal filed by the Appellant against the Assessment Order, dated 18.12.2017, passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. The Appellant has raised the following grounds of appeal:

- “1. The Commissioner of Income tax (Appeals), National Faceless Appeal Centre ("the CIT(A)) erred in confirming the action of the Deputy Commissioner of Income tax, Exemption Circle 1, Mumbai ("the AO") in rejecting the appellant's claim for exemption under section 11 and section 12 of the Income tax Act, 1961 ("the Act").*
- 2. The CIT(A) erred in holding that the objects and activities of the Appellant were not charitable and that its case was hit by the first proviso to section 2(15) of the Act.*
- 3. The CIT(A) erred in confirming the addition of SGM Balance at the beginning of the year of Rs. 40,34,22,862/- and interest income on SGM Investments of Rs. 3,64,47,904/- on the alleged ground that the same was not offered to tax. Further, the CIT(A) failed to consider that the above defect /mistake resulting in double addition of the income was rectified by the AO by passing rectification order u/s 154 r.w.s. 143(3) of the Act dated 28/02/2018.*
- 4. The CIT(A) erred in upholding invocation of the provisions of section 13(1)(c)(ii) of the Act by the AO for denial of the benefit of section 11 and 12 of the Act.*
- 5. The CIT(A) erred in holding that it was an undisputed position that banks to whom services were rendered fell within the category of persons referred to in section 13(3) of the Act.*
- 6. The CIT (A) erred in deciding the appeal of the Appellant ex-parte based on the grounds of appeal and statement of facts. He erred in holding that the Appellant had not*

*complied with the various notices issued as it had not filed written submissions, overlooking that in all cases where notices were issued, except in one instance, an application for adjournment was filed by the Appellant on the grounds that the time granted for filing details and submissions was very short and/or the concerned partner of the instructing Chartered Accountants who was looking into the matter was hospitalized and was unable to attend and/or compile details and make submissions and/or notice of hearing was not received by email and/or other reasons. He failed to appreciate that once an application for adjournment is made in response to a hearing notice, the notice cannot be regarded as not complied with.*

7. *The CIT(A) erred in rejecting the ground challenging not granting of credit of advance tax of Rs.41,90,00,000/-. Further, the CIT(A) failed to consider that the above defect /mistake was rectified by the AO by passing rectification order u/s 154 r.w.s. 143(3) of the Act dated 28/02/2018.*
8. *The CIT(A) erred in rejecting the ground challenging levy of interest u/s.234A & u/s.2348 of Rs.40,06,070/- & Rs.13,22,00,310/- respectively. Further, the CIT(A) failed to consider that the above defect /mistake was rectified by the AO by passing rectification order u/s 154 r.w.s. 143(3) of the Act dated 28/02/2018."*

4. Brief facts of the case are that the Appellant filed its return of income on 29.09.2015 along with Audit Report in Form 10B declaring 'Nil' income after claiming benefit of exemption under Section 11 of the Act. According to the Appellant, during the relevant previous year the Appellant earned income of INR 2,93,01,19,556/- and applied INR 2,45,17,61,196/- towards the main objects. The case of the Appellant was selected for limited scrutiny. The Assessing Officer passed Assessment Order under Section 143(3) of the Act on 18.12.2017 assessing taxable

income of the Appellant at INR 1,69,07,29,030/- after, inter alia, rejecting the claim for exemption under Section 11 and 12 on the grounds that (a) the Appellant was hit by the provisions contained in proviso to Section 2(15) and therefore, activities of the Appellant undertaken for advancement of object of general public utility did not qualify as 'charitable purpose', and (b) without prejudice to the aforesaid, the provisions of Section 13(1)(c) of the Act are attracted since the existence of the Appellant-Company is primarily for the benefit of the promoters bank.

5. Being aggrieved, the Appellant preferred appeal before the CIT(A). Vide order dated, 01.09.2022, the CIT(A) dismissed the appeal and therefore, the Appellant is before us in appeal.
6. The Ld. Authorised Representative for the Appellant appearing before us submitted that the CIT(A) has, in effect, passed an ex-parte order dismissing the appeal of the filed by the Appellant. Taking us through the sheet containing 'Summary of Notices Received from CIT(A)/NFAC and Adjournment Request Filed', he explained that the Appellant had sought adjournment when the matter was fixed on 06.01.2021, 11.01.2022, 01.03.2022, 11.03.2022, 30.03.2022, 01.04.2022 and 15.06.2022 on account of the Covid-19 pandemic and on account personal difficulties faced by Mr. Rajesh V Shah, the concerned partner of the Chartered Accountant firm engaged by the Appellant. He further submitted that when the appeal was listed for hearing between 11.07.2018 and 18.03.2019, the Appellant had sought adjournment for the reason that the Appeal preferred by the Appellant on identical issues pertained to Assessment Year 2010-

11 to 2014-15 were filed/pending before the Tribunal. The Ld. Authorised Representative for the Appellant submitted that the Appellant had a good case on merit as the issues raised in the present appeal were decided in favour of the Appellant by the Tribunal vide order, dated 06.07.2020, passed in ITA No. 5431/Mum/2015 (Assessment Year 2010-11) and ITA No. 3382/Mum/2016 (Assessment Year 2012-13). He submitted that one of the reasons/grounds on which relief was granted to the Appellant was that the dominant object of the Appellant was charity by advancement of objects of general public utility and not to earn profits. He fairly submitted that in view of the judgment of the Hon'ble Supreme Court in the case of CIT (Exemptions) Vs. Ahmadabad Urban Development Authority: 449 ITR 1 (SC) the aforesaid reason/ground may not hold good. However, at the same time submitted that the other grounds/reasoning given by the Tribunal for allowing the appeal of the Appellant would still hold good. In response to a query from the Bench, he submitted that the appeal could be remanded back to the file of CIT(A) for examination of the issues on merits after taking into consideration the submission of the Appellant and the decision of the aforesaid Tribunal in the case of the Appellant.

7. The Ld. Departmental Representative did not object to the suggestion of remanding the issue back to the file of CIT(A)/Assessing Officer. However, at the same time he relied upon the judgment of the Hon'ble Supreme Court in the case of Ahmadabad Urban Development Authority (supra) and contended that in view of the same the decision of the Tribunal shall not hold good anymore.
8. We have considered the rival submissions and perused the

material on record. Perusal of the record shows that the Appellant had sought adjournments when the matter was listed on various dates between 06.01.2021 and 11.03.2022 on account of difficulty faced by the Appellant and the Authorized Representative due to non-availability of staff and closure of office on account of COVID-19 Pandemic. On 31.03.2022, 01.04.2022 and 15.06.2022, adjournment was sought on account of hospitalization and personal difficulty faced by the professional chartered accountant engaged by the Appellant. We note that the CIT(A) has dismissed the appeal, vide order dated 01.09.2022, holding as under:

*"7.9 In view of the facts and legal position discussed above, it is presumed that appellant is not interested in pursuing the appeal and not having any documents, explanation and evidence in support of grounds of appeal raised and thus has not discharged the onus to prove the genuineness of the transactions/ addition made by the AO. It is seen that no written submission filed till date. In view of the lack of prosecution by the appellant. I proceed to decide the appeal on the basis of facts and material available on record.*

8. *I have carefully considered the assessment order u/s 143(3) of the Act. grounds of appeal, the statement of facts as well as the relevant provisions of law.*

*The appellant had sought adjournment vide letter dated 17th January 2022 but there was no response after the adjournment period. As discussed supra, the appellant had not submitted any submissions except Grounds of Appeal and Statement of Facts therefore, the appeal is being adjudicated based on the material available on record. The contentions and submissions of the appellant are being discussed and decided here in under:*

xx      xx

*In view of detailed discussion supra, I hold that appellant's case is hit by proviso to section 2(15) and its object is no*

*more a charitable purpose and thus its income will not be eligible for exemption under section 11 and 12. Further other income like interest income etc. will not be eligible for exemption under section 11 at same is not derived from property held for charitable purpose as in view of above discussion object of appellant is no more a charitable purpose. Hence, grounds of appeal No 1 and 3 are dismissed.” (Emphasis Supplied)*

9. From the above extract of the order impugned by way of present appeal, it is clear that the Appellant was, in effect, proceeded ex-parte. Having perused the record, we find that the Appellant had sufficient reasons for not appearing before the CIT(A) on the hearing fixed by the CIT(A) from 06.01.2021 to 15.06.2022 in the appellate proceedings before passing the order on 01.09.2022. Accordingly, we set aside the ex-parte order, dated 01.09.2022, passed by the CIT(A) and remand the issue raised in the present appeal before the CIT(A) for fresh adjudication after taking into consideration the law laid down by the Hon'ble Supreme Court in the case of Ahmadabad Urban Development Authority (supra). All the rights and contentions of the parties, including those raised before us relating to the merits of the issues and recorded hereinabove, are left open. The CIT(A) is directed to consider the documents/detail/submission furnished by the Appellant, if any, as per law and grant a reasonable opportunity of being heard to the Appellant. The Appellant is directed to co-operate by effectively pursuing the appeal before the CIT(A) and by not seeking unnecessary adjournments. With the aforesaid directions, Ground No. 6 raised by the Appellant is allowed while all the other grounds raised by the Appellant are dismissed as being infructuous.

ITA No. 2746/Mum/2022 (Assessment Year 2016-17)  
ITA No. 2747/Mum/2022 (Assessment Year 2017-18)  
ITA No. 2748/Mum/2022 (Assessment Year 2018-19)  
ITA No. 2749/Mum/2022 (Assessment Year 2019-20)

10. For the reasons given in paragraph 8 and 9 above while disposing the appeal for Assessment Year 2015-16 (ITA No. 2745/MUM/2022), Ground No. 6 raised by the Appellant in appeals for the Assessment Years 2016-17, 2017-18, & 2018-19, and Ground No. 5 raised in appeal for the Assessment Year 2019-20 are allowed, while all the other grounds raised by the Appellant in the aforesaid appeals are dismissed as being infructuous.

In result, all the five appeals filed by the Appellant are allowed for statistical purposes.

Order pronounced on 08.02.2023.

*Sd/-*

(Om Prakash Kant)  
Accountant Member

*Sd/-*

(Rahul Chaudhary)  
Judicial Member

मुंबई Mumbai; दिनांक Dated : 08.02.2023  
*Alindra, PS*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai