

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
ITA Nos. 178, 180 & 181/Mum/2023
(A.Ys.2014-15, 2016-17 & 2017-18)

Pioneer Education Trust Bhau Daji Road, Maheshwari Udyan, Matunga (East) Mumbai - 400 019	Vs.	Income Tax Officer, Exemption 2(2) MTNL Building, Cumbala Hill, Peddar Road Mumbai - 400 026
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAATP0207G		
Appellant	..	Respondent

Appellant by :	Shri Kedar Phadke
Respondent by :	Shri C.T. Mathews

Date of Hearing	21.03.2023
Date of Pronouncement	28.03.2023

आदेश / ORDER

Per Amarjit Singh (AM):

These three appeals filed by the assessee are directed against the common order of NFAC, Delhi, dated 28.11.2022. Since common issue on identical facts are involved in these three appeals filed by the assessee, therefore, these appeals are adjudicated together by taking ITA No. 178/Mum/2023 as lead case and its finding will be applied to ITA Nos. 180 & 181/Mum/2023 mutatis mutandis.

ITA No.178/Mum/2023

- “1. The learned Commissioner of Income Tax (Appeals) erred in fact and in law in holding that income from letting out of hall amounting to Rs.10,33,060/- was business income.
2. The reliance of the learned CIT(A) on the Apex Court Judgment in case of Ahmedabad Urban Development Authority is totally misplaced.

3. *The learned CIT(A) relying on the above judgment held that the word "incidental" as appearing in section 11(4A) can be interpreted in light of proviso to section 2(15) so as to mean that the activity should be conducted actually in the course of achieving the GPU object, without realising that the activity referred to is a business activity and the appellant is not engaged in any business activity.*
4. *The passive letting out the trust property (as against exploitation by way of complex commercial activities) to earn income is not a business activity and hence section 11(4A) cannot be pressed into service at the threshold, the appellant is therefore entitled to exemption u/s 11(1) in respect of income from the property held under trust.*
5. *The learned Commissioner of Income Tax (Appeals) erred in not appreciating that the appellant is engaged in educational activities and proviso to section 2(15) which is applicable only where the object is "General Public Utility cannot be invoked.*
6. *The appellant craves leave to add, alter or amend any of the grounds of the appeal, at any time before or at the time of hearing."*

2. The fact in brief is that assessee is a charitable trust registered u/s 12A and engaged in providing education to children by running school. The return of income declaring nil income after claiming exemption u/s 11 of the Act was filed on 30.09.2014. During the year under consideration apart from the main activity of providing education the assessee had also earned a rental income of Rs.10,33,060/- for letting out of school halls. This income earned by the assessee was also utilised for the charitable purpose of providing education. However, the A.O treated the income earned from renting hall premises as business income and also stated that no separate books of account were maintained in respect of the same as per provision of Sec. 11(4A) of the Act.

2. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee by referring the decision of Hon'ble Supreme Court in the case of Assistance Commissioner of Income Tax Vs. Ahmedabad Urban Development Authority.

3. Heard both the sides and perused the material on record. During the course of appellate proceeding before us the ld. Counsel contended that ld. CIT(A) has dismissed the appeal of the assessee without taking into consideration the submission of the assessee filed during the course of appellate proceedings on 26.09.2022. The ld. Counsel further submitted that the ld. CIT(A) has also not given any opportunity to the assessee before dismissing the appeal of the assessee by incorrectly placing reliance on the decision of Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority since the facts of the case of the assessee are entirely different from the case law referred by the ld. CIT(A) as the case of the assessee does not fall under the proviso 2 of Sec. 2(15) of the Act because assessee is engaged in the field of education for charitable purposes. The ld. Counsel further submitted that the ld. CIT(A) has not considered the decision of Hon'ble jurisdictional Bombay High Court in the case of Shri Vile Parle Kelvani Mandal 378 ITR 593 (Bom) wherein on similar facts and identical issue it is held that the income generated from giving halls and properties of the institution on rent on Saturday and Sunday and on public holidays when they are not required for education activities then this cannot be said to be a business which is not incidental to attain the object of trust.

4. The assessee is a charitable trust registered u/s 12A of the Act and engaged in charitable activities by providing education to the children and claimed exemption u/s 11 of the Act. The assessee submitted that trust is engaged in the field of education as provided u/s 2(15) of the Act and proviso to Sec.2(15) of the Act pertaining to advancing of any other object of general public utility is not applicable to the case of the assessee. It provide hall on rent generally on weekends when the same are not required for the purpose of carrying out primary activity of education. The entire income earned is utilised on the object of providing education under charitable purpose. During the course of

appellate proceedings before the ld. CIT(A) the assessee had made detailed submission vide letter dated 26.09.2022 and copy of the same was also filed in the appellate proceedings before ITAT. The assessee had also submitted in their submission made before the ld. CIT(A) that their case is squarely covered by the decision of the Hon'ble jurisdictional Bombay High Court in the case of Shri Vile Parle Kelvani Mandal. However, the ld. CIT(A) has neither considered the submission filed by the assessee vide letter dated 26.09.2022 during the course of appellate proceedings before the ld. CIT(A) nor afforded any opportunity to the assessee before dismissing the appeal of the assessee. The ld. CIT(A) has also not discussed how the facts and circumstances of the case of the assessee are similar to the case of Ahmedabad Urban Development Authority. Looking to the aforesaid infirmities in the order of ld. CIT(A), I remand this matter back to the file of the ld. CIT(A) for deciding afresh after taking into consideration the submission filed by the assessee and after affording opportunity of hearing to the assessee. Therefore, this appeal of the assessee is allowed for statistical purposes.

ITA No. 180/Mum/2023

5. As the facts and issues involved in this appeal are similar to ITA No. 178/Mum/2023 as supra, therefore, applying the same findings mutatis mutandis this appeal of the assessee is also restored to file of the ld. CIT(A) for deciding a fresh.

ITA No.181/Mum/2023

6. As the facts and issues involved in this appeal are similar to ITA No. 178/Mum/2023 as supra, therefore, applying the same findings mutatis mutandis this appeal of the assessee is also restored to the file of the CIT(A) for deciding a fresh.

7. In the result, all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 28.03.2023

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 28.03.2023

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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