

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

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

**ITA NO.2966/MUM/2022 (A.Y: 2019-20)**

DCIT (Exemption) – 2(1) Room No. 608, 6 <sup>th</sup> Floor MTNL Building, Cumballa Hill Mumbai - 400026	v.	NEIA Trust C/o. ECGC of India 10 <sup>th</sup> Floor, Express Tower Nariman Point Mumbai – 400021  <b>PAN: AAATN9999F</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Ms. Aarti Visanji</b>
<b>Department Represented by</b>	<b>:</b>	<b>Dr. Mahesh Akhade</b>
<b>Date of Hearing</b>	<b>:</b>	<b>01.03.2023</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>02.05.2023</b>

**ORDER**

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

**1.** This appeal is filed by the revenue against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 28.09.2022 for the A.Y.2019-20.

**2.** Brief facts of the case are, assessee filed its return of income on 01.10.2019 declaring total Income at ₹.Nil for A.Y. 2019-20 and the same was processed u/s 143(1) of the Income-tax Act, 1961 (in short "Act"). The Assessee Trust has been set up by the Government of India to facilitate medium and long term exports by ensuring the availability of credit risk cover for projects and other high-value exports. The Assessee Trust is registered u/s 12A of the Act. The case was selected for complete scrutiny under CASS to verify the issues such as "Receipts of Trust, High Refund Claim and Ratio of establishment and administrative expenses to expenditure on objects of the assessee trusts is high". Subsequently, notices u/s 143(2) and 142(1) of the Act are issued and served on the assessee by National Faceless Assessment Centre through ITBA Portal.

**3.** Further, Assessing Officer observed that the past history of the assessee shows that in the earlier assessment years, proviso to section 2(15) of the Act has been invoked and the exemption u/s. 11 of the Act has been denied as the activities of the assessee is not charitable. He also observed that for the A.Y. 2010-11, 2011-12, 2013-14 and 2014-15 the Coordinate Bench in assessee's own case has decided in favour of the assessee on the same issue as discussed above. However, he

observed that department has filed the appeal before the Hon'ble High court against the above decision. The Assessing Officer by invoking proviso to section 2(15) of the Act, he held that the case of the assessee falls under fourth limb of definition i.e., object of the general public utility.

4. He observed that Assessee is providing insurance cover to various Indian exporters and is receiving insurance premium payment for the same and has entered into agreements with these exporters for the same. He observed that purpose of the assessee trust is not education, medical relief to poor, preservation environment and preservation of monuments or places or objects of artistic or historic interest but at the most the advancement of any other object of general public utility and he held that assessee is not engaged in any charitable activities and the engagement in these activities in national interest does not come to its help as national interest cannot be necessarily a charitable object. Accordingly, he denied the deduction u/s. 11 of the Act and reworked the taxable income of the assessee and determined the taxable income at ₹.473,86,01,397/-.

5. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and assessee has filed detailed submissions, for the sake of clarity it is reproduced below: -

**"1. *Ground No.1 - Application of provisions of Section 11 of the Income Tax Act, 1961 (the Act):***

1. *The appellant is a public charitable trust set up in terms of the Government Resolution vide the Trust Deed dated 21st March, 2006 (Paper Book Page Nos. 1 to 35). the President of India, acting through the Joint Secretary, Department of Commerce, Ministry of Commerce & Industry, Government of India, being the sole settlor of the appellant.*

2. *There is a difference of opinion subsisting by and between the appellant and the AO in assessment of income from assessment year 2010-11 as regards whether the objects of the appellant can be considered as "Charitable Purpose" as defined in Section 2(15) of the Act and whether the first proviso to Section 2(15) of the Act is to be applied in assessment of the income of the appellant.*

3. *In the course of assessment proceedings, the Ld. AO called upon the appellant to justify why the provisions of Section 11 of the Act, should be applied in assessing the income for the year keeping in view the following aspects:*

*(a) Receipt of Insurance Premium Income.*

*(b) The object of the appellant falls under the last limb i.e., advancement of any other object of general public utility.*

*(c) Applicability of the First Proviso to Section 2(15) of the Act.*

4. *Pursuant to which, Written submissions have been made vide letter dated 13th November, 2021 and 27th September 2021 to AC (Paper Book Page Nos.36 to 54). Briefly stated. following are the relevant submissions:*

4.1 *With a view to facilitating medium and long term exports, and consider the limitations of Export Credit Guarantee Corporation (a Government of India Undertaking) in providing adequate cover on its own and non-availability of re-insurance cover to such exports, the Government of India, Ministry of Commerce &*

*Industry, Department of Commerce, vide the Resolution dated 7th March, 2006 established National Export Insurance Account ("NEIA) Scheme to be maintained and operated by a Public Trust.*

*4.2 The objects of the appellant as enshrined in Para 7.1 to 7.4 of Revised Trust Deed are as follows (Paper Book Page Nos. 55 to 94)*

*7.1 the object of the appellant is to promote exports from India and to protect payment risks for transactions for which ECGC is unable to provide cover owing to lack of capacity or commercial consideration.*

*7.2 To meet the cost of credit insurance (including the reinsurance charges payable by ECGC) which ECGC would levy for project exports in circumstances where competitiveness of the Indian project exporters are affected.*

*7.3 Objects with respect to medium and long term exporters.*

*7.3.1. To implement this scheme through ECGC for the benefit of medium and long term exporters in national interest.*

*7.3.2. To implement such other schemes and programmes for the benefit of medium and long term exporters as the Government of India may frame from time to time and direct the appellant to implement.*

*7.4 Objects with respect to short term exporters.*

*7.4.1 To implement this scheme through ECGC for the benefit of short term exporters in the national interest.*

*7.4.2 To implement such other schemes and programmes for the benefit of short term exporters as the Government of India may frame from time to time and direct the Trust to implement.*

*7.4.3 To provide Micro, Small and Medium Enterprises (MSME exporters and banks financing MSMEs additional relief while settling the claims respectively under export credit insurance covers issued to exporters also known as policies and export credit insurance covers issued to banks also known as Export Credit Insurance Covers for Banks (ECIBY*

*4.3 On a perusal of the above, it will be observed as under:*

*(a) The appellant is to provide insurance cover to promote exports from India and to protect payment risks for transactions for which ECGC (Export Credit Guarantee Corporation) is unable to provide cover owing to lack of capacity or inadequate consideration.*

*(b) The appellant is to meet the cost of credit insurance (including the reinsurance charges payable by ECGC) which ECGC would levy for project exports in circumstances where competitiveness of the Indian project exporters are affected.*

*(c) The appellant is to implement such other schemes and programmes as the Government of India may frame in this regard.*

*(d) Hence, the appellant undertakes such activities, as per directions of the Government of India.*

*(e) Such activities will not be undertaken normally by a commercial enterprise, which is engaged for earning profits. This is for the simple reason that ultimately the claims devolving upon the appellant will be far in excess of insurance premium, as may be charged by the appellant.*

*(f) Further insurance coverage provided by the appellant are as per directions of the Central Government, which is to meet with national interest of the Government of India and are such which normally will not be provided by a commercial enterprise.*

*4.4 Respectfully submitted, the following submissions have to be given weightage in deciding whether the objects of the appellant are charitable and whether proviso to Section 2(15) of the Act is applicable:*

*(a) Definition of Charitable Purpose is inclusive and not exhaustive;*

*(b) In other words, the legislature has recognized and accepted that there can be a purpose other than the following which can be considered as*

*"Charitable Purpose" for the purpose of the Act:*

*(i) Relief of the poor;*

*(ii) Education;*

*(iii) Medical relief,*

*(iv) Preservation of environment (including watershed and forest and wild life).*

*(v) Preservation of monuments or places or objects of artistic and historic interest*

*(vii) The advancement of any other objects of general public utility*

*(c) The appellant is a public charitable trust registered with the office of Charity Commissioner. (Paper Book Page No. 95)*

*d) The appellant is holding certificate of registration issued under section 12AA of the Act, (Paper Book Page Nos. 96 and 97)*

*(e) The objects of the appellant as enshrined in Para No. 7.1 to 7.4 of the Revised Trust Deed as detailed vide Para 2.2 at Page No. 2 to 3 above as well submissions made vide Para 2.3 at Page No. 3.*

*4.5 Accordingly, it was submitted as under*

*(a) The objects of the appellant are "Charitable Purpose" keeping in view the inclusive definition U/s 2(15) of the Act and do not fall under the last limb, i.e. the advancement of any other object of public utility.*

***Without prejudice to the above and in the alternate***

*(b) Keeping in view the following factual aspects, in law it cannot be said that the appellant is carrying on any activity in the nature of trade, commerce or business or rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration. Hence in any view of the matter, First Proviso to Section 2(15) cannot be invoked.*

*(i). The object of the appellant (Refer Para 7.1 to 7.4 of Revised Trust Deed)*

*(ii) Submissions contained vide Para 4.3 at Page No. 3 and 4 above.*

*(iii) Expected outcome of devolvement and settlement of claims for exceeding insurance charged.*

5. On the captioned subject, your kind attention is drawn to the Order of Hon. Mumbai ITAT, "B" Bench dated 18.01.2019 in appellant's own case for Assessment Year 2010-11 (Paper Book Page Nos. 98 to 108). Vide Para Nos. 7, 8 and 9 of the said Order (reproduced hereunder for your easy reference), the Hon. Mumbai ITAT has allowed the claim of the appellant by granting exemption u/s. 11 of the Act.

Para 7:

*The scope of activity of the Trust is primarily to implement schemes formulated by the Government of India. Ministry of Commerce, Government of India, is the settlor of the Trust and the Trust is not empowered to carry out any other activity.*

*Para 8: Further, even the project / exports which require credit insurance has to meet the criteria stipulated in clause 12 of the Trust Deed Criteria No.(ix) and (k) specifically require the project to be of 'importance of such project export from national point of view' and 'other factors like the current economic development in the project country and related issues therefore, the trust does not even value the project from the perspective of premium viability or profitability. Once the project export fulfills the criteria mentioned in clause 12, the trust will provide credit cover. In view of the above said activities we noticed that there is no intention of the appellant to earn the profit. Undoubtedly the dominant and prime object is required to be seen. The learned representative of the appellant has relied upon the law settled by the Delhi High Court in case titled as India Trade Promotion Organization Vs. D.G.I.T(E). [2015] 53 taxmann.com 404 (Delhi). It is settled in the said law that the dominant and prime object is required to be seen to observe the nature of trade, commerce and business. The relevant Para in the case of India Trade Promotion Organization (supra) is 58 which is reproduced as under:*

*"In conclusion, we may say that the expression "charitable purpose", as defined in Section 2(15) cannot be construed literally and in absolute terms. It has to take color and be considered in the context of Section 10(23C)(iv) of the said Act. It is also clear that if the literal interpretation is given to the proviso to Section 2(15) of the said Act, then the proviso would be at risk of running fowl of the principle of equality enshrined in Article 14 of the Constitution of India. In order to save the Constitutional validity of the proviso, the same would have to be read down and interpreted in the context of Section 10(23C)(iv) because, in our view, the context requires such an interpretation.*

*The correction interpretation of the proviso to section 2(15) of the said Act would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities in the nature of trade, commerce or business or the activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. If the dominant and prime objective of the institution, which claims to have been established for charitable purpose, is profit making, whether its activities are directly in the nature of trade, commerce or business or indirectly in the rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a charitable purpose. On the flip side, where an institution is not driven primarily by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an institution established for charitable purposes."*

*Para 9:*

*The facts of the present case are quite similar to the facts of the case titled as India Trade Promotion Organization (supra). Therefore, finding of the said case is quite applicable to the facts of the present case. Since the dominant and prime object of the appellant is not to earn the profit in relation to trade, commerce and business, therefore, the exemption u/s.11 & 12 of the Act is not liable to be declined. Accordingly, we set aside the finding of the CIT(A) in this issue and allow the claim of the appellant.*

*To sum up, the Order of the assessment year 2010-11 followed by the Ld. CIT(A). has now been set aside by the Tribunal in the above case. The AO has been directed to allow the claim of the appellant for exemption under section 11 & 12 of the Act. Facts being identical, we follow the above order of the Co-ordinate Bench and allow the appeal filed by the appellant"*

*6. Further, the Hon. ITAT, Mumbai vide the following Order(s) in the appellant's own case, has held that the objects of the appellant are "Charitable Purpose" as defined u/s. 2(15) of the Act and has granted exemption under Section 11 and 12 of the Act, by following its Order for the assessment year 2010-11 (supra)*

*(i) Order dated 24th December, 2019 for the assessment year(s) 2011-12 and 2012-13 (Paper Book Page Nos.109 to 122)*

*(ii) Order dated 11th January, 2021 for the assessment year(s) 2014-15 and 2015-16 (Paper Book Page Nos. 123 to 136)*

7. Further, the Ld. CIT(Appeals) vide order(s) passed u/s. 250 of the Act dated 30th June 2022 for the assessment years) 2013-14,2016-17 and 2017-18 in the appellant's own case, has also accepted the above referred submissions and the contentions of the appellant and has accordingly allowed exemption u/s. 11 and 12 of the Act. (Paper Book Page Nos. 137 to 226)

8. Further, the Ld. AO in assessing the total income of the appellant for the assessment year 2018-19 has also accepted the above referred submissions and the contentions of the appellant and has accordingly allowed exemption u/s, 11 and 12 of the Act, as evident from the order of assessment dated 19th April, 2021 passed u/s. 143(3) of us Act (Paper Book Page Nos. 227 and 228)

9. Keeping in view the facts applicable as detailed hereinabove and the said order(s) of Hon. Mumbai ITAT and the order of assessment for the assessment year 2018-19 in the appellant's own case being relied upon and respectfully following the principle of Rule of Consistency a well settled proposition in law, it is humbly submitted that it should be held that:

(a) The objects of the appellant are "Charitable Purpose" as defined u/s. 2(15) of the Act.

(b) Keeping in view the fact that the activities undertaken by the appellant are such which normally will not be undertaken by a commercial enterprise, the proviso to Section 2(15) of the Act cannot be applied

(c) The provisions of Section 11 of the Act have to be applied in assessing the income of the appellant.

10. On the captioned subject of respecting the principle of "Rule of Consistency", we draw your kind attention to the following decisions, endorsing the sanctity to the said proposition:

(a) CIT Vs. Gopal Purohit [2011] 336 ITR 287 (Bombay HC)

Note: SLP filed by the Department dismissed by the Hon. Supreme Court of India. (15.11.2010)

(b) Aroni Commercials Ltd Vs. DCIT [2014] 44 taxmann.com 304 (Bombay HC)

(c) Prin. CIT Vs. Quest Investment Advisors (P) Ltd (2018) 96 taxmann.com 157 (Bombay HC)

11. The scope of activity of the appellant is primarily to implement schemes formulated by the Government of India. The President of India, acting through the Joint Secretary, Department of

*Commerce, Ministry of Commerce & Industry, Government of India, is the sole settlor of the appellant and the appellant is not empowered to carry out any other activity. The said activities carried out by the appellant, as detailed hereinabove, will not be undertaken normally by a commercial enterprise, which is engaged for earning profits. This is for the simple reason that ultimately the claims devolving upon the appellant are expected to be far in excess of insurance premium, as may be charged by the appellant. Further, the insurance coverage provided by the appellant are as per directions of the Central Government, which is to meet with national interest of the Government of India and are such which normally will not be provided by a commercial enterprise.*

*12. Further, even the project / exports which require credit insurance has to meet the criteria stipulated in clause 12 of the Trust Deed. Criteria No. (ix) and (xi) specifically require the project to be of "importance of such project export from national point of view and other factors like the current economic development in the project country and related issues. Therefore, the appellant does not even evaluate the project from the perspective of premium viability or profitability. Once the project export fulfills the criteria mentioned in clause 12, the appellant will provide credit cover. In view of the said activities, it will be observed that there is no intention of the appellant to earn the profit.*

*13. In view of the above, it is humbly submitted that the objects of the appellant are Charitable Purpose keeping in view the inclusive definition u/s. 2(15) of the Act and do not fall under the last limb, i.e. advancement of any other object of public utility. Hence in any view of the matter, the proviso to Section 2(15) of the Act cannot be invoked as it cannot be said that the appellant is carrying on any activity in the nature of trade, commerce of business or rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration.*

*14. Kind attention is drawn to a plethora of judicial decisions inclusive of the following. wherein it is held that where the assessee is engaged in charitable activity through advancement of objects of general public utility, proviso to section 2(15) not applicable.*

*(i) Karnataka Industrial Area Development Board Vs. ADIT [2020] 121 taxmann.com 88 (Karnataka HC)*

*The assessee, an industrial area development board, was a statutory body under Karnataka Industrial Area Development Act, 1987. Its main objective was to promote and assist rapid and orderly establishment, growth and development of industries in suitable areas*

*in the State and to provide industrial infrastructural facilities and amenity in industrial areas. The functions of the assessee were fully controlled by instructions issued by Government. Further, profit making was not driving force or dominant objective of appellant. The Court held that since the assessee is engaged in charitable activity through advancement of objects of general public utility, proviso to section 2(15) is not applicable.*

*(ii) CIT VS. Society of Indian Automobile Manufacturers (2020] 117 taxmann.com 129 (Delhi HC)*

*The assessee was incorporated with the object of promoting awareness and information dissemination with respect to automobile industry and is also engaged in advocacy in that industry. For the relevant year, it reported receipt of some amounts towards fees for conducting seminars and other like activity. The AO felt that since it was engaged in providing commercial activity, the proviso to section 2(15) was attracted. The Hon. ITAT held that mere circumstance of collection of such amounts did not result in the appellant losing its essential character of being established for charitable purposes. The High Court upheld the decision of the Hon. ITAT. Note: SLP filed by the Department against the decision of the High Court is dismissed by the Hon. Supreme Court of India [2020] 117 taxmann.com 130 (SC)*

*(iii) All India Rubber Industries Association Vs. ADIT [2018] 100 taxmann.com 7 (Mumbai ITAT)*

*The assessee, registered under section 12AA, was formed with an object for promoting and safeguarding rubber industry. The AO noted that objects of assessee were not for benefit of general public at large, but were limited only to members of appellant association. Therefore, it was only a mutual association and not charitable. Further, the assessee's receipts from non-members and other sources such as income received from advertisements, sale of books and periodicals, magazine subscription, interest income on fixed deposits and cumulative deposits, etc. was hit by amended proviso to section 2(15). The Hon. ITAT noted that Memorandum of Association prescribed that income and property of association when so ever derived would be applied solely towards promotion of objects of*

*association and that no portion thereof would be paid directly or indirectly to members of the association. Further, upon winding up or dissolution of association, surplus remaining after satisfaction of all debts and liabilities, if any, would not be paid or distributed amongst members of association but would be given to some other association or institution having similar objects. The Hon. ITAT held that there was no justification for AO to hold that since objects of assessee sought to promote and protect interests of a particular trade and industry, the same lost the character of being charitable. The fact that some of the activities carried out by an entity involving charging of fee, etc. had resulted in a surplus could not ipso facto be determinative of fact that there was an element of profit motive.*

*Therefore, proviso to section 2(15) could not be invoked in appellant's case.*

*(iv) Credit Guarantee Fund Trust Vs. ITO [2017] 78 taxmann.com 204 (Mumbai ITAT)*

*The object of the trust was to help small scale industries and micro enterprises in obtaining loans, by way of providing guarantees to lending institution. The Hon. ITAT held that since the trust was not carrying on any regular 'trade, commerce or business', it would be an entity essentially existing for charitable purposes and mere charging of fee from beneficiaries for services rendered would not justify invoking proviso to section 2(15), unless it was established that the purpose and object of the trust had profit motive..*

*Notes:*

*(i) Copy each of the said decisions is enclosed herewith as (Paper Book Page Nos.229-259*

*(ii) The decision of the Hon. Delhi High Court in the case of India Trade Promotion Organization Vs. DGIT [2015] 53 taxmann.com 404 (Delhi HC) is followed in the said decisions, wherein it was held that the expression 'charitable purpose as defined in section 2(15) cannot be construed literally and in absolute terms and it has to take colour and be considered in context of section 10(23C)(iv) and hence, if the dominant and prime objective of institution, was not the desire to earn profits, but the object of promoting trade and commerce not for itself but for nation, it was clearly a charitable purpose.*

*15. Keeping in view the submissions made as detailed hereinabove, both in terms of facts and in law, and the said order(s) of Hon. Mumbai ITAT and the order of assessment for the assessment year 2018-19 in the appellant's own case being relied upon and respectfully following the principle of Rule of Consistency, a well settled proposition in law, it is humbly submitted that it should be held that:*

*(a) The objects of the appellant are "Charitable Purpose" as defined u/s. 2(15) of the Act.*

*(b) Keeping in view the fact that the activities undertaken by the appellant are such which normally will not be undertaken by a commercial enterprise, the proviso to Section 2(15) of the Act cannot be applied.*

*(c) The provisions of Section 11 of the Act have to be applied in assessing the income of the appellant.*

*16. We trust Your Honour will consider the above referred submissions judiciously and in proper perspective and grant relief to the appellant by making appropriate directions in consonance with submissions made before Your Honour herein above."*

**6.** After considering the detailed submissions of the assessee and findings of the Assessing Officer in the impugned order, the Ld.CIT(A) by relying on the decision of the Coordinate Bench in assessee's own case for the A.Y. 2010-11 in ITA.No. 544/Mum/2014 dated 18.01.2019 and also the decision of his predecessor allowed the appeal filed by the assessee and held as under: -

*"8. The issues involved in the present appeal in grounds of appeal No.1 is identical to the issues involved in the Grounds of appeal No. 1 of the appeals decided by the Ld. CIT(Appeals) vide order(s) passed u/s. 250 of the Act dated 30.06.2022 for the AYS 2013-14, 2016-17 and 2017-18 in the appellant's own case. Reliance has also been placed upon the order no CIT(A)-7/IT-367/154/2017-18 & 397/53/2018-19 dated: 01.03.2019 of my Id. predecessor for assessment years A.Y. 2014-15 and 2015-16, wherein the Ld. CIT(A) has given relief to the appellant relying*

*upon the order of the Hon. ITAT- ITA No. 544/Mum/2014 Dated 18.01.2019 for A.Y. 2010-11.*

*9. In view of the foregoing discussion, factual matrix and respectfully following the aforesaid decisions of the Hon'ble ITAT in appellant's own case for A.Y. 2010-11, A.Y. 2011-12, AY2012-13, A.Y. 2014-15 and AY 2015-16 and that of my Ld. predecessor, for assessment years A.Y. 2014-15 and 2015-16, appellant's claim of exemption under section 11 is allowed. Hence, ground of appeal no. 1 is allowed."*

**7.** Aggrieved, revenue filed appeal before us and raised following grounds in its appeal: -

*"1. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the benefit of exemption u/s 11 & 12 of the IT. Act, 1961 to the assessee, ignoring the fact that the objects of the assessee falls at the most under the category of "advancement of any other object of general public utility and the activities are clearly in the nature of providing services in relation to trade, business and commerce in lieu of fees and total receipts of the assessee from such activities are more than 20% of the total receipt of the trust, hence the proviso to section 2(15) of the IT. Act is applicable and the assessee is not entitled to exemption u/s 11 of the Act in view of the provisions of section 13(8) of the LT Act, 1961?"*

*2. Whether, on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in allowing the benefit of exemption u/s 11 & 12 of the I.T. Act, 1961 to the assessee, even though the principal object and activities of assessee trust to provide cover for credit risk to various business enterprises through insurance by charging premium are in the nature of services provided in relation to trade, business and commerce in lieu of fee and as the receipts from the same are more than 20% of the total receipt of the trust, the proviso to section 2(15) is applicable?"*

*3. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the benefit of exemption u/s 11 & 12 of the I.T Act, 1961 to the assessee, ignoring the fact that once the assessee is hit by the proviso to section 2(15) of the IT Act, its objects are no more charitable objects from year after year and therefore even the interest on surplus of such activities cannot be treated as income derived from*

*property held for charitable purposes and therefore such income is also not exempt u/s 11 of the Act?*

4. *"Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the benefit of exemption u/s.11 & 12 of the I.T Act, 1961 to the assessee relying on the earlier judgments of Hon ITAT (in ITA.No. No.544/Mum/2014 dated 18.01.2019 in assessee's own case for AY 2010-11) wherein the Hon ITAT has relied on the case of India Trade Promotion Organization Vs. DGIT(E) 2015 taxman.com 404 Delhi ignoring the fact that the above case was decided in the backdrop of cancellation of exemption u/s 10(23C)(iv) of the IT Act which was issued before introduction of proviso to section 2(15) and not for exemption u/s 11 of the IT. Act by applying section 13(8) of LT. Act and otherwise also that the department has not accepted the decision of Hon'ble Delhi High Court and filed SLP before the Hon'ble Supreme Court which is pending for adjudication".*

5. *The appellant prays that the order of the Commissioner of Income Tax (Appeals)-7, Mumbai be set aside and that of the Assessing Officer be restored.*

6. *"The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."*

**8.** At the time of hearing, Ld. DR submitted that as per the facts brought on record by the Assessing Officer the case of the assessee is falls under proviso to section 2(15) of the Act and the object of the assessee falls under "General Public Utility". He submitted that the decision of the Hon'ble Supreme Court in the case of ACIT v. Ahmedabad Urban Development Authority in Civil Appeal No. 21762 of 2017 dated 19.10.2022 is applicable in the assessee's case. Further, he submitted that the business of the assessee is insurance business, therefore he submitted that as per the direction of Hon'ble Supreme

Court the issue has to go back to the file of the Assessing Officer to evaluate the same as per the guidelines given by the Hon'ble Supreme Court.

**9.** On the other hand, Ld. AR of the assessee brought to our notice Page No. 1 to 9 of the Paper Book which is the Trust Deed of the assessee and further, he brought to our notice Page No. 55 of the Paper Book which is the Revised Deed of Trust pursuant to the scheme settled by the office of the Charity Commissioner, Mumbai and he submitted that the object of the assessee trust is to mitigate the risk of Small and Medium Exporters which are outside the ambit of coverage by the Export Credit Guarantee Corporation (hereinafter in short "ECGC"). Therefore, there is absolutely no scope for making any profit. He brought to our notice findings of the Assessing Officer and opposed the view taken by the Assessing Officer by bringing to our knowledge Page No. 57 of the Paper Book which is the composition of the High Power Committee under the Ministry of Commerce and Industry and he highlighted that the Commerce Secretary being the Chairman of the Committee and other Secretaries of Economic Affairs, Ministry of External Affairs, Department of Commerce, one of the members is Chairman & Managing Director, ECGC, Chairman & Managing Director,

Exim Bank, Deputy Governor/Executive Director RBI and Joint secretary,  
E & MDA Division, Department of Commerce.

**10.** He submitted that the whole operation of the assessee are being monitored by the ECGC and all the premiums and the settlements of the claim are being done at the supervision of the ECGC. Therefore, the assessee is only earning premium as determined by the ECGC and there is no profit earned by the assessee. Accordingly, he brought to our notice Profit and Loss Account in which assessee earns majority of the income from interest on Fixed Deposits, Guarantee Fees and therefore he stated that the interest earned by the assessee is nothing but the funds deposited by the assessee in the bank which are contributed by the Government of India to support these charitable activities to support the interest of the Small and Medium Exporters. He also brought to our notice the claim settled by the assessee during the year was ₹.531.71 Crores. Ld. AR of the assessee also brought to our notice the Hon'ble Supreme Court decision which Ld.DR has relied upon and he brought to our notice Page No. 111 of the order in which the Hon'ble Supreme Court has discussed the issue relating to Statutory Corporation, Authorities or Bodies. He relied on the findings of the Hon'ble Supreme Court relating to Statutory Bodies and Authorities. Further, Ld. AR of

the assessee brought to our notice decision of the Coordinate Bench in assessee's own case for the previous assessment years and he prayed that decisions of the Coordinate Bench in earlier assessment years may be sustained.

**11.** Considered the rival submissions and material placed on record, we observe from the record that assessee is a Public Charitable Trust set-up by the Government of India through Government resolution. The main object of the formation of the Public Trust is to support and mitigate the loss which will be faced by the Small and Medium Exporters which are outside the ambit of ECGC coverage. We observe from the record that the Coordinate Bench in earlier assessment years consistently decided the issue in favour of the assessee by holding, assessee is doing charitable activities. For the sake of clarity, the decision in ITA.No. 2166, 2167 & 2168/Mum/2022 dated 15.11.2022 relating to A.Y. 2013-14, 2016-17 and 2017-18 is reproduced below: -

*"5. Heard both the sides and perused the material on record. We find that Id. CIT(A) has adjudicated the issue in favour of the assessee after following decision of ITAT, Mumbai, in the case of the assessee itself for various earlier years as elaborated in the finding of the Id. CIT(A). We have perused the decision of ITAT, Mumbai, in the case of the assessee itself for A.Y. 2014-15 and 2015-16 vide ITA No. 9363 & 3964/Mum/2019. The relevant operating part of the decision is reproduced as under:*

"6. We heard the rival submissions and perused the material on record. The sole disputed issue challenged by the revenue, in respect of granting of exemption u/s 11 of the Act to the assessee trust though the assessee is hit because of amendment to provisions of Sec. 2(15) of the Act effective from 01.04.2009. The Ld. DR submitted that the Ld.CIT(A) has relied on the assessee's own case and granted the relief and same is contested by the revenue. Whereas, the Ld AR has also submitted a chart on the decisions of assessee's own case. We find that, the Ld.CIT(A) in the appellate proceedings has considered the assessee's submissions and relied on the decisions of the Hon'ble Tribunal in assessee's own case for the A.Y 2010-11 and granted the relief. Similarly, for the A.Y 2011- 12 and 2012-13 the Hon'ble Tribunal has relied on the earlier years decision of A.Y. 2010-11 and passed the order on 24.12.2019 in granting the exemption to the assessee. We considered it appropriate to refer, to the observations of the Coordinate Bench of the Hon'ble Tribunal in ITA No. 544/Mum/2014, in assessee's own case for the A.Y 2010-11 at page 8 of the order which is read as under.

"4. We have heard the argument advanced by the Ld. Representative of the parties and by perusing the record. We noticed that the AO applied the first proviso to Section 2(15) of the Act, 1961 and declined the claim of the assessee u/s 11/12 of the Act. The object of the assessee has been given in para no. 5 of the trust deed at page no. 11 which is hereby mentioned below (i) To implement the NEIA Scheme through ECGC (Export Credit Guarantee Corporation of India) for the benefit of medium and long term exporters (b) To implement such other schemes and programmes for the benefit of medium and long term exporters as the Government of India mainframe from time to time and direct the trust implement.

5. The assessee trust received policy premium payments from the following parties (1) Apar Industries Ltd. Rs. 1,86, 12,015/- (i) ONGC Videsh Ltd Rs.2,06,32,870/- Hindustan Aeronautics Ltd. Bangalore Rs. 17,34,159/- total to the tune of Rs.4,09,79,044/ The assessee also paid the claim of various exporters under the

*scheme in sum of Rs.32,12,724/- during the year. The claim of the assessee was declined in view of the exception of provision u/s 2(15) of the Act specifically on the grounds of that the object of the assessee is in nature of business, trade and commerce. No doubt, the said provision was introduced. The assessee trust was formed with a view to facilitate Immediate and long term exports and to consider the limitations of export credit guarantee corporation in providing adequate cover on its own and non availability of reinsurance cover to such exporters. The Government of India Ministry of Commerce and Industries Department of Commerce vide the resolution dated 7.03.2006 decided to establish the national Exporter Insurance Account (NEIA) Scheme to be maintained and operated by a Public Trust. NEIA Trust was, thus, set up in terms of this Government Resolution vide the Trust Deed dated 21.3.2006, the President of India, acting through the Joint Secretary, Department of Commerce, Ministry of Commerce & Industry, Government of India being the settler of the Trust. The object of the assessee trust was the same which is for the benefit of medium and long term exporters. There is no change in the object of the trust. Here it is important to mention that the assessee trust was registered u/s 12AA of the Act which was not withdrawn by authority who granted the registration. The Ld.Representative of the Assessee has contented that AO has no right to withdraw the claim of exemption by discussing the provisions of Section 2(15) of the Act. Section 2(15) is hereby reproduced 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 the 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 service in relation to any trade,*

*commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use of application, or retention, of the income from such activity"*

*6. Subsequently, the said amendment was explained and interpreted by the CBDT Circular No. 11/2018 dated 19.12.2008 in which trade, commerce and business is required to be decided on the basis of the nature, scope, extent, frequency of activities. Accordingly, the nature of the trust is hereby specified that the trust is to provide credit insurance cover to Indian Exporters keeping in view the national interest. The Trust is sponsored and the nature of activities of the trust is to provide credit insurance cover to Indian Exporters keeping in view of the national interest. The Trust is sponsored by Govt. of India with the objective to promote exports, improve competitiveness of Indian exports and to implement schemes formulated by the Govt. of India for the benefits of medium and long term exporters in national interest. Certainly, none of the above objectives are tainted with motive of trade, commerce or business as Govt of India is not into business of providing Credit Insurance. Wherever, it has intended to do so, it has been done through Corporate structure e.g. ECGC of India Ltd. (Export Credit Guarantee Corporation) which does the credit insurance activity on commercial basis with Govt. of India as the sole shareholder with a premium and other income of Rs. 1020 crores (appx) and a net surplus of Rs.171 (approx) for FY 2012-13. On the basis of the above, NEIA's activity cannot and should not be considered to be in nature of trade, commerce or business.*

*7. The Trust scope of activity is primarily to implement schemes formulated by Govt of India. Ministry of Commerce, Govt. of India, is the settler of the Trust and the Trust is not empowered to carry out any other activity.*

*8. Further, even the project / exports which require credit insurance has to meet the criteria stipulated in clause 12 of the Trust Deed. Criteria*

*No.(ix) and (xi) specifically require the project to be of "importance of such project export from national point of view" and "other factors like the current economic development in the project country and related issues". Therefore, the Trust does not even evaluate the project from the perspective of premium viability or profitability. Once the project export fulfills the criteria mentioned in clause 12, the trust will provide credit cover. In view of the above said activities we noticed that there is no intension of the assessee to earn the profit. Undoubtedly the dominant and prime object is required to be seen. The learned representative of the assessee has relied upon the law settled by the Delhi High Court in case titled as India Trade Promotion Orgaization Vs. DGIT(E), 2015 taxman.com 404 Delhi. It is settled in the said law that the dominant and prime object is required to be seen to observe the nature of trade, commerce and business. The relevant para in case of India Trade Promotion Orgaization (supra) is 58 which is reproduced as under 58. In conclusion, we may say that the expression "charitable purpose", as defined in Section 2(15) cannot be construed literally and in absolute terms. It has to take color and be considered in the context of Section 10(23C)(iv) of the said Act. It is also clear that if the literal interpretation is given to the proviso to Section 2(15) of the said Act, then the proviso would be at risk of running fowl of the principle of equality enshrined in Article 14 of the Constitution of India. In order to save the Constitutional validity of the proviso, the same would have to be read down and interpreted in the context of Section 10(23C)(iv) because, in our view, the context requires such an interpretation. The correction interpretation of the proviso to section 2(15) of the said Act would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities in the nature of trade, commerce or business or the activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. If the dominant and prime objective of the institution, which*

*claims to have been established for charitable purpose, is profit making, whether its activities are directly in the nature of trade, commerce or business or indirectly in the rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a charitable purpose. On the flip side, where an institution is not driven primarily by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an institution established for charitable purposes." 9. The facts of the present case is quite similar to the facts of the case titled as India Trade Promotion Organization (supra). Therefore finding of the said cases is quite applicable to the facts of the present case. Since the dominant and prime object of the assessee is not to earn the profit in relation to trade, commerce and business, therefore, the exemption u/s. 11 & 12 is not liable to be declined. Accordingly, we set aside the finding of the CIT(A) in this issue and allowed the claim of the assessee.*

*7. We respectfully follow the decision of the Coordinate Bench of this Hon'ble Tribunal in assessee's own case for the A.Y 2010-11 and further observe that the Ld. DR could not controvert the findings of the Ld.CIT(A) with any new cogent evidence or information but relied on the Assessing officers order. Accordingly, we are not inclined to interfere with the order of Ld. CIT(A) and upheld the same and we dismiss the grounds of appeal of the revenue.*

**ITA No. 3964/Mum/2019, A.Y 2015-16.**

*8. As the facts and circumstances in this appeal are identical to ITA No.3963/Mum/2019 for A.Y. 2014-15, the decision rendered at para 6 and para 7 would apply mutatis mutandis for this case also. Accordingly, we dismiss the grounds of appeal of the revenue."*

*Respectfully following the decision of coordinate bench of the ITAT as supra, we don't find any infirmity in the decision of Id. CIT(A). Therefore, ground of appeal of the revenue stand dismissed."*

*6. The appeal of the revenue stand dismissed."*

**12.** Respectfully following the above said decision, we are inclined to dismiss the ground raised by the revenue. At the same time, during the hearing, Ld. AR of the assessee submitted recasting of "Statement of Income and Expenditure Account" for the year ended 31.03.2019, the same is reproduced below: -

Sr. No.	Particulars	Rs. in crores	Rs. in crores
<b>I.</b>	<b>Operating income (A):</b>		
1	Guarantee fees		59.00
2	Claim recovery		0.10
3	Reversal of provision for claims (Refer Note 1 below)		145.46
	Total		204.57
	Less: Operating expenses (B)		
	Consultancy Charges	0.25	
	Administrative expenses	13.05	
	Claims	531.71	
	Bank Charges	0.00017	
	Miscellaneous Expenses	0.00013	<b>545.01</b>
	Deficit: C = B - A		<b>(-) 340.44</b>
<b>II.</b>	<b>Non - Operating income (D):</b>		
1	Interest accrued on fixed deposits	171.17	
2	Interest realized on:		
(i)	Fixed Deposits	55.82	
(ii)	IDS on Fixed Deposits	29.21	
(iii)	Income Tax Refund	9.49	265.69
3	Prior Period Income - Interest on Income tax refund		3.60
4	Sundry balances written back		0.0067
	<b>Total</b>		<b>269.29</b>
<b>III.</b>	<b>Deficit E = C -D</b>		<b>(-) 71.15</b>

**Notes:**

1. Reversal of provision for claims is not an item of "operating income".

2. Kind attention of the Hon'ble Bench is drawn to Para 172 at Pg.110 of the judgment of the Hon. Supreme Court in the case of ACIT (Exemptions) Vs. Ahmedabad Urban Development Authority [2022] 449 ITR 1 (copy of Para 172 is enclosed herewith) in relation to proviso to Section 2(15) of the Income Tax Act, 1961 reproduced hereunder:

*"Yet another manner of looking at the definition together with sections 10(23) and 11 is that for achieving a general public utility object, if the charity involves itself in activities, that entail charging amounts only at cost or marginal mark-up over cost, and also derive some profit, the prohibition against carrying on business or service relating to business is not attracted-if the quantum of such profits do not exceed 20 per cent of its overall receipts." (underlining supplied)*

**13.** From the above, we observe that assessee has actually earned Guarantee Fees of ₹.59 Crores and at the same time assessee has settled the Guarantee claim to the extent of ₹.531.71 Crores. This itself shows that assessee has never earned any profit and in comparison to the Guarantee Fees collected by the assessee. The assessee has settled the Guarantee Claim / Guarantee Funds collected from the Small and Medium Exporters. From the above the premium charged by the assessee is very nominal compared to the settlement made by the assessee and it is important to note that the insurance premiums are determined by the ECGC for which even ECGC is not interested to cover these risks (exports made by the Small and Medium Exporters to the risky markets or countries). This itself shows that charitable intention of the Government of India to extend these facilities to such Small and Medium Exporters so that the interest of the Small and Medium Exporters are

being taken care. Therefore, there is absolutely reasonableness in determination of Guarantee Fees and there is no excess of Guarantee funds collected by the assessee. In case the Revenue wanted to rely on the Hon'ble Supreme Court decision for the reasonableness of the claim of the insurance premium it has to bring on record how the charge of Guarantee Fees by the assessee is excessive in comparison to the Market rate or premium. In the given case the assessee takes additional burden of settling the claim of the Small and Medium Exporters which is purely to take care of a section of the public. Therefore, we are inclined to agree with the findings of the Coordinate Bench in the earlier Assessment Years. Accordingly, ground raised by the revenue is dismissed.

**14.** In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on

May, 2023

**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai / Dated /05/2023  
Giridhar, Sr.PS

**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER

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