

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VP AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं. ITA No.682/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2016-17)

&

आयकर अपील सं. ITA No.683/Chny/2022
(निर्धारण वर्ष / Assessment Year: 2018-19)

M/s. Tamil Nadu Chamber Foundation 178B, II floor, Kamarajar Salai, Madurai-625 009.	बनम / Vs.	ITO Exemption Ward, Madurai.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AACTT-0428-K		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी/ Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	Shri G.Gopalan (Retd JCIT)-Ld.AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri D.Hema Bhupal (JCIT) -Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	17-05-2023
घोषणाकी तारीख / Date of Pronouncement	:	07-07-2023

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years (AY) 2016-17 & 2018-19 arise out of the separate orders of learned first appellate authority. However, the grievance of the assessee, in both the years, is identical i.e., denial of deduction u/s 11 / 12 as applicable to a registered trust. The appeal for AY 2016-17 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal

Centre (NFAC), Delhi [CIT(A)] dated 30-06-2022 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 18-12-2018. The Ld. AR supported the case of the assessee whereas Ld. Sr. DR submitted that the subsequent decision of Hon'ble Supreme Court rendered in bunch of appeals titled as **CIT vs. Ahmedabad Urban Development Authority (143 Taxmann.com 278 dated 19.10.2022)** clearly support the stand of the revenue. Having heard rival submissions and after perusal of case records, our adjudication would be as under.

2. The assessee is registered u/s 12AA of the Income Tax Act. Its main activity was to render services to the members in relation to the trade, commerce or business for fees / subscription from members. The assessee reflected deficit of Rs.58.19 Lacs during the year. The Ld. AO held that the activities of the assessee would fall under last limb of Sec. 2(15) i.e., advancement of object of general public utility and therefore, the proviso therein would apply to the case of the assessee. The activities of the assessee were not incidental to the objects of the trust because the only activity of the trust was fee based services to its members. No other charitable activity was carried out by the assessee. The assessee was clearly hit by first and second proviso to Sec. 2(15). Therefore, the deduction as claimed by the assessee was denied. The Ld. CIT(A) confirmed the action of Ld. AO, inter-alia, on the ground that the activities were fees based and the activities were not charitable in nature. Aggrieved, the assessee is in further appeal before us.

3. We find that the activities of the assessee are fees based activities. The objects of the assessee would fall under last limb i.e., advancement of objects of any other general public utility. We concur with the rival

submissions that the cited case law of Supreme Court which has been rendered subsequently would have material bearing to the case of the assessee. The summary of conclusion, in the cited judgment, was as under: -

IV. Summation of conclusions

253. In view of the foregoing discussion and analysis, the following conclusions are recorded regarding the interpretation of the changed definition of "charitable purpose" (w.e.f. 1-4-2009), as well as the later amendments, and other related provisions of the IT Act.

A. General test under section 2(15)

A.1. It is clarified that an assessee advancing general public utility cannot engage itself in any trade, commerce or business, or provide service in relation thereto for any consideration ("cess, or fee, or any other consideration");

A.2. However, in the course of achieving the object of general public utility, the concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that (i) the activities of trade, commerce or business are connected ("actual carrying out..." inserted w.e.f. 1-4-2016) to the achievement of its objects of GPU; and (ii) the receipt from such business or commercial activity or service in relation thereto, does not exceed the quantified limit, as amended over the years (Rs. 10 lakhs w.e.f. 1-4-2009; then Rs. 25 lakhs w.e.f. 1-4-2012; and now 20% of total receipts of the previous year, w.e.f. 1-4-2016);

A.3. Generally, the charging of any amount towards consideration for such an activity (advancing general public utility), which is on cost-basis or nominally above cost, cannot be considered to be "trade, commerce, or business" or any services in relation thereto. It is only when the charges are markedly or significantly above the cost incurred by the assessee in question, that they would fall within the mischief of "cess, or fee, or any other consideration" towards "trade, commerce or business". In this regard, the Court has clarified through illustrations what kind of services or goods provided on cost or nominal basis would normally be excluded from the mischief of trade, commerce, or business, in the body of the judgment.

A.4. Section 11(4A) must be interpreted harmoniously with section 2(15), with which there is no conflict. Carrying out activity in the nature of trade, commerce or business, or service in relation to such activities, should be conducted in the course of achieving the GPU object, and the income, profit or surplus or gains must, therefore, be incidental. The requirement in section 11(4A) of maintaining separate books of account is also in line with the necessity of demonstrating that the quantitative limit prescribed in the proviso to section 2(15), has not been breached. Similarly, the insertion of section 13(8), seventeenth proviso to section 10(23C) and third proviso to section 143(3) (all w.r.e.f. 1-4-2009), reaffirm this interpretation and bring uniformity across the statutory provisions.

B. Authorities, corporations, or bodies established by statute

B.1. The amounts or any money whatsoever charged by a statutory corporation, board or any other body set up by the state government or central governments, for achieving what are essentially 'public functions/services' (such as housing, industrial

development, supply of water, sewage management, supply of food grain, development and town planning, etc.) may resemble trade, commercial, or business activities. However, since their objects are essential for advancement of public purposes/functions (and are accordingly restrained by way of statutory provisions), such receipts are prima facie to be excluded from the mischief of business or commercial receipts. This is in line with the larger bench judgments of this court in Ramtanu Cooperative Housing Society and NDMC (supra).

B.2. However, at the same time, in every case, the assessing authorities would have to apply their minds and scrutinize the records, to determine if, and to what extent, the consideration or amounts charged are significantly higher than the cost and a nominal mark-up. If such is the case, then the receipts would indicate that the activities are in fact in the nature of "trade, commerce or business" and as a result, would have to comply with the quantified limit (as amended from time to time) in the proviso to section 2(15) of the IT Act.

B.3. In clause (b) of section 10(46) of the IT Act, "commercial" has the same meaning as "trade, commerce, business" in section 2(15) of the IT Act. Therefore, sums charged by such notified body, authority, Board, Trust or Commission (by whatever name called) will require similar consideration - i.e., whether it is at cost with a nominal mark-up or significantly higher, to determine if it falls within the mischief of "commercial activity". However, in the case of such notified bodies, there is no quantified limit in section 10(46). Therefore, the Central Government would have to decide on a case-by-case basis whether and to what extent, exemption can be awarded to bodies that are notified under section 10(46).

B.4. For the period 1-4-2003 to 1-4-2011, a statutory corporation could claim the benefit of section 2(15) having regard to the judgment of this Court in the Gujarat Maritime Board case (supra). Likewise, the denial of benefit under section 10(46) after 1-4-2011 does not preclude a statutory corporation, board, or whatever such body may be called, from claiming that it is set up for a charitable purpose and seeking exemption under section 10(23C) or other provisions of the Act.

C. Statutory regulators

C.1. The income and receipts of statutory regulatory bodies which are for instance, tasked with exclusive duties of prescribing curriculum, disciplining professionals and prescribing standards of professional conduct, are prima facie not business or commercial receipts. However, this is subject to the caveat that if the assessing authorities discern that certain kinds of activities carried out by such regulatory body involved charging of fees that are significantly higher than the cost incurred (with a nominal mark-up) or providing other facilities or services such as admission forms, coaching classes, registration processing fees, etc., at markedly higher prices, those would constitute commercial or business receipts. In that event, the overall quantitative limit prescribed in the proviso to section 2(15) (as amended from time to time) has to be complied with, if the regulatory body is to be considered as one with 'charitable purpose' eligible for exemption under the IT Act.

C.2. Like statutory authorities which regulate professions, statutory bodies which certify products (such as seeds) based on standards for qualification, etc. will also be treated similarly.

D. Trade promotion bodies

Bodies involved in trade promotion (such as AEPC), or set up with the objects of purely advocating for, coordinating and assisting trading organisations, can be said to be involved in advancement of objects of general public utility. However, if such

organisations provide additional services such as courses meant to skill personnel, providing private rental spaces in fairs or trade shows, consulting services, etc. then income or receipts from such activities, would be business or commercial in nature. In that event, the claim for tax exemption would have to be again subjected to the rigors of the proviso to section 2(15) of the IT Act.

E. Non-statutory bodies

E.1. In the present batch of cases, non-statutory bodies performing public functions, such as ERNET and NIXI are engaged in important public purposes. The materials on record show that fees or consideration charged by them for the purposes provided are nominal. In the circumstances, it is held that the said two assesseees are driven by charitable purposes. However, the claims of such non-statutory organisations performing public functions, will have to be ascertained on a yearly basis, and the tax authorities must discern from the records, whether the fees charged are nominally above the cost, or have been increased to much higher levels.

E.2. It is held that though GS1 India is in fact, involved in advancement of general public utility, its services are for the benefit of trade and business, from which they receive significantly high receipts. In the circumstances, its claim for exemption cannot succeed having regard to amended section 2(15). However, the Court does not rule out any future claim made and being independently assessed, if GS1 is able to satisfy that what it provides to its customers is charged on cost-basis with at the most, a nominal markup.

F. Sports associations

So far as the state cricket associations are concerned (Saurashtra, Gujarat, Rajasthan, Baroda, and Rajkot), this Court is of the opinion that the matter requires further scrutiny, in light of the discussion in paragraphs 228-238 of the judgment. Accordingly, a direction is issued that the AO shall adjudicate the matter afresh after issuing notice to the concerned assesseees and examining the relevant material indicated in the previous paragraphs of this judgment. Furthermore, if any consequential order needs to be issued, the same shall be done and resulting actions, including assessment orders shall be passed in accordance with the law under relevant provisions of the IT Act.

G. Private Trusts

So far as the appeal by assessee-Tribune Trust is concerned, it has been held that despite advancing general public utility, the Trust cannot benefit from exemption offered to entities covered by section 2(15) as the records reveal that income received from advertisements, constituted business or commercial receipts. Consequently, the limit prescribed in the proviso to section 2(15) has to be adhered to for the Trust's claim of being as a charity eligible for exemption, to succeed. Therefore, despite differing reasoning, this court has held that the impugned judgment of the High Court does not call for interference.

H. Application of interpretation

H. At the cost of repetition, it may be noted that the conclusions arrived at by way of this judgment, neither precludes any of the assesseees (whether statutory, or non-statutory) advancing objects of general public utility, from claiming exemption, nor the taxing authorities from denying exemption, in the future, if the receipts of the relevant year exceed the quantitative limit. The assessing authorities must on a yearly basis, scrutinize the record to discern whether the nature of the assessee's activities amount to "trade, commerce or business" based on its receipts and income

(i.e., whether the amounts charged are on cost basis, or significantly higher). If it is found that they are in the nature of "trade, commerce or business", then it must be examined whether the quantified limit (as amended from time to time) in proviso to section 2(15), has been breached, thus disentitling them to exemption.

Therefore, the case of the assessee has to be analyzed at the threshold of above adjudication of Hon'ble Supreme Court. For the said purpose, we set aside the impugned order and restore the assessment back to the file of Ld. AO for adjudication de novo in the light of above judgment. The assessee is directed to substantiate its stand. The appeal stand allowed for statistical purposes.

4. It is admitted position that similar facts exist in AY 2018-19. Therefore, our adjudication as above, shall mutatis mutandis apply to this year also. This appeal also stand allowed for statistical purposes.

5. Both the appeals stand allowed for statistical purposes.

Order pronounced on 7th July, 2023.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष / **VICE PRESIDENT**

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :07-07-2023
DS

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF