

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

SHRI KULDIP SINGH, JUDICIAL MEMBER

**ITA No.689/M/2023
Assessment Year: 2017-18**

M/s. Indian Beauty & Hygiene Association, 504, Midas, 5 th Floor, Sahar Plaza Complex, M.V.Road, Near Kohinoor Hotel, Andheri(E), Mumbai-400 059 PAN: AAATI1252J	Vs.	Income Tax Officer, ITO(E) -1(3), Piramal Chambers, Lal Baug Parel, Mumbai- 400 012
(Appellant)		(Respondent)

Present for:

Assessee by : Shri. Nitesh Joshi, A.R.
Revenue by : Shri. Joginder Singh, Sr. AR

Date of Hearing : 14 . 06 . 2023

Date of Pronouncement : 31 . 08 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Indian Beauty & Hygiene Association (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 09.01.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2017-18 on the grounds inter-alia that :-

“1. The learned Commissioner of Income-tax (Appeals), Income Tax Department, National Faceless Appeal Center (NFAC), Delhi (hereinafter referred to as CIT(A)] erred in holding that the sum

earned from Surplus of Seminar of Rs. 8,00,000/- is treated as other income which is hit by main proviso to section 2(15) of the Income-tax Act, 1961 (the Act) for non-charitable purpose and sustaining the addition of Rs. 8,00,000/-.

The CIT(A) erred in considering surplus of seminar of Rs. 8,00,000/- as other income hit by main proviso to section 2(15) without considering the fact that aggregate receipt for the seminar of Rs. 10,50,000/-, do not exceed the quantified limit of 20% of total receipt of the appellant for AY 2017-18 and hence the same should not be considered for the non-charitable purpose under section 2(15).

Your appellant prays that on the facts and circumstances of the Assessing Officer and the CIT(A) ought to have considered the quantified limit of 20% and treat the surplus for Charitable Purpose under section 2(15), exempt under section 11.

Your appellant crave leave to add to, amend, alter, vary, omit or substitute the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal as they may be advised.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : appellant Indian Beauty and Hygiene Association (IBHA) was incorporated on 11.09.1937 as a company with charitable objects under section 8 & 25 of the Company Act, 2013. IBHA is also registered under section 12AA of the Income Tax Act, 1961 (for short ‘the Act’) with Director of Income Tax (Exemption), Mumbai. During the year under consideration the assessee company having been engaged in various activities for the benefit of its members, industry as a whole and consumer at large by engaging with the government in respect of issues affecting the beauty and hygiene industry. The assessee in the month of November, 2016 sponsored a session on Alternative to Animal Models in Regulatory Toxicology and the 2nd International Toxicology Conclave at Lucknow. Assessing Officer (AO) during scrutiny proceedings noticed that the assessee has sponsored a session on alternative to Animal Models in Regulatory Toxicology and the 2nd International Toxicology Conclave held on 15th & 16th

November 2016 at Council of Scientific & Industrial Research (CSIR) Indian Institute of Toxicology Research, Lucknow wherein the assessee has received Rs.10,50,000/- as sponsorship even out of which Rs.8,00,000/- was received from non members and amount of Rs.2,50,000/- was received from members. IBHA incurred expenditure of Rs.2,50,000/- for sponsoring the aforesaid session leaving a surplus of Rs.8,00,000/-. The AO also noticed that the assessee has earned interest of Rs.3,85,178/- from its surplus fund parked with the bank.

3. Declining the contentions raised by the assessee the AO proceeded to hold that during the year under consideration the assessee has received Rs.11,85,178/- from its non members which is not under the purview of principle of mutuality and thereby treated the amount of Rs.11,85,178/- as income within the meaning of principle of mutuality hit by proviso to section 2(15) of the Act for non charitable purpose and consequently claim of the assessee for exemption under section 11 of the Act has been denied by framing the assessment under section 143(3) of the Act.

4. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has given part relief to the assessee to the extent of Rs.3,85,178/- being the interest income earned by the assessee, however, confirmed the addition of Rs.8,00,000/-, earned from the surplus of seminars of Rs.8,00,000/-, by treating the same as other income within the meaning of principle of mutuality by partly allowing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the present appeal.

5. I have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. Undisputedly assessee is a company incorporated under section 8 & 25 of the Company Act, 2013 and has also been registered under section 12AA of the Act. It is also not in dispute that the assessee received sponsorship amount of Rs.8,00,000/- from non members viz. Amazon Sellers Pvt. Ltd. and others for co-sponsorship. It is also not in dispute that in the similar seminars are being conducted by IBHA as per its objects enshrined in the objects of association. It is also not in dispute that the main object of the assessee inter-alia that:

“(i) To promote and protect the trade, commerce, manufacture and sale of soaps, detergents, glycerin, fatty acids, tooth pastes, Cosmetics and toiletries manufactured in Indian which shall hereafter be known as "products.”

(ii) To promote a feeling of fraternity and co-operation amongst its members and others in trade and unanimity on all subjects connected with their common good.

(iii) To protect the interest of the members in the matters of legislation or action by the Government railways municipalities and other bodies affecting the product.”

(iv) To educate the public against the use of adulterated "products", to use Indian "products" and to stop all unfair competitions amongst the manufacturers.”

7. It is also not in dispute that the AO as well as the Ld. CIT(A) have treated the surplus of seminars to the tune of Rs.8,00,000/- as other income within the meaning of principle of mutuality, hit by

main proviso under section 2(15) of the Act being not for charitable purpose.

8. In the backdrop of the aforesaid undisputed facts and circumstances of the case the sole issue arises for determination before the Bench is :

“As to whether the amount of Rs.8,00,000/- earned by the assessee during the year under consideration from the surplus of seminars is hit by the main proviso to section 2(15) of the Income Tax Act for non charitable purpose and thereby its claim for exemption under section 11 is liable to be denied?”

9. Challenging the impugned order passed by the Ld. CIT(A) the Ld. A.R. for the assessee contended inter-alia that conducting of seminars as per main object of the assessee company could not be regarded as a service in relation to trade, commerce or business; that the activities of conducting seminars for the benefit of industry as a whole including the other stake holders being the regulators and consumers are not individualized or specialized services and as such not hit by main proviso to section 2(15) of the Act and that the seminars organized by the assessee fixed on safety standard, regulatory measures to be adopted, impact of violation of digital marketing etc. and as such the benefits passed on to stake holders including regulators and consumers; that without prejudice it is contended that since aggregate receipt of the assessee company from seminars are less than 20% of the total receipts during the year under consideration the proviso to section 2(15) is not attracted qua the appeal under consideration.

10. However, on the other hand, the Ld. D.R. for the Revenue relied upon the impugned order passed by the Ld. CIT(A) and contended that the issue has been rightly decided by the Ld. CIT(A)

by relying upon the CBDT circular No.11/2008 dated 19.12.2008 and main proviso to section 2(15) of the Act.

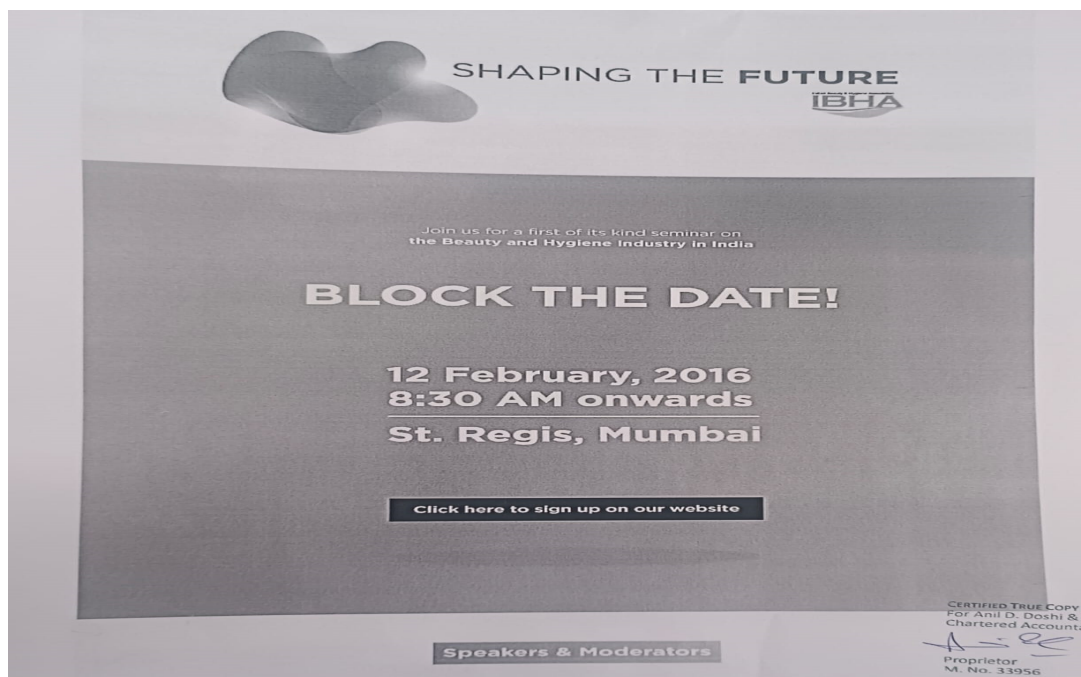
11. Before proceeding further for facility of reference I would like to extract the proviso to section 2(15) of the Act for ready perusal as under:

"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 or application, or retention, of the income from such activity, unless-

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility, and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year."

12. The Ld. A.R. for the assessee contended that Brochure of the seminar organized by the assessee company on 12.02.2016 shows that the seminar was organized for the advancement of any other object of the general public activity, which is extracted for ready perusal as under:



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Gmail - IBHA Seminar - February 12, 2019

[294]



...and more

Panel Discussion

Future of Beauty
Global trends in beauty and its impact in the Indian context

The Evolving Regulatory Landscape
Meeting the challenges of the rapidly evolving regulatory landscape

Driving Inclusive & Sustainable Growth
Understanding the environmental impact of our operations

Impact of E-commerce & Digital
Exploring the potential of e-commerce and marketing in the digital age

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Chartered Accountants

Proprietor
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Gmail - IBHA Seminar - February 12, 2016

Best Regards

Malathi Narayanan
Secretary General

13. The brochure of the seminar shows that speakers and moderators were invited from the beauty and hygiene industry, senior officers from the department of industrial policy and promotion. Panel discussion to be taken in the seminar also shows that all the topics like future of beauty, deriving inclusive and sustainable growth evolving and regulatory landscape and impacting e-commerce and digitals are for general public utility and as such seminar was not for individualized or any specialized service to be provided to the specific group of persons etc.

14. When the subject matter of the seminar conducted by the assessee company on shaping the future of “beauty and hygiene industry in India” on 12.02.2016 as per brochure available at page 296 is examined in the light of the object of the assessee company extracted in the preceding para the same is strictly in accordance with the object of the assessee company to “promote and protect the trade commerce, manufacturing and sale of soaps, detergent, beauty products etc.” and to educate the public against the use of adulterated products. Eminent industry experts from India and abroad have attended the seminar to express their views and to educate the fraternity and general public on the topics such as future trends in beauty, transformation of digital impacting the market, the potential of e-commerce, driving sustainable & inclusive growth and the evolving nature of the regulatory landscape.

15. When I examine proviso to section 2(15) of the Act there is not an element of activities in nature of trade, commerce or business or any activity of rendering of any service in relation to any trade, commerce or business because there was no

individualized or specialized services to an entity and seminar was conducted for the benefit of the industry in particular and general public as a whole. So it can be safely said that the seminar was carried out for advancement of other objects of general public utility.

16. When I examine the objects of the assessee company and seminar organized in the light of the decision rendered by Hon'ble Supreme Court in case of ACIT (Exemptions) vs. Ahmedabad Urban Development Authority (2022) 143 taxmann.com 278 (SC) organizing seminars for awareness of the industry and general public is broadly covered by trade promotions. Non qualifying activities as per judgment rendered by Hon'ble Supreme Court (supra) is providing individualized and specialized services viz., conducting paid workshops, training courses, skill development courses, hiring venues which are let out but industrial, trading or business organizations to promote or advertise their respective businesses. But in the instant case no such activity is there and conducting seminars for the benefit of beauty care industry in particular and for general public in general was squarely falls under the advancement of any other object of the general public utility.

17. Even otherwise receipt of Rs.8,00,000/- by the assessee as seminar fee from non members do not exceeding 20% of the total receipt of the assessee company as per details provided by the assessee company which is extracted as under for ready perusal:

<u>Sr. No.</u>	<u>Particulars</u>	<u>Amt Rs.</u>	<u>Amt Rs.</u>
1	Aggregate Receipts from Seminar activity		10,50,000
	Gross amount received	10,50,000	
	Less: Expenses relating to the Seminar	2,50,000	
	Net Surplus on Seminar (Reflected in Note 9 of the audited accounts on page 13 of the paper book)	8,00,000	
2	Total Receipts of the Association during FY 16-17 (Reflected in Statement of Income and Expenditure on page 07 of the paper book)		71,35,305
3	% of aggregate receipts from Seminar Activity to total receipts		14.72%

18. So on this score also when the assessee's receipt of Rs.8,00,000/- comes to 14.72% of the total receipt of the assessee company during the year under consideration it is squarely covered by proviso II to section 2(15) of the Act and the addition sustained by the Ld. CIT(A) is not sustainable in the eyes of law.

19. In view of what has been discussed above, I am of the considered view that the activities of the assessee in organizing seminar and receiving seminar fee from non members is not hit by proviso to section 2(15) of the Act, hence findings returned by the Ld. CIT(A) are set aside and the AO is directed to grant the benefit to the assessee under section 11 & 12 of the Act.

20. Resultantly, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 31.08.2023.

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 31.08.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

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By Order

Dy/Asstt. Registrar, ITAT, Mumbai.