

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई IN THE INCOME TAX APPELLATE TRIBUNAL 'C' BENCH: CHENNAI		
श्री मंजूनाथा .जी, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष BEFORE SHRI MANJUNATHA. G, ACCOUNTANT MEMBER AND SHRI MANOMOHAN DAS, JUDICIAL MEMBER		
आयकर अपील सं./ITA No.3144/Chny/2018 निर्धारण वर्ष /Assessment Year: 2013-14		
M/s.SAE India, No.1/117, Cee Bros Arcade, II Floor, III Cross, Kasturba Nagar, Adyar, Chennai-600 020. [PAN: AADTS 3913 K] (अपीलार्थी/Appellant)	v.	The Income Tax Officer- (Exemptions), Ward-4, Chennai. (प्रत्यर्थी/Respondent)
आयकर अपील सं./ITA No.3158/Chny/2018 निर्धारण वर्ष /Assessment Year: 2013-14		
The Dy. Commissioner of Income- Tax (Exemptions), Chennai Circle, Chennai.	v.	M/s.SAE India, No.1/117, Cee Bros Arcade, II Floor, III Cross, Kasturba Nagar, Adyar, Chennai-600 020. [PAN: AADTS 3913 K] (प्रत्यर्थी/Respondent)
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
	:	Shri S.Sridhar, Adv.
Assessee by	:	Shri P. Sajit Kumar, JCIT
Department by	:	30.08.2023
सुनवाई की तारीख/Date of Hearing	:	20.10.2023
घोषणा की तारीख /Date of Pronouncement	:	

आदेश / ORDER

PER MANJUNATHA. G, AM:

These two cross-appeals filed by the assessee, as well as the Revenue are directed against the order of the Commissioner of Income Tax

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(Appeals)-17, Chennai, dated 18.09.2018, and pertains to assessment year 2013-14. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has raised the following grounds of appeal:

1. The order of the Commissioner of Income Tax (Appeals) -17, Chennai dated 18.09.2018 in I.T.A.No.53/16-17 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in rejecting the claim for application of income to the extent of Rs.12.55 Lakhs based on the revised Form No. 10 filed in the course of assessment proceedings in acknowledgement No.556697020310315 dated 31.03.2015 as per Rule 17 of the Income Tax Rules, 1962 in the tax exemption computation u/s.11 of the Act without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that having not appreciated the subsequent judicial trend especially the decision of the Madras High Court, the purposes shown in Form No. 10 on the facts of the case should not be reckoned as multiple or vague, thereby vitiating the findings in para 4.2 of the impugned order.

4. The CIT (Appeals) erred in dismissing the grounds alternatively raised on the applicability of principles of mutuality for total tax exemption in para 4.1 of the impugned order without assigning proper reasons and justification.

5. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles of natural justice would be nullity in law.

6. The Appellant craves leave to file additional grounds/arguments at the time of hearing.

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

1. The order of the learned CIT(A) is contrary to the law and facts of the case.

2. The Id CIT(A) erred in holding that the Trust is eligible for exemption u/s.11 of the Act and the Trust is not hit by the amended provisions of Sec.2(15) of the Act under the object of "General Public Utility".

2.1 The Id.CIT(A) ought to have appreciated that the Finance Act 2008 w.e.f.01.04.2009 has made a very fundamental and radical change by excluding a group of Trusts from engaging into trade and business related activities. Therefore,

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these trusts which are pursuing the residuary category objects under 'charitable purpose' are debarred from having any trade or business related activity.

2.2 The Id. CIT (A) ought to have considered the amendment made to the Income Tax Act as specified in sec 13(8) w.e.f. 1/4/2009.

2.3 The Id. CIT(A) ought to have followed the decision of Hon'ble ITAT, Panaji Bench in the case of Entertainment Society of Goa Vs. Commissioner of Income-tax (2013)34 Taxmann. Com 210.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.

4. The brief facts of the case are that the assessee, M/s.SAE India was registered u/s.12AA of the Income Tax Act, 1961 (in short "the Act") from AY 2004-05 onwards. The assessee has filed its return of income on 30.09.2013 admitting a 'nil' income. The case was selected for scrutiny and the during the course of assessment proceedings, the AO noticed that the Society was formed with the following main objects:

- i) to serve as a forum where Engineers Scientists, Technologists and Innovators in mobility engineering field can exchange ideas and learn from each other experience.*
- ii) to hold, organize technical meetings, workshop, seminars educational programs and specialty conferences to report on the frontline development before they impact the industry.*
- iii) to organize tours, social events and exhibition of latest events related to mobility engineering field,*
- iv) to encourage the creation, maintenance and adherence of code of conduct for the profession of mobility engineering, etc.*

5. The AO, on the basis of objects of the assessee and the activities carried during the impugned assessment year, came to the conclusion that the objects of the assessee falls under last limb of the definition of 'charitable purpose' as defined u/s.2(15) of the Act, i.e. any other objects of General Public Utility (in short "GPU"). Therefore, called upon the

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assessee to explain 'as to why' exemption u/s.11 of the Act, shall not be denied. In response, the assessee submitted that the Society was formed with the object of imparting education in the field of Mobility Engineering. The assessee organizes technical meetings, workshops, seminars and other educational programs which are for the benefit of members of the society and in the nature of the education as defined u/s.2(15) of the Act. Therefore, the assessee cannot be considered as GPU Trust for the purpose of determining exemption u/s.11 of the Act.

6. The AO after considering relevant submissions of the assessee and also taken note of objects of the assessee's Trust and its activities carried out during the impugned assessment year, came to the conclusion that the activities of the assessee clearly falls within the ambit of amended provisions of Sec.2(15) of the Act, as the assessee's main object is GPU and the activities of the assessee are in the nature of trade, commerce or business. Since, the gross-receipts from the GPU activity is in excess of prescribed limit as per provisions of Sec.2(15) of the Act, the assessee does not entitle for exemption u/s.11 of the Act. Accordingly, rejected arguments of the assessee and denied the benefit of exemption u/s.11 of the Act. The AO had also taxed 'corpus donations' received towards Magazine Fund of Rs.12.55 lakhs on the ground that once the assessee loses the benefit of exemption u/s.11 of the Act, any income including 'corpus donations' received forming part of corpus of Trust, is includable in

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the total income of the assessee, and thus, rejected Form No.10 filed by the assessee and taxed 'corpus donations' received towards Magazine Fund amounting to Rs.12.55 lakhs. The AO had also disallowed excess depreciation claimed on fixed assets on the ground that once the income of the assessee is computed under normal commercial accounting principles, then, depreciation on fixed assets, the cost of which has already been allowed as application, cannot be allowed as deduction. Therefore, re-computed depreciation by considering the fixed assets acquired during the impugned assessment year and disallowed excess depreciation and added back to the total income of the assessee.

7. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee submitted that main objects of the assessee's Trust and activities carried out during the impugned assessment year are in the nature of imparting education and falls under the definition of 'charitable purpose' as defined u/s.2(15) of the Act. The Ld.CIT(A) after considering relevant submissions of the assessee and also by following his predecessor order in the assessee's own case for earlier AYs 2009-10 to 2012-13 held that amended provisions of Sec.2(15) of the Act, is not applicable to the assessee, and thus, allowed exemption u/s.11 of the Act. As regards additions towards 'corpus donations' of Rs.12.55 lakhs, the Ld.CIT(A) confirmed additions made by the AO by holding that although, the assessee has filed Form No.10 during

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the course of assessment proceedings, but on perusal of purpose for which accumulation was sought to be made by the assessee is too general in nature and suffers from vagueness. Therefore, upheld the additions made by the AO towards taxation of 'corpus donations' of Rs.12.55 lakhs. Aggrieved by the order of the Ld.CIT(A), the assessee as well as the Revenue are in appeals before us.

8. The Ld.DR, Shri P. Sajit Kumar, submitted that the Ld.CIT(A) is erred in holding that the assessee's Trust is eligible for exemption u/s.11 of the Act, and not hit by amended provisions of Sec.2(15) of the Act, without appreciating the fact that the objects of assessee's Trust and its activities falls under the last limb of 'charitable purpose' i.e. any other object of GPU and once the receipts from said activity exceeds the prescribed limit, assessee will lose benefit of exemption u/s.11 of the Act. The Ld.DR further referring to the decision of the Hon'ble Supreme Court in the case of ACIT v. Ahmedabad Urban Development Authority reported in [2022] 449 ITR 1 (SC) submitted that the Hon'ble Supreme Court has explained the concept of GPU charity and Trust/Society coming under other limb of 'charitable purpose' and the Hon'ble Supreme Court held that trade promotion body, councils, associations or organizations are clearly GPU charities and subject to provisions of Sec.2(15) of the Act. If the activities of the GPU charities are in nature of trade, commerce or business for a fees or cess, then, such Trust/Societies should be considered as per amended definition of

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'charitable purpose' and proviso provided therein. Since, the assessee's Trust clearly falls under the definition of GPU category and its receipts are in excess of prescribed limit, the AO has rightly denied exemption u/s.11 of the Act, but the Ld.CIT(A) without considering relevant facts simply allowed exemption u/s.11 of the Act.

9. The Ld.Counsel for the assessee, Shri S.Sridhar, Advocate, on the other hand, referring to the objects of the Trust and its activities submitted that if you go through the objects of the Trust, it is in the nature of imparting education in the field of Mobility Engineering. The assessee carries its activities and holds technical meetings, workshops, seminars and other educational programs to encourage the profession of mobility engineering and said activity clearly falls under the definition of 'education' as per provisions of Sec.2(15) of the Act. The Ld.Counsel for the assessee further submitted that assuming for a moment, but not accepting the assessee is a GPU society/Trust, but the gross-receipts from the activity does not exceed 20% of the gross-receipts and for this purpose, the Ld.Counsel for the assessee has filed a computation and argued that net income from conference is less than 20% of the gross-receipts, and thus, the assessee is outside the scope of provisions of Sec.2(15) of the Act. The Ld.Counsel for the assessee further submitted that once assessee is eligible for exemption u/s.11 of the Act, then, 'corpus donations' received with a specific direction and forming part of corpus of the Trust is not taxable.

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Further, the assessee has filed Form No.10 and accumulated income for specific purpose. The AO and the Ld.CIT(A) without appreciating the facts simply taxed 'corpus donations' as income of assessee's Trust. Therefore, he submitted that the additions made by the AO should be deleted.

10. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. We have carefully considered the objects of the assessee's Trust as per their Memorandum of Association and as per the objects, the assessee is conducting technical meetings, workshops, seminars and other educational programs and specialty conference for development of Mobility Engineering, etc. On perusal of main objects of the assessee's Trust and activities carried out for the impugned assessment year, it is undoubtedly clear that the assessee falls under the last limb of the definition of 'charitable purpose' as defined u/s.2(15) of the Act i.e. any other object of GPU, and this principle is supported by the decision of the Hon'ble Supreme Court in the case of ACIT v. Ahmedabad Urban Development Authority (supra), wherein, it has been clearly held that Trust/Societies which provides services in relation to trade, commerce or business for fees or other consideration has to be broadly covered by trade promotion. Further, when a trade promotion provides individualized or specialized services such as conducting paid workshops, training courses, skill development courses, and other services to promote and advertise their respective businesses, the claim for GPU status needs

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to be scrutinized in light of provisions of Sec.2(15) of the Act. In the present case, the objects of assessee's Trust and its activities are clearly in the nature of GPU activity, and thus, in our considered view, the exemption, if any, needs to be examined in light of provisions of Sec.2(15) of the Act. The Ld.CIT(A) without considering relevant facts simply held that the assessee is not hit by the amended provisions of Sec.2(15) of the Act, and thus, we set aside the order of the Ld.CIT(A) on this issue.

11. Having said so, let us come back to the applicability of proviso to Sec.2(15) of the Act. As per proviso to Sec.2(15) of the Act, the advancement of any other object of GPU shall not be a 'charitable purpose', if it involves carrying on 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 fees or cess and further, the aggregate receipt from such activity during the previous year, exceeds 20% of the total receipt of the Trust or Institution. In the present case, undoubtedly, the objects and activities of the Trust are in the nature of trade, commerce or business and hit by proviso to Sec.2(15) of the Act. Therefore, the assessee entitlement for exemption needs to be examined in light of gross-receipts and receipts from the activity of trade, commerce or business. The gross income of the assessee from conducting conference is more than 20% of the gross-receipts of the assessee for the impugned assessment year. We have gone through the computation filed by the assessee's Society and we

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find that the Ld.Counsel for the assessee has considered net income after expenses from conducting conference and then, compared with gross-receipts of the assessee to work out the limit prescribed under provisions of Sec.2(15) of the Act. In our considered view, the working furnished by the Ld.Counsel for the assessee is not in accordance with law, because, as per provisions of Sec.2(15) of the Act, if gross receipts from the GPU activity, i.e. from trade, commerce or business exceeds 20% of gross receipts, then, the assessee is not entitled for exemption u/s.11 of the Act. If you consider the gross-receipts from conducting conference, then undisputedly, said receipts exceeds 20% of the gross receipts of assessee's Trust for the impugned assessment year. But, fact needs to be verified with reference to financial statement of the assessee for relevant AY.

12. The Ld.Counsel for the assessee had also made an alternative argument in light of 'principles of mutuality' for total tax exemption to receipts of assessee's Trust on the ground that the society is exclusively working for the benefit of members and out of contribution received from the members. If the assessee is mutual society and the benefits of the assessee's Trust is only for the members and out of contributions received from members, then, the applicability of 'principles of mutuality' needs to be examined. But, in the present case, as per facts brought on record by the lower authorities, there is no clarity whether the income of the assessee is only from members or from non-members. Further, even the assessee

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could not file any evidences to prove its arguments that it is a mutual benefit society. This fact also needs to be verified. If, the arguments of the assessee is right, then, the applicability of 'principles of mutuality' needs to be examined with reference to income received by the assessee and expenditure incurred for the impugned assessment year and also any other income received by the assessee like interest income, etc. This fact also needs to be verified by the AO afresh.

13. To sum up, as per objects of the assessee's Trust/Society and its activities, it is undisputed fact that the assessee falls under the last limb of the definition 'charitable purpose' i.e. any other object of GPU. Therefore, the income of the assessee needs to be computed in light of amended provisions of Sec.2(15) of the Act. and proviso provided therein in light of the latest decision of the Hon'ble Supreme Court in the case of ACIT v. Ahmedabad Urban Development Authority (supra). Thus, we set aside the order of the Ld.CIT(A) and restore the issue back to the file of the AO and direct the AO to reconsider the issue **de novo** in light of our discussion given hereinabove and also by following the decision of the Hon'ble Supreme Court in the case of ACIT v. Ahmedabad Urban Development Authority (supra). The AO is also directed to look into the arguments of the assessee for applicability of 'principles of mutuality' in light of any evidence that may be filed by the assessee. Further, all other issues including computation of taxable income, if any, and taxability of 'corpus

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donations' receipts towards Magazine Fund and also depreciation issue needs to be reconsidered afresh after considering the assessee's case in light of amended provisions of Sec.2(15) of the Act, and also in light of decision of the Hon'ble Supreme Court in the case of ACIT v. Ahmedabad Urban Development Authority (supra).

14. In the result, appeals filed by the assessee as well as the Revenue are allowed for statistical purposes.

Order pronounced on the 20th day of October, 2023, in Chennai.

Sd/-

(मनोमोहन दास)

(MANOMOHAN DAS)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 20th October, 2023.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

Sd/-

(मंजूनाथा.जी)

(MANJUNATHA.G)

लेखा सदस्य/**ACCOUNTANT MEMBER**

3. आयकर आयुक्त/CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाइल/GF