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

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI PRASHANT MAHARISHI, AM**

आयकर अपील सं/ I.T.A. No.3201/Mum/2022

(**निर्धारण वर्ष** / Assessment Year: 2018-19)

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| DCIT(Exemption)-1(1)<br>Room No.607, 6th Floor,<br>MTNL Building, Cumballa Hill, Mumbai-400026. | **बनाम** / Vs. | Association of Mutual Funds in India<br>71, 7th Floor one Indiabulls Centre Tower-2, Wing B, 841 Senapati Bapat Marg Elphinstone Road, Mumbai-400013. |
| **स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACA5550A** | | |
| (अपीलार्थी /**Appellant**) | .. | (प्रत्यर्थी / **Respondent**) |

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| Assessee by: | Shri Nitesh Joshi/Shri Samir Kapadia |
| Revenue by: | Shri Ajay Chandra (CIT-DR) |

सुनवाई की तारीख / Date of Hearing: 16/10/2023

घोषणा की तारीख /Date of Pronouncement: 29/11/2023

**आदेश / O R D E R**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the revenue against the order of the Ld. CIT(A)/NFAC, Delhi dated 28.10.2022 for the AY. 2018-19.

**2.** The main grievance of the revenue is against the action of the Ld. CIT(A) allowing the appeal of the assessee by following the Tribunal order in assessee's own case for AY. 2012 13 & AY. 2013-14 wherein exemption u/s 11 of the Income Tax Act, 1961 (hereinafter "the Act") was allowed to the assessee. According to the revenue, the Tribunal while granting exemption u/s 11 of the Act has not considered the proviso to section 2(15) of the Act as well as the recent decision of the Hon'ble Supreme Court in the case of ACIT(Exemptions) Vs. Ahmedabad Urban Development Authority

(2022) 143 taxmann.com 278 (SC). The revenue has raised the following grounds of appeal which are as under: -

> "1. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in directing the AO to allow the benefit of exemption u/s 11 of the I.T. Act relying on the decision of the Hon'ble ITAT in ITA No.5762/ Mum/2015 dated 06.09.2022, [ITA No.5761/Mum/2015 dated 06.09.2022 & ITA No.6888/ Mum/ 2016 dated 06.09.2022 in assessee's own cases respectively for A. Y.2011-12, A.Y 2012-13 & A.Y 2013-14 wherein the exemption u/s 11 was allowed ignoring the fact that the objects of assessee falls under the category of "advancement of any other object of general public utility". The main objects have been reproduced at the time of Assessment proceedings in which none of points mentioned either in the main objects or in its ancillary objects mentions that it is for the person who is non-member or general public at large. Thus, the benefit of the Company is not utilized by all the persons of the society. It is benefited to limited person i.e. Members of the assessee company only, hence the proviso to section 2(15) of the LT. Act is applicable and not entitled to exemption u/s 11 of the Act in view of the provisions of section 13(8) of the LT. Act, 1961.
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> 2. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified by relying upon the decision of Hon'ble ITAT in assessee's own case for A.Y.2010-11 in which the Hon'ble ITAT was right in directing the Assessing Officer to allow exemption u/s 11 of the LT. Act, 1961, even though the activities of assessee Trust to provide cover for credit risk to various public through insurance are in

the nature of services provided in relation to trade, business and commerce 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 directing the AO to allow the benefit of exemption u/s 11 of the LT. Act relying on the decision of the Hon'ble ITAT in ITA No.5762/Mum/2015 dated 06.09.2022, ITA No.5761/Mum/ 2015 dated 06.09.2022 & ITA No.6888/Mum/2016 dated 06.09.2022 in assessee's own cases respectively for A.Y.2011-12, A.Y 2012-13 & A. ¥ 2013-14 wherein exemption u/s 11 was allowed to the assessee ignoring the fact that once the assessee is hit by the proviso to section 2(15) of the LT. Act, its objects are no more charitable objects.

4. Whether on the facts and circumstances of the case and in law and in light of the law laid down by hon'ble Supreme Court in the case of New Noble Educational Society vs Chief Commissioner of Income Tax [2022] 143 taxmann.com 276 (SC) and in Civil Appeal No.21762 of 2017 in various batch of appeals and SLP's [lead case ACIT (Exemptions) Vs. Ahmedabad Urban Development Authority [2022] 143 taxmann.com 278 (SC}] , the Hon'ble ITAT erred in not appreciating that even if the activities of the assessee are held to be covered under residuary part of section 2(15) as "advancement of any other object of general public utility" even then it is not entitled to exemption u/s 11 because it is hit by the proviso to section 2(15) as the income of the assessee consists of membership fees, advertisement, sale of publication,

sponsorship fees, etc. which are in the nature of trade, commerce or business?

5. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is justified in allowing the benefit of exemption u/s.11 of the Income Tax Act, 1961 without appreciating that the income of the assessee consists of membership fees, advertisement, sale of publication, sponsorship fees, etc. arising from regular and systematic activities which are in the nature of trade, commerce or business?

6. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT is justified in allowing the claim of the assessee for exemption u/s.11 of the Income Tax Act, 1961 ignoring that the Respondent is carrying out activities for the benefit of its own members with commercial objectives and hence the same are not educational in nature and no charitable benefits to the society ensure as such?

7. Whether on the facts and circumstances of the case and in law, the Hon'ble Tribunal is justified in allowing the claim of the assessee for exemption u/s.11 of the Income Tax Act, 1961 ignoring that the assessee is basically an organization of professionals and therefore is a mutual organization with commercial objectives?

8. Whether on the facts and circumstances of the case and in law in the light of Civil Appeal No.21762 of 2017 in various batch of appeals and SLP's [lead case ACIT (Exemptions) Vs. Ahmedabad Urban Development Authority [2022] 143 taxmann.com 278 (SC)] , the Hon'ble ITAT erred in holding in

para 17 of the said order that " "it is not the case of the Revenue that the activities of the object of 'general utility carried on by the assessee in the present case is only a mask or a device to hide the true purpose which is trade, commerce or business or rendering of any service in relation to trade, commerce or business" not appreciating that even if the activities of the assessee are held to be covered under residuary part of section 2(15) as "advancement of any other object of general public utility" even then it is not entitled to exemption u/s 11 because it is hit by the proviso to section 2(15) as the income of the assessee as spelt out clearly in the Judgement of the Hon'ble Supreme Court ?

**3.** Brief facts are that the assessee was incorporated u/s 25 of the Companies Act, 1956 and enjoying registration u/s 12A of the Act. The assessee filed its return of income on 28.09.2018 declaring total income of Rs. Nil., after claiming exemption u/s 11 of the Act. Later, the return of income filed by assessee was selected for scrutiny. During the assessment proceedings, the assessee was asked as to why the income from ARN Fees, ARN data fees & due diligence fee, summit collection and other income including interest should not be taxed in view of proviso of section 2(15) of the Act. The assessee filed its response which the AO reproduces from page no. 3 to 14 of his order. And thereafter, the AO not satisfied with the reply recorded his dissatisfaction from page 14 to 20 wherein he cited the CBDT Circular No.11/2008 dated 19.12.2008, and thereafter, he discussed about the application of "*Principle of Mutuality*". Thereafter, he was of the opinion that the income from ARN Fees amounting to

Rs.18,94,40,298/- (*earlier nomenclature of the said income for AY. 2016-17 and AY. 2017-18 was registration fee of certified agents*) income from ARN data fees & due diligence fee amounting to Rs.10,00,391/- income from AMFI summit collection amounting to Rs.31,09,565/- and other income amounting to Rs.3,73,20,680/- shown as per income and expenditure account are not the receipt from members. Thus, according to the AO, an amount totaling Rs.22,99,70,934/- is not covered u/s 11 of the Act. And the AO noted that since there is no change in facts of the earlier assessment years, and he has already taken similar view (supra) in the earlier years, he reiterated the same view and held at para no. 11 of assessment order that the income out of receipts from non-members is hit by the proviso to section 2(15) of the Act and thus computed income under the head "*Business Income*" [*within the meaning of first proviso to section 2(15) of the Act r.w.s. 13(8) for non charitable purpose*] and to that extent, claim of exemption u/s 11 of the Act was rejected. Thus, he computed the business income of the assessee at Rs.22,99,70,934/- and allowed exemption only in respect of contribution fee from members to the tune of Rs.3,32,10,000/- on the basis of "*Principle of Mutuality*". And thus, the income of the assessee was computed as under: -

| Particulars | Rs. | Rs. |
|---|---|---|
| Income as per Income & expenditure account | | 26,31,80,934 |
| Less: Business Income as discussed above | 22,99,70,934 | |
| Less: Income covered under mutuality | 3,32,10,100 | |

| | | |
|---|---|---|
| **Computation of Business Income** | | **22,99,70,934** |
| Less Business Expenditure | 8,76,32,742 | |
| Add: Depreciation and amortization expenses as discussed above | 53,15,510 | |
| Business Income | | |
| Assessed Income | | **14,76,53,702** |

**4.** Aggrieved, the assessee preferred an appeal before the Ld. CIT(A)/NFAC who was pleased to follow the order of this Tribunal in assessee's own case for AY. 2011-12 (ITA. No.5762/Mum/2015) for AY. 2012-13 (ITA. NO.5761/Mum/2015) for AY. 2013-14 (ITA. No.6888/Mu/2016) order dated 06.09.2022 wherein the Tribunal was pleased to allow the exemptions claimed u/s 11 of the Act by holding as under: -

> "17. Keeping in view the facts of the present case, we are of the view, that the Appellant is engaged in charitable activity. We have examined the objects of the Appellant. The Appellant has not been established with the objects of earning profits. The Appellant was registered under Section 25 of the Companies Act, 1956, which specifically applies to entities which intend to apply their profits, if any, and/or other income in promoting its objects, and prohibits the payment of any dividend to its members. In the present case, there is no dispute regarding the nature of activities undertaken by the Appellant. The genuineness of the activities undertaken by the Appellant has not been doubted by the Revenue. It is not the case of the Revenue that the activities of the object of 'general public utility'

carried on by the Assessee in the present case is only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. For the preceding assessment years the activities undertaken by the Appellant were accepted as being for the benefit of general public and therefore, for advancement of general public utility. However, for the relevant assessment year the Revenue has taken a stand that the activities undertaken by the Appellant are for the benefit of members resulting in indirect benefit to the general public even though, admittedly, there has been no change in the facts as compared to preceding assessment years. The case of the Revenue is that on account of amendment to Section 2(15) of the Act the objects/activities of the Appellant have become non-charitable even though there has been no change in the facts as the objects/activities of the Appellant continue to be the same. In our view, the approach of the Revenue cannot be countenanced. Circular No. 11 of 2008 issued by the CBDT clearly provides that whether an assessee has for its object 'the advancement of any other object of general public utility' is a question of fact to be examined keeping in view the facts of each case. It is admitted position that the Appellant was registered under Section 12A of the Act since 09.01.1996 and was granted the benefit of exemption in terms of Section 11 of the Act in the preceding assessment years even though the Appellant had receipt registration fee for certified agents, certification test fee etc. It is admitted position that the registration and certification activities were carried out by the Appellant as per the directives of SEBI. Further, the Appellant has been holding investor education camps and publishes material/information. In our view, the aforesaid activities of the

Appellant are directed towards the benefit of investors and potential investors forming part of the general public and are not limited to the benefit of its members. The Appellant has also maintained separate accounts in respect of these activities. As regards activities of the Appellant directed towards the benefit of its members are concern, the Assessing Officer has granted the benefit of principle of mutuality in respect of the same.

18. In view of the above, the Assessing Officer is directed to allow exemption under Section 11 of the Act to the Appellant. Ground No. 1 to 7 raised by the Appellant are, therefore, allowed. Ground No. 8 is disposed off as being infructuous.

In the result, the present appeal is allowed.

ITA No.5761/Mum/2015 (Assessment Year 2012-13)

ITA No.6888/Mum/2016 (Assessment Year 2013-14)

19. Both the sides agreed that all the grounds raised by the Appellant in the Appeals for the Assessment Year 2012-13 and 2013-14 are identical to the grounds raised in appeal for the Assessment Year 2011-12 with only difference being that no ground corresponding Ground No. 8 raised in appeal for the Assessment Year 2011-12 pertaining to allowance of expenses has been raised in appeals for the Assessment Year 2012-13 and 2013-14 since the Assessing Officer has allowed deduction for the expenses while computing taxable income.

20. Given the identical factual matrix, our findings/conclusion on grounds raised in appeal for Assessment Year 2011-12 shall apply mutatis mutandis to the corresponding grounds raised in

> appeal for the Assessment Year 2012-13 and 2013-14. Accordingly, Ground No. 1 to 7 raised in appeal for the Assessment Year 2012-13 and Ground No. 1 to 7 raised in appeal for the Assessment Year 2013-14 are allowed whereas Ground No. 8 is disposed off as being infructuous. Accordingly, the appeal for Assessment Year 2012-13 (ITA No. 5761/MUM/2015), and for Assessment Year 2013-14 (ITA No. 6888/MUM/2016) filed by the Appellant/Assessee are allowed.
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> 21. In result, all the three appeals preferred by the Appellant/Assessee are allowed."

**5.** Aggrieved by the action of the Ld. CIT(A) to have followed the Tribunal order in assessee's own case for earlier year (supra), the revenue is before us and raised the aforesaid grounds of appeal.

**6.** We have heard both the parties and perused the records. The Ld. DR assailing the action of the Ld. CIT(A) submitted that the only issue involved in this appeal is in respect of Ld. CIT(A) allowing the claim of exemption u/s 11 of the Act, even though the assessee was in receipt of Rs.22.99 crores from non-members. In this regard, the Ld. DR, pointed out that the following receipts the assessee received are from non-members and therefore the said receipts cannot be exempt income as "Mutuality Principle" is not attracted for the receipts like (1) ARN Fees (Rs.1894.40 Lakhs) (2) ARN Data fees & Due diligence fee (Rs. 1.00 Lakh) (3) AMFI Summit Collection (Rs.31.09 Lakh) and (4) Other income including interest (Rs.373.20 Lakh). According to the Ld. DR, since the assessee received the aforesaid receipt from non-

members, the AO held it to be business receipts and the AO after allowing deduction on account of business expenditure and depreciation has rightly assessed the taxable income at Rs.1476.53 Lakhs. According to the Ld. DR, the Ld. CIT(A) erred in allowing the claim of the assessee by merely relying on the order of the Tribunal dated 06.09.2022 for AY. 2011-12 to AY. 2013-14. Further, according to him, while doing so, the Ld. CIT(A) has not taken into consideration, the ratio of the recent Hon'ble Supreme Court decision in the case of Ahmedabad Urban Development Authority (supra) passed on 19.10.2022; and the Ld. DR pointed out that in any case, the Tribunal before passing its order dated 06.09.2022 for earlier year could not have considered the Hon'ble Supreme Court decision in the case of Ahmedabad Urban Development Authority (supra). Assailing the Tribunal order (supra) the Ld. DR pointed out that even after the amendment was made u/s 2(15) of the Act, the Tribunal has applied "Dominant Object Test'' as laid down by the Apex Court in ACIT Vs. Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR 1. According to the Ld. CIT-DR, the Hon'ble Supreme Court in Ahmedabad Urban Development Authority (supra) has considered its own decision in Surat Art Silk Cloth Manufacturers Association (supra) in Ahmedabad Urban Development Authority (supra) at para no. 200 to 205 wherein their Lordship observed as under: -

> "**200.** *Surat Art Silk* (*supra*) and other decisions, had ruled that as long as the objects of trade promotion bodies were for general public utility - wherein 'trade promotion' in itself, was held to be

a GPU - the fact that incidentally these bodies carried on some commercial activity, leading to profit, did not preclude them from claiming to be driven by charitable purpose. As observed earlier, the enunciation of those principles were in the context of the unamended section 2(15).

**201.** The question that arises is whether the change in definition impacts the claims of trade promotion bodies, federations of commerce, or such organizations, that they are GPU charities . The judgment in Surat Art Silk (*supra*) proceeded on the assumption that trade promotion was the pre-dominant object of the GPU charity before the court, and that other objects - including procuring licences, trade etc. were incidental. The assessee in Surat Silk had clear trading objects:

> "(*b*) To carry on all and any of the business of Art Silk Yarn, Raw Silk, Cotton Yarn as well as Art Silk cloth, Silk Cloth and Cotton Cloth belonging to and on behalf of the members.
>
> ***** *****
>
> (*e*) To buy and sell and deal in all kinds of cloth and other goods and fabrics belonging to and on behalf of the Members."

This court, nevertheless, held that since the predominant object of the assessee was trade promotion, while furthering it, the fact that some trading occurred, leading to income, did not preclude the assessee from claiming tax exemption.

**202.** In the opinion of this court, the change in definition in section 2(15) and the negative phraseology - excluding from consideration, trusts or institutions which provide services in relation to trade, commerce or business, for fee or other consideration - has made a difference. Organizing meetings, disseminating information through publications, holding

awareness camps and events, would be broadly covered by trade promotion. However, when a trade promotion body provides individualized or specialized services - such as conducting paid workshops, training courses, skill development courses certified by it, and hires venues which are then let out to industrial, trading or business organizations, to promote and advertise their respective businesses, the claim for GPU status needs to be scrutinised more closely. Such activities are in the nature of services "in relation to" trade, commerce or business. These activities, and the facility of consultation, or skill development courses, are meant to improve business activities, and make them more efficient. The receipts from such activities clearly are 'fee or other consideration' for providing service "in relation to" trade, commerce or business.

**203.** The revenue has appealed to this court, in respect of two assessment years, in the case of Apparel Export Promotion Council (AEPC). The objects of AEPC, which was set up in 1978 - include promotion of ready-made garment export. To achieve that end, its objects include providing training to instil skills in the workforce, to improve skills in the industry; guide in sourcing machinery; to serve as a body advising, providing information on market or technical intelligence; assisting the concerned industry in obtaining import licenses; showcase the best capabilities of Indian garment exports through the prestigious "India International Garment Fair" organised twice a year by AEPC, etc. These fairs host over 350 participants who exhibit their garment designs and patterns. Other functions are to provide information, and to provide market research. AEPC also assists in developing new design patterns and garments and

to perform promotional activities in individual foreign markets. Further, AEPC sends missions and trade delegations abroad, who participate in international fairs; and conducts surveys to gather information on potential export of ready-made garments.

**204.** As part of its functioning, it also books bulk space, which is then rented out to individual Indian exporters, who showcase their products and services, and ultimately secure export orders. Towards these services, *i.e.,* booking and providing space, AEPC charges rentals. Now, these rents are not towards fixed assets owned by it. They are in fact charges, or fees, towards services in relation to business; likewise, the skill development and diploma courses conducted by it, for which fees are charged, are to improve business functioning of garment exporters. Furthermore, market surveys and market intelligence, especially country specific activities, aimed at catering to specified exporters, or specified class of exporters, is also service in relation to trade, commerce or business.

**205.** In the circumstances, it cannot be said that AEPC's functioning does not involve any element of trade, commerce or business, or service in relation thereto. Though in some instances, the recipient may be an individual business house or exporter, there is no doubt that these activities, performed by a trade body continue to be trade promotion. Therefore, they are in the "actual course of carrying on" the GPU activity. In such a case, for each year, the question would be whether the quantum from these receipts, and other such receipts are within the limit prescribed by the sub-clause (*ii*) to proviso to section 2(15). If

> they are within the limits, AEPC would be - for that year, entitled to claim benefit as a GPU charity.
>
> (*iv*) *Non-statutory bodies - ERNET, NIXI and GS1 India*."

Thus, according to Ld. DR in order to decide whether the assessee's case falls under mischief of proviso to section 2(15) of the Act, one needs to examine whether fees charges by it are significantly higher than the cost incurred and whether receipts on account of such fees is more than 20% of the total receipts. According to him, from the details available in the assessment order, receipts held as business income of Rs.22.99 crores is approximately 87% of the total receipts of Rs.26.31 crores. Further, as against the total business receipts of Rs.22.99 crores, the total expenditure incurred by the assesse is only Rs.8.23 crore which is approximately 36% of the total business receipts. In other words, the assessee has earned profit of nearly 180% on the cost incurred by it. Hence, the Ld. DR asserted that there cannot be two opinion about the conclusion that the fees charged by the assesse is significantly higher than the cost incurred by it and therefore in view of the ratio laid down by the Hon'ble Apex Court, these receipts would constitute commercial or business receipts; and such income would attract mischief of proviso to section 2(15) of the Act. The Ld DR also pointed out that the ratio laid down by the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (supra) was reiterated in the recent decision dated 31.01.2023 rendered in the case of PCIT(E) Vs. Servants of People Society (2023) 147 taxmann.com 79 (SC). In view of the above facts and discussion, he pleaded that the

exemption denied u/s 11 of the Act by the AO may be upheld by reversing the impugned order of Ld. CIT(A).

**7.** Per contra, the Ld. AR appearing for the assessee pointed out that the AO has only discussed about application of "*Principle of Mutuality*" to deny exemption claimed by assessee, which was erroneous and the AO has not discussed anything about the amendment brought in by proviso to section 2(15) of the Act. According to the Ld. AR, the objects of the assessee are for charitable purposes and its activities are for the benefit of the public at large and not just for its members. According to him, the assessee was granted registration u/s 12A of the Act by the Competent Authority, after examination of its objects and held it to be of charitable nature. And drew our attention to the objects which have been stated by the AO at page no. 2 of his order. According to him, the amendment brought in by the proviso to section 2(15) of the Act will be attracted only where the objects of an organization was involved in carrying out any activity in the nature of trade, commerce and business with the object of earning profits. According to him, assessee does not carry on any activity in the nature of trade, commerce or business. According to him, the receipts are from the registration, examination and certification work carried on by the assessee for the benefit of investors and general public. And according to him, this Tribunal in assessee's own case for AY. 2011-12 to AY. 2013-14 (supra) has passed order dated 06.09.2022 wherein all aspects were considered and assessee's claim for exemption u/s 11 of the Act was allowed.

According to the Ld. AR, the Ld. CIT(A) has correctly followed the order of the Tribunal in assessee's own case which does not require any interference from our sides.

**8.** After considering the submission of both parties, we note that the main grievance of the revenue is that the relevant year under consideration is AY 2018-19; and the Parliament had substituted the first and second proviso of section 2(15) of the Act by Finance Act, 2015 w.e.f 01.04.2016 which is applicable for the year under consideration. According to Ld DR, the Hon'ble Supreme Court by order dated 19.10.2022 had laid the law on the 'lis' before us in the case of Ahmedabad Urban Development Authority (supra) after considering the proviso to section 2(15) of the Act, which admittedly the Ld. CIT(A) did not consider, even though he passed the impugned order on 28.10.2022; and Ld CIT(A) erroneously, followed the order of Tribunal dated 06.09.2022 [passed in assessee's own case for AY. 2011-12 to AY. 2013-14 (supra)]. Thus, according to Ld DR, the Ld CIT(A) erred in following the decision of Tribunal in earlier years without considering the ratio laid by the Hon'ble Supreme Court passed in the case of Ahmedabad Urban Development Authority (supra). We find force in the contention of Ld DR. We note that the relevant year under consideration is AY 2018-19 and the Parliament had substituted the first and second proviso of section 2(15) of the Act

by Finance Act, 2015 w.e.f 01.04.2016 which is applicable for the year under consideration. And the Hon'ble Supreme Court had laid the law on the issue regarding claim of exemption by similar assessee's in the case of Ahmedabad Urban Development Authority (supra) [as well as in the case of Servants of People Society (supra)] which was decided after considering the proviso to section 2(15) of the Act, which admittedly the Ld. CIT(A) did not consider, before he passed the impugned order. In the light of the recent decision of the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (supra) as well as Servants of People Society (supra), we are of the opinion that Ld. CIT(A) erred in merely following the order of the Tribunal in assessee's own case for AY. 2011-12 to AY. 2013-14 passed on 06.09.2022. And that AO has framed the assessment only discussing the 'Principle of Mutuality' and did not consider the application of proviso to section 2(15) of the Act. And since the ratio laid by the Hon'ble Supreme Court (supra) is applicable in the case of assessee for assessment [regarding claim of exemption] for the relevant year under consideration, in the interest of justice and fair play, we are inclined to set aside the impugned order and restore the assessment back to the file of AO for denovo assessment in the light of the ratio laid by the Hon'ble Supreme Court in Ahmedabad Urban Development Authority (supra) and Servants of People Society (supra). The AO to decide the issues [claim of exemption] involved in assessment for AY. 2018-19 after giving proper opportunity to assessee and assessee is directed to file relevant/details/written

submission and request for video conference as per rules. And the AO to consider both the decision (Ahmedabad Urban Development Authority (supra) and Servants of People Society (supra) and facts involved in the case in hand and after giving proper opportunity to the assessee, to pass fresh assessment in accordance to law.

**10.** In the result, the appeal of the revenue stands allowed for statistical purpose.

Order pronounced in the open court on this 29/11/2023.

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| Sd/- | Sd/- |
| **(PRASHANT MAHARISHI)** | **(ABY T. VARKEY)** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

मुंबई Mumbai; दिनांक Dated : 29/11/2023.
*Vijay Pal Singh, (Sr. PS)*

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

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

**आदेशानुसार/** BY ORDER,

सत्यापित प्रति **//**True Copy**//**

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