

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
ITA No.3804/Mum/2023
(A.Y. 2018-19)

Indian Beauty & Hygiene Association, 504, Midas, 5 th Floor, Sahar Plaza Complex, M.V. Road, Near Kohinoor Hotel, Andheri (W), Mumbai -400 059	Vs.	ITO (E) 1(3) Piramal Chamber, Lal Baug, Parel, Mumbai - 400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAATI1252J		
Appellant	..	Respondent

Appellant by :	Nitesh Joshi
Respondent by :	S. Arunkumar

Date of Hearing	29.02.2024
Date of Pronouncement	06.03.2024

आदेश / O R D E R

Per Amarjit Singh (AM):

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC, dated 05.01.2023 for A.Y. 2018-19. The assessee has raised the following grounds before us:

“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 amount of Rs.9,93,791/- would be chargeable to tax overlooking that, on the facts and circumstances of the present case and in law, the proviso below section 2(15) of the income-tax Act had no application to the activity of conducting seminar/workshop.

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. Fact in brief is that return of income declaring total income of Rs.nil was filed on 31.10.2018. The case was subject to scrutiny

assessment and notice u/s 143(2) of the Act was issued on 21.09.2019.

The main object of the assessee trust were as under:

- “i. To promote and protect the trade, commerce, manufacture and sale of soaps, detergents, glycerine, fatty acids, tooth pastes, Cosmetics and toiletries manufactured in India 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 "products".*
- iv. To educate the public against the use of adulterated "products", to use Indian "products" and to stop all unfair competitions amongst the manufacturers.”*

The assessee claimed exemption u/s 11 of the Act on the ground that the object of the assessee trust was for charitable purpose being covered under any other object of general public utility. During the course of assessment the assessing officer observed that assessee trust was providing/rendering services to its members and non-members by charging fees and its activities were commercial in nature. Further the AO has noticed that assessee trust has received professional receipt aggregating to Rs.88,55,31,341/- from rendering of services which were more than 20% of the gross receipt. The assessing officer further observed that assessee was engaged in the activities in the nature of business/trade with definite motive of profit and regulating and enhancing the activities of its members and there was prima facie no charitable purpose or any activity for public utility which was primarily requirement of Sec. 2(15) of the Act. Therefore, the assessing officer was of the view that activities of the trust were not undertaken for any other object of general public utility. He stated that activities of the trust was for the benefit of its members only and there was no element of charity involved. Therefore, the AO held that assessee trust was no longer charitable institution after amendment made u/s 2(15) w.e.f

assessment year 2009-10. The assessee in its income and expenditure account has shown interest income of Rs.3,53,490/- and surplus of seminars of Rs.9,93,791/- totalling to Rs.13,47,281/-. The AO treated the aforesaid receipt of Rs.13,47,281/- as received from the non-members and not covered under the purview of principal of mutuality. Therefore, Rs.13,47,281/- was treated as other income within the meaning of principal of mutuality for non-charitable purpose and claim of exemption u/s 11 of the Act was denied.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us at the outset the ld. Counsel submitted that identical issue on similar fact in the case of the assessee itself has been decided by the ITAT, Mumbai, vide ITA No.689/Mum/2023. He also referred the page no. 71 of the paper book on the report of the Indian Beauty & Hygiene Association of Committee members on the role of assessee for engaging with Ministry of Ayush, CDSCO and Government of India to ensure that pragmatic regulation are made in the Ayurvedic and natural sector etc. He also referred page no. 259 of the paper book pertaining to profit and loss account of the assessee showing that assessee incurred total expenses of Rs.111,46,614/- whereas its revenue was only Rs.79,16,451/- and there was deposit of Rs.32,30,162/-. He further submitted that after allocation of indirect expenses assessee has not earned any income from seminars.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. Without reiterating the fact as discussed supra the assessee Indian Beauty &

Hygiene Association was incorporated u/s 25 of the Company Act. The object of the assessee company were mainly the following:

- "i. To promote and protect the trade, commerce, manufacture and sale of soaps, detergents, glycerine, fatty acids, tooth pastes, Cosmetics and toiletries manufactured in India 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 "products".*
- iv. To educate the public against the use of adulterated "products", to use Indian "products" and to stop all unfair competitions amongst the manufacturers."*

The assessee was registered u/s 12AA of the Act. During the year under consideration the assessee was engaged in various activities for the benefit of its members, industry as a whole and consumers at large by engaging with the government in respect of various issue affecting the beauty and hygiene industry i.e regulatory procedural aspect with respect to imports, registration of products, representation regarding necessary reforms in regulations to facilitate ease of doing business in India institution/defending the court proceedings concerning the interest of members, industry as a whole consumers at large etc. Further during the year the assessee has shown total receipt from seminar activities of Rs.32,80,456/- and after deducting direct expenditure relating to seminar of Rs.22,86,665/- there was net surplus of Rs.9,93,791/-. However, there was total indirect expenses of Rs.82,44,188/- and after allocation of indirect expenditure of Rs.12,36,628/- assessee was not having any surplus from the seminar activities. It is further noticed that in the profit and loss account overall the assessee has shown deficit in its revenue as discussed supra in this order. Further with the assistance of representative we have perused the decision of ITAT in the case of the assessee itself for the AY 2017-18 vide ITA No. 689/Mum/2023 dated 31.08.2023 wherein the similar

issue on identical facts has been decided in favour of the assessee. The relevant part of the decision is reproduced as under:

“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.”

It is clear that the issue in the appeal is squarely covered by the decision of the earlier order of the ITAT in the case of the assessee as discussed supra in this order. The Revenue has not brought any material on record to prove that fact of the case during the year under consideration was different from the facts and issue as adjudicated by the ITAT in the case of the assessee itself as referred above. Therefore, following the decision of ITAT the ground of appeal of the assessee is allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 06.03.2024

Sd/-
(Kuldip Singh)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 06.03.2024

Rohit: 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 DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

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