

आयकर अपीलिय अधिकरण
मुंबई पीठ " एफ ", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " F ", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आसं. 2973/मुं/2023 (नि. व. 2017-18)
ITA NO.2973/MUM/2023(A.Y.2017-18)

Income Tax Officer (E)-1(3), Mumbai
Room No.619, MTNL Telephone Exchange Building,
Cumballa Hill, Peddar Road,
Mumbai – 400 026.

..... अपीलार्थी/ Appellant

बनाम Vs.

Fragrance and Flavours Association of India,
2-B, Court Chambers,
25, Sir Vithaldas Thakersey Marg,
Churchgate, Mumbai 400 020.
PAN: AAAAF-0029-K

..... प्रतिवादी/ Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Ankush Kapoor, CIT DR.
प्रतिवादीद्वारा/ Respondent by : Shri Anil Sathe
सुनवाई की तिथि/ Date of hearing : 19/03/2024
घोषणा की तिथि/ Date of pronouncement : 26/03/2024

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 04/07/2023, for the Assessment Year 2017-18.

2. The Revenue in appeal has assailed the order of CIT(A) on following grounds:

“1. Whether on the facts 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 without appreciating the fact that the assessee trust is engaged in the activity of providing/rendering services to members/ non-members in relation to trade, commerce or business for a fees and not for the benefit of the public at large, therefore these objects are not covered within the ambit of charitable purpose as defined under the provisions of section 2(15) of the Act.

2. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in allowing the benefit of exemption u/s 11 & 12 of the I.T. Act, 1961 to the assessee, ignoring the fact that once the assessee is hit by proviso to section 2(15) of the I.T. Act, its objects are no more charitable objects then such activities cannot be treated as income derived from property held for charitable purposes and therefore such income is also not exempt u/s 11 of the Act.

3. 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 ACIT (Exemption) Vs. Ahmedabad Urban Development Authority [2022] 143 taxmann.com 278 (SC), the Ld. CIT(A) 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.

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) 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.”

3. Shri Ankush Kapoor representing the Department submits that assessee is a Charitable Trust registered u/s. 12A of the Income Tax Act, 1961 [in short ‘the Act’]. Though the assessee is claiming to have carried out charitable activities in accordance with its objects but in actual the assessee is a mutual association working for the benefit of its members only. In the light of CBDT Circular No.11/2008 dated 19/12/2008 the assessee is not eligible for the benefit of exemption u/s.11 of the Act. The Id. Departmental Representative

vehemently supported the assessment order and prayed for reversing the findings of CIT(A).

4. Per contra, Shri Anil Sathe appearing on behalf of the assessee submits that the assessee is a Non-profit Public Charitable Trust registered u/s. 12A of the Act. The object of the assessee is to promote Fragrance and Flavor Industry. In the preceding Assessment Years, the Assessing Officer had disallowed the benefit of section 11 of the Act to the assessee for similar reasons. The matter travelled to the Tribunal. The Tribunal after examining the facts held that the assessee is entitled to claim benefit of exemption u/s. 11 of the Act. He placed on record copy of Tribunal order in ITA No.5453/Mum/2015 for Assessment Year 2011-12 decided on 08/12/2017.

5. We have heard the submissions made by rival sides and have examined orders of authorities below. The solitary dispute in appeal is with regard to assessee's claim of exemption u/s. 11 of the Act. Undisputedly, the assessee is a Charitable Trust registered u/s. 12A of the Act. The Assessing Officer has disallowed assessee's claim of exemption on the pretext that the activities of the assessee are restricted to its members. Thus, the assessee is predominantly a mutual association. The Assessing Officer thus, disallowed assessee's claim of exemption u/s. 11 of the Act.

6. In preceding Assessment Years i.e. Assessment Year 2009-10, 2011-12 and 2013-14, the Assessing Officer had rejected assessee's claim of exemption u/s. 11 of the Act on the ground that the activities of the assessee are commercial in nature. The assessee carried the issue in appeal before the Tribunal. The Tribunal decided the issue in favour of assessee holding that assessee is eligible for the benefit of exemption u/s.11 of the Act. In the

impugned Assessment Year, the CIT(A) placing reliance on the decision of Tribunal reversed the findings of Assessing Officer and directed the Assessing Officer to delete the addition.

7. The Co-ordinate Bench in Assessment Year 2011-12 (supra), after examining facts of the case held as under:

“11. We are of the considered view that the fact that holding of the seminar at Bangalore by the assessee was in furtherance of the dominant object of the assessee, viz. empowerment, betterment and creating awareness amongst the industrialists of the Fragrance and Flavours industry, and display of the products of the sponsors can safely be concluded to be for furtherance of and in the interest of the members of the trade. We are unable to persuade ourselves to be in agreement with the view of the A.O that as the products of the sponsors were displayed at the seminar held at Bangalore, therefore, on the said stand alone basis the assessee was to be held to have carried on commercial activities. We are of the considered view that on a close analysis of the aforesaid activities of the assessee trust, which if viewed in a broader perspective and pitted against the dominant object of the assessee to hold a seminar for furtherance of and in the interest of the members of the industry, cannot be characterised as a commercial activity. We find that the Hon’ble Jurisdictional High Court in the case of Director of Income-tax Vs. Womens India Trust (2015) 379 ITR 506 (Bom) had upheld the observations of the Tribunal that where a trust formed to carry out the object of education and development of natural talents of the people having special skills, more particularly the women in the society, had in the course of imparting to them training in the field of catering, stitching, toy making, etc., therein carried out sale of certain finished products, viz. pickles, jams, etc. which were in the course of such training produced by them, through shops, exhibitions and personal contracts, the same could not be held to be activities in the nature of trade, commerce or business as contemplated in the proviso of Sec. 2(15). We find that the view of the Tribunal that as the dominant object of trust was to teach or impart skills and to instill confidence, therefore, the sale of the goods or articles produced in the course of such training could not be construed as carrying on of trade, commerce or business, did find favour with the Hon’ble High Court. We find that in the case of the assessee before us, the holding of the seminars and carrying on of other activities, viz. receipt of subscriptions from the members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts etc., were activities which were carried out in order to facilitate the furtherance of the dominant object of the assessee trust, viz. providing knowledge, information, awareness, demonstrations etc. to the members of the Fragrance and Flavours industry, therefore, neither the carrying on of either of the aforesaid activities, specifically the display of the products of the sponsor members of the industry in the course of the seminar at Bangalore, which we find had been emphasized by the revenue as the primary reason for

concluding that the assessee was carrying on commercial activities could be held as such and brought within the sweep of the first proviso of Sec. 2(15). We further find that the Hon'ble High Court of Madras in the case of Director of Income Tax (Exemption) Vs. The Chartered Accountant Study Circle (2012) 250 CTR 70 (Mad), had the occasion to deliberate on the scope and gamut of the first proviso of Sec. 2(15) in the case of an assessee trust whose objects among other things was to conduct periodical meetings on professional subjects. The High Court observed that the publishing and sale of books, booklets etc. on professional subjects related to audit and not on any other subject by the assessee. The sale of the books was primarily made to the members of the society, as well as made available to the general public, with the aim to help the society to get better, well-equipped and skilled set of Chartered Accountants for maintaining audit quality, which however could not be construed as a trade or commerce or business. Thus, the High Court observed that the activities of the assessee trust in publishing and selling books of professional interest, which were meant to be used as a reference material even by the general public as well as the professionals in respect of Bank Audit, Tax Audit, etc., could not be construed as a commercial activity. We are of the considered view that in the case of the present assessee before us, the services, viz. receipt of subscriptions from the members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts etc., were provided for facilitating the dominant object of the assessee trust, viz. providing knowledge, information, awareness, demonstrations etc. to the members of the Fragrance and Flavours industry. We further find that even the display of the products of the sponsors of the seminar at Bangalore, who were primarily the members of the industry, was also in furtherance of the interest of the members of the industry, i.e both by facilitating the very holding of the seminar, as well as providing them knowledge and information of the wide range of products available in the industry. We are thus of the view that the aforesaid activities of the assessee trust before us, in the backdrop of the aforesaid observations of the High Court of Madras can safely be held to be in the course of furtherance of the dominant object of the assessee trust, and would not fall within the realm of commercial activities. We further find that a similar view had also been taken by the Hon'ble High Court of Delhi in the case of The Institute of Chartered Accountants Of India Vs, Director General of Income Tax (Exemption) (2013) 260 CTR 1 (Del). The High Court held that no doubt the assessee institute was holding classes and providing coaching facilities for the members and articled clerks etc. who wanted to appear in the examination conducted by the Institute of Chartered Accountants, but these classes were not held for coaching or for appearance in an examination conducted by some other entity. The High Court observed that as conducting of coaching classes was with the predominant object of maintaining and upholding the standards of the accountancy profession and in furtherance of the object and purpose for which the institute was established, i.e., professional excellence and promotion of accountancy as a preferred profession, and to sharpen the skills and knowledge of the members of Institute who would attend the courses/lectures etc., therefore, the activities of providing coaching classes or undertaking campus placement interviews for a fee were in relation to the main object of the assessee institute, which could not be held

to be trade, business or commerce. The High Court while concluding as hereinabove, had observed as under:

“After going through the provisions of the ICAI Act and the Regulations framed therein as well as various activities carried on by the petitioner, we are of the view that the petitioner institute does not carry on any business, trade or commerce. The activity of imparting education in the field of accountancy and conducting courses both at pre-qualification as well as post-qualification level are activities in furtherance of the objects for which the petitioner has been constituted. Activities of providing coaching classes or undertaking campus placement interviews for a fee are in relation to the main object of the petitioner which as stated earlier cannot be held to be trade, business or commerce. Accordingly, even though fees are charged by the petitioner institute for providing coaching classes and for holding interviews with respect to campus placement, the said activities cannot be stated to be rendering service in relation to any trade, commerce or business as such activities are undertaken by the petitioner institute in furtherance of its main object which as held earlier are not trade, commerce or business.”

We are further of the considered view that the proviso to Sec. 2(15) is not aimed at excluding genuine charitable trusts of general public utility, but rather, a trust would not be held to be for „Charitable purpose“, if it is engaged in any activity in nature of trade, commerce or business or renders any service in relation to trade, commerce or business for a cess, fee and/or any other consideration. We find that our aforesaid view is fortified by the judgment of the Hon’ble High Court of Gujarat in the case of DIT (Exemption) Vs. Sabarmati Ashram Gaushala Trust (2014) 362 ITR 539 (Guj).”

“12. We thus in the backdrop of our aforesaid observations are of the considered view that activities of the assessee trust which was set up for a charitable purpose within the meaning of Sec. 2(15) of the Act, viz. advancement of an object of the general public utility were well within the realm of charitable purpose for which it was set up. We are of the view that as deliberated by us at length hereinabove, the holding of the seminar at Bangalore and the other activities of the assessee trust, viz. receipt of subscriptions from the members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts were incidental to and in furtherance of the main object of securing the advancement and development of the Fragrance and Flavours industry in India. We are further of the considered view that the aforesaid activities of the assessee trust are neither in the nature of trade, commerce or business, nor an activity rendered in relation to any trade, commerce or business. We further find that the activities of the assessee trust are not with any motive to earn profit, which though we are not oblivious would not conclusively determine as to whether an activity is in the nature of a trade, commerce or business, but then, the same undoubtedly remains a crucial factor for characterising an activity, as one. We find that the surplus arising to the assessee is only incidental and ancillary to the dominant object of the assessee, viz. advancement and development of the Fragrance and Flavours industry in India. We further find that the surplus generated

by the assessee trust was utilized only for the purpose of feeding its dominant object, and no part of such surplus was distributed amongst its members. We have deliberated on the records pertaining to the nature of the activities of the assessee trust, and have observed that the generation of the surplus in its hands was merely a by-product of its main object, which had incidentally resulted in the course of furtherance of its dominant object, viz. advancement and development of the Fragrance and Flavors industry in India. We are further of the view that as the international seminar at Bangalore was held by the assessee for the very first time, and the assessee was neither holding such type of seminars by way of a regular and systematic activity, nor for the general public at large, therefore, on the said count also the same can safely be held as not being in the nature of a commercial activity. We have also deliberated on the order of the ITAT, Kolkata, in the case of Indian Chamber of Commerce Vs. Income Tax Officer (2015) 167 TTJ 1 (Kolkata) as had been relied upon by the Id. A.R, and find that a similar view in context of the issue before us was taken by the coordinate bench of the Tribunal.

13. We thus, in the backdrop of our aforesaid observations are unable to persuade ourselves to be in agreement with the view of the lower authorities that the assessee was involved in carrying of commercial activities. We thus being of the view that as the assessee is carrying on its charitable activities, which are in the nature of advancement of the object of general public utility and is not carrying on any commercial activity, therefore, uphold the entitlement of the assessee towards claim of exemption under Sec. 11 of the Act. We thus in terms of our aforesaid observations set aside the order of the CIT(A)."

The Co-ordinate Bench threadbare examined activities of the assessee from all facets including the issue of rendering services to members. In light of aforesaid decisions by Co-ordinate Bench we find no infirmity in the impugned order. Thus, the order of CIT(A) is upheld and appeal of Revenue is dismissed being devoid of any merit.

`Order pronounced in the open court on Tuesday the 26th day of March, 2024.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य / ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/ Dated 26/03/2024

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य / JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

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(Dy./Asstt. Registrar) ITAT, Mumbai