

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI**

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकरअपीलसं./**ITA No.: 948/Chny/2023**

निर्धारणवर्ष / Assessment Year: 2016-17

M/s. Council for Leather
Exports,
No.1, Sivaganga Road,
Nungambakkam,
Chennai – 600 034.

The Deputy Commissioner of
v. Income Tax (Exemption),
Chennai Circle,
Chennai-34.

[PAN: AAACC-4697-G]

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri. R. Vijayaraghavan, Advocate

प्रत्यर्थीकीओरसे/Respondent by : Shri. Krishnan Ramaswamy, JCIT

सुनवाई की तारीख/Date of Hearing : 30.05.2024

घोषणा की तारीख/Date of Pronouncement : 07.08.2024

आदेश /ORDER

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal instituted by the assessee is against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2016-17, vide order dated 21.07.2023.

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

"1. The Commissioner of Income tax, National Faceless Appeal Centre (NFAC) is contrary to law, facts and circumstances of the Act.

2. The Commissioner of Income tax, (NFAC) erred in dismissing the appeal *ex parte* without giving an opportunity to assessee of being heard.

3. The Commissioner of Income tax (NFAC) erred in dismissing appeal by rejecting the appellants claim of exemption u/s 10(23C)(iv).

3.1 The Commissioner of Income tax (NFAC) ought to have appreciated that the appellant's activities are not in nature of trade, business or commerce nor renders any service in relation to trade, business or commerce. He ought to have appreciated that in assessee's own case for the assessment year 2010-11 and 2012-13 the Hon'ble ITAT has allowed the appeal of the assessee.

3.2 The Commissioner of Income tax (NFAC) ought to have appreciated that the decision of Hon'ble Apex court in the case of ACIT Vs. Ahmedabad Urban Development Authority, Reported in 449 ITR 1 (SC) is not applicable to fact of the appellant case.

3.3 Without prejudice the Commissioner of Income tax (Appeals) (NFAC) should have appreciated that the entire certification was only for the members of the council and therefore the entire income from certification is exempt from tax section on account of mutuality.

3.4 The Appellant relies on the circular number 11/2008 Dated 19.12.2008 issued by the CBDT wherein it has been clarified that:

3.1 There are industry and trade associations who claim exemption from tax u/s 11 on the ground that their objects are for charitable purpose as these are covered under 'any other object of general public utility'. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants.

Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to

the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2 (15).

3.5 The Commissioner of Income tax (Appeals) (NFAC) should have appreciated that balance income is interest from the Deposits with commercial banks made in accordance with provisions of section 11(5) and hence the same is exempt under section 11 in as much as it is not violative of proviso to sec2(15) and hence exempt under sec10(23C)(vi).

3.6 The Appellant therefore submits that entire income of the Appellant, excluding that exempt on account of mutuality is not taxable, undersec13(8) read with sec2(15) and exempt undersec10(23C)(vi).

3.7 The CIT(A) / NFAC ought to have appreciated that all the conditions stipulated whist granting and hence there was no violation and hence the entire income is exempt u/s.10(23C)(iv). The Appellant was granted exemption u.s.10(23C)(iv):

a) The institute will apply its income or accumulate for application, wholly and exclusively to the objects for which it is established and in a case where more than fifteen per cent of its income is accumulated on or after the 1st day of April 2002, the period of the accumulation of the amount exceeding fifteen percent of its income shall in no case exceed five years;

b) the institution will not invest or deposit its fund (other than voluntary contribution received and maintained in the form of jewellery, furniture, etc) for any period during the previous year's relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub-section (5) of the section 11;

c) this notification will not apply in relation to any income being profits and gains of business unless the business is incidental to the attainment of the objectives of the institution and separate books of account are maintained in respect of such business;

d) the institution will regularly file its return of income before the income tax authority in accordance with the provisions of the income tax Act 1961.

e) that in the event of dissolution of the institution, its surplus and assets will be given to an organization with similar objectives.

f) The institute will get its accounts audited by an accountant as defined in Explanation below sub section (2) of section 288 and furnish along with the return of income. The report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

The Council has complied with the all the conditions stated about and hence eligible for exemption u/s.10(23C)(iv).

3.8 The appellant therefore submits that the entire income of the Appellant is not subject to tax.

4. The Appellant craves leave to file additional grounds at the time of hearing.

3. The brief facts are that, the assessee is a non-profit organization sponsored by the Ministry of Commerce and registered under Section 25 of the Companies Act and it is approved U/s.10(23C)(iv) of the Act, vide order No.F.No.197/143/2006-ITA-I, in notification No.23/2007 from the A.Y. 2004-05 and onwards. The main activity of the council is to promote exports of leather industries. It is facilitating the participation of its members in Tradefairs. About 2,850 exporters of leather, leather products and footwear spread all over India are members of this council. The Council serves as a bridge between Indian exporters and overseas buyers on one hand and between Government and industry on the other hand.

The assessee filed its return of Income for the A.Y. 2016-17 on 26/09/2016 admitting a gross receipts of Rs.19,18,93,575/- and after claiming exemption U/s.10(23C)(iv) of the Act, admitting a Rs.NIL income. The case was selected for scrutiny and statutory notices were served to assessee and the assessment was framed U/s.143(3) by the Assessing Office (AO) on 20/12/2018 holding as under:

"8. Invocation of first proviso to Sec.2(15) the assessee being engaged in rendering service in relation to trade and the gross receipts having exceeds 20%:

8.1 It would be pertinent to note that collection of fee for the service of issuing certificate is an indispensable element vis -a-vis the activities of the Assessee. The aggregate receipt of the assessee from such activity was found to be Rs.7,62,60,796/-

8.2 The sizable profit element from the collection of fees for rendering the service of issuance of certificate and collection of membership fee brings the case within the fourth limb of the definition of 'charitable purpose', contained in Sec.2(15), viz., 'advancement of any other object of general public utility', read with the first proviso to the said section [2(15)]. The assessee's case is only to be categorised as 'advancement of any other object of general public utility', since, the case cannot fit into any of the other limbs of 'charitable purpose', viz., 'relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest'. The gross receipts of the assessee for the assessment year from the activity of issuance of certificate is also seen to be Rs.7,3,51,961/-. Therefore, the exception to the first proviso, given in the second proviso to Sec.2(15), also does not apply in the assessee's case, inasmuch as, the aggregate value of the receipts from the above mentioned two activities, for the relevant previous year, has exceeded. For easy reference, both the aforesaid provisos [first and second provisos to Sec.2(15)] are reproduced hereunder

"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 cessor fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity.

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year".

8.3 Since, the first proviso to Sec.2(15) becomes applicable in the case of the assessee, Sec.11 will not operate and the assessee's income cannot be excluded under Sec.11. This is in view of the provisions of Sec.13(8) which is extracted below

13 (8). Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous year".

8.4. Since, sec.11 will not operate in the assessee's case, the taxable income of the assessee is determined in a commercial sense, as envisaged by Board's Circular No.5P dated 19.6.1968. For better clarity, the relevant part of the Circular, for the purpose of the issue-in-hand, is given below :

"Where the trust derives income from house property interest on securities, capital gains, or other sources, **the word "income" should be understood in its commercial sense, i.e., book income**, after adding back any appropriations or applications thereof towards the purposes of the trust or otherwise, and also after adding back any debits made for capital expenditure incurred for the purposes of the trust or otherwise".

9. Exemption u/s.10(23C)(iv) of the Incometax Act, 1961

The assessee was asked to explain the allowability of expenditure claimed with respect to exemption availed for which the assessee replied on 05/12/2018 placed as under:

Justification for claiming exemption u/s 10(23C)(iv)

For the assessment year 2010-11 the Hon'ble ITAT, Chennai has after extensive examination, held that the Council is eligible to claim exemption u/s10(23C)(iv), upholding the order of Commissioner of Income Tax, (Appeals), in our favour. (copy of the ITAT order enclosed for your kind perusal)

The objects and activities of the Council continue to be the same and hence the exemption sought by the Council u/s 10(23C)(iv) may kindly be allowed.

No doubt, the Hon'ble ITAT Chennai has held that the assessee is eligible to claim exemption u/s 10(23)(iv). However, this order of the Hon'ble ITAT has not attained finality and further appeal before the Hon'ble Madras High Court has been preferred. In such circumstances, to keep alive the issue of denial of exemption u/s 10(23)(iv), the assessee is not granted the relief u/s 10(23)(iv) for this assessment year also.

Nonetheless, as the decision of the jurisdictional Hon'ble Tribunal is in favour of the assessee on the issue under consideration, the tax demand arising out of the said issue will not be recovered until there is a change which alters the present situation.

Subject to the above, the taxable income of the assessee and tax payable, thereon, is computed below:

| | |
|--|--------------------|
| <i>Net surplus as per the income & expenditure</i> | <i>7,62,60,796</i> |
| <i>Total taxable income (rounded off)</i> | <i>7,62,60,800</i> |

Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld.CIT(A), NFAC, Delhi.

4. The Ld.CIT(A) confirms the order of the AO by passing an order dated 21/07/2023 holding as under :

"5.8.4 *The appellant's aggregate receipts from the activity of issuing textile certificates were Rs.8,11,19,933/- and total receipts were Rs.13,25,33,668/ during the F.Y.2015-16 relevant to the A.Y.2016-17. The surplus shown by the appellant was Rs.7,62,60,796 and thus it is clear that the appellant has rendered services not on any cost-basis or nominal above cost basis. The mark-up is very high which shows that the appellant is*

*advancing the services of General Public Utility on commercial basis. As the appellant is advancing the services on commercial basis, and the receipts from the activities of GPU are more than Rs.25 lakhs, the AO had invoked first and second provisos of Sec.2(15) of the Act as mentioned in para 5.8.1 supra. Further, Section 11 cannot be applicable to the case of the appellant as the appellant is hit by the first proviso to Section 2(15) of the IT Act. Thus, the appellant has failed on both the tests laid down by the Hon'ble Apex Court in the case of **ACIT(Exemptions) vs Ahmedabad Urban Development Authority in C.A No 21762 of 2017 reported in 449 ITR 1 {SC}**, in determining whether the appellant is entitled to exemption or not. Thus, this appellate authority is of the opinion that the Ld.AO's decision of rejecting the appellant's claim of exemption u/s 10(23C)(iv) of the IT Act does not warrant any interference. Thus, the **first and the sole ground of appeal** raised by the appellant is **dismissed.**"*

5. The Ld.AR assailing the action of the Ld.CIT(A) in confirming the AO's order stated that the Ld.CIT(A) has erred by not appreciating the assessee's activities are not in the nature of trade, business or commerce nor renders any service in relation to trade, business or commerce. Further Ld. AR drew our attention to the paper book (Page No.1 to 71) consisting of the following details / documents :

| Sl.No | Particulars | Page No. |
|--------------|--|-----------------|
| 1 | Objects of the assessee council | 1-7 |
| 2 | Section 10(23C)(vi) approval | 8 |
| 3 | Customs Notification No. 12/2012 dated 17.03.2012 | 9-17 |
| 4 | MAIS Scheme and sample | 18-60 |
| 5 | Analysis of Income and expenditure | 61-69 |
| 6 | Balance sheet, profit and loss account and Schedules | 70-71 |

6. Further, the Ld.AR argued that for the earlier years the Tribunal has granted exemption U/s.10(23C)(iv) of the Act on the ground that council is not carrying out any activity of trade, business or commerce and the proviso to Sec. 2(15) will not apply to the assessee. For the current year the AO has held that total receipts of the Assessee is Rs.13,25,33,668/- (Taking only Sum of Membership Fee of Rs. 5.14 Crores and Certification fee of Rs. 8.22 Crores and ignoring other receipts - Page 61 of PB) and the surplus of Rs. 7.62 crores is in excess of 20% of the receipts and hence is liable to tax, but has held that tax will not be demanded as the exemption has been granted for the earlier years and the issue is before the High Court. On appeal, the CIT(A) has applied the ratio of the Apex Court decision in the case of ACIT v Ahmedabad Urban Development Authority (449 ITR 1) and has held (@ **Para 5.8.4**) that the surplus amount shows that the Appellant has charged at a high markup and hence the surplus is taxable as per Proviso 2 to sec.2(15), which reads as under:

"Further, the advancement of any other object of general public utility shall not be considered as 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;***

7. The Id.AR further stated that the Id.CIT(A) has followed the decision of the Supreme Court in the case of ACIT Vs Ahmadabad Urban Development Authority reported in 449 ITR 1 and has confirmed the levy of tax and income of Rs.7.62 crores. The issue is what is the receipts that has to be considered for the purpose of applying the Proviso in accordance with the ratio laid down by the Apex Court. The Hon'ble Supreme Court in its order in para 253-D relating to Trade promotion bodies have provided as under:-

"D Trade promotion bodies:

*Bodies involved in trade promotion (such as AEPC), or set up with the objects of purely advocating for, coordinating and assisting trading organisations, can be said to be involved in advancement of objects of general public utility. However, **if such organisations provide additional services such as courses meant to skill personnel, providing private rental spaces in fairs or trade shows, consulting services,** etc then income or receipts from such activities, would be business or commercial in nature. In that event, the claim for tax exemption would have to be again subjected to the rigors of the proviso to Section 2(15) of the IT Act."*

Thus as the Id.AR stated that the assessee provides for rental space in Fairs and Trade shows receipts from such activity

should also be considered for the purpose of complying with the limit of 20% of total receipts of the Council.

8. The next issue is while total receipts is to be taken as the denominator for the second proviso, whether total receipts from different activities has to be aggregated or only the profit element alone has to be taken into consideration as Numerator, for complying with the condition under second proviso. In this connection the Apex court has further clarified as to in what manner and to what extent the individual receipts which will have to be aggregated as numerator, while determining the compliance of the 20% limit of the total receipts. In that connection, the Apex Court has distinguished between the receipt in carrying out the charitable objects, or activities for which the Trust charges only the cost or marginal mark up, for complying with the proviso to Section 2(15), only profits from activities should be taken into account in the Numerator. Para 171 to 173 of the Apex Court order of the order(as reported in 449 ITR 001).

*"171 Therefore, pure charity in the sense that the performance of an activity without any consideration is not envisioned under the Act If one keeps his in mind, what Section 2(15) emphasizes is that so long as a GPU's charity's object involves activities which also generates profits **(incidental, or in other words, white actually carrying out the objectives of GPU, if some profit is***

generated), it can be granted exemption provided the quantitative limit (of not exceeding 20%) under second proviso to Section 2(15) for receipts from such profits, is adhered to.

172 Yet another manner of looking at the definition together with Sections 10 (23) and 11 is that for achieving a general public utility object, **if the charity involves itself in activities, that entail charging amounts only at cost or marginal mark up over cost, and also derive some profit, the prohibition against carrying on business or service relating to business is not attracted - if the quantum of such profits do not exceed 20% of its overall receipts.**

173 It may be useful to conclude this section on interpretation with some illustrations. The example of Gandhi Peace Foundation disseminating Mahatma Gandhi's philosophy (in Surat Art Silk) through museums and exhibitions and publishing his works, for nominal cost, ipso facto is not business. Likewise, providing access to low-cost hostels to weaker segments of society, where the fee or charges recovered cover the costs (including administrative expenditure) plus nominal mark up; or renting marriage halls for low amounts, again with a fee meant to cover costs; or blood bank services, again with fee to cover costs, are not activities in the nature of business. Yet, when the entity concerned charges substantial amounts- over and above the cost it incurs for doing the same work, or work which is part of its object (ie , publishing an expensive coffee table book on Gandhi, or in the case if the marriage hall, charging significant amounts from those who can afford to pay, by providing extra services, far above the cost-plus nominal markup) such activities are in the nature of trade, commerce, business or service in relation to them. In such case, the receipts from such latter kind of activities where higher amounts are charged, should not exceed the limit indicated by proviso (ii) to Section 2(15)."

9. From the above it is clear that in respect of activities incidental, or in other words, while actually carrying out the objectives of GPU, if some profit is generated), it can be granted exemption provided the quantitative limit (of not exceeding 20%) under second proviso to Section 2(15) for receipts from such profits, is adhered to.

9.1 Therefore if some profits (nominal) is earned in carrying out the objectives, then only the profits from such activities (and not the entire receipt) should be considered whether it is below the limit of 20% of the entire receipts of the institution. Thus, from the financials of the activities given in pages 61 to 64, in respect of participation in Trade fairs, Appellant charges/ collects only the actual expenditure from Govt as grant and members as participation charges. (Receipts Rs.24,07,51,794/- and expenditure Rs.24,76,65,706/-). Therefore, in respect of these activities which is in furtherance of the objective of the Appellant as per Para 171 of the Apex order referred to above, while the receipts are Rs24.07 Crores only the profit (here a loss of Rs. 80,57,912) can be considered for Numerator for the purpose compliance of second Proviso to sec.2(15). As per second proviso to sec.2(15) these profits has to be less than 20% of the Total receipts of the Institution. The total receipts and which has to be considered for the second proviso is given as under:

| | (Rs. in crores) | Receipts | Profits |
|------------------------|------------------------|-----------------|----------------|
| 1. Membership fee | | Rs.5.14 | |
| 2. Certificate fee | | Rs.8.11 | |
| 3. Interest from banks | | Rs.4.74 | |
| 4. Sale of magazine | | Rs.0.17 | |

| | | |
|---|-----------|---------------|
| 5. Grant for capital expenditure | Rs.0.09 | |
| 6. Receipt for participating in trade Fairs | | |
| 7. From Government | Rs.11.72) | |
| 8. Contribution from members | Rs.12.35) | (0.80) |
| | ----- | |
| Total | Rs.42.82 | |
| | ----- | |
| The expenses (including the loss) | -Rs.34.71 | |
| The net surplus | - | Rs. 7.62. |

9.2 Applying the ratio of the Apex Court, the net surplus of Rs.7.62 crores is less than 20% of the total receipts of the Institution of Rs.42.82 Crores and hence the exemption u/s. 23(c)(iv) cannot be rejected under second proviso to section 2(15) of the Act."

10. Further, the Ld. AR also state that, the assessee relies on the circular number 11/2008 Dated 19.12.2008 issued by the CBDT wherein it has been clarified that:

"3.1 There are industry and trade associations who claim exemption from tax u/s 11 on the ground that their objects are for charitable purpose as these are covered under 'any other object of general public utility'. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants.

Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2(15)."

Therefore, the Ld.AR prayed for setting aside the orders of the lower authorities by allowing the appeal of the assessee.

11. Per Contra, the Ld.DR asserting the action of the AO/Ld.CIT(A), stated that the assessment framed by lower authorities are in accordance with the law laid down by the Hon'ble Supreme court in the case of ACIT Vs. Ahmedabad Urban Development authority (449 ITR 1) and hence prayed for upholding the same by dismissing the appeal of the assessee.

12. We have heard the rival contentions and perused the materials available on record and the decision of the Hon'ble Supreme Court and the orders of lower authorities below. the assessee is a non-profit organization sponsored by the Ministry of Commerce and registered under Section 25 of the Companies Act and it is approved U/s.10(23C)(iv) of the Act, vide order No.F.No.197/143/2006-ITA-I, in notification No.23/2007 from

the A.Y. 2004-05 and onwards. The main activity of the council is to promote exports of leather industries. It is facilitating the participation of its members in Trade fairs. About 2,850 exporters of leather, leather products and footwear spread all over India are members of this council. The Council serves as a bridge between Indian exporters and overseas buyers on one hand and between Government and industry on the other hand.

12.1 The assessee has been granted exemption U/s.10(23C)(iv) of the Act, for the earlier Assessment years upto 2015-16 based on the ITAT order on the ground that, Council is not carrying out any activity of business, trade or commerce and proviso to Sec. 2(15) will not apply.

12.2 It is noted that, for the Assessment year 2016-17 the AO has held that total receipts of the Assessee is Rs.13,25,33,668/- (Taking only Sum of Membership Fee of Rs. 5.14 Crores and Certification fee of Rs. 8.22 Crores and ignoring other receipts - Page 61 of PB – Actual gross receipts of Rs.42.34 Crores) and the surplus of Rs.7.62 crores is in excess of 20% of the receipts and hence is liable to tax, but has held that tax will not be

demanded as the exemption has been granted for the earlier years and the issue is before the High Court.

12.3 It is further observed that, on appeal the CIT(A) has applied the ratio of the Apex Court decision in the case of ACIT v Ahmedabad Urban Development Authority (449 ITR 1) and has held (**Para 5.8.4**) that the surplus amount shows that the Appellant has charged at a high markup and hence the surplus of Rs.7.62 crores is taxable as per Proviso 2 to sec.2(15), which reads as under :

Further, the advancement of any other object of general public utility shall not be considered as 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;***

12.4 The issue is 'what is the receipts' that has to be considered for the purpose of applying the Proviso in

accordance with the ratio laid down by the Hon'ble Apex Court. The Hon'ble Supreme Court in its order in para 253-D relating to Trade promotion bodies have provided as under:-

"D Trade promotion bodies:

*Bodies involved in trade promotion (such as AEPC), or set up with the objects of purely advocating for, coordinating and assisting trading organisations, can be said to be involved in advancement of objects of general public utility. However, **if such organisations provide additional services such as courses meant to skill personnel, providing private rental spaces in fairs or trade shows, consulting services, etc** then income or receipts from such activities, would be business or commercial in nature. In that event, the claim for tax exemption would have to be again subjected to the rigors of the proviso to Section 2(15) of the IT Act."*

12.5 Thus as the assessee provides for rental space in Fairs and Trade shows receipts from such activity should also be considered for the purpose of complying with the limit of 20% of total receipts of the Council.

13. The next issue is while total receipts is to be taken as the denominator for the second proviso, whether total receipts from different activities has to be aggregated or only the profit element alone has to be taken into consideration as Numerator, for complying with the condition under second proviso.

13.1 In this connection the Hon'ble Apex court has further clarified as to in what manner and to what extent the individual receipts which will have to be aggregated as numerator, while determining the compliance of the 20% limit of the total receipts.

13.2 In that connection, the Hon'ble Apex Court has distinguished between the receipt in carrying out the charitable objects, or activities for which the Trust charges only the cost or marginal mark up, for complying with the proviso to Section 2(15), only profits from activities should be taken into account in the Numerator. Para 171 to 173 of the Hon'ble Apex Court order (as reported in 449 ITR 001) reads as under:

*"171. Therefore, pure charity in the sense that the performance of an activity without any consideration is not envisioned under the Act. If one keeps this in mind, what Section 2(15) emphasizes is that so long as a GPU's charity's object involves activities which also generates profits **(incidental, or in other words, while actually carrying out the objectives of GPU, if some profit is generated)**, it can be granted exemption provided the quantitative limit (of not exceeding 20%) under second proviso to Section 2(15) for receipts from such profits, is adhered to.*

*172 Yet another manner of looking at the definition together with Sections 10 (23) and 11 is that for achieving a general public utility object, **if the charity involves itself in activities, that entail charging amounts only at cost or marginal mark up over cost, and also derive some profit, the prohibition against carrying on business or service relating to business is not***

attracted - if the quantum of such profits do not exceed 20% of its overall receipts.

173 It may be useful to conclude this section on interpretation with some illustrations. The example of Gandhi Peace Foundation disseminating Mahatma Gandhi's philosophy (in Surat Art Silk) through museums and exhibitions and publishing his works, for nominal cost, ipso facto is not business. Likewise, providing access to low-cost hostels to weaker segments of society, where the fee or charges recovered cover the costs (including administrative expenditure) plus nominal mark up; or renting marriage halls for low amounts, again with a fee meant to cover costs; or blood bank services, again with fee to cover costs, are not activities in the nature of business. Yet, when the entity concerned charges substantial amounts- over and above the cost it incurs for doing the same work, or work which is part of its object (ie, publishing an expensive coffee table book on Gandhi, or in the case of the marriage hall, charging significant amounts from those who can afford to pay, by providing extra services, far above the cost-plus nominal markup) such activities are in the nature of trade, commerce, business or service in relation to them. In such case, the receipts from such latter kind of activities where higher amounts are charged, should not exceed the limit indicated by proviso (ii) to Section 2(15)."

13.3 We, find that, from the above it is clear that in respect of activities incidental, or in other words, while actually carrying out the objectives of GPU, if some profit is generated, it can be granted exemption provided the quantitative limit of not exceeding 20% under second proviso to Section 2(15) for receipts from such profits, is adhered to.

13.4 Therefore, if some profits (nominal) is earned in carrying out the objectives, then only the profits from such

activities (and not the entire receipt) should be considered whether it is below the limit of 20% of the entire receipts of the institution.

13.5 It is noted that, from the financials of the activities given in Pages 61 to 64, in respect of participation in Trade fairs, Appellant charges/collects only the actual expenditure from Govt as grant and members as participation charges.(Receipts Rs.24,07,51,794/- and expenditure 24,76,65,706/- = Loss of Rs.80,57,912/-). Therefore, in respect of these activities which is in furtherance of the objective of the Appellant as per Para 171 of the Hon'ble Apex order referred to above, while the receipts are Rs.24.07 Crores only, the profit (here a loss of Rs.80,57,912/-) can be considered for Numerator for the purpose compliance of second Proviso to sec2(15).

13.6 As per second proviso to sec.2(15) these profits has to be maximum cap of 20% of the Total receipts of the Institution. The total receipts and which has to be considered for the second proviso is given as under:

| | | (Rs. in crores) |
|---|---|-------------------------|
| | | Receipts Profits |
| 1. Membership fee | | Rs.5.14 |
| 2. Certificate fee | | Rs.8.11 |
| 3. Interest from banks | | Rs.4.74 |
| 4. Sale of magazine | | Rs.0.17 |
| 5. Grant for capital expenditure | | Rs.0.09 |
| 6. Receipt for participating in trade Fairs | | |
| 7. From Government | | Rs.11.72) |
| 8. Contribution from members | | Rs.12.35) (0.80) |
| | | ----- |
| Total receipts (A) | | Rs.42.82 |
| | | ----- |
| The expenses (including the loss) - | | Rs.34.71 |
| | | ----- |
| The net surplus | - | Rs. 7.62 |
| | | ----- |
| 20% of the Total receipts (A) | | Rs.8.56 crores |
| | | ----- |

13.7 It is seen from the above tabulation, the net surplus of Rs.7.62 crores is less than 20% of the total receipts of the Institution i.e., Rs. 42.82 Crores, by applying the ratio of the Apex Court, the exemption u/s. 10(23C)(iv) cannot be rejected under second proviso to sec 2(15)."

13.8 In the factual matrix discussed above and by respectfully following the decision of the Hon'ble Supreme Court, we are of the considered view that, the orders of the

lower authorities are erroneous in denying the exemption and hence, set aside the impugned order by allowing the grounds of appeal of the assessee.

14. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 07th August, 2024 at Chennai.

Sd/-
(एबी टी वर्की)
(ABY T VARKEY)
न्यायिक सदस्य/**Judicial Member**

Sd/-
(एस.आर.रघुनाथा)
(S. R. RAGHUNATHA)
लेखा सदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 07th August, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF