

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "A" Bench, Mumbai.

Before Shri Narender Kumar Choudhry (JM)
& Shri Omkareshwar Chidara (AM)

I.T.A. No. 4422/Mum/2023 (A.Y. 2013-14)
I.T.A. No. 4423/Mum/2023 (A.Y. 2015-16)
I.T.A. No. 4424/Mum/2023 (A.Y. 2017-18)

Advertising Agencies Association of India (earlier registered under the Societies Act 1860 as Advertising Agencies Association of India converted into Company) B-502 Marathon Futurex N.M. Joshi Marg, Lower Parel Mumbai-400 013. PAN : AAATA5800E of the Trust AAWCA1728L of the Company	Vs.	ITO(Exemption) 1(1) 611, 6 th Floor Cumballa Hill MTNL TE Building Pedder Road Dr. Gopalrao Deshmukh Marg Cumballa Hill Mumbai-400026.
(Appellant)		(Respondent)

Assessee by	Shri Nishit Gandhi
Department by	Shri Manoj Kumar Singha
Date of Hearing	27.06.2024
Date of Pronouncement	20.09.2024

ORDER

Per Omkareshwar Chidara (AM) :-

These three appeals filed by the appellant against the orders of the learned Commissioner of Income Tax [Ld. CIT(A) for short] for A.Y. 2013-14, 2015-16 and 2017-18.

2. Since the issues are common and connected and appeals were heard together, these are being disposed of by this common order, for the sake of convenience.

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3. In the above said case the appellant has raised following grounds of appeal before the ITAT :-

- a) Denial of exemption u/s. 11 of the Income Tax Act (the Act for short) on the surplus generated on conducting the Goa Fest.
- b) Denial of exemption u/s. 11 of the Act on bank interest earned by the appellant
- c) Denial of benefit of application of income u/s. 11/12 of the Act on the amount advanced by the appellant to Broadcast Audience Research Council of India (BARCI).

4. The learned Assessing Officer (Ld. AO for short) made addition by denying exemption u/s. 11 of the Act and the Ld. CIT(A) has confirmed the addition made by the Ld. AO.

5. Aggrieved by the orders of the Ld. AO and the Ld. CIT(A), the appellant filed the present appeal before the ITAT with the above grounds of appeal.

6. During the hearing proceedings before the ITAT, Learned Authorised Representative (Ld. AR for short) of the appellant brought to the notice of the Hon'ble ITAT that some of the issues were covered by the order of the ITAT in earlier years in their favour and pleaded that the additions made by the Ld. AO and confirmed by the Ld. CIT(A) may be deleted.

7. Ld. DR relied on the orders of the Ld. AO and the Ld. CIT(A) and requested for confirming the additions as they are properly made under the provisions of section 11 and 12 of the Act.

8. After hearing both sides the order is passed before :-

9. First issue relating to denial of exemption u/s. 11 of the Act by the Ld. AO was covered in case of the appellant's own case vide order of the ITAT in ITA No. 2072/Mum/2016 for A.Y. 2011-12 and ITA No. 6687/Mum/2016 for A.Y. 2012-13. At paragraphs 4 to 7, page Nos. 7 to 11 of the ITAT's order for

A.Y. 2011-12 & paragraph 3&4 of Hon'ble ITAT's order for A.Y. 2012-13, it was held that the activity carried out by the appellant by organising Goa Fest is not in the nature of any trade or commerce or business or any activity ancillary related thereto. The Ld. AR of the appellant has further mentioned that for A.Y. 2018-19, the Ld. AO has accepted the claim for exemption u/s. 11 in principle but denied the same for filing Form 10B belatedly. It was also submitted by the Ld. AR of the appellant that the activity of conducting workshops and conferences for promoting education on the subject of advertising is not in the nature of any trade or commerce and hence even proviso is not applicable in its case.

10. After hearing both sides, it is decided that the activity of conducting seminar and other activities under the banner of "Goa Fest" is not in the nature of business as it only promotes the main object of the appellant trust. Respectfully following the decisions of earlier years of Hon'ble ITAT for A.Y. 2011-12, 2012-13, it is decided that the surplus generated on conducting Goa fest income is exempt u/s. 11 of the Act. Consequently, the addition made by the Ld. AO is deleted.

11. Second issue relates to denial of exemption u/s. 11 on Bank interest earned by the appellant holding that the same is not from members and therefore not exempt since the appellant is a mutual society. This issue was also covered in appellant's own case vide orders of ITAT in ITA No. No. 2072/Mum/2016 for A.Y. 2011-12 and ITA No. 6687/Mum/2016 for A.Y. 2012-13. The Ld. AR of the appellant invited attention of the Bench to paragraph 4 to 7 at pages 7 to 11 of Hon'ble ITAT's order for A.Y. 2011-12 and paragraph 3 & 4 of Hon'ble ITAT's order for A.Y. 2012-13. As the issue was covered in favour of the appellant by the earlier order of the ITAT for the reasons mentioned therein, the addition made by the Ld. AO relating to the Bank interest is hereby deleted.

12. Ground No. 3 of the appeal raised by the Ld. AR of the appellant is that the Ld. AO denied benefit of application of income u/s. 11/12 on the amount of Rs. 20,00,000/- advanced by the appellant to Broadcast Audience Research Council of India (BARCI) for the purpose of its objects.

13. During the proceedings before the Bench, the Ld. AR has mentioned that the amount was added by the Ld. AO based on error committed by the appellant whereby the said advance to BARCI was wrongly categorised as investment in shares instead of advances made to BARCI. As the “advance” is not an investment and therefore bar contained in section 11(5) of the Act is not attracted, pleaded by the Ld. AR of the appellant. As the Ld. AR of the appellant mentioned that a mistake was committed by the appellant with regard to wrong classification as investment in shares instead of advances made to BARCI, this issue may be examined by the Ld. AO and an appropriate decision may be taken after giving opportunity to the appellant. The Ld. AO also is directed to find out the veracity as to whether this amount is “advance or investment” and an appropriate decision may be taken.

14. The Ld. AR of the appellant has submitted that an additional ground was raised before the Bench for the first time which states that the appellant may be permitted to carry forward the excess expenditure i.e., deficit for the present assessment year and the same may be allowed to set off against the income/receipts for subsequent years under the Income Tax Act. Ld. AR has argued that the same is purely a legal ground and since all the facts necessary for the same were already before the Ld. AO, it was requested to allow this ground of appeal. Ld. AR of the appellant also prayed that the Ld. AO may be directed to correctly set off deficit against the taxable income of the appellant.

15. As this ground of appeal was taken up before the ITAT for the first time, the Ld. AO is directed to go through the arithmetic as well as applicability of the law and compute the correct tax liability of the appellant.

As the full facts are not filed before the Bench, the Ld. AO is directed to go through the request made by the appellant and necessary action may be taken as per law.

16. The appeal of the appellant is partly allowed as above.

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17. For A.Y. 20015-16 also, the Ld. AO denied exemption u/s. 11 of the Act on the surplus generated on conducting Goa fest on the ground that the same did not amount to “chargeable purpose” defined u/s. 2(15) of the Act.

18. As this ground of appeal was covered in favour of the appellant in earlier years for A.Y. 2011-12 and 2012-13, addition made by the Ld. AO is deleted for the reasons mentioned in the orders of the ITAT.

19. Next ground of appeal raised by the appellant is that the Ld. AO has applied some abstract theory of allocation and worked out the expenses attributable to members and non-members to be deducted from the income from Goa fest. Ld. AR of the appellant has also mentioned that the Ld. AO did an arithmetic mistake while computing the income from non-members by wrongly taking an amount of Rs. 61,11,932/- which is reduced from the income received from non-members whereas the actual expenses to be reduced should be Rs. 2,44,47,735/-. Ld. AR has mentioned that even though this ground was mentioned before the Ld. CIT(A), the same was not adjudicated by him. Hence, the appellant has grievance.

20. After taking into consideration the plea, the Ld. AO is directed to verify the correct amount received from the Members and non-members and actual expense incurred by the appellant. The Ld. AO is directed to correct the mistake, if any.

21. Third ground of appeal raised by the appellant is that the Ld. AO denied exemption u/s. 11 on bank interest earned by the appellant holding that the same is not from Members and therefore not exempt since the appellant is a mutual society.

22. After hearing both sides, it is decided to follow the decision of the ITAT in appellant's own case for A.Y. 2011-12 & 2012-13. Ld. AR of the appellant has submitted that the interest received is "income from property held under Trust" and therefore eligible for exemption u/s. 11 of the Act and same was allowed by the Ld. AO in earlier years up to A.Y. 2012-13. After going through the orders of the Ld. AO and the Ld. CIT(A), it is decided that this issue is already covered in appellant's own case for A.Y. 2011-12 & 2012-13 and respectfully following the earlier years decision of the ITAT, Ld. AO is directed to delete the addition relating to bank interest.

23. Fourth ground of appeal raised by the Ld. AR of the appellant is that the Ld. AO has wrongly considered "entrance fees" received by the appellant to the extent of Rs. 25 lakhs is taxable income.

24. The Ld. AR of the appellant has argued that the appellant's association was formed for the mutual benefits of its members and on the basis of mutuality, entrance fees received from the members is not taxable. Ld. DR has relied on the orders of the Ld. AO and the Ld. CIT(A).

25. During the proceedings before the Bench, Ld. AR of the appellant has brought to the notice of the Bench that this issue was also covered in appellant's own case in ITA No. 6687/Mum/2016 for A.Y. 2012-13 at page 10 of Hon'ble ITAT's order. Respectfully following the earlier years order of the ITAT in appellant's own case, addition is deleted for the reasons mentioned in that order.

26. Ld. AR of the appellant raised an additional ground for the first time before the ITAT stating that the appellant may be permitted to set off against

the expenditure i.e. deficit for earlier assessment year since the appellant has incurred excess expenditure over the receipts/income in the earlier years and the same must be set off/reduced from the taxable income before arriving at the correct taxable income.

27. Ld. AR of the appellant has argued that this is purely a legal issue and all necessary facts are already before the Ld. AO and hence the Ld. AO may be directed to correctly set off the deficit against taxable income of the appellant since it is the duty of the Ld. AO to compute correct tax liability of the appellant.

28. As this ground of appeal was taken up before the ITAT for the first time, the Ld. AO is directed to go through the arithmetic as well as applicability of the law and compute the correct tax liability of the appellant. As the full facts are not filed before the Bench, the Ld. AO is directed to go through the request made by the appellant and necessary action may be taken as per law.

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29. For A.Y. 2017-18 also the issues are same.

30. Ground No. 1 : For the reasons mentioned in ITAT's order for A.Y. 2011-12 & 2012-13, the Ld. AO is directed to allow exemption u/s. 11 on the surplus generated on conducting Goa fest.

31. Ground No. 2&3 : Aggrieved by the AO's denial of exemption u/s. 11 of the Act on bank interest earned by the appellant holding that the same is not from Members and therefore not exempt since the appellant is a mutual society. The Ld. AO has denied u/s. 11 in the assessment order and the same was confirmed by the Ld. CIT(A) in his order. Aggrieved by the addition made by the Ld. AO and being confirmed by the order of the Ld. CIT(A), the appellant filed an appeal on this ground.

32. For the reasons mentioned in ITAT's order for A.Y. 2011-12 & 2012-13, addition made by the Ld. AO is deleted relating to bank interest earned by the appellant.

33. Appellant has taken another ground stating that the Ld. AO has considered interest income as Rs. 51,06,592/-, instead of actual interest income of Rs. 29,85,772/-while denying exemption u/s. 11 on bank interest. As this is a purely arithmetic, the Ld. AO is directed to verify the facts and pass necessary order.

34. The appellant has raised additional ground before the ITAT for the first time praying that the appellant may be permitted to set off excess expenditure i.e. deficit of earlier assessment year since the appellant has incurred excess expenditure over the receipt/income in earlier years and the same must set off/reduced from the taxable income before arriving at correct taxable income.

35. The Ld. AR of the appellant has submitted that this is purely a legal ground and all facts necessary for proper computation is already before the Ld. AO and hence the Ld. AO may be directed to correctly set off the deficit against taxable income of the appellant since it is the duty of the Ld. AO to compute correct tax liability of the appellant.

36. As this ground of appeal was taken up before the ITAT for the first time, the Ld. AO is directed to go through the arithmetic as well as applicability of the law and compute the correct tax liability of the appellant. As the full facts are not filed before the Bench, the Ld. AO is directed to go through the request made by the appellant and necessary action may be taken as per law.

37. Thus, all the three appeals are disposed off and partly allowed as mentioned in this order.

Order pronounced in the open court on 20th September, 2024.

Sd/-
(Narender Kumar Choudhry)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 20.09.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai