

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

**BEFORE JUSTICE (RETD.) SHRI C.V. BHADANG, PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No. 3489/MUM/2024 :

A.Y : 2018-19

Airoli Sports Association,
Plot No. 107, Sector 8A,
Airoli S.O., Navi Mumbai
PAN : AAATA4828Q

(Appellant)

Vs National Faceless Assessment
Centre,
Jawaharlal Nehru Stadium,
2nd Floor, E-Ramp,
New Delhi

(Respondent)

Assessee by : Shri Prakash Pandit,
Revenue by : Shri Ajay Chandra, CIT-DR

Date of Hearing : 20/08/2024

Date of Pronouncement : 21/10/2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dated 22-05-2024 passed by the Ld.Commissioner of Income Tax (Appeals), NFAC, Delhi and it relates to the Assessment Year (AY.) 2018-19.

2. The grounds of appeal raised by the assessee are reproduced below:

"1. In the facts and circumstances of the case and in law the learned CIT(A) erred in affirming the view of the assessing officer in holding that the activities carried out by the assessee do not fall

within the meaning of section 2(15) of the Income Tax Act, 1961 & therefore not eligible to claim exemption u/s. 11 of the Act.

2. *In the facts and circumstances of the case and in law the learned CIT(A) erred in affirming the view of the assessing officer in holding that activities carried out by the assessee fall within the ambit of proviso to section 2(15) of the Income Tax Act, 1961, & therefore the assessee is not entitled for deduction u/s. 11(1)(d) of the Act in respect of corpus/membership fees of Rs. 58crores received towards the Corpus Fund of the assessee.*

3. *In the facts and circumstances of the case and in law the learned CIT(A) erred confirming the view of the assessing officer of disallowing benefit of exemption under section 11 of the Act when the exemption granted u/s. 12A of the Act is valid and subsisting till this date.*

4. *In the facts and circumstances of the case and in law the learned CIT(A) erred confirming the view of the assessing officer in disallowing benefit of exemption under section 11 of the Act on the ground that the assessee is involved in commercial activities in the nature of business and further erred in holding that the activities carried out by the assessee are covered by the proviso to section 2(15) of the Act.*

5. *In the facts and circumstances of the case and in law the learned CIT(A) ought to have adjudicated the issues raised by the assessee regarding the interpretation of changed definition of section 2(15) w.e.f. 1/4/2009 in the light of Supreme Court decision in ACIT v. Ahmedabad Urban Development Authority (449 ITR 1).*

6. *In the facts and circumstances of the case and in law the CIT(A) erred in not adjudicating alternate ground raised by the assessee of treating assessee as a mutual concern and compute income of the assessee on the basis of the principle of mutuality.*

7. *The assessee craves leave to add, amend, alter, modify or omit any of the aforesaid Grounds of Appeal as occasion may arise or demand.”*

3. The Ld.AR submitted that the assessee is a Public Charitable Trust, formed by a Trust Deed dt. 31-05-2000. He submitted that the assessee-trust was granted registration u/s. 12A of the Income Tax Act, 1961 ('the Act') by CIT(E). The assessee was allotted a plot of land admeasuring 2499.630 sq., meters by M/s. CIDCO Ltd., for development of a Sports complex. In order to augment the funds required for that purpose, the assessee-trust proposed to collect corpus fund from its

members. In the return of income, the corpus donations were claimed as exempt u/s.11(1)(d) of the Act.

4. During the year under consideration, the construction of sports complex was completed and Occupation Certificate was also received from CIDCO authorities. The cost of asset was mainly met out of the corpus donations of around Rs.56 crores received from around 2900 members. The AO, however, took the view that activity of collection of corpus fund from persons admitted as new members would amount to carrying on business activities. Accordingly, the AO took the view that the assessee would be covered by the proviso to section 2(15) of the Act and accordingly, he held that the assessee cannot be treated as a 'Charitable Trust' for the year under consideration. Accordingly, the AO computed the total income at Rs. 57.86 crores by assessing the entire corpus donations as income of the assessee. The same was upheld by the Ld.CIT(A). Hence, the assessee has filed this appeal.

5. The Ld.AR submitted that the Hon'ble Supreme Court has recently passed a detailed order in the case of ACIT (Exemptions) vs. Ahmedabad Urban Development Authority [2022] 449 ITR 1 (SC), explaining the scope of proviso to section 2(15) of the Act. The Ld.AR submitted that, as per the ratio laid down by Hon'ble Supreme Court, the activities of the assessee cannot be treated as business in nature and hence, the AO was not justified in treating the activity of collection of corpus donations as a business activity. Accordingly, the Ld.AR prayed that all the issues may be restored to the file of the AO for examining them afresh in the light of the decision rendered by the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (supra).

6. The Ld.DR did not object to the plea of the assessee.

7. Having regard to the submissions made by the parties, we are of the view that all the issues contested before us require fresh

examination at the end of the AO in the light of the decision rendered by the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (supra). Accordingly, we set aside the order passed by the Ld.CIT(A) and restore all the issues to the file of the AO for examining them afresh, after affording an opportunity of being heard to the assessee.

8. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 21st October, 2024

Sd/-
(JUSTICE (RETD.) C.V. BHADANG)
PRESIDENT

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai,

Date :- 21-10-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "A" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai