IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F & SMC" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)

ITA Nos. 21, 20 & 128/MUM/2024
Assessment Year: 2013-14, 2014-15 & 2018-19

Fixed Income Money Market & Derivatives Association of India, 2nd floor, United India Building, Sir P.M. Road, Fort, Mumbai-400 001. **PAN NO. AAATF 0404 B** **Appellant**	**Vs.**	ITO (Exemption)-(1)(3), 6th floor, Room 619, Cumballa Hills, MTNL Building, Peddar Road, Mumbai-400026. **Respondent**

Assessee by	:	Mr. Nitesh Joshi
Revenue by	:	Mr. Ashish Kumar, Sr. DR

Date of Hearing	:	10/09/2024
Date of pronouncement	:	28/10/2024

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against orders passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short 'the Ld. CIT(A)'] for assessment year 2013-14, 2014-15 and 2018-19 respectively. Identical issues are involved in these appeals and therefore, same

were heard together and disposed off by way of this consolidated order for convenience.

2. The grounds raised by the assessee in appeal for assessment year 2013-14 are reproduced as under:

> ***1: 0 Re.: Non granting of exemption u/s. 11 of the Income-tax Act, 1961;***
>
> *1:1 The Commissioner of Income-tax (Appeals) has erred in confirming the stand taken by the Assessing Officer in holding that the Appellant is not entitled to an exemption u/s. 11 of the Income-tax Act, 1961 as claimed by the Appellant.*
>
> *1:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the Appellant is entitled to an exemption in terms of section 11 of the Income-tax Act, 1961 in computing its income for the year and the Commissioner of Income-tax (Appeals) ought to have held as such.*
>
> *1:3 The Appellant submits that the Assessing Officer be directed to grant the Appellant exemption u/s. 11 and to re-compute its total income accordingly.*

3. Briefly stated, facts of the case are that the assessee filed its return of income on 03.10.2013 declaring total income at Rs.77,93,570/-. The return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. The assessee trust is registered as a charitable organization with the Commissioner of Income-tax (Exemption), Mumbai. During scrutiny proceedings, the Assessing Officer found the activities of the assessee related to dealing in securities and ancillary activities for dealing in securities in India , which were held to be in the nature of the trade/business and commercial activities and thus hit by the

proviso to section 2(15) of the Act. After considering the submission of the assessee, the Assessing Officer rejected the exemption claimed by the assessee u/s 11 of the Act and held the assessee as a mutual association. The Assessing Officer further treated the interest under the head miscellaneous income as taxable. In the assessment order passed u/s 143(3) of the Act on 30.01.2016, the Assessing officer assessed total income at Rs.13,88,990/-.

4. On further appeal, the Ld. CIT(A) also upheld the rejection of the exemption claimed by the assessee, in view of the decision of the Hon'ble Supreme Court in the case of **ACIT (Exemption) v. Ahmedabad Urban Development Authority [2022] 143 taxmann.com 278 (SC)**. The Ld. CIT(A) noted that annual conference fee, sponsorship fee, website fee etc. were in the nature of trade, commerce or business or any services in relation thereto exceeding 20% of the total receipt and therefore, invoking the ratio laid down by the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority (supra) upheld the denial of exemption u/s 11 of the Act observing as under:

> *"7.5 Generally, the charging of any amount towards consideration for advancing general public utility which is on cost basis or nominally above cost cannot be considered to be "trade, commerce or business" or any services in relation there to. It is only when the charges are markedly or significantly above the cost incurred by the appellant/assessee in question, that they would fall within the mischief of "cess or fee or any other consideration" towards "trade, commerce or business". Hon'ble Supreme Court in the above decision held that the assessing authorities must every year, scrutinize the record to discern whether the nature of the assessee's activities amounts to "trade, commerce or business" based on its receipts and income (i.e., whether*

the amounts charged are on a cost-basis, or significantly higher). If it is found that they are in the nature of "trade, commerce or business", then it must be examined whether the quantified limit (as amended from time to time) in the proviso to Section 2(15), has been breached, thus disentitling them to exemption.

7.6 It is noticed from letter of appellant dated 05.11.2015 written by the appellant to the ITO (Exam) 11(3), Mumbai that the total receipts from members and nonmembers for the financial year 2012-13 are as follows :

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EIXEO MONY MARKET AND DERIVATIVES ASSOCIATION 31.03.2013

Particulars	**From Members**	**From Non-members**	**Total**
Income			
Membership fees contribution	19,750,000		19,750,000
Additional contribution for 5LP	2,769,400		2,769,400
Bank interest from member banks	3,588,418		3,588,418
Training fees	3,041,965	653,099	3,695,064
Annual Conference Delegate Fees	15,561,324	2,814,503	18,375,827
Annual Conference Fees-Sponsorship Fees		5,297,016	5,297,016
F Trac Income		5,912,464	5,192,464
Website Regstration Fees		2,209,000	2,209,000
Interest on IT Refund & Other	21,010		21,010
Prior Period Income	11,030		11,030
Expenses Written Back:	13,788		13,788
Total	44,756,935	16,886,082	61,643,017

From the above income statement, it can be seen that the total receipts during the relevant year were Rs.6, 16,43,017. The AO identified the following three receipts as in the nature of trade, commerce or business:

1. Annual Conference Delegate Fees : Rs.1,83,75,827

(AO wrongly noted this amount as Rs.2,20,70,891)

1. Annual Conference Fee - Sponsorship Fee : Rs. 52,97,016

2. Website Registration Fee : Rs. 22,09,000

The receipts from 'Annual Conference Delegate Fee' are received from both members and non-members, whereas the other two receipts are exclusively received from non-members. In addition to the above three receipts, at least two more receipts from activities undertaken by the appellant appear to be in the nature of the of trade, commerce, or business or any services in relation there to. They are, -

Training fees Rs. 36,95,064

F Trac Income Rs. 59,12,464

Among the above two receipts, the 'training fees' is obtained from both members as well as non-members. 'F Trac' is nothing but FIMMDA integrated reporting platform for deals in Corporate Bond, Corporate Bond Repo, CDs/ CPs which went live from 1st December 2011. The receipts from F Trac were obtained only from non-members.

7.7 The above five receipts totalling Rs.3,54,89,371 are approximately 57.5% of the total receipts. Since the said receipts exceeded 20% of total receipts, I am of the considered opinion that they would fall within the mischief of "cess or fee or any other consideration" towards "trade, commerce or business"

7.8 Since, the above receipts from the activities that are in the nature of the of trade, commerce, or business or any services in relation there to, exceeded 20% of the total receipts, I hold that the advancement of the objects of general public utility in the case of the appellant SHALL NOT be categorised as a "charitable purpose" in view of the Proviso to section 2(15) and the appellant will not be eligible for exemption u/s 11 of the Act. This is in effect, the ratio decidendi of Hon'ble Supreme Court in ACIT (Exemptions) vs. Ahmedabad Urban Development Authority (supra).

7.9 In part (b) of Ground No. 1, the appellant contended that the AO erred in assessing the appellant-company as a mutual association instead of charitable institution as claimed in the revised return during the assessment proceedings. It may be noted that Hon'ble ITAT, Mumbai in the appellant's own case for the AY 2012-13 in ITA No.849/Mum/2017 dated 28.02.2020, held that the activities carried on by the assessee can never be assessed under the concept of mutuality (para 9 below). Thus, the appellant is not eligible for the benefit of the principle of mutuality as well. Respectfully following the said decision of Hon'ble ITAT, the appellant's contention as above is rejected.

7.10 In part (c) of Ground of appeal No.1, the appellant relied upon the decision of Hon'ble Delhi High Court in Indian trade promotion organization vs DGIT (Exemp) 229 Taxman 347 and Hon'ble Kolkata Tribunal decision in Indian Chamber of Commerce Kolkata vs ITO (Exemp.). Both the above decisions were rendered prior to the decision of Hon'ble Supreme Court in Ahmedabad Urban Development Authority (supra) and as such are not helpful to the appellant.

7.11 In view of the above factual matrix, I hold that the appellant is not entitled for the exemption u/s 11 of the Act. Accordingly, this ground fails."

5. Before us, the Ld. counsel for the assessee has filed an application for filing additional evidence containing pages 1 to 156 in support of claim that assessee is not hit by the proviso to section 2(15) of the Act as per the ratio in the case of Ahmedabad Urban Development Authority (supra). We find that the assessee has filed details in respect of training and conference, website application etc activities for the year under consideration. Since, those documents have not been examined or verified by the Ld. CIT(A) and filed first time before us therefore, it is important to examine all these documents for adjudicating the substantial issue of activities of the assessee covered by the proviso to section 2(15) of the Act. Accordingly, we feel it appropriate to set aside the finding of the Ld. CIT(A) on the issue in dispute and restore the matter back to the file of the Assessing Officer for verifying the claim of the assessee in the light of the additional evidences filed. The grounds of appeal of the assessee are accordingly allowed for statistical purposes.

6. In assessment year 2014-15 also the assessee has filed request for admitting the additional evidences related to training and conference expenses details, website application etc. Since, the details filed as additional evidences in the assessment year under consideration are identical to the details filed in assessment year 2013-14 and therefore, following our finding in assessment year 2013-14, the grounds raised in the appeal are restored back to the file of the Assessing Officer .

7. The grounds raised in the ITA No. 128/Mum/2024 for assessment year 2018-19, are reproduced as under:

> *1:0 Re.: Violation of principles of natural justice:*
>
> *1: 1 The Commissioner of Income-tax (Appeals) has erred in passing the impugned Order without giving an opportunity of being heard which is against the principles of natural justice and thus, should be struck down as bad in law.*
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> *2: 0 Re.: Enhancement of income by Commissioner of Income-tax (Appeals):*
>
> *2: 1 The Commissioner of Income-tax (Appeals) has erred in enhancing the Appellant's total income for the year under consideration which is beyond the powers given in Section 251 of the Income-tax Act, 1961.*
>
> *2:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject the enhancement made by the Commissioner of Income-tax (Appeals) u/s. 251 of the Income-tax Act, 1961 is misconceived incorrect and illegal.*
>
> *2: 3 The Appellant submits that the enhancement made by the Commissioner of Income-tax (Appeals) be struck down as ab-initio void.*
>
> *3: 0 Re.: Denial of exemption u/s. 11 of the Income-tax Act, 1961;*
>
> *3: 1 The Commissioner of Income-tax (Appeals) has erred in holding that the Appellant is not entitled to exemption u/s. 11 of the Income-tax Act, 1961.*
>
> *3:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject, the Appellant is entitled to an exemption in terms of section 11 of the Income-tax Act, 1961 in computing its income for the year and the action of the Commissioner of Income-tax (Appeals) in directing the Assessing Officer to re-compute the Appellant's total income without considering the provisions of Section 11 of the Income-tax Act, 1961 is misconceived, erroneous, incorrect and illegal.*
>
> *3:3 The Appellant submits that the Assessing Officer be directed to grant the Appellant exemption u/s. 11 and to re-compute its total income accordingly.*

7.1 We have heard rival submission of the parties and perused the relevant material on record. In ground No. 1, the assessee has submitted that the Ld. CIT(A) has not provided adequate opportunity of being heard which is against the principle of natural justice. Further, the Ld. counsel for the assessee has filed a request for admitting certain additional evidence in relation to determination of the claim exemption u/s 11 of the Act which according to the assessee could not be filed during the course of the assessment or appellate proceedings. It is submitted by the assessee that said default was not deliberate on account of factors beyond the control of the assessee and therefore, said evidences should be admitted. We find that the identical additional evidences have been admitted in assessment year 2013-14 and 2014-15. Therefore, following our finding in those years, the impugned order for the year under consideration is set aside and restores the mater back to the Ld. Assessing Officer for adjudication after taking into consideration additional evidences and other documents/ submissions filed by the assessee.

7. In the result, all three appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 28/10/2024.

Sd/-	Sd/-
(SANDEEP SINGH KARHAIL)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 28/10/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai