

**IN THE INCOME TAX APPELLATE TRIBUNAL
‘SMC’ BENCH MUMBAI**

BEFORE HON’BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

**ITA Nos. 3956 & 3957/Mum/2024
(A.Ys: 2012-13 & 2011-12)**

Insurance Brokers Association of India 1 st Floor, A-Z Industrial Premises, Unit No. 165, GK Marg, Lower Parel Mumbai – 400013.	Vs.	ITO (Exemption) Ward – 1(3) 609, 6 th Floor, Cumball Hill, MTNL TE Bldg, Pedder Road, Ld.DR. Gopalrao Deshmukh Marg, Cumballa Hill, Mumbai – 400026.
PAN/GIR No. AAATI1580R		
(Applicant)		(Respondent)

Assessee by	Shri Gautam Thacker & Shri Mayank Thosar
Revenue by	Shri Pankaj Kumar, CIT(DR)

सुनवाई की तारीख/Date of Hearing	18.12.2024
घोषणा की तारीख/Date of Pronouncement	19.12.2024

आदेश / ORDER

PER SANDEEP GOSAIN:

The present appeals have been filed by the assessee challenging the common impugned order dated 10.06.2024, passed u/s 250 of the Income Tax Act, 1961 (‘the Act’), by the National Faceless Appeal Centre, Delhi / CIT(E) for the assessment years 2011-12 & 2012-13.

2. Since all the issues involved in these two appeals are common and identical, therefore, they have been clubbed, heard together and consolidated order is being passed for the sake of convenience and brevity. I shall take ITA No. 3956/Mum/2024, A.Y 2011-12 as lead case and facts narrated therein. The assessee has raised the following grounds of appeal:

1. The learned Commissioner (Appeals) erred in not adjudicating the grounds of appeal on validity of reassessment and in upholding the validity of the reassessment proceedings.

2 The learned Commissioner (Appeals) failed to appreciate that no tangible material or information had come to the notice of the Assessing Officer to form "reason to believe" that income chargeable to tax had escaped assessment

3 The learned Commissioner (Appeals) failed to appreciate that reassessment proceedings had been initiated with a view to make further enquiries or investigate the facts or make roving enquiries, without formation of the belief of escapement of income

4. The learned Commissioner (Appeals) ought to have appreciated that the Assessing Officer had failed to arrive at a subjective satisfaction that income had escaped assessment independently based on objective criteria.

As regards denial of exemption under section 11

5 The learned Commissioner (Appeals) erred in upholding the action of the Assessing Officer to deny the exemption under section 11 on the ground that the proviso to section 2(15) was applicable in the case.

6. The learned Commissioner (Appeals) was not justified in upholding the action of the Assessing Officer to consider the Appellant's activities under the category of "advancement of any other objects of general public utility" and not under "education".

7. The learned Commissioner (Appeals) erred in holding that the Appellant trust is only a mutual association and not a charitable institution

As regards disallowance of expenses

8. Without prejudice to the foregoing grounds of appeal, in the alternate and in addition, the learned Commissioner of Income Tax (Appeals) erred in upholding the action of the Assessing Officer in not granting deduction of proportionate expenses of Rs. 11,70,831 claimed against the taxable income computed after applying the principle of mutuality, on the ground that the same were not incurred wholly and exclusively for the earning of the incomes..

3. At the very outset, Ld. AR has drawn our attention to Ground No. 5 to 7, wherein the order of Commissioner has been challenged in denial of exemption u/s 11 of the Act. All the grounds raised by the assessee i.e 5 to 7 are interrelated and interconnected and relates to challenging the order of CIT(E) upholding the action of Ld.AO to deny the exemption u/s 11 of the Act on the ground that the proviso to section 2(15) was applicable.

4. In this regard, the Ld. AR submitted that these grounds are fully covered in favour of assessee by the decision of Coordinate Bench of this Tribunal in assessee's own case for the A.Ys. 2016-17 & 2018-19, wherein identical issue was decided in favour of assessee and the same is reproduced herein below:

8. *The next issue is whether proviso to section 2(15) is applicable in assessee's case and in this regard we will look at the relevant provisions of section 2(15) of the Act.*

(15) "charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

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 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;

9. *From the plain reading of the section, it is clear that the Trust whose objects is for the advancement of any other object of general public utility shall be held to be not for charitable purpose if it involves the carrying on of any activity in the nature of trade, commerce business for rendering of any service to any trade, commerce or business for a cess or fee or any other consideration. We also notice that the income of the assessee does not contain any revenue from any activity in the nature of trade, commerce or business. Further the participation in the annual meet for which the sponsorship fees is received is free of cost and therefore cannot be held to be a service for a fee for rendering service. Considering these facts we are of the view that the AO is not correct in stating that the 1st proviso to section 2(15) is applicable in assessee's case without bringing anything*

on record to substantiate the claim. It is relevant here to consider the observations of the Hon'ble Supreme Court in the case of ACIT (E) Vs. Ahmadabad Urban Development Authority (2022) 143 taxmann.com 278 (SC) where it has been held that

"200. Surat Art Silk (supra) and other decisions, had ruled that as long as the objects of trade promotion bodies were for general public utility wherein 'trade promotion' in itself, was held to be a GPU the fact that incidentally these bodies carried on some commercial activity, leading to profit, did not preclude them from claiming to be driven by charitable purpose. As observed earlier, the enunciation of those principles were in the context of the unamended section 2(15).

*201.***

202. In the opinion of this court, the change in definition in section 2(15) and the negative phraseology - excluding from consideration, trusts or institutions which provide services in relation to trade, commerce or business, for fee or other consideration has made a difference. Organizing meetings, disseminating information through publications, holding awareness camps and events, would be broadly covered by trade promotion. However, when a trade promotion body provides individualized or specialized services - such as Conducting paid workshops, training courses, skill development courses certified by it, and hires venues which are then let out to industrial, trading or business organizations, to promote and advertise their respective businesses, the claim for GPU status needs to be scrutinized more closely. Such activities are in the nature of services "in relation to" trade, commerce or business. These activities, and the facility of consultation, or skill development courses, are meant to improve business activities, and make them more efficient. The receipts from such activities clearly are 'fee or other consideration' for providing service "in relation to" trade, commerce or business.

10. When we consider the facts in assessee's case in the light of the above observations of the Hon'ble Supreme Court we are of the view that the AO is not correct in denying the benefit of section 11 to the assessee by invoking the proviso to section

2(15) of the Act and in holding that the principle of mutuality is applicable to assessee to make an addition towards interest and other income. Accordingly, the AO is directed to delete the addition made in this regard.

5. On the other hand, Ld. DR relied on the orders passed by the lower authorities.

6. After having gone through the submissions of both the parties and also the decision placed on record, I am of the view that the grounds raised by the assessee in the present appeal are squarely covered by the decision of Coordinate Bench. Therefore, respectfully following the decision of the Coordinate Bench of Hon'ble ITAT in assessee's own case for the A.Y 2016-17 & 2017-18 and in order to maintain judicial consistency, I apply the same findings which are applicable mutatis mutandis in the present case. Resultantly, this ground raised by the assessee is allowed

7. Since I have decided the grounds on merits therefore there is no need to adjudicate other grounds raised by the assessee with regard to validity of reassessment proceedings and the same are kept open.

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8. As the facts and circumstances in these appeals are identical to ITA No 3957/Mum/2024 for the A.Y 2011-12

(except variance in figures) and the decision rendered in above paragraph would apply mutatis mutandis for these appeals also. Accordingly, the grounds of appeal of the assessee are allowed.

9. In the result, both the appeals filed by the assessee stands partly allowed.

Order pronounced in the open court on 19.12.2024.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai, Dated 19/12/2024

KRK, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai