

**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.5613/Mum/2024
(Assessment Year :2018-19)**

&

**ITA No.5611/Mum/2024
(Assessment Year :2017-18)**

Dy. Commissioner of Income Tax (E)-2(1) Mumbai	Vs.	Mumbai APMC 3 rd Floor, Administrative Building Sector-18 Turbhe Vashi Turbhe
PAN/GIR No.AABTM6722G		
(Appellant)	..	(Respondent)

**CO No.5/Mum/2025
(Arising out of ITA No.5613/Mum/2024)
(Assessment Year :2018-19)**

&

**CO No.4/Mum/2025
(Arising out of ITA No.5611/Mum/2024)
(Assessment Year :2017-18)**

Mumbai APMC 3 rd Floor, Administrative Building Sector-18 Turbhe Vashi Turbhe	Vs.	Dy. Commissioner of Income Tax (E)-2(1) Mumbai
PAN/GIR No. AABTM6722G		
(Appellant)	..	(Respondent)

Assessee by	Shri Kapil Hirani
-------------	-------------------

Revenue by	Smt. Sanyogita Nagpal
Date of Hearing	27/01/2025
Date of Pronouncement	29/01/2025

आदेश / O R D E R

PER BENCH:

The aforesaid appeals have been filed by the Revenue and Cross Objections by the assessee against order dated 10/08/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2017-18 and 2018-19.

2. In the grounds of appeal, the Revenue has challenged that ld. CIT (A) has erred in granting exemption u/s.11 to the assessee on various grounds:-

“1. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeal) has erred in granting exemption u/s 11 of the Act to the assessee without appreciating that the assessee had not filed the Form No. 10B within the specified due date prescribed for furnishing return of Income u/s 139(4A) of the Income Tax Act, 1961?”

2. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeal) has erred in granting exemption u/s 11 of the Act to the assessee when the claim of exemption u/s 11 was not originally made in the ROI and the power to entertain such claim is not open to the authority of Ld. CIT(A) in the Judgment of Goetze India 284 ITR 323?”

3. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeal) has erred in granting exemption u/s 11 of the Act to the assessee without considering that the objects and income received by the assessee

are in the nature of trade and commerce, therefore, proviso to section 2(15) are attracted and applicable, thereby violating the provisions of Section 2(15) of the Income Tax Act, 1961.

4. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeal) has erred in granting exemption u/s 11 of the Act without appreciating the fact that the proceeds from the activities carried out by the assessee are also substantial to the tune of Rs. 75,79,62,658/-which is more than 20% of total receipts of Rs. 1,62,50,50,967/-and hence as has been stated in the Hon'ble Supreme Court's Judgment in the case of Ahmedabad Urban Development Authority, the assessee is engaged in business activities and therefore proviso to section 2(15) of the Act shall be applicable and exemption u/s 11 of the Act shall be denied to the assessee?

5. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeal) has erred in not appreciating that even if the activities of the assessee are held to be covered under residuary part section 2(15) as "advancement of any other object of general public utility" even then it is not entitled to exemption u/s 11 because it is hit by the proviso to section 2(15) as the income of the assessee consist of activities which are in the nature of trade, commerce or business as laid down by the Hon'ble Supreme Court in Civil Appeal No. 21762 of 2017 in various batch of appeal and SLP's (lead case in ACIT (Exemption) Vs. Ahmedabad Urban Development Authority [2022] 143 taxmann.com 278(SC)]?"

3. Whereas in the Cross Objection the assessee has stated that firstly, ld. CIT(A) has rightly allowed the benefit of exemption u/s.11 and also stated that assessee is anyway not liable for taxation, benefit of exemption u/s.10(26AAB) of the Act, no income is chargeable to tax.

4. The brief facts are that assessee has filed its return of income u/s.131 on 30/10/2018 for the A.Y.2018-19 claiming exemption

u/s.10(26AAB) however, it has also filed revised return on 26/12/2018 alongwith Form 10B claiming exemption u/s.11. The ld. AO without considering that assessee is an Agricultural Produce Market Committee (APMC) created under the MAPM Regulation Act, 1963 with the aims and objects of to promote agricultural produce and its market and that income of the assessee is exempt u/s.10(26AAB) has proceeded to compute the total income. The ld. Assessing Officer referred to some old CBDT Circular dated 11 of 2010 dated 19/12/2008 and after invoking proviso to Section 2(15) has taxed the surplus amount. Ld. CIT (A) too has confirmed the addition.

5. Here in this case both the authorities have clearly missed the fundamental provisions governing the agricultural produce market committees. Earlier all the agricultural produce committees were treated as local authority u/s.10(20). Later on there was amendment u/s.10(20) w.e.f. 1.04.2003 and the scope of authorities falling u/s. 10(20) was limited. All these agricultural produce market committees then were required to get registered u/s.12A and they were entitled to claim benefit u/s.11 on the computation of income. Finally, the legislature introduced u/s.10(26AAB) w.e.f. 01/04/2009 wherein it was provided as under:-

“(26AAB) any income of an agricultural produce market committee or board constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce”

6. Thus, any income of agricultural produce market committee or board were held to be non-taxable, i.e., while computing the total income, the same shall not be included in the total income. Once the entire income of the agricultural produce market committee or board is not included in the computation of total income u/s.10(26AAB), then whether assessee earlier had the registration u/s 12A prior to 01/04/2009 or was granted benefit u/s.11, then there is no relevance to invoke provision of Section 11 to 13. The Registration u/s.12A has no significance or relevance any more in case of agricultural produce market committee. Here the provision of section 11(7) will not be fetter because now *per se* any income from whatever source of the agricultural produce market committee is exempt and cannot be included in the computation of income and registration of 12A has no relevance at all. Its upto the Department to cancel or still recognize the certificate but so far as APMC is concerned it is dead letter and it is out of any kind of taxing ambit under the Income Tax Act Thus, we hold that any income of the assessee cannot be included in the computation of income and the entire income is exempt under the Act. Accordingly, the order of the ld. AO in computing the income u/s.11 denying the benefit is hereby quashed.

7. In the result, appeals of the Revenue are dismissed and the Cross Objections of the assessee are allowed.

Order pronounced on 29th January,2025.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 29/01/2025
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai