

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "J" MUMBAI**

**BEFORE SHRI C. N. PRASAD (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3328/MUM/2015  
Assessment Year: 2010-11**

The Indian Silk Export Promotion Council, B-1, Entension A -39 Mohan Co-op. Industrial Estate, Mathura Road, New Delhi-110044.	Vs.	ACIT (Exemption) II (1), Mumbai- 400002
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**PAN No. AAATT4407C**

**(Appellant)**

**(Respondent)**

Assessee by:	Shri N. H. Gajria, AR
Revenue by:	Shri Kailash Gaikwad, DR.

Date of Hearing : 06/10/2016  
Date of pronouncement: 30/11/2016

**ORDER**

**PER N.K. PRADHAN, A.M**

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner (Appeals)-7 Mumbai and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (The 'Act').

2. The sole ground raised by the assessee in this appeal is that the ld. CIT(A) erred in confirming the disallowance of Rs.32,90,030/-, being the amount spent outside India as not an application of money in India in terms of provisions of section 11 of the Act. It is also raised that the ld. CIT(A) has erred in confirming the said disallowance, being the amount spent outside India, though the main object of the Council is to promote exports in silk industries for the country falling under the head public utility services.

3. The assessee-trust filed its return of income for A.Y. 2010 – 11 declaring total income at Rs. Nil. During the course of assessment for the impugned assessment year, the AO found that the assessee had spent the following amount outside India.

Particulars	Amount spent outside India (Rs.)
Global Textile Fair, Los Angeles USA , April 2009	6,96,155/-
Tex World Fair, Paris, September,2009	4,96,599/-
ATF Fair, Capetown, South Africa, November,2009	7,41,968/-
Heim Textile Fair, Germany,January,2010	8,31,086/-
Textile World Fair,Paris, February,2010	5,24,222/-
Total	32,90,030/-

In response to a query raised by the AO to explain why this amount spent outside India should not be disallowed, the assessee submits that the trust is formed by the Ministry of Commerce with the object of promoting export of silk and its allied products. It gets grants from the government for participating in such programs. It is argued before the AO that the objects of the trust fall under the general public utility. The assessee also submits that it requires participation in fairs abroad in order to achieve its objects and the very purpose of formation of the assessee trust would be defeated if such amount is not spent outside India.

The AO relied on the decision in the case of *Director of Income-tax (Exemption) vs. National Association of Software and Services Companies* (345 ITR 362) and held that the application of income as well as charitable purposes should be in India. In view of the above decision, the AO disallowed Rs. 32, 90, 030/-spent by the assessee trust outside India and denied exemption on the above amount.

4. The assessee-trust preferred appeal against the order of the AO before the Id. CIT (A). The Id. CIT (A) relied on the decision in the case of *India Brand Equity Foundation*, 53 SOT 506 and *National*

*Association of Software and Services Companies (supra)* and confirmed the disallowance of Rs.32,90,030/- made by the AO.

5. The Id. counsel of the assessee submits before us that the decision relied on by the AO and Id. CIT(A) are different from the case of the assessee in the following manner. India Brand Equity Foundation (IBEF) is not an Export Promotion Council. It did not get any grants from Government to organize an exhibition abroad. It got funds from Engineering Export Promotion Council to hold the exhibition abroad. IBEF was not liable to refund the unspent amount to any authorities as against the appellant company is bound to refund the entire amount of grants if not utilized as per the directions of the Government. The Council is an Export Promotion Council, whose main objects are to promote the exports in the field of silk and its allied products, whereas the case of IBEF and NASCOM (National Association of Software and Services Companies) their main objects are not to promote exports but to promote trade of their industry. The Council needs to arrange such exhibitions and seminars in India and abroad to promote the exports under the guidelines of the Government policies and Rules and Regulations, whereas IBEF and NASCOM are at their will and desire to arrange or participate in exhibitions outside India. The Council is bound to have such exhibitions abroad in view of the Government Policies and guidelines, whereas IBEF and NASCOM are not bound to participate in activities outside India.

5.1 The Id. counsel of the assessee submits that the case of the assessee is fully covered by the following decisions which indicate that the amount spent outside India to promote the exports are deemed to have been applied for the charitable purposes in India.

- (i) *Gem and Jewellery Export Promotion Council vs. Sixth Income tax Officer* 68 ITD 95(Mum-ITAT Bench)
- (ii) *Handloom Export Promotion Council vs. Adi (Exemption)- IV, Chennai* 62 taxmann. com 288-Chennai ITAT
- (iii) *ADIT (Exemption) vs. The Synthetics & Rayon Textiles Export Promotion Council Mumbai-* ITA 6639 and 6640/Mum/2011 Mumbai ITAT.

5.2 The ld. counsel specifically refers to the order of the ITAT “H” Benches Mumbai in the case of *M/s The Gem & Jewellery Export Promotion Council* (ITA No. 5143/Mum/2010 for A.Y. 2005-06), (ITA No. 5144/Mum/2010 for A.Y. 2006-07) & (ITA No. 5145/Mum/2010 for A.Y. 2007-08) stating that the Tribunal has followed the decision of the Hon’ble Bombay High Court in *DIT vs. M/s The Gem & Jewellery Export Promotion Council* [ITA (LOD) No. 1113 of 2010] and allowed exemption u/s 11 to the assessee. The ld. counsel submits that facts being similar, the assessee-trust in the instant case is also entitled to exemption u/s 11 by following the referred decision of the jurisdictional High Court.

5.3 An alternative argument is made by the ld. counsel of the assessee stating that all grants received with specific directions do not form or fall within the definition voluntary contribution and hence not liable to taxed . He states that the issue has been clearly brought out in the following decisions.

- (i) *CIT vs. Gem and Jewellery Export Promotion Council* -13 Taxmann 13(Bom).
- (ii) *Handloom Export Promotion Council vs. ADIT (Exemption -IV)* 62 Taxmann.com 288 (Chennai ITAT).
- (iii) *DIT (Exemption) vs. Gujarat State Council for Blood Transfusion* 41 Taxmann.com 449(Guj.)

- (iv) *DIT (Exemption) vs. Society for Development Alternatives* 18 Taxmann. Com 364 (Del.)
- (vi) *Nirmal Agriculture Society vs. ITO* 71 ITD 152 (Hyderabad ITAT).

6. The ld. DR supports the order passed by the ld. CIT(A). He relies on the decision in the case of *National Association of Software and services Companies (supra)* wherein it has been held that “the amount of Rs. 38,29,535 spent by the assessee-trust in Hanover, Germany cannot be considered as application of the income of the trust in India for charitable purposes.” He also relies on the order in the case of *India Brand Equity Foundation(supra)*.

7. We have heard the rival submissions and perused the relevant material on record. During the course of hearing we requested the ld. counsel of the assessee to file a copy of the judgement of the Hon’ble Bombay High Court in *M/s The Gem & Jewellery Export Promotion Council (supra)*. The ld. counsel filed a written submission on 21.10.2016 stating that the said decision of the Hon’ble Bombay High Court is not available though the order of the Tribunal mentions it. We have gone through the order of the Tribunal in *M/s The Gem & Jewellery Export Promotion Council(supra)* and find that the issue of holding exhibition is there. But the issue of holding exhibition outside India is not apparent from the order.

7.1 We find that the alternative argument advanced by the ld. counsel of the assessee has got a direct bearing on the instant case . The ld counsel of the assessee has relied *inter-alia* on the judgement of the Hon’ble Bombay High Court in *Gem and Jewellery Export Promotion Council(supra)*, wherein it has been held:

“It was well known that the grants-in-aid were made by the Government to provide certain institutions with sufficient funds to carry on their charitable activities. On reading the conditions on which those grants-in-aid were given,

it was obvious that the institutions or associations to which the grant was made had no right to ask for the grant and it was solely within the discretion of the Government to make grants to institutions of a charitable nature. Again, the Government did not expect any return for the grants given by it to such institutions and there was nothing which was required to be done by these institutions for the Government, which could be considered as consideration for the grant.

Therefore, none of the conditions attached to the grant affected the voluntary nature of the contribution. Hence, the impugned grant was exempt under section 12.”

7.2 Therefore, we admit under Rule 29 of the ITAT Rules, 1963 the alternative argument filed by the assessee on 21/10/2016 before the Tribunal. However, the above alternative argument was not there before the AO or the Id. CIT(A) . In view of the above, we set aside the order of the Id. CIT(A) and remit the case to the file of the AO (i) to consider the main as well as the alternative argument of the assessee (ii) examine the relevance of the decision of Hon’ble Bombay High Court in *M/s The Gem & Jewellery Export Promotion Council (supra)* and make a fresh assessment as per the provisions of the Act, after giving reasonable opportunity of being heard to the assessee.

8. In the result the appeal is allowed for statistical purpose.

**Order pronounced in the open court on 30/11/2016**

Sd/-

(C. N. PRASAD)  
JUDICIAL MEMBER

Sd/-

(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai; Dated: 30/11/2016

*Pramila*

**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//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**