

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष  
**BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1854/Mds/2014  
निर्धारण वर्ष /Assessment years : 2009-2010.

M/s. Employers Federation  
of Southern India,  
No.33, Hindi Pracher Street,  
T. Nagar,  
Chennai 600 017.

**Vs.** The Assistant Director of  
Income Tax,  
Exemption –III,  
Chennai.

**[PAN AAAAT 0118M]**  
**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Shri. V.S. Manoj, Advocate  
: Shri. Ashush Tripathi, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 11-01-2017

घोषणा की तारीख /Date of Pronouncement

: 31-01-2017

**आदेश / ORDER**

In this appeal filed by the assessee, it is aggrieved on denial of exemption claimed u/s.11 of the Income Tax Act, 1961 (in short "the Act"). One other grievance raised by the assessee is on rejection of its claim for exemption from tax on subscription and delegates fees collected from members, based on the principles of mutuality.

2. Facts apropos are that assessee a trust registered u/s.12A(a) of the Act had filed return of income for the impugned assessment year claiming exemption u/s.11A of the Act. From the details submitted by the assessee during the course of assessment proceedings, it was noted by the Id. Assessing Officer that its main object was "to consider all questions concerning the relations between the employers and employees in Southern India in order to protect the interest of employers engaged in trade, commerce, manufacture and industry of Southern India". As per Id. Assessing Officer apart from collecting annual subscription from members, assessee had also collected delegate fees for seminars conducted by it, raised income through advertisements placed in a souvenir brought out by it and also had other miscellaneous income. Ld. Assessing Officer was of the opinion that assessee, though it was carrying on an object of general public utility activity, had aggregate receipts in the nature of fees which exceeded ₹10,00,000/-. Ld. Assessing Officer was of the opinion that assessee was hit by second proviso of Sec.2(15) of the Act. He denied exemption claimed by the assessee u/s.11 of the Act. He treated the income, earned over the expenditure incurred, falling under the heads building fund and general fund, as its total income after allowing the claim of depreciation.

3. Aggrieved, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Arguments taken by the assessee before Id. Commissioner of Income Tax (Appeals) are summarized hereunder:-

*(i) Receipts of subscription and delegates fees did not mean that it was carrying on trade or commerce or any activity of rendering service in relation to trade, commerce or business.*

*(ii) Principles of mutuality as classified by Circular No.11/2008, dated 19.12.2008 of CBDT was not considered nor were the judgments of Apex Court in the case of Chelmsford Club vs. CIT 243 ITR 89 and that of Hon'ble Allahabad High Court in the case of CIT vs. JK Organization Limited 279 ITR 503 considered.*

*(iii) All money collected through subscription were credited to general fund. As per governing rules, surplus could not be distributed to members.*

However, Id. Commissioner of Income Tax (Appeals) was not impressed by the above arguments. According to him, object of the assessee was advancement of object of general utility and not relief of poor, education or medical relief. According to him, since its receipts

exceeded ₹10,00,000/- proviso to Se. 2(15) of the Act stood clearly attracted.

4. Coming to the claim on exemption based on the principles of mutuality, as per Id. Commissioner of Income Tax (Appeals), for applying such principle, activities of the assessee should have been restricted to contribution from and participation of its members. As per Id. Commissioner of Income Tax (Appeals) assessee had receipts from interest on fixed deposits, fee from advertisement, surplus from seminar and miscellaneous income which involved non members also. Id. CIT(A) observed that facts in the case of *Chelmsford Club (supra)* of Apex Court and that of *JK Organization Limited (supra)* decided by Allahabad High Court were not applicable, since in those cases, concerned parties were not catering to any outsiders. Thus he upheld the order of the Id. Assessing Officer.

5. Now before me, Id. Authorised Representative strongly assailing the orders of the lower authorities submitted that assessee was not carrying on any activity in the nature of trade, commerce or business. As per Id. Authorised Representative it was not rendering any service in relation to any trade, commerce or business for consideration. As per Id. Authorised Representative advertisement income earned by the assessee from its souvenir and delegate fees

from seminars were incidental to the main object of the assessee trust. Contention of the Id. Authorised Representative was that object of the assessee trust did not involve carrying on any such activity which could be considered as trade, commerce or business or any services related thereto. As per Id. Authorised Representative conducting seminars and bringing out souvenirs were all activities which were incidental to the main object of the trust, which was maintaining relationship between employers and employees in Southern India and promoting good feeling between them. Submission of the Id. Authorised Representative was that seminars conducted and souvenirs issued and activities akin to them were all incidental to the main object and was never the primary object of the assessee trust. Reliance was placed by the Id. Authorised Representative on the decision of the Co-ordinate Bench in the case *Madras Chamber of Commerce and Industry vs. vs. ACIT (2016) 46 CCH 681*. Drawing parallel with the said case, Id. Authorised Representative submitted that *Madras Chamber of commerce and Industry (supra)* was receiving fees for issuing certificates of origin. As per Id. Authorised Representative these were considered by the lower authorizes as commercial activity. Id. Authorised Representative pointed out that Tribunal had held such services to be incidental to the main activity of the said assessee. Reliance was also placed on the judgment of Hon'ble Jurisdictional

High Court in the case of *CIT vs. Madras Chamber of Commerce and Industry (1980) 16 CTR 228*, on the decisions of Kolkata Bench of the Tribunal in the case of *DCIT vs. Indian chamber of commerce (2016) 47 CCH 549* and *Indian Chamber of Commerce vs. ITO (2015) 67 SOT 176* and that of Co-ordinate Bench in the case of the *Southern India Chamber of Commerce and Industries vs. JCIT (ITA No.2733 & 2734/Mds/2014, dated 17.04.2015)* and *DDIT vs M/s. Council for Leather Exports (ITA No.1192/Mds/2014, dated 26.06.2015)*. In any case, as per Id. Authorised Representative, principles of mutuality was not properly considered since annual subscription collected by the assessee were from its members. Contention of the Id. Authorised Representative was that just because advertisement income from souvenir and participation fees from conference involved some outside parties would not change the character of the assessee which was governed by the principles of mutuality. Thus, according to him exemption claimed u/s.11 of the Act was unfairly denied and principles of mutuality not applied though assessee was a mutual benefit association.

**6.** Per contra, Id. Departmental Representative strongly supported the orders of the authorities below.

7. I have considered the rival contentions and perused the orders of the authorities below. Income and expenditure of the assessee for the relevant previous year and also the immediate preceding previous year makes interesting reading. This is reproduced hereunder:-

	Schedule No.	Year ended 31 <sup>st</sup> March 2010	Year ended 31 <sup>st</sup> March, 2009
INCOME			
Subscriptions		1722744	1703028
Other Income	6	1573822	2013213
		<u>3296566</u>	<u>3716241</u>
		-----	-----
Less: Expenditure	7	2472100	2529681
Depreciation	3	246146	239846
Excess of Income over expenditure		<u>578320</u>	<u>946714</u>
Transferred to:			
Building Fund		225000	700000
General Fund		353320	246714
		<u>578320</u>	<u>946714</u>

The expenditure incurred by the assessee which is given in Schedule 7 also is relevant and details thereof as appearing in Schedule 7 of its Audited accounts is reproduced hereunder:-

		Year ended 31 <sup>st</sup> March 2010 ₹		Year ended 31 <sup>st</sup> March 2009 ₹
<b>EXPENDITURE</b>				
Electricity charges		41942		43444
Affiliation charges to employers federation of India		17000		16000
Subscription to the association		6000		6000
Establishment charges		1302693		1322408
Repairs and renewals and maintenance		56992		49392
Rent		112200		112200
Rates and Taxes		21000		24500
Printing and Stationery		207383		271611
Postage and Courier charges		196082		262682
Books and Periodicals		20464		21700
Annual General Meeting / Meeting expenses		163708		92164
Travelling & Conveyance expenses		99149		91370
Telephone charges		77953		74495
Bank charges		4256		9309
Sundry expenses		34108		25237
Professional charges				
For Audit Fees	13236		13236	
For Tax Representation	11030		11663	
For Expenses	--		3596	
	-----	24266		28495
Computer Maintenance		34830		26600
Proportionate Cost of investment in excess of face value written off		2074		2074
Service charges relating to Karnataka Branch		50000		50000
		<u>2472100</u>		<u>2529681</u>

8. Now the first question we have to answer is whether assessee was carrying on any activity which came within the ambit of its primary object. This is for the reason that claim of the assessee with regard to its conference fees, advertisement income, delegates fees etc is that these were incidental to the main object and were not anyway connected with trade, commerce and business. Objects of the assessee as it appear in its clause (3) of its Rules is reproduced hereunder:-

- (i) "to consider all questions concerning the relations between employers and employees in Southern India, and to collect, classify, circulate and publish statistics and other information relating thereto;*
- (ii) to encourage and secure, whenever possible, united or concerted action among employers on all subjects involving the interests of Members;*
- (iii) to encourage and promote good feeling and to establish just and equitable principles in dealings between employers and employees in Southern India, and to promote and support all appropriate schemes for the general improvement of employer-employee relations;*
- (iv) to promote and protect the interests of employers engaged in trade, commerce, manufacture and industries of Southern India in the areas of industrial relations;*
- (v) to advise employers on matters, relating to employer-employee relations, to assist them in the settlement of disputes and to represent or arrange for the representation of employers in any proceedings before Conciliation Officers; Conciliation Boards, Courts of Enquiry, Industrial Tribunals, Labour Court or any Court or other judicial or quasi-judicial body and any tripartite bodies or other statutory bodies.*
- (vi) to reconcile controversies, if any, between Members of*

*the Federation.*

*(vii) to arbitrate in the settlement of disputes arising out of matters affecting the relationship of employers and employees, between parties agreeing to abide by the judgement of the Federation.*

*(viii) to negotiate on behalf of employers with trade unions and / or other employees' organisations;*

*(ix) to communicate with Chambers of Commerce, Employers' Federations, Trade Unions and other employees' organisations, mercantile and public bodies throughout the world, and concert and promote measures connected with these objects or any of them;*

*(x) to promote, examine and offer suggestions to legislative or other measures affecting the terms and conditions of service, welfare, health, education and regulations and control of employees, and to make representations to local, State, Central, Commonwealth, International and other authorities on matters connected with these objects or any of them;*

*(xi) to promote management and technical education including training and in furtherance to set up either by itself or in collaboration with any other body, training institutes etc.*

*(xii) to assist members in improving employee and industrial relations by (a) organising where necessary in association with other institutions, programmes/courses on personnel management and industrial relations on personnel management and industrial relations*

*(b) maintaining reading rooms, library and any information centre; (c) opening regional/branch offices and (d) creating endowments for furthering the Federation's objectives and receiving contributions for such purposes;*

*(xiii) to acquire and dispose off any property, movable and immovable, which the Federation for the purposes thereof, may from time to time think proper to acquire;*

*(xiv) to invest the monies of the Federation in accordance with the provisions of Section 13(1) (d) read with Section 11 (5) of the Income Tax Act.*

*(xv) to borrow or raise any monies required for the purposes of the Federation, and upon such terms, as may seem*

*expedient;*

*(xvi) to subscribe, to affiliate with and I or become a member 0:1 and cooperate with any other Association, national or international, whether incorporated or not, whose objects are altogether or in part similar to those of this Federation, and to procure from and communicate to any such Association such information as may be likely to forward the objects of the Federation;*

*(xvii)to do such other lawful things in business as may be incidental or conducive to the attainment of the above objects or any of them with no intention of earning profit unless the business is incidental to the attainment of the objectives of the Society.*

*(xviii) to negotiate, giving or receiving of grant or contribution from any national or international agency either by way of financial or other assistance, equipment, books etc., subject to any statutory provisions;*

*(xix) to undertake, collaborate with or assist others, measures for the promotion of family planning and welfare, health and hygiene and measures for pollution control and environmental improvement by way of education, propaganda, holding meetings, seminars etc., including setting up of centres in furtherance of the above.*

*(xx) to do all the above activities in such a manner that the benefits will be available to all persons irrespective of caste, creed, religion, sex etc”.*

In my opinion, none of the expenditure listed by me at para 7 above could be considered as incurred in furtherance to any objects mentioned (supra). There might be some indirect nexus of a few heads of expenditure with the objects. However, chapter 4 of its Annual report which gives the gist of the activities speaks

predominantly of conferences like "labour law implications in the changed scenario" conducted on 12<sup>th</sup> September, 2009, "employment laws-managements perspective" conducted on 6<sup>th</sup> February, 2010, "building organizations and human capabilities in challenging times" held on 9<sup>th</sup> April, 2009 and "innovative wage settlements- sharing of experiences" held on 28<sup>th</sup> January, 2010, of which atleast two were in collaboration with Bangalore Chamber of Industry and Commerce. It is not being disputed by the Id. Authorised Representative that these conferences and seminars were open to persons other than members of assessee trust and fees were collected from such non members also. Major activity of the assessee trust, as per its annual report was conducting such seminars and therefore in our opinion claim of the assessee that conducting of seminars, publication of souvenirs etc seminars were incidental to its main object cannot be accepted. This is also clear from income and expenditure account which clearly shows that it had other income of ₹15,73,822/- against subscription income of ₹17,22,744/-. Details of the "other income" as it appears in schedule 6 of its audited final accounts is reproduced hereunder:-

	Year ended 31 <sup>st</sup> March 2010 ₹	Year ended 31 <sup>st</sup> March 2009 ₹
OTHER INCOME		
Interest on Investment & Fixed Deposits (Tax deducted at source -4087 Previous year -₹ Nil)	775282	702934
Others	10173	19066
Fees for Extra Copies of Circular Advertisement	12500	10500
Surplus from Seminars	57500	81000
Delegate fee collected	1018132	1715728
Less: Expenses	<u>493697</u>	<u>770519</u>
Miscellaneous Income	193932	945209
Provision made for shortfall in market value of investment no longer required written back	0	61049
	<u>1573822</u>	<u>2013213</u>

There cannot be a iota of doubt that assessee was earning substantial income from seminars, interest on investments and miscellaneous

items. Assessee in my opinion assessee cannot claim that its earning were only incidental to its main objects nor can it say that its income was exempt on principles of mutuality, since admittedly the items comprised in other income were not exclusively earned from its members.

9. Now coming to the reliance placed by the assessee on the decision of Co-ordinate bench in the case of Madras Chamber of Commerce and Industry (supra), fees received by the said Chamber was for issuing certificates of origin and for arbitration. Finding of the Tribunal was that such fees were incidental to the main activities of the Madras Chamber of Commerce and Industry (supra). The Tribunal had relied on the judgment of Hon'ble Jurisdictional High Court in the case of Madras Chamber of Commerce and Industry (supra). Their lordship in the said case had held at para 3 & 4 of the judgment as under:-

*'3. It was common ground before the Tribunal, as stated in paragraph 4 of the Tribunal's order, that the assessee, which was a society registered under the societies Registration Act, was founded for the promotion and protection of trade and commerce and that, therefore, the objects of the assessee were of general public utility within the meaning of s. 2(15) of the Act. The decision of the Calcutta High Court, which was followed by the AAC, and the decision of the Kerala High Court, which was followed by the Tribunal, were all considered by the Supreme Court in the Indian Chamber of Commerce vs. CIT, Bengal.*

*The Kerala decision was reversed and the Calcutta decision was affirmed. Subsequently the Supreme Court in the case of the Add. CIT, Gujarat, Ahmedabad vs. Surat Art Silk Cloth Manufactures Association, Surat has dissented from the judgment in the Indian Chamber of Commerce vs. CIT, West Bengal-II. The latest decision of the Supreme Court has been considered by us in T. C. No. 352 of 1974 and applied in the judgment pronounced today.*

*4. The first point to be considered in the present case is whether the assessee is pursuing an object of general public utility. In the light of the judgment of the Supreme Court in the CIT vs. Andhra Chamber of Commerce it has to be held that the assessee's objects are such as to subserve the general public. Therefore, the assessee would fall within the main part of definition of s. 2(15). The only further question that would require consideration would be whether the Association is carrying on any activity for profit, so as to fall with the word "exclusion" in s. 2(15). There is nothing to show that the assessee, in giving assistance by way of arbitration or issuing certificates of origin in respect of goods, was carrying on any activity for profit. The dominant purpose of the assessee Chamber is only to pursue an object of general public utility".*

The factual scenario in the case before us is entirely different. Assessee had not received any income on account of any arbitration or issue of certificates of origin but substantial part of its earning were from advertisement in souvenirs, fees from seminar /conference, interest etc. These type of income in my opinion could never be compared with income like fees received for issuing certificates of origin and arbitration fees received by a Chamber of commerce.

10. Now coming to the decision of Co-ordinate bench in the case of M/s. Council for Leather Exports (supra) which in turn relied on a decision of same Bench in the case of the Southern India Chamber of Commerce & Industry (supra), in the latter case the Co-ordinate bench had considered the judgment of Hon'ble Delhi Court in the case of Indian Trade Promotion Organization vs. DCIT (2015) 374 ITR 333, (2015) 114 DTR 329, while holding that if the dominant object of a federation was promotion, protection and development of trade, commerce and industry without any motive to earn profits, any income from such activity could be considered as incidental or ancillary to the dominant object which was welfare and common good of the country's trade, commerce and industry. No doubt Hon'ble Delhi High Court did hold that basic principle underlying the definition of charitable purpose remained unaltered even after amendment in Sec. 2(15) of the Act through Finance Act, 2010 with effect from 01.04.2009, through which second proviso was inserted. All the other case laws relied on by the assessee were on Chambers of commerce or association of like nature and not a federation of employers. In the case before us, facts clearly bring out that conducting conference/seminar was not done as an incidental activity but during the relevant previous year it was the pre-dominant activity. In our opinion, it may not be appropriate to give an

interpretation to Sec. 2(15) of the Act which is not in consonance with the words used by the legislation, where the predominant activity carried on was akin to a business or trade or service in connection thereto. Section 2(15) of the Act alongwith the relevant provisos as it stood at the relevant point of time is reproduced hereunder:-

*"charitable purpose" includes relief of the poor, education, medical relief, 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 ;*

*Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is ten lakh rupees or less in the previous year ;*

Admittedly receipt of the assessee classified by it as "other income", comprised in it seminars / delegates fees, advertisement and miscellaneous income which far exceeded limits laid down in the second proviso. Thus, in our opinion assessee could neither be considered performing charitable activities within the meaning of Sec.

2(15) of the Act during the relevant previous year nor it could be considered as exempt on the principles of mutuality. We therefore, find no reason to interfere with the orders of the lower authorities

8. In the result, the appeal of the assessee stands dismissed.

Order pronounced on Tuesday, the 31<sup>st</sup> day of January, 2017 at Chennai.

**Sd/-**

**(अब्राहम पी. जॉर्ज)**

**(ABRAHAM P. GEORGE)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:31 January, 2017.

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |