

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&**

SHRI RAVISH SOOD, JUDICIAL MEMBER

**ITA No.3162/Mum/2019
(Assessment Year :2013-14)**

The Association of Physician of India Turf Estate, 6 & 7 Dr. E.Moses Road Near Mahalaxmi Station (W) Opp. Shakti Mills Compound Mumbai – 400 011	Vs.	Assistant Director of Income Tax-E-II(2) Room No.508, 5 th Floor Piramal Chambers Lalbaug, Mumbai-400 012
PAN/GIR No.AAATA0598F		
(Appellant)	..	(Respondent)

Assessee by	Shri Hitesh Jain
Revenue by	Shri Brajendra Kumar
Date of Hearing	23/08/2021
Date of Pronouncement	08/09/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.3162/Mum/2019 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-3, Mumbai in appeal No.CIT(A)-3/IT-10431/2017-18 dated 23/01/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 28/12/2015 by the Id. Income Tax Officer – E-1(1), Mumbai (hereinafter referred to as Id. AO).

2. The assessee has raised the following grounds of appeal: -

“The learned Commissioner of Income Tax (Appeals) {“Ld. CIT(A)”} has erred in confirming the action of the Ld. Assessing Officer in considering the activities of the appellant trust as that of a “mutual association” and denying the exemption under section 11 of the Act on the income aggregating to Rs. 1,70,58,230/- and taxing the same as business income. On the basis of facts, in circumstances of the case and in law the exemption claimed under section 11 of the Act, ought to be allowed as the appellant is a charitable institution imparting education in the field of science of medicine.

2. The appellant craves leave to add, alter, amend and/ or rescind any grounds of appeal during the course of the hearing.”

3. We have heard rival submissions and perused the materials available on record. We find that assessee was formed as a public charitable trust on 22/11/1944 to provide education in the field of science of medicine and is registered under Public Trust Act, 1950 vide registration deed dated 28/06/1965. The assessee has also registered u/s.12A of the Act vide registration dated 31/07/1991. From the inception of the trust till A.Y.2010-11, the assessee has been granted exemption u/s.11 of the Act in respect of its income. During the year under consideration, the Id. AO had sought to apply the proviso to section 2(15) of the Act which came into effect from 01/04/2009. The Id. AO also applied Circular No.11 of 2008 dated 19/12/2008 issued by the CBDT, sought to rely on the exception provided in the said Circular with respect to mutual association, concluded that income by way of interest and profit on sale of books and journals of Rs.1,70,58,230/-, derived from non-members would be liable to tax. The action of the Id. AO was upheld by the Id. CIT(A).

3.1. From the perusal of the various objects of the assessee, we find that the objects of the trust are indeed charitable in nature and the objects predominantly pertain to the field of education and benefit of such activities are received by doctors who may be members of the assessee

association or not. The benefit of activities is also extended to various hospitals, students and the general public. On these facts, there is absolutely no dispute. Both the parties before us primarily agreed that the issue raised by the assessee in this ground is squarely covered by the Coordinate Bench decision of this Tribunal in ITA No.2623/Mum/2019 for A.Y.2011-12 dated 03/03/2021 in assessee's own case wherein it was held as under:-

"6. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.

7. We have noted that while the Assessing Officer has categorically observed that "the object of the assessee trust is solidarity and endowment to it's members" (emphasis supplied by us), and that this object extends "to encourage and advance the knowledge, study and practice of the science of medicine in all" ways among members (emphasis supplied by us), the aims and objectives of the assessee trust make no mention about restricting the beneficiaries to the members of the assessee trust. The aims and objectives of the assessee trust are as evident from the trust deed on record, are as follows:-

PART I : MEMORANDUM OF THE ASSOCIATION

1. The name of the Association is "The Association of Physicians of India."

2. The registered office of the Association shall be situated at Madras for the present.

3. The headquarters of the Association shall be at Mumbai.

4. Aims and Objectives

4.1 To encourage and advance the knowledge, study and practice of the science of medicine in all ways.

4.2 To encourage research, including experimental work, in the science of medicine.

4.3 To organize, establish, conduct, superintend or control institutions for promoting, whether directly or indirectly, the study of and research in problems, prevention and control of various diseases relating to the science of medicine.

4.4 To hold meetings and organize conferences, exhibitions, study circles or conventions for the study and discussion of problems relating to and allied with the science of medicine.

4.5 To provide instruction and education to deserving persons in the science of medicine.

4.6 To make pecuniary grants by way of scholarships, donations, subscriptions, allowances, gratuities, guarantees and otherwise to and for the benefit of deserving students, scholars and other persons who are worthy of receiving such grants by reasons of their skill and proficiency in the science of practice of medicine or their contribution to the cause of promotion of learning, research and practice of the science of medicine

4.7 To award prizes, medals or other certificates or diploma of proficiency in the science of medicine to persons found deserving after such tests,

examinations or other forms of scrutiny as may be prescribed from time to time.

4.8 To make rules, prescribing standards of professional conduct for members of the Association in conformity with the relevant provision of Medical Council of India.

4.9 To establish and maintain libraries and reading rooms.

4.10 To print, publish, distribute or sell books, pamphlets, notices, pictures, periodicals, newspapers or magazines or any other literature on any matter concerning or relating to the science or practice of medicine or the life or work of eminent persons.

4.11 To suggest, study, offer opinion and advise on, or take part in, the framing of laws affecting the science of practice of medicine, medical education, health policies and health care activities.

4.12 To promote esprit de corps among persons studying or practicing the science of medicine and good feelings between them and members of the general public or public authorities.

4.13 To co-operate with other associations or individuals to promote the objects of the Association.

4.14 To construct, provide, regulate and maintain buildings, rooms or other structures for the purpose of the Association and to alter, add to or remove any of them.

4.15 To receive any gift or legacy of moveable or immovable assets with or without conditions for promoting the objects of the Association.

4.16 To acquire by purchase, lease, or otherwise, any property, rights, or privileges for the purposes of the Association.

4.17 To improve, manage, develop, sell, mortgage, lease or let, under-lease or sub-let, dispose of, turn to account or otherwise deal with, all or any part of the property of the Association.

4.18 To act as trustees, agents or managers of property endowed by any person for objects similar to those of the Association

4.19 To encourage formation of chapters/branches at local and state level and to appoint agents and correspondents whether in India or abroad for promoting all or any of the objects of the Association.

4.20 To draw, make, accept, endorse, execute, negotiate, purchase, lend money upon, discount, hold and dispose of cheques, promissory notes, bills of exchange, drafts and other instruments and to cancel or change such instruments as per statute of Government.

4.21 To lay out, advance, invest, and deal with the Association's funds for such investments and securities and generally in such manner as may be determined from time to time.

4.22 To engage such officials, servants or other persons as may be found necessary or useful for the conduct and management of the affairs of the Association.

4.23 To make bye-laws, rules and regulations of the Association and to delete, change, or add to the same from time to time.

4.24 To do all such other acts as may be necessary, incidental, conducive or convenient to the attainment of the above objects or any of them.

EXPLANATION

It is hereby declared that none of the objects or powers enumerated above shall be deemed subsidiary or auxiliary to the objects mentioned in any one or more them.

8. It is thus clear that the authorities below have proceeded on the misconception that the assessee trust has claimed tax exemption on the basis of mutuality principle alone. Learned CIT(A) has rather summarily dismissed the contention of the assessee with respect of exemption under section 11 by the virtue of being a charitable institution, and simply observed that "all the case laws relied upon by the AR are distinguishable". Learned CIT(A) has observed that "in view of discussions at length in the preceding paras, the receipts from non-members hit by 6th limb of the amended proviso to Section 2(15) of the Income Tax Act", but has hardly elaborated upon that reasoning. Be that as it may, in our considered view quite clearly the object of the appellant trust is to promote education in the field of science of medicine and the profit on sale of books/journals is incidental thereto. In this view of the matter, proviso to Section 2(15) will have no application in the present case. It may be borne in mind that proviso to Section 2(15) comes into play only in respect of "any other object of general utility" and not in respect of relief to poor, education, medical relief etc. As long as object of the institution is charitable, as in our considered view, in this case, exemption cannot be declined merely on the ground that the assessee has received consideration for sale of training material or journal etc. incidental to furtherance of its objective of imparting education. We may, in this regard, refer to the following observations made by Hon'ble Jurisdictional High Court in the case of **DIT vs Samudra Institute of Maritime Studies Trust [(2014) 369 ITR 645 (Bom)]** as follows:-

5. We are of the opinion that the Tribunal has applied the correct test in concluding that the exemption under section 11 of the Act can be availed of by the Respondent – Assessee. In doing so, the Tribunal referred to the objects as set out in the Trust Deed of the Respondent – Assessee. They are to set up, administer and maintain technical training institution at various places in India for presea and postsea training for the ships and maritime industry as a Public Charitable Institute for education. That is to provide onboard and offshore training and continuing technical education for Officers, both on the deck and engine side. One of the object was to register with the Director General of Shipping and obtain other necessary approvals at the State and Central levels. We do not find that the ratio of the judgment of the Hon'ble Supreme Court or of this Court, which may be dealing with

section 10(22), has been applied to such an extent as complained by Mr Malhotra. In the present case, the Tribunal in paragraph 9.6 of the impugned order concludes that the Assessee is giving training in the above area to seamen. All the courses may not be approved by the Director General of Shipping but that by itself is no ground to hold that the purpose is not charitable. The exemption under section 11 can be claimed and bearing in mind the object of the Trust. We are of the opinion that the Tribunal and the CIT (Appeals) have approached the issue correctly and in the light of the definition so also the tests laid down came to a factual conclusion that the Respondent is entitled to exemption under section 11 of the Act. This is not a case where the purpose can be said to run a coaching class or a centre. This is an institution which imparts education in the area of presea and postsea training to seamen so as to prepare them for all duties. In such circumstances, we do not find that the concurrent findings of fact are vitiated by error of law apparent on the face of the record or perversity enabling us to entertain this Appeal. There is no substantial question of law. The Appeal is therefore dismissed with no order as to costs.

9. We find support for our conclusion from a co-ordinate bench decision in the case of **Gujarat Safety Council vs ITO [(2020) 180 ITD 711 (Ahd)]** wherein our esteemed colleagues have, inter alia, observed as follows:-

11.1 The main thrust being on the objects of trust, will be apposite to reproduce the stated objects of the trust:

“The objects of the Gujarat Safety Council is in general to promote the message of safety and to engage itself in safety activities as mentioned below within Gujarat State.

1. To devise effective method of safety protection and propagate them among employee, workers and public at large in factories, on roads, in homes and in farms.
2. To organise safety programmes, lectures, conferences and other activities.
3. To conduct educational campaigns, to arouse public opinion and interest of the employers and workers.
4. To enlist the co-operation of public and private organizations interested in the promotion of Safety.
5. To suggest improvements in the Central and State laws to prevent accidents.
6. To organize local Safety Centres in the State of Gujarat and to provide them organizational help and materials to promote the objects of the Safety.
7. To do all such work in the field of Safety.”

11.2 Section 2(15) of the Act which defines the term „charitable purpose“ was substituted vide Finance Act, 2008 w.e.f. 2009-10 to provide that advancement of object of general public utility shall not be a „charitable purpose“; if it involves carrying on of any activity in the nature of trade, commerce or business. This amendment has given rise to the present litigation. It is the case of the assessee that in order to carry on the charitable object, it is necessary to charge certain fee or consideration for the services rendered and such an act of trust cannot give colour of trade, commerce or business to the solemn objects carried out just for the reason that fee or charges are being recovered.

11.3 The courts have stated that if the activities are being carried on as part of charitable object, it cannot be said to be in the nature of trade, commerce or business. The Hon'ble Supreme Court in the case of Queen's Educational Society vs. CIT [2015] 372 ITR 699 (SC) has held that a surplus arising from activities would not necessarily mean that institution is being carried on „for profit“. The Hon'ble Gujarat High Court in the case of DIT(Exemption) vs. Gujarat Cricket Association Tax Appeal No. 123 of 2014 judgment dated 27.09.2019 inter alia observed that the profits, if any, ploughed back into the very activities of promotion and development of sport of Cricket and therefore, the assessee cannot be termed to be carrying out commercial activities in the nature of trade, commerce or business. Drawing parallel in the instant case as the income of the trust are being stated to be ploughed back for the furtherance of objects of the trust, such activities would not portray the character of commercial nature. Therefore, applying the principles, the activities of the trust cannot be deemed to be a commercial venture. Thus, in our considered view, the activities of the assessee cannot be excluded from the ambit of definition of Section 2(15) of the Act where the registration of the assessee is in force. The assessee, in our view, would be entitled to deduction under s.11 of the Act on surplus as claimed.

11.4 Viewed from a different angle, multifaceted activities in the form of handbook/literature published together with stated activities like holding conferences on industrial safety programmes, public talks, seminars, workshops etc. on ongoing basis to inculcate safety measures would also be bracketed in the league of „educational activities“ when tested in the light of the decision of the Hon'ble Gujarat High Court in the case of Ahmedabad Management Association (supra). The Hon'ble Gujarat High Court took note of the changing times and ever widening of horizon of knowledge, rapid changes in the method of teaching for constituting the word „education“ used under s 2(15) of the Act. Thus, on a fair reading of the activities carried out, the assessee, in our view, would be entitled for exemption under s.11 of the Act without any demur.

12. In the result, Ground No.1 of the assessee"s appeal is allowed.

10. In view of the above discussions, as also bearing in mind entirety of the case, we uphold the plea of the assessee. The Assessing Officer is, accordingly, directed to allow exemption under section 11 in respect of income of the assessee.”

3.2. Respectfully following the aforesaid decision, we direct the Id. AO to grant exemption u/s.11 of the Act in respect of income of the assessee. Accordingly, the ground raised by the assessee is allowed.

4. In the result appeal of the assessee is allowed.

Order pronounced on 08/09/2021 by way of proper mentioning in the notice board.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 08/09/2021
KARUNA, sr.ps

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai