

IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.80/Mum./2023

(Assessment Year : 2014-15)

Dy. Commissioner of Income Tax
(Exemption)-1(1), Mumbai

..... Appellant

v/s

Indian Machine Tools
Manufacturers' Association
Plant no.13, Extension Office, 1st Floor
Godrej Campus, Pirojshanagar
Vikhroli (E), Mumbai 400 079
PAN - AAACI1369M

..... Respondent

ITA no.82/Mum./2023

(Assessment Year : 2014-15)

Indian Machine Tools
Manufacturers' Association
M/s. Kalyaniwalla & Mistry LLP
Esplanade House, 29, Hazarimal Somani
Marg, Fort, Mumbai 400 001
PAN - AAACI1369M

..... Appellant

v/s

Dy. Commissioner of Income Tax
(Exemption)-1(1), Mumbai

..... Respondent

Assessee by : Shri P.J. Pardiwala a/w
Shri Jeet Kamdar
Revenue by : Shri Shambhu Yadav

Date of Hearing - 28/06/2023

Date of Order - 25/09/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present cross-appeals have been filed challenging the impugned order dated 14/11/2022, passed under section 250 of the Income Tax Act,

1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), Mumbai, [*"learned CIT(A)"*], for the assessment year 2014–15.

2. In its appeal, the Revenue has raised the following grounds: –

"1. Whether on the facts of the case and in law the Ld. CIT(A) was justified in directing the AO to allow the benefit of exemption u/s 11 of the IT. Act by holding that the income received from members as regards the holding of exhibitions and seminars, is governed by the general commercial principles of mutuality, and is hence not liable to tax and has to be excluded accordingly. Thereby ignoring the fact that the objects of assessee fall under the category of "advancement of any other object of general public utility". Hence, when the benefit of the Company is not utilized by all the persons of the society and is benefited to limited person i.e. Members of the assessee company only. Then, the proviso to section 11 of the IT. Act is not applicable in the case of the assessee.

2. Whether on the facts of the case and in law the Ld. CIT(A) was justified in directing the AO to allow the benefit of exemption u/s 11 of the IT. Act even though the activities of assessee company involves providing cover for credit risk to various public through insurance, and the same are in the nature of trade, commerce or business governed by the general commercial principles and the receipts from the such activities is more than 20% of the total receipt of the trust, the proviso to section 2(15) is applicable.

3. Whether on the facts and circumstances of the case and in law and in light of the law laid down by hon'ble Supreme Court in the case of Civil Appeal No.21762 of 2017 in various batch of appeals and SLP's lead case ACIT (Exemptions) Vs. Ahmedabad Urban Development Authority [2022] 143 taxmann.com 278 (SC)] the Hon'ble ITAT erred in not appreciating that even if the activities of the assessee are held to be covered under residuary part of 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 consists of membership fees, advertisement, sale of publication, sponsorship fees, etc. which are in the nature of trade, commerce or business?

4. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in allowing the benefit of exemption u/s.11 of the Income Tax Act, 1961 without appreciating that the income of the assessee consists of membership fees, advertisement, sale of publication, sponsorship fees, etc. arising from regular and systematic activities which are in the nature of trade, commerce or business?

5. Whether on the facts and circumstances of the case and in law in the light of Civil Appeal No.21762 of 2017 in various batch of appeals and SLP's [lead case ACIT (Exemptions) Vs. Ahmedabad Urban Development Authority [2022] 143 taxmann.com 278 (SC)] the Ld. CIT(A) erred in holding that the activities of the object of 'general utility carried on by the assessee in the present case are to be covered under residuary part of section 2(15) as "advancement of any other object of general public utility" and the assessee 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 as spelt out clearly in the judgement of the Hon'ble Supreme Court ?”

3. While, the assessee has raised the following grounds in its appeal: –

“1) The learned Commissioner of Income Tax (Appeals) erred in not adjudicating the ground regarding the rate of tax applicable to the Appellant.

2) The learned Commissioner of Income Tax (Appeals) erred in not considering that the Appellant is registered under Section 12A of the Act and consequent thereto, the tax payable is to be determined on the income which is not exempt under Section 11 or Section 12 of the Act in accordance with the provisions of Section 164(2) of the Act, as against the flat rate of tax applicable to a company.

3) Having regard to the facts of the case, the Assessing Officer be directed to compute the tax by treating the Appellant as an Association of Persons which is eligible for the benefit of the slab rates of tax and the minimum threshold limit of Rs.2,00,000/-, as applicable to the assessment year under consideration. The Appellant craves leave to add to, alter, amend, modify, substitute or withdraw the above Ground of Appeal before or at the time of hearing of the Appeal as they may be advised from time to time.”

4. The brief facts of the case, as emanating from the record, are: The assessee is an association formed to promote the machine tool industry, engaged in the manufacture and trade in machine tools, small tools, cutting tools, foundry, furnace, and moulding equipments and also to render assistance to the machine tool industry in India. The assessee is registered under section 25 of the Companies Act, 1956. During the year under consideration, the assessee filed its return of income on 30/09/2014 declaring a total income of Rs. 15,92,10,230. During the assessment proceedings, from the financials of the assessee, it **was observed that assessee’s major income** is from holding exhibitions for both members and non-members and it also has a permanent exhibition Centre at Bengaluru, which is also rented to outsiders for holding exhibitions. It was noticed that during the year, the assessee earned exhibition income of Rs. 21.57 crore, exhibition hall hire

income of Rs. 38.72 crore, seminar and other activities receipts of Rs. 2.80 crore, and interest income of Rs. 1.13 crore. It was observed that the assessee has bifurcated the receipts as related to members and non-members. Further, the expenses were also apportioned in the said ratio. It was noticed that the expenses are apportioned on a pro-rata basis of the receipts from members/non-members to the total receipts. During the assessment proceedings, it was observed that the assessee has on its own offered the income related to non-members as being in the nature of receipts covered under proviso to section 2(15) of the Act. Since the nature of the income from non-members and members was the same, the assessee was asked to justify the treatment of income from non-members only as taxable income. In response, the assessee submitted that the activity is not in the nature of receipts covered under the proviso to section 2(15) of the Act. The assessee further submitted that even if the activity was held to be in the nature of business, the amount received from members would not fall in the purview of the proviso to section 2(15) of the Act by placing reliance upon the Circular No. 11 of 2008 dated 19/12/2008 issued by the CBDT. The assessee also submitted that it is a mutual concern and there is complete identity between the contributors and participators, therefore the fees received from its members are not its income or profits.

5. **The Assessing Officer ("AO") vide order dated 31/10/2016** passed under section 143(3) of the Act did not agree with the submissions of the assessee **and held that as per assessee's own admission** receipts from non-members are in the nature of receipts covered under the proviso to section 2(15) of the Act and even the exhibition and allied receipts are in the nature of business

receipts covered under the aforesaid proviso. Therefore the nature of receipts from the members cannot change when it is for the same services provided by the assessee. The AO further held that the complete identity between the contributor and participant ceased to exist when the same type of services were provided to members and non-members. Accordingly, the AO held that the activity carried on by the assessee claiming it to be a mutual concern is a trade or an adventure in the nature of trade and the transactions entered into with the members or non-members are trade or business transactions and the resultant surplus is profit-income liable to tax. Thus, the AO held that the assessee is not a mutual concern, the income being covered under the proviso to section 2(15) of the Act and the profits from the activity are taxable and no exemption can be granted to the assessee u/s 11 of the Act.

6. The learned CIT(A), vide impugned order, upheld the contention of the assessee that the principle of mutuality is applicable with respect to the receipts from members, and thus the same is not taxable in the hands of the assessee. The relevant findings of the learned CIT(A), vide impugned order, are reproduced as under: -

"1. 1. After having considered the facts of the case and the appellant's submission these grounds are allowed due to the following reasons-

1. The Assessing Officer has not given any cogent reasons for deviating from the tax treatment afforded to the appellant by Revenue in earlier assessment years.

1. The Assessing Officer has not provided any reasons why principle of mutuality does not apply to the members of the Appellant's Association.

1. The Assessing Officer has not given any reasons why exhibition to promote the activities of its members is not as per the objections of the Appellant's Association.

1. It is very clear that the appellant has been using the mode of exhibitions and seminars to promote the activities of its members, and it has in a

reasonable manner apportioned tax on the surplus it has generated from its activities involving non- members. Therefore it would be un-reasonable to deny the exemption without substantial reason."

7. Being aggrieved by the findings of the learned CIT(A) regarding the applicability of the principle of mutuality in respect of income from members, the Revenue is in appeal before us. While the assessee has challenged the non-adjudication of its grounds regarding the rate of tax by the learned CIT(A).

8. We have considered the submissions of both sides and perused the material available on record. As per the Memorandum of Association, forming part of the paper book from pages 36-42, the main objects of the assessee are as under: -

"(A) MAIN OBJECTS OF THE ASSOCIATION TO BE PURSUED ON INCORPORATION:

- 1. To promote and protect the industries for the manufacture of and the trade and commerce in Machine Tools, Small Tools, Cutting Tools, Foundry, Furnace and Moulding Equipments and Machine Tools Accessories (hereinafter referred to as "these industries") in India and to consider all questions connected with such manufacture, trade and commerce;*
- 2. To constitute and maintain a Central Organisation for co-operation between all these industries and trade;*
- 3. To render assistance and advice to Members and to promote and further mutual assistance between members on technical and industrial matters and to make representations to Government or Departments or officials of Government or to any other commercial and industrial bodies in respect of any matter pertaining to trade, commerce, manufacture in general and Machine Tool industry in particular;*
- 4. To watch, support, protect, extend and defend the rights and interest of the members and to procure for their benefit such advantages and concessions as may be necessary for their business;*
- 5. To institute, finance, encourage, develop and carry on all kinds of scientific and economic research relating to these industries;*
- 6. To acquire and take over an unincorporated Association running under the name and style of Indian Machine Tool Manufacturers' Association at Bombay*

along with all their assets and liabilities including the registration of members thereof as on the date of registration of this Company."

9. Accordingly, in the year under consideration, the assessee had the following major activities: -

- (i) Holding of exhibitions in which there was participation from members and non-members;*
- (ii) Organising seminars and conferences for members and non-members;*
- (iii) Letting out of the exhibition centre;*
- (iv) Receiving income from investments.*

10. As per the assessee, while filing its return of income, it has offered for taxation the income from holding of exhibitions and organising of seminars arising from participation by non-members, whereas the income arising from participation by members was claimed exempt on the principle of mutuality. As regards the income derived from letting of exhibitions centre and income derived from investments, the assessee has also offered the said income to tax. As is evident from the record, the AO did not agree with the differential treatment of income from non-members and members by the assessee, when the nature of income from the exhibition and seminar was the same from both non-members and members. Since the assessee itself has offered the income from non-members to tax on the basis that the same is in the nature of receipts covered under the proviso to section 2(15) of the Act, the AO also treated the income from members as taxable in the hands of the assessee and also held that no exemption can be granted to the assessee under section 11 of the Act.

11. From the computation of total income, for the year under consideration, forming part of the paper book on page 9, it is clearly discernible that during the year under consideration, the assessee did not claim the benefits of section 11 of the Act for any activities or income. Thus, at the outset, we find no basis in the findings of the AO that the assessee claimed exemption under section 11 of the Act, to which it is not entitled.

12. It is evident from the record that there is no dispute as regards the income from non-members, letting out of exhibitions centre, and the income derived from investments, which have already been offered to tax by the assessee. The AO only disagreed with the contention of the assessee that income from members in respect of holding exhibitions and organising seminars is not taxable on the principle of mutuality. As per the AO, complete identity between the contributor and participators ceases to exist when the same type of services are provided to members and non-members. However, as per the assessee, since it is an association to protect the machine tool industry engaged in the manufacture and trade in machine tools, small tools, cutting tools, etc., therefore number of persons combine together and contribute to a common fund for a common venture or the object. The surplus from activities by those persons cannot be regarded in any sense as profit. Thus, as per the assessee, the income from members is non-taxable not under section 11 of the Act but the same is not taxable as per the principle of mutuality. Further, an activity between persons associated together does not give rise to profit which is chargeable to tax, as the members cannot trade with themselves. No person or body of persons can earn profit out of himself or themselves jointly. During the hearing, reference was also made to page

26 of the paper book to submit that revenue from members and non-members in respect of the activities of the holding of exhibitions and seminars and other activities have been duly accounted separately in its books of accounts and the related expenditure to each activity has also been duly accounted and bifurcated between members and non-members in the ratio of actual receipts.

13. We find from the Memorandum of Association that it was also resolved that upon winding up or dissolution of the assessee if any property whatsoever remains then the same shall not be distributed amongst the members of the assessee but shall be given or transferred to such other association having similar objects. Further, it is also undisputed that the assessee is registered under section 25 of the Companies Act, 1956, and thus surplus, if any, can be applied only for the furtherance and attainment of its objects alone. Therefore, we find merit in the submissions of the assessee that on the basis of the principle of mutuality, the income earned from members in respect of holding seminars, exhibitions, and other activities is not taxable. Accordingly, the plea of the assessee regarding the non-taxability of receipts from members is upheld on the basis of the principle of maturity. Since the AO on the erroneous assumption that the assessee has claimed exemption under section 11 of the Act treated the income from members to be of the same category as income from non-members and taxed the same and the details as provided on page 26 of the paper book regarding bifurcations of income and expenditure amongst members and non-members were not examined during the assessment proceedings, therefore we direct the AO to examine the allocation of income and expenditure amongst

members and non-members as submitted by the assessee and grant the relief to the assessee to the extent the income is earned from the members in light of the principle of mutuality. As a result, the grounds raised by the Revenue are partly allowed for statistical purposes.

14. As we have accepted the plea of the assessee regarding the applicability of the principle of mutuality with respect to income earned from members, we deem it appropriate to restore the issues **raised in assessee's appeal to the** file of AO for *de novo* adjudication, since the assessee has been found to not have claimed exemption under section 11 of the Act. The AO is directed to determine and apply the appropriate rate of tax as per law. Accordingly, the grounds raised by the assessee are allowed for statistical purposes.

15. In the result, the appeal by the assessee is allowed for statistical purposes, while the appeal by the Revenue is partly allowed for statistical purposes.

Order pronounced in the open Court on 25/09/2023

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 25/09/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai