

आयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 5832/Mum/2019

(निर्धारण वर्ष / Assessment Years 2009-10)

Bombay Chamber of Commerce & Mackinnon Mackenzie Building, 4, Shoorji Vallabhdas Marg, Ballard Estate, Mumbai-400 001	बनाम/ Vs.	The Income-tax Officer (Exemptions)-1(1), Room No. 508, 5 th Floor, Piramal Chambers, Lalbaug, parel, Mumbai-400 012
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AABCB2270M		

अपीलार्थी की ओर से/ Appellant by	:	Shri Niraj Sheth, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Ms. Shreekala Pardeshi & Ms. Kavita P. Kaushik, DRs'

सुनवाई की तारीख / Date of hearing:	03.09.2021
घोषणा की तारीख / Date of pronouncement:	30.09.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of assessee is arising out of the order of the Commissioner of Income Tax (Appeals)]-3, Mumbai, [in short CIT(A)], in appeal No. CIT(A)-3/IT-10441/2017-18 dated 31.07.2019. The assessment was framed by the Income Tax Officer (E) (in short

DCIT/ITO/ AO), Ward-1(1), Mumbai for the A.Y. 2009-10 vide order dated 18.08.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) in confirming the action of the Assessing Officer in denying exemption under section 11 of the Act by holding that the proviso to section 2(15) of the Act was applicable in the case of assessee as it had rendered services in relation to commercial activity for which fees were charged. For this issue the assessee has raised the following grounds: -

“Denial of exemption under section 1 of the Income-tax Act, 1961 (the Act)

1. *The CIT(A) erred in confirming the action of the Income-tax Officer (Exemptions)-1(1), Mumbai (hereinafter referred to as the ITO) in denying exemption under section 11 of the Act.*

Applicability of the proviso to section 2(15) of the Act.

2. *The CIT(A) erred in holding that proviso to section 2(15) of the Act was applicable to the appellant as it had rendered services in relation to a commercial activity for which fees were charged.*

3. *The CIT(A) erred in holding that the appellant had not brought any evidence which proved that activities carried out by it were non-commercial and without profit motive.*

4. *The CIT(A) erred in holding that the appellant is engaged in doing regular business activities which are in the nature of “business” and “commerce” by arranging seminars, collecting fees from participants, interest income and sale of publications and hence the objects of the appellant are not charitable.*

5. *The CIT(A) erred in holding that the case laws relied by the appellant were distinguishable as the same were decided without considering the decision of the Hon’ble Supreme Court in the case of Sole Trustee, Loka Shikshana Trust v. CIT (101 ITR 234). ”*

3. Brief facts as narrated by assessee and not disputed by revenue are that the assessee is a non-profit company incorporated in 1924, inter alia for the purposes of promoting and protecting the trade, commerce and manufacturers of India and in particular the trade, commerce and manufacturers of the Bombay Presidency. It is registered as a section 25 company under the erstwhile Companies Act, 1956. The assessee was registered as a charitable trust under section 12A of the Act by order dated 22.09.1998. Upto and including the assessment year 2008-2009 the assessments were made granting exemption under section 11 of the Act. For the assessment year under consideration, the assessee filed its return of income on 30.09.2009 claiming exemption under section 11 of the Act. A copy of the computation of income and the audited financials for the assessment year under consideration is enclosed at pages 1 to 10 of the paper book of the assessee. The assessee's return was selected for scrutiny

assessment. The ITO called for various details, which were submitted from time to time. Meanwhile the Director of Income-tax (Exemptions) Mumbai [in short DIT(E)] passed an order dated 16.12.2011 under section 12AA(3) of the Act withdrawing the registration under section 12A of the Act on the ground that the assessee is not covered under the term "charitable purpose" as defined in section 2(15) of the Act. The assessee filed an appeal before the Income-tax Appellate Tribunal (ITAT).

4. We noted the fact that the assessee received an assessment order dated 29.12.2011 passed by the ITO under section 143(3) of the Act wherein the ITO denied exemption under section 11 of the Act. However, exemption under the principle of mutuality was granted only to membership subscription but Surplus from non-members was taxed alongwith interest Income, unutilized accumulation of earlier years and disallowance under section 14A of the Act. Aggrieved, assessee preferred the appeal before Commissioner of Income Tax (Appeals).

5. The CIT(A) vide order dated 28.08.2014 dismissed the assessee's appeal. On further appeal, the ITAT vide its common order dated 15.01.2016 has remanded the matter to the file of the ITO to decide the issue afresh considering that it had re-stored the assessee's registration under section 12A of the Act. The ITAT also heard the appeal of the assessee against the DIT(E)'s order cancelling 12A registration, the ITAT held that for cancellation of registration under section 12AA(3) of the Act, the provisions of section 2(15) of the Act

cannot be brought into play and accordingly set- aside the order of the DIT(E) and directed him to re-store the registration.

6. The CIT(A) confirmed the action of the AO and not consider the assessee's charitable institution for the purposes of section 2(15) of the Act. He stated that the activities of Trust would be hit by first and second proviso under section 2(15) of the Act. For this, he recorded the following finding in Para 4.3 as under:-

"4.3 Decision on Ground Nos. 1 to 3

I have carefully considered the contentions of the AO and arguments of appellant and case laws relied before me in order to decide whether the appellant is eligible for exemption u/s 11 of the Act, the following issues are required to be decided as under: -

a) Whether the activities of the appellant could be considered as for Charitable purpose within the meaning of Sec 2(15) of the Act,

b) Whether the activities of the trust would be hit by 1 and 2nd provisos to Sec. 2(15) of the Act as a result of which the activities cannot be regarded as Charitable purpose;

As regards the 1st issue whether the activities of the appellant could be considered as for Charitable purpose within the meaning of Sec.2(15) of the Act it is an undisputed fact that the activities of the appellant trust is

not for Relief of the poor, Education, Medical relief Preservation of environment. It is observed from the arguments of the appellant that the appellant is not only offering services in relation to the trade and business of Bombay Presidency but is also accepting fees, cess or other consideration for providing such services The appellant is also accumulating the income and as such is also getting a good interest income on it. However, during the course of appellate proceedings, the appellant had totally failed to demonstrate and had not brought any documentary evidence on record which could prove that the activities are of non-commercial nature and without a profit motive.

The 2nd question that needs to be answered is whether the 1st and 2nd Provisos to Sec.2(15) would apply to the appellant. As per the 15 proviso to Sec 2(15), the last limb of Sec.2(15) being the advancement of any other object of general Public Utility' shall not be regarded as 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 The 2nd proviso to Sec.2(15) states that the 1st proviso shall not apply if the aggregate value of the receipt from that activities of Rs.10,00,000/- or less In the appellant's

case, it is an undisputed fact that the appellant had received the consideration in excess of the prescribed limits As regards carrying on the activities in the nature of trade, commerce or business, it is observed that the appellant is engaged in doing regular activities which are in the nature of business by way of arranging seminars, collecting participation fees from the participants, interest income and sale of publications. Thus, it can be said that the appellant is carrying on activity in the nature of commerce and the objects of the appellant is not to be considered as for charitable purpose.

It is pertinent to discuss what is stated in the Memorandum while explaining the provisions of the Finance Bill, 2008 the Legislative intent behind the amendment as below'

It has been noticed that a number of entities operating on commercial lines are claiming exemption on their income either under section 10(23C) or section 11 of the Act on the ground that they are' charitable institutions. This is based on the argument that they are engaged in the 'advancement of an object of general public utility' as is included in the fourth limb of the current definition of 'charitable purpose'. Such a claim, when made in respect of an activity carried out on

commercial lines, is contrary to the intention of the provision.

With a view to limiting the scope of the phrase 'advancement of any other object of general public utility', it is proposed to amend section 2(15) so as to provide that 'the advancement of any other object of general public utility shall not be a charitable purposes, 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.'

It is also relevant to discuss in this context the term 'charity' as against profit making activity:

Charity v. Profit making activity - In the case before the Supreme Court of Sole Trustee, Lok Shikshana Trust v CIT [1975 101 ITR 234, J. Ben has explained the term 'charity' as against profit making activity as under-

'It seems to me that a common concept or element of charity is shared by each of the four different categories of charity. It is true that charity does not necessarily exclude carrying on an activity which yield profit, provided that profit has to be used up

for what is recognized as charity. The very concept of charity denotes altruistic thought or action. Its object must necessarily to benefit others rather than ones self. Its essence is self-lessness In a truly charitable activity any possible benefit to the person who does the charitable act is merely incidental and immaterial. The action which flows from charitable thinking is not directed towards benefiting ones self. It is always directed at benefiting others. It is this direction and thought and effort and not the result of what is done, in terms of financially measurable gain, which determines that it is charitable. This direction must be evident and obligatory upon the trustee from the terms of a deed of trust before it can be held to be really charitable.

We think that this governing idea of charity must qualify purpose of every category enumerated in section 2(15) of the Act 1961. We think that the words introduced by the Act of 1961 to qualify the last and widest category of objects of public utility were really intended to bring out what has to be the dominant characteristic of each and every category of charity. They were intended to bring the last and the most general category in line with the nature of activities considered truly charitable and mentioned in the earlier categories

The Larger Bench of the Supreme Court in the case of Surat Art Silk Cloth Mfgs. Association (supra) has approved the observations of J Ben rendered in the above case, though the judgment was overruled. The above observations therefore hold importance to understand the concept of charity.

Similarly, the provision u/s 11 (4A) which provides that the provisions of section 11 would apply to any business income if it is incidental to the attainment of the objects of the trust. The Proviso inserted in 2008 has also not been amended. In this situation, the only conclusion or interpretation of the amendment is that the reiteration of the existing or prevailing principle, that any commercial activity under the garb of charitable activity would only be affected and for that purpose, one has to look into the dominant object of the Trust. the manner and form in which the objects are achieved Needless to say, the concept of charity as explained by the Supreme Court in the case of Sole Trustee, Lok Shikshana Trust (supra) has to be kept in mind The only meaning that can be drawn is that the amendment does not apply to every income from business that is earned by the trust. Cases where the business is carried out mainly with the objective of earning profit than to carry out charitable work would be hit by the proviso to the section 2(15). If any business is carried out which is incidental to the

carrying out the charitable objects and the income is utilized for charity, such income would still be eligible for exemption u/s 11.

In the final analysis, however whether the assessee has for its object the advancement of any other object of general public utility' is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of general public utility' will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible. Assessee, who claim that their object is 'charitable purpose" within the meaning of section 2(15), would be well advised to eschew any activity which is in the nature of trade, commerce or business. [Circular No. 11 of 2008, dated 19th December, 2008].

I had also gone through the order of A' Bench of ITAT, Chandigarh in the case of Chandigarh Lawn Tennis Association v. ITO(E), Chandigarh (ITA No.1382/CHD/2016) for AY 2013-14., wherein

amendment to proviso to section 2(15) was thoroughly analysed and discussed.

As per the clarification, the dealings of trade and industry associations with any nonmembers for activities in the nature of trade commerce or business would not qualify for tax exemption and would be liable to tax under section 28(iii) of the Act. Each case would, therefore, be decided on its own facts and no generalization is possible.

The circular also cautions that the assessee, who claim that their object is 'charitable purpose' within the meaning of section 2(15), would be well-advised to eschew any activity which is in the nature of trade. commerce or business or the rendering of any service in relation to any trade, commerce or business.

While the body like Board of Control for Cricket in India (BCCI) which promotes cricket as a public utility, is to be taxed for sale of television rights, tickets, advertisement, other institutions like chambers and association (e.g. CII, FICCI) will be liable to pay tax for renting their facilities to non-members

A thorough analysis of the above shows the intent of legislation to curb the practice of claiming exemption on the pretext of carrying out objects of general public utility

and thereby taking the benefit of exemption in respect of business carried out in the mask of charity.

The proviso mentions that advancement of object of general public utility shall not be a charitable purpose if it involves the carrying 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. In the case under consideration, the appellant has rendered services in relation to a commercial activity for which fee has been charged and thus, is hit by this provision

The Very Concept of Charity denotes altruistic thought and action i.e. to benefit others rather than oneself and the beneficiaries must not be able to claim the benefit as was held by Hon'ble courts in the cases of Chamber of Commerce Vs. CIT 4 ITR (All.), and also in Sole Trustee Lok Shikshan Trust Vs. CIT (SC) 101 ITR. Contention of the appellant is therefore rejected.

The judicial decisions relied upon by Ld. AR are distinguishable and had been decided without considering the Apex court's decision cited supra. The Hon'ble Supreme Court in the case of A. Distributors (Baroda) Pvt. Ltd vs. Union of India reported in 155 ITR 120 had decided that the powers of the CIT(A) exists to

decide the issue which had not been considered by the higher authority.

In view of the above, I hold that the appellant's claim u/s 11 is not allowable for the year under consideration i.e for AY 2009-10. Accordingly, grounds of appeal nos. 1 to 3 are dismissed”

Aggrieved, assessee came in appeal before tribunal on this very issue.

7. We have heard the rival contentions and gone through the facts and circumstances of the case. We have noted the objectives of the assessee which inter alia are as under:

- *to promote and protect the trade, commerce and manufacturers of India and in particular the trade," commerce and manufacturers of the Bombay Presidency;*
- *to consider all questions connected with trade, commerce and manufacture;*
- *to collect and circulate statistics and other information relating to trade, commerce and manufacture;*
- *to promote or oppose legislative and other measures affecting trade, commerce and manufacture;*

- *to communicate with Chambers of Commerce and other mercantile and public bodies throughout the world, and concert and promote measures for the protection of trade, commerce and manufacture and persons engaged therein;*
- *to arbitrate in the settlement of disputes arising out of commercial transactions between parties willing or agreeing to abide by the judgment and decision of the Association;*
- *to pay out of the fluids of the Association the costs, charges and expenses preliminary and incidental to the formation, establishment and registration of the Association, or of any other Association, and all expenses, which the Association may lawfully pay, having regard to the provisions of the Indian Companies Act, 1913 of or incident to the raising of money for the Association, including brokerage and commissions for obtaining applications for or taking, placing or underwriting Debentures or Debenture Stock.*

8. The assessee has also drew our attention to clause 4 and clause 8 of the Memorandum and Article of Association, which is enclosed at assessee's paper book. The relevant Clause 4 of the MOA provides that the income and property of the Association whensoever derived shall be

applied solely towards the promotion of the objects of the Association and no portion thereof shall be paid or transferred directly or indirectly by way of dividend or bonus or otherwise howsoever by way of profit to the persons who at any time are or have been members of the Association or to any person claiming through any of them. Further, Clause 8 of the MOA provides that on winding up, the surplus property remaining after satisfaction of all the debts, shall not be paid or distributed among the members, but shall be transferred to some other institution or institutions having similar objects similar to the objects of the Association which is to be determined by the members of the Association.

9. From the reading of the aforesaid clauses, it is clear that the members of the assessee chamber do not stand to gain personally since no portion of the income or property is paid or transferred directly or indirectly by way of dividend or bonus or otherwise. Further, even on winding up, the members cannot claim any share in the surplus assets. These facts highlight the fundamental fact that the assessee by and large strives to promote and protect the trade, commerce and manufacturers of India without seeking to make profits for its members.

10. Now, we have gone through the amended definition of the term 'charitable purpose' under section 2(15) of the Act by the Finance Act, 2008 w.e.f. 1 April 2009, reads as under:

*"charitable purpose includes relief of the poor, education
, medical relief preservation of environment (including*

watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, 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".

11. Further, learned counsel for the assessee invited our attention to the speech of Finance Minister and the relevant extract of the speech is reproduced hereunder:-

"180. 'Charitable purpose' includes relief of the poor, education, medical relief and other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning

incomes have sought to claim that their purposes would also fall under 'charitable purpose'. Obviously, this was not the intention of the Parliament and, hence. I propose to amend that law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected.

I once again assure the House that genuine charitable organizations will not in any way be affected. The CBDT will, following the usual practice, issue an explanatory circular containing guidelines for determining whether an entity is carrying on 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. Whether the purpose is a charitable purpose will depend on the totality of the facts of the case. Ordinarily, Chambers of Commerce and similar organizations rendering services to their members would not be affected by the amendment and their activities would continue to be regarded as “advancement of any other object of general public utility” (Emphasis supplied,)

12. From a perusal of the FM's speech it is apparent that the intent behind the amendment was that only such entities which are carrying on regular trade, commerce or business would not fall within the definition of the term 'charitable purpose. It was never intended to affect genuine charitable organizations in any way. The learned Counsel for the assessee stated that as discussed above, the terms "trade",

"commerce" and "business" imply carrying on an activity for profit since no trader/businessmen would like to carry on its activities at a loss. The definition of the term "charitable purpose" was practically the same as was contained in the last para of section 4(3) of the 1922 Act except for the addition of the words "not involving the carrying on of any activity for profit" at the end. Section 2(15) read as under:

'charitable purpose' includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility not involving the carrying on of any activity for profit'.

13. The words "not involving the carrying on of any activity for profit" occurring at the end were omitted by the Finance Act, 1983 with effect from 01.04.1984.

14. We noted that the term "not involving any activity for profit" came up for discussion before the Supreme Court in ACIT v. Surat Art Silk Cloth Manufacturers Association (121 ITR 1) (SC). The majority view was that the condition that the purpose should not involve the carrying on of any activity for-profit would be satisfied if profit-making is not the real object. The theory or dominant or primary object of the trust has, therefore, been treated to be the determining factor, even in regard to the fourth head of charity, viz the advancement of any other object of general public utility, so as to make the carrying on of business activity merely ancillary or incidental to the main object. Further, in CIT v. Federation of Indian Chambers of Commerce & Industries (130 ITR 186) (SC) a question was raised before the Supreme Court regarding

the interpretation of the words "not involving the carrying on of any activity for profit" in the definition of "charitable purpose" contained in section 2(15) of the Act.

15. The learned Counsel for the assessee relied on the decision of Hon'ble Delhi High Court in the case of India Trade Promotion Organization V. DGIT(E) (371 ITR 333) (Del) and argued that the petitioner had challenged the constitutional validity of the proviso to section 2(15) of the Act on the ground that it was arbitrary, unreasonable and thus violative of Article 14 of the Constitution of India dealing with "equality before law". Hon'ble Delhi High Court while upholding the constitutional validity of the proviso to section 2(15) of the Act, held that the proviso to section 2(15) of the Act has to read in the manner indicated by them. The High Court while in arriving at its conclusion held as under:

"If the dominant activity of the institution was not business, trade or commerce, then any such incidental or ancillary activity would also not fall within the categories of trade, commerce or business. It is clear from the facts of the present case that the driving force is not the desire to earn profits but, the object of promoting trade and commerce not for itself but for the nation - both within India and outside India. Clearly, this is a charitable purpose, which has as its motive the advancement of an object of general public utility to which the exception carved out in the first proviso to Section 2(15) of the said Act would not apply. We say so, because, if a literal

interpretation were to be given to the said proviso, then it would risk being hit by Article 14 (the equality clause enshrined in Article 14 of the Constitution). It is well-settled that the courts should always endeavour to uphold the Constitutional validity of a provision and, in doing so, the provision in question may have to be read down, as pointed out above" (para 53)

"In conclusion, we may say that the expression "charitable purpose" as defined in Section 2(15) cannot be construed literally and in absolute terms. It has to take colour and be considered in the context of Section 10(23 C) (iv) of the said Act. It is also clear that if the literal interpretation is given to the proviso to Section 2(15) of the said Act, then the proviso would be at risk of running foul of the principle of equality enshrined in Article 14 of the Constitution India. In order to save the Constitutional validity of the proviso, the same would have to be read down and interpreted in the context of Section 10(23)iv because, in our view, the context requires such an interpretation. The correct interpretation of the proviso to Section 2(15) of the said Act would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities 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. In both the activities, in the nature of trade, commerce or business or the activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. If the dominant and prime objective of the institution, which claims to have been established for charitable purposes, is profit making, whether its activities are directly in the nature of trade, commerce or business or indirectly in the rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a 'charitable purpose. On the flip side, where an institution is not driven primarily by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an institution established for charitable purposes. (para 58)

16. On applying the aforesaid tests laid down by the Delhi High Court to the facts of the present case, it was argued before us that the assessee ought to be regarded as established for charitable purpose as its primary or dominant objects are inter alia to promote and protect the trade, commerce and manufacturers of India and in particular trade, commerce and manufacturers of the Bombay presidency and hence is entitled to exemption under section 11 of the Act.

17. The learned Counsel for the assessee explained the brief facts with reference to the income scheme of the assessee which are as under:-

a. *Certificate of origin fees - Rs. 2,81,06,980/-*

The appellant has been authorized by the Ministry of Commerce, Government of India to issue Non-Preferential Certificates of Origin in accordance with Article II of International Convention relating to Simplification of the Custom Formalities. The schedule of fees is prescribed by the Ministry of Commerce. This service is mainly availed of by member companies of the Chamber.

b. *Secretarial Fees- Rs. 5,00,000/-*

The appellant provides secretarial services to the associations who are members or are associated with it. Secretarial fees are charged to cover the cost of providing services viz. organizing meetings, preparation of accounts, filing income tax and TDS returns, service tax and other related work.

This activity is in pursuance of Object no. 21 of the appellant; namely "to do all such other things as may be necessary for or incidental or conducive to the extension of trade, commerce or manufacture, or the attainment of objects.

c. *Labour advisory Fees —Rs. 21,91,605/-*

The appellant has a labour advisory department which is constituted of advisors providing opinions to the

members on specific queries referred to it relating to labour statutes. The purpose of this department is to get the grievances of the members redressed on labour matters. A nominal charge, as per a fixed schedule, to cover the costs of establishment and opinions of the labour advisors are recovered from them as fees.

d. Seminar and training programmes - Rs. 43,61,134/-

e. Conference and exhibition - Rs. 48,22,078/-

The appellant conducts seminars/conferences and arranges executive training programmes in order to:

encourage and promote a friendly feeling and unanimity among commercial men on all subjects involving their common good;

Promote and protect the trade, commerce and manufacturers of India and in particular the trade, commerce and manufacturers of the Bombay Presidency;

consider all questions connected with trade, commerce and manufactures.

The representational functions of the appellant relating to providing a channel of communication with government and other regulators and to improve the efficiency and working of members, etc. are also carried out through

seminars, conferences, training and exhibitions. The participation fees meet the costs. The role and objective of the seminars is also to bring together the members on a common platform on mutually relevant topics. In this case also, the participation fees meet the costs of the seminars conducted many a times at external venues which entail heavy expenditure which is recovered by the amounts received on seminar & training programs and conference & exhibitions.

f. Advertisements – Rs.26,15,000/-.

This is for meeting publication and other expenses towards the monthly Bombay Chamber Review newsletter of the Chamber which is circulated to its members only. Complimentary copies are sent to the government, consulates etc. and the cost of the publication are, met by the corporate advertisement issued by the members only. There is no element of sale of the publication - it is distributed free of cost.

g. Sale of in house publications - Rs. 3,90,269/-

This is with reference to the Object no. 5. of the appellant, "To collect and circulate statistics and other information relating to trade, commerce and manufactures,"

The appellant brings out reports and studies which are used for presentation to the government, members and

other interested individuals from the member organizations. Some of these reports are given out to the applicants on a cost basis. The appellant also provides e-information to its members about the latest changes in law etc. at a nominal cost. The membership directory in a published form and a Table listing is also offered for sale on cost basis.

18. The learned counsel for the assessee before us explained that the appellate orders for earlier years i.e. AYs 2009-10, 2010-11 and 2011-12 cannot be followed for the assessment year under consideration because the benefit of the decision of the Delhi High Court in India Trade Promotion Organization (supra) was not available before the CIT(A) while passing the order and the CIT(A) in para 5.3.12 and 5.3.14 of its order dated 19.12.2014 for AYs 2010-11 and 2011-12 respectively has held that the decision of the Kolkata Tribunal in Indian Chamber of Commerce vs. ITO (67 SOT 176) (Kolkata ITAT) is distinguishable as proviso to section 2(15) of the Act was not adjudicated upon since a ground in respect of the proviso to section 2(15) of the Act was not raised.

19. We noted that the observations of the CIT(A) mentioned in the order of Assessment Year 2010-11 and 2011-12 is incorrect because the Kolkata Tribunal in Indian Chamber of Commerce (supra) has considered the effect of the proviso to section 2(15) of the Act in arriving at its conclusion. One of the grievances raised in the appeal

filed by Indian Chamber of Commerce (supra) for AY 2009-10 before the Tribunal read as under (para 311):

"Thai on the facts and circumstances of the case of the appellant, the Ld. CIT(A) erred in confirming the allegation of the Ld. AO that the appellant was hit by the proviso to section 2(15) of the Income-tax Act inserted w. e.f. 01.04.2009, in as much as the appellant was allegedly involved in the rendering of service in relation to trade, commerce or business, for cess or fee or any other consideration ".

The Tribunal in para 32 stated as under:

"We have already discussed the facts above in ITA No1491/Kol/2012 for AY 2008-09, which are unchanged in this appeal also i.e. for AY 2009-10 but in view of amendment in Section 2(15) of the Act vide Finance Act 2008, w.e.f 01/04/2009, whereby new proviso was inserted and according to lower authorities the activities of assessee association of conducting Environment Management Centres, meetings, conferences & seminars and issuance of certificate of origin were all in the nature of "rendering of service in relation to business, for consideration" and falling under the last limb of charitable purpose, i.e. "advancement of any other object of general public utility", thus covered by the proviso to section 2(15) of the Act. In connection to the above it would be relevant to know the amended section 2(15,) of

the Act in view of legislative intent behind such amendment.....”

20. We noted that the Tribunal after considering the proviso to section 2(15) of the Act and the CBDT Circular No. 11/2008 dated 19.12.2008 (which was issued pursuant to the proviso being inserted in the Act) held in para 38 that the definition of the term "charitable purpose" remained unaltered even on amendment in the section 2(15) of the Act w.e.f. 01.04.2009, though the restrictive first proviso was inserted therein. Hence, the assessee was not hit by newly inserted proviso to section 2(15) of the Act.

21. We noted that the issue in present appeal is also covered in favour of assessee by the Kolkata Tribunal decision in the case of Indian Chamber of commerce (supra) because of its income streams noted above. We also noted that the amounts received are not in nature of trade (since there is no exchange of goods either for goods in return or money) or commerce (since it is not engaged in purchase and sale of goods) or business (since we are a non-profit making body formed with the promotion of protecting the trade, commerce and manufacture of India and in particular the Bombay Presidency). In view thereof, we hold that the activities carried out by the assessee chamber continue to be charitable in nature even under the amended definition under section 2(15) of the Act and assessee is entitled for exemption under section 11 of the Act. We direct the AO accordingly.

22. Since, we have held that the assessee is entitled for exemption under section 11 of the Act, we need not adjudicate any other issue on this.

23. In the Result, the appeal of the assessee is allowed.

Order pronounced in the open court 30.09.2021.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 30.09.2021.

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai