

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT
DB-II), MUMBAI**

BEFORE SHRI M.BALAGANESH, AM

&

SHRI AMARJIT SINGH, JM

**ITA No.2435/Mum/2019
(Assessment Year :2013-14)**

M/s. Confederation of Indian Textile Industry 1508, Maker Chamber V-221 Nariman Point Mumbai – 400 021	Vs.	ITO(E)(1)(2), Mumbai
PAN/GIR No.AAACT0174H		
(Appellant)	..	(Respondent)

Assessee by	Shri Ketan Ved
Revenue by	Shri Amit Pratap Singh, Sr. AR
Date of Hearing	15/07/2020
Date of Pronouncement	17/07/2020

आदेश / ORDER

PER M. BALAGANESH (A.M.):

This appeal in ITA No.2435/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)-10478/2017-18 dated 18/01/2019 (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 07/03/2016 by the Id. Income Tax Officer (E)-1(2),Mumbai (hereinafter referred to as Id. AO).

2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the action of the Id. AO in disallowing the claim of exemption u/s.11 of the Act to the assessee in the facts and circumstances of the case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is a non-profit organisation registered u/s. 25 of the Companies Act, 1956. It is an apex industry association representing the entire value chain of textile and clothing sector. It is constituted by member associations, members and corporate members and young entrepreneurs group. Member associations covering all the geographical area of India nominate their selected members to the executive committee of the confederation. All textile companies which are members of these associations automatically become the members of the confederation.

3.1. We find that the assessee is registered u/s.12A of the Act and was accordingly, claiming exemption u/s.11 of the Act which was granted by the Id. AO up to A.Y.2012-13. For the A.Y.2013-14 also, the assessee claimed exemption u/s.11 of the Act in the return of income filed on 28/09/2013 claiming the deficit of Rs.8,40,487/- to be carried forward to subsequent years. As per the Memorandum of Articles of Association of the assessee, the following are the primary objects for which the assessee was formed:-

- *To promote and protect trade, commerce and industries of India in general and more particularly in respect of Cotton Textile Industry and allied industries and trades.*
- *To watch over and protect the general commercial interests of India or any part thereof and the interests of the Cotton Textile Industry and allied industries and trades in particular.*

- *To do all such things as may be conducive to the preservation and extension of trade, commerce and industries and manufacturers of India more particularly in respect of Cotton Textile Industry and allied industries and trades.*
- *To promote, develop, encourage, support, maintain and increase the exports of the products and by-products of the Cotton Textile Industry and allied industries.*
- *To encourage friendly feeling and unanimity among business community and associations on all subjects connected with the common good of Indian business, and in particular with the Cotton Textile Industry and allied industries and trades.*
- *To carry on publicity and propaganda for the purpose of educating the public with regard to the scope, importance and needs of the Cotton Textile Industry and allied Industries and trades and generally to promote the interests of the consumers.*
- *Obtaining policy inputs from the Government targeted at the overall growth of the textile and clothing sector.*

3.2. In accordance with the objects as spelt out in the 'Memorandum of Association', a brief nature of the activities undertaken by the assessee are as under:-

- *The efforts for obtaining policy inputs from the Government of India targeted at the overall growth of the textile and clothing sector have helped in shaping Government initiatives like 'The Technology Upgradation Fund Scheme' ('TUFS), The Technological Mission on Cotton, The Debt Restructuring Package and significant rationalization of the excise duty structure for the sector. Though its subsidiary body, namely ICMF Cotton Development and Research Association ('ICMF-CDRA), the assessee has been supporting cotton extension and seed development activities since 1964 in different parts of the country.*
- *The assessee established a Young Entrepreneurs Group (YEG) in March 2003. The Group comprises of young entrepreneurs in the textile industry holding executive positions. The objective of the group is to harness the inherited textile knowledge and new ideas and initiatives of the young entrepreneurs in the industry. The Group provides a forum for interaction among these new players in the industry and supports the activities of ICMF and the industry.*
- *Confederation has also constituted sub-committees on Market Access, Investment and Skill Development for monitoring the developments and activities relating to the respective subjects and to give focused attention*

to topical issues facing its members and provide proper feedback to government.

3.3. The following restrictive clauses were specifically mentioned in the Memorandum of Articles of Association with regard to the application of income and property of the assessee confederation:-

- *Clause V(1) of the MOA, the Confederation **is bound to apply income and the property when so ever derived shall be applied solely for the promotion of its objects as set forth in the memorandum.***
- *Clause V(2) – No portion of the income or property aforesaid shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to persons who, at any time, are to have been members of the Confederation or to any one or more of them or to any persons claiming through any one or more of them.*
- *Clause V(3) – No remuneration or other benefit in money or money's worth shall be given by the Confederation to any of its members, whether officers or servants of the Confederation of not except payment of out-of-pocket expenses, reasonable and proper rent on premises let to the Confederation.*
- *Clause V(5) – Nothing in this clause shall prevent the payment by the Confederation in good faith of reasonable remuneration to any of its officers or servants (not being members) or to any other person (not being a member) in return for any services actually rendered to the Confederation*

3.4. From the aforesaid restrictive clauses with regard to application of income and property of the assessee, it can be seen that assessee is bound to apply income derived from the property held under trust solely towards promotion of its objects and not for the benefit of its members.

3.5. We find that assessee had derived following income apart from its regular income:-

Particulars	Amounts in Rs.
Interest on fixed deposits	1,46,64,431
Interest income on advances given to employees	29,335
Interest on income-tax refund	1,53,212
Exchange gain	12,118
Miscellaneous Income	6,679
Total	1,48,65,975

3.6. The Id. AO applied the principles of mutuality and observed that the regular income derived by the assessee from its members are exempt on the principles of mutuality. However, with regard to the interest income, exchange gain and miscellaneous income as tabulated in the aforesaid table, the Id. AO observed that these incomes were derived by the assessee from its non-members and accordingly, the same would not be exempt on the principles of mutuality. The Id. AO observed that assessee is a mutual association and not a charitable institution. Accordingly, the aforesaid income of Rs.1,48,65,975/- was sought to be taxed as receipts from non-members by treating the same as business income by the Id. AO by applying the proviso to Section 2(15) of the Act and consequently rejecting the claim of exemption u/s.11 of the Act.

3.7. We find that before the Id. CIT(A), the assessee among various arguments also submitted that the activities of the assessee are not in the nature of trade, commerce or business and hence, the proviso to Section 2(15) of the Act would not be applicable to the assessee at all.

To support its contentions, the assessee placed reliance on various decisions of various Tribunals across the Country and various High Courts decisions before the Id. CIT(A). We find that assessee had also given individual explanation for each of the aforesaid nature of income received from non-members as under before the Id. CIT(A):-

Re: Interest Income – Rs.1,46,64,431/-

1. *At the outset, we invite your Honour's attention to the fact that the aforesaid income received is to reduce the Appellant's costs which have to be increased while trying to achieve its objectives mentioned hereinabove in para 04 (page Nos.02 & 03) of the compilation.*
2. *Further a break-up of the interest income received by the Appellant is as under:-*

Particulars	Amount (in Rs.)
<i>On Fixed Deposits with Body Corporates</i>	99,00,481
<i>On Fixed Deposits with Banks</i>	45,30,274
<i>On Savings Account with Bank</i>	1,32,276
<i>On Fixed Deposit of CITI's Export Promotion Fund with Bank</i>	1,01,400
Total	1,46,64,431/-

3. *Here we have been instructed to point out that to invest the money of the Appellant or of the funds of the Appellant in such manner and in such assets, properties, securities, shares, deposits or in investments of any kind is one of the objects of the Appellant- refer sub-clause 36 of Clause III of its Memorandum of Association – a copy of which has already been forwarded hereinabove as "Appendix-B" (page No.32 of the compilation)*
4. *The above investments have been made in accordance with the provisions laid down in Section 11(5) of the Act.*
5. *Thus it becomes apparent that the interest income is one of the modes of recovery of a part of the costs incurred by the Appellant in carrying on its objects as specified in its Memorandum of Association which we would like to re-iterate are for the advancement of any other object of general public utility in terms of Section 2(15) of the Act.*
6. *It is further submitted that what the Appellant is doing is deriving interest income from fixed deposits and spending it for its objects which are charitable in nature thereby falling in line with the law laid down in Section 11(1)(a) of the Act. Section 11 of the Act lays down that the income derived from the property held under the trust to the extent to which such income is utilized for charitable purposes for exempt from tax.*

**Re.: Interest Income from Advance to Employees – Rs.29,335/- & Re.:
Interest on Refund of Tax Deducted at Source – Rs.1,53,212/- & Re.:
Miscellaneous Income – Rs.6,879/-**

1. *The above-mentioned receipts are not for rendering any services but to meet its costs and not to make any profit for itself.*
2. *Interest on refund of tax deducted at source in fact represents interest on income-tax refund received of the earlier years and the same can never have any profit element embedded in it and hence is eligible for exemption u/s.11 of the ITA. Also, interest from advance to employees is a nominal amount charged by the Appellant on the advances given by it to its employees to ensure timely repayment of the same.*
3. *Miscellaneous income pertain to old amounts which were not payable any longer and hence written back and in no way could be construed to give rise to any income and hence it cannot be said to be received from any activity in the nature of any trade, commerce or business.*
4. *Here it may be noted and appreciated that the aforesaid receipts are basically to reduce the Appellant's costs which have to be incurred while trying to achieve its objectives mentioned hereinabove in para 04 (page Nos.02& 03 of the compilation) and hence exemption u/s.11 ought to be granted on the aforesaid receipts.*
- 5.

Re: Exchange Grain – Rs.12,118/-

1. *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 Cotton Textile Industry.*

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, conference, 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.

2. *Exchange gain is on account of foreign currency conversion difference on the amounts received from parties/Members for conducting events like Conferences, Seminars, Fairs, Bilateral Trade Promotion, etc. and hence*

in no way can be considered to be received from any activity in the nature of any trade, commerce or business.

*Without prejudice to the aforesaid, your Honour's attention is invited to the decision of the Kolkata Bench of the Income-tax Appellate Tribunal in the case **Indian Chamber of Commerce v/s. Income-tax Officer, Exemption-I (2014) 52 taxmann.com 52 (Kolkata-Trib.)** (copy enclosed-refer "Appendix – K") (refer page Nos. 206 to 242 of the compilation) wherein it has been held that assessee-association, formed with object of advancement and development of trade, commerce and industry in India, its primary object being charitable in nature under section 2(15), income earned by it from any incidental activities would also be eligible for exemption under section 11. The Tribunal further held that in absence of profit motive, receipts derived by chamber of commerce and industry for performing specific services to its members, though treated as business income under section 28(iii), would still be entitled to exemption under section 11, read with 2(15).*

26. Further, the Assessing Officer has also made addition of Rs.3,94,295/- to the total income of the Appellant being the expenditure incurred on fixed assets during the year. The Appellant submits that since it is eligible to claim exemption u/s.11 of the Act, it is entitled to claim the expenditure incurred on addition to fixed assets as application of its income.

27. Without prejudice to the above, the Appellant submits that the aforesaid addition of Rs.3,94,295/- has been erroneously made by the Assessing Officer to the total income of the Appellant which is explained hereunder:

- *For the year under consideration, the Appellant had filed its return of income on 28 September 2013 declaring its total income at Nil after claiming an exemption u/s.11 of the Act.*
- *While arriving at its total income for the year under consideration, the Appellant had, as it had consistently been doing for the past several years and had been allowed, claimed the addition to fixed assets of Rs.3,94,295/- as an application of its income u/s.11(1)(a) of the ITA – a copy of the statement showing computation of total income for the year is forwarded herewith-refer "Appendix-L" (refer page No.243 of the compilation)*
- *However, while assessing the total income, exemption u/s.11 has not been granted to Appellant and the receipts from non-members have been taxed in terms of the impugned Order.*
- *While doing so, no expenditure has been allowed as a deduction by the Assessing officer and simultaneously the Assessing Officer has also made an addition of Rs.3,94,295/- being addition made to fixed assets claimed as application of income for the year by the Appellant.*
- *The starting point of the assessed income considered by the Assessing Officer in the impugned Order is income received from non-members and no deduction whatsoever has been granted against the same and hence the*

addition made to the total income vis-à-vis the addition to fixed assets is erroneous.

In view of the foregoing, it is submitted and it will be appreciated that the activities carried out by the Appellant are not in the nature of business and hence the activities continue to be in nature of advancement of any other object of general public utility and therefore fall within the definition of the term 'charitable purpose' as defined u/s.2(15) of the Act and hence there can be no question of denying exemption u/s.11 of the Act.

3.8. We find that the Id. CIT(A) merely dismissed the entire submissions of the assessee together with the various case laws relied upon by him without assigning any reasons thereon and upheld the action of the Id. AO that assessee trust is only a mutual association and accordingly, any receipt received from non-members would be liable to tax as business income. He also held that assessee's case is squarely covered by the proviso to Section 2(15) of the Act and accordingly, upheld action of the Id.AO in rejecting the claim of Section 11 of the Act.

3.9. We find from the aforesaid narration of primary facts vis-à-vis objects of the activities carried out by the assessee, which are not in dispute before us, that the assessee was formed to promote and protect trade, commerce and industries of India in general and more particularly in respect of cotton textile industry and allied industries and trades. Admittedly, the activities carried on by the assessee were not with a view to make profits. It is not even the case of the revenue that assessee trust is not existing for the purpose of 'not for profit' within the meaning of Section 11-13 of the Act. We find that the Id. AO had erroneously treated the assessee as a mutual association instead of charitable organization merely on the ground that services were rendered by the assessee to its members. It is pertinent to note that assessee had not even claimed to be a mutual association and had not claimed any exemption from Income Tax on the basis of principle of mutuality. What has been claimed by the

assessee is only exemption u/s.11 of the Act being a charitable organization and on fulfilment of all the conditions stipulated in Sections 11-13 of the Act. It is not even the case of the revenue that assessee has violated any of the provisions of Section 11-13 of the Act in the instant case.

3.10. We also find that the lower authorities had not brought out any evidence to prove or to even doubt that activities of the assessee are existing for the purpose of making profits and that such profits were in turn distributed to its members. We find from the perusal of the orders of the lower authorities that nowhere they had pointed out that assessee activities involved in the nature of trade, commerce or business or activity of rendering any service in relation to any trade, commerce or business and in consideration of which a cess or fee has been received by the assessee. Hence, we hold that assessee's case does not fall within the ambit of proviso to Section 2(15) of the Act. We find that the Id. DR vehemently placed reliance on the orders of the lower authorities. We find that the Co-ordinate Bench of this Tribunal had adjudicated an identical issue under similar facts and circumstances in the case of All India Rubber Industries Association vs. Additional Director of Income Tax (Exemptions), Mumbai reported in 173 ITD 615 dated 12/10/2018 for the A.Yrs.2011-12 to 2013-14, wherein it was held as under:-

“10. We have carefully considered the rival submissions. Before we proceed to address the specific objections raised by the Assessing Officer, we deem it fit and proper to refer to the objects for which the assessee association has been established. As noted earlier, assessee has been founded in 1945 and is further registered u/s 25 of the Companies Act, 1956. As per its Memorandum of Association, some of the important objects are as follows.

“(a) To promote co-operation among Persons, Companies, Factories and Firms, engaged as Manufacturers of rubber products made out of Natural Rubber, Synthetic Rubber & Latex in India with a view to adopting a common policy and collectively taking such steps, as may be deemed necessary or expedient to further

and safeguard the interests of the Industry and Trade, provided that the Association shall not make or support any regulation or restriction which would make the Association a Trade Union.

(b) To regulate and standardise as far as possible business practices in the Rubber Manufacturing Industry and its allied Trades.

(c) To promote and safeguard the interests of the Indian Rubber Industry and Trade in all its branches and by all possible means and in particular by (1) providing a meeting place with facilities for exchange of views of Members and others interested in the Industry and Trade, (2) providing facilities for communication, co-ordination of interests or co-operation with similar or allied associations or societies in other countries, (3) arranging and providing facilities for conferences, exhibitions, demonstrations, lectures, and excursions and other functions relating to the Rubber Industry and Trade, (4) establishing, equipping and maintaining laboratories for Testing as well as Research and Libraries for the benefit of the Members and if possible of non-members also; (5) collection and dissemination of statistics and data related to the global rubber industry, particularly in respect of market situations with emphasis on exports; (6) educating the general public by all suitable means in the utility of Rubber Goods from the industrial as well as other points of view; (7) to provide fora for interaction with consumers of rubber products with a view to improving their quality; (8) to promote technical education related to Rubber Technology, training and retraining of manpower employed in rubber industry and in general to concern with the Human Resources Development for and in the rubber industry and (9) providing facilities and machinery for the settlement of disputes by arbitration.

.....
(j) To publish an official journal of the Association giving prominence to the aims, objects and activities and for the spread of knowledge and information relating to the Natural Rubber, Synthetic Rubber and Latex Goods Industry and Trade generally and to print and publish any advertisements, newspapers, periodicals, books, lectures or pamphlets that may be deemed desirable.

.....
(v) And generally to do all such other things as may be deemed incidental or conducive to the attainment of the above objects or any of them.”

11. The Memorandum of Association also prescribes by way of clause 4 that income and property of the association whensoever derived shall be applied solely towards the promotion of the objects of the Association as set forth in this Memorandum of Association and no portion thereof shall be paid or transferred directly or indirectly to the members of the Association except, of course, for payment of remuneration to the employees of the association. Clause 7 of the Memorandum of Association also brings out that upon winding up or dissolution of the Association, the surplus remaining after satisfaction of all debts and liabilities, if any, shall not be paid or distributed amongst the members of the Association but shall be given or transferred to some other Association or Institution having similar objects.

12. We are only referring to the aforesaid features of the assessee association to point out that the objects of the assessee-association are primarily revolving

around promotion and safeguarding the interests of Rubber trade and industry. In fact, clause 3(a) specifically rules out making or supporting any regulation or restriction, which would make the assessee association a trade union. A perusal of the objects does lead to an inference that it is formed with the objects of promoting or protecting the interests of Rubber industry. Notably, assessee continues to be registered u/s 12A of the Act, and in that regard, its objects can be stated to be in the realm of 'advancement of objects of general public utility'. The Assessing Officer has made out a case that since the objects are not for the benefit of general public at large, but are for a section of public inasmuch as the benefits are limited to the members of the assessee-association, therefore, the same is not charitable. In our view, the aforesaid approach of the Assessing Officer is contrary to the accepted legal position on this subject, and more so, considering that in assessee's own case for Assessment Year 1997-98, the Tribunal in ITA No. 2057/Mum/2001 dated 14.01.2002 had considered an identical controversy. At the time of hearing, the learned representative had referred to the order of the Tribunal dated 14.01.2002 (supra) in this regard, whose relevant portion reads as under :-

"4. It is to be noted that when an object seeks to promote or project the interest of a particular trade or industry, that object becomes an object of public utility, but not so, if it seeks to promote the interest of those who conduct the said trade or industry. The distinction between projection of the interest of an individual and projection of the interest of an activity which is of general public utility goes to the root of the whole problem. The advancement of an object of benefit to the public or a section of the public is distinguished from an individual or a group of individual would be of charitable purposes. This view was taken in the case of CIT vs Ahmedabad Rana Cast Association 140 ITR 1 (SC). The expression "object of general public utility" in sec. 2(15) prima facie includes all objects which permits the welfare of the general public. It cannot be said that a purpose would cease to be charitable if it includes taking of steps for the promotion of trade, commerce or manufacture. An object beneficial to a section of the public is an object of general public utility. To serve a charitable purpose, it is not necessary that the object must benefit the whole of mankind. It is sufficient if the intention is to benefit a section of the public. This view was taken by the jurisdictional High Court in the case of CIT vs Western India Chambers of Commerce Ltd. 13 ITR 67 (Bom.). The decision of the Gujarat High Court relied upon by the revenue authorities is not relevant in the facts of the present case. In that case distribution of property amongst members was permitted. Whereas in the present case it is not permitted. In my opinion, facts of the present are covered by the decision of the jurisdictional High Court rendered in the case of Western India Chambers of Commerce (supra). Respectfully following the precedent, I decide this issue in favour of the assessee and against the revenue. [underlined for emphasis by us]"

13. Therefore, in our considered opinion, there is no justification for the Assessing Officer to hold that since the objects of the assessee seek to promote and protect the interests of a particular trade, industry, the same loses the character of being charitable.

14. The other and more substantive point made out by the Assessing Officer is based on the proviso to Sec. 2(15) of the Act which has been inserted by the Finance Act, 2008 w.e.f. 01.04.2009. In this context, the amended Sec. 2(15) of the Act as on the statute w.e.f. 01.04.2009 reads as under :-

“(15) “Charitable purpose” includes relief to the poor, education, medical relief and the advancement of any other object of general public utility”

The definition after the amendment reads as follows;

“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”.

15. The impact of the aforesaid proviso inserted w.e.f. 01.04.2009 is that “advancement of any other object of general public utility” would no longer be considered as a charitable purpose if it involved 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 a fee or for any other consideration irrespective of the nature of use or application or retention of such income from such activity. The aforesaid proviso has been invoked by the Assessing Officer to say that as assessee’s objects were of general public utility, and since in the course of carrying on its objects, it was receiving charges from its members as well as nonmembers, the activities could no longer be treated as charitable. In this context, one has to examine the import of the proviso inserted to Sec. 2(15) of the Act. Pertinently, the assessee continues to enjoy recognition u/s 12A of the Act; and, in any case, de hors the proviso to Sec. 2(15) of the Act, there is no dispute by the Revenue that the objects of the assessee fall within the scope of Sec. 2(15) of the Act on account of the same being in the nature of “advancement of any other objects of general public utility”. Therefore, one has to examine as to whether the insertion of proviso to Sec. 2(15) of the Act would render the activities of the assessee to be of noncharitable purpose. The Hon'ble Delhi High Court in the case of India Trade Promotion Organisation (supra) as well as in the case of Institute of Chartered Accountants of India (supra) have extensively examined the nature and scope of the proviso to Sec. 2(15) of the Act. At this point, we may note that a similar issue came-up before our coordinate bench at Kolkata in the case of Indian Leather Products Association (supra). Therein also, the charge made by the Revenue was that the proviso inserted to Sec. 2(15) of the Act w.e.f. 01.04.2009 had rendered the activities of the assessee non-charitable. Our co-ordinate bench perused the detailed judgment of the Hon'ble Delhi High Court in the case of India Trade Promotion Organisation (supra) and culled out the principles laid down by the Hon'ble Delhi High Court

for the interpretation of the proviso to Sec. 2(15) of the Act. The principles so culled out by our co-ordinate bench are quite illustrative and read as under :-

“(i) The proviso to Sec.2(15) of the Act introduced by virtue of the Finance Act, 2008 with effect from 01.04.2009 has two parts. The first part has reference to the carrying on of any activity in the nature of trade, commerce or business. The second part has reference to any activity of rendering any service in relation to any trade, commerce or business. Both these parts are further subject to the condition that the activities so carried out are for a cess or fee or any other consideration, irrespective of the nature or use or application or retention of the income from such activities. In other words, if, by virtue of a ‘cess’ or fee’ or any other consideration, income is generated by any of the two sets of activities referred to above, the nature of use of such income or application or retention of such income is irrelevant for the purposes of construing the activities as charitable or not.

(ii) If an activity in the nature of trade, commerce or business is carried on and it generates income, the fact that such income is applied for charitable purposes, would not make any difference and the activity would nonetheless not be regarded as being carried on for a charitable purpose. If a literal interpretation is to be given to the proviso, then it may be concluded that this fact would have no bearing on determining the nature of the activity carried on by the petitioner. But, in deciding whether any activity is in the nature of trade, commerce or business, it has to be examined whether there is an element of profit making or not. Similarly, while considering whether any activity is one of rendering any service in relation to any trade, commerce or business, the element of profit making is also very important.

(iii) The meaning of the expression "charitable purposes" has to be examined in the context of "income", because, it is only when there is income the question of not including that income in the total income would arise. Therefore, merely because an institution, which otherwise is established for a charitable purpose, receives income would not make it any less a charitable institution. Whether that institution, which is established for charitable purposes, will get the exemption would have to be determined having regard to the objects of the institution and its importance throughout India or throughout any State or States.

(iv) Merely, because an institution derives income out of activities which may be commercial, that does, in any way, affect the nature of the Institution as a charitable institution if it otherwise qualifies for such a character.

(v) Merely because a fee or some other consideration is collected or received by an institution, it would not lose its character of having been established for a charitable purpose. 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. If the driving force is not the desire to earn profits but to do charity, the exception carved out in the first proviso to Section 2(15) of the said Act would not apply.

(vi) *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). 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.*

(vii) *Section 2(15) is only a definition clause. Section 2 begins with the words, in this Act, unless the context otherwise requires. The expression "charitable purpose" appearing in Section 2(15) of the said Act has to be seen in the context of Section 10(23C)(iv). When the expression "charitable purpose", as defined in Section 2(15) of the said Act, is read in the context of Section 10(23C)(iv) of the said Act, we would have to give up the strict and literal interpretation sought to be given to the expression "charitable purpose" by the revenue.*

(viii) *The expression "charitable purpose", as defined in Section 2(15) cannot be construed literally and in absolute terms. 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. (emphasis supplied)"*

16. *From the perusal of the aforesaid, what stands out is that in order to invoke the proviso to Sec. 2(15) of the Act, it is imperative for the Revenue to establish that there is an element of profit motive in the activities of the assessee. Notably, the fact that some of the activities carried out by an entity involving charging of fee, etc. have resulted in a surplus could not ipso facto be determinative of the fact that there was an element of profit motive.*

17. *At this point, we may also refer to the judgment of the Hon'ble Bombay High Court in the case of Shree Nasik Panchvati Panjrapole (supra). Though the said judgment is with regard to the registration u/s 12A of the Act, but the parity of reasoning laid down by the Hon'ble Bombay High Court in context of proviso to Sec. 2(15) of the Act is very eloquent. In the case before the Hon'ble Bombay High Court, the dominant activity being carried out by the assessee-trust for over 130 years was to take care of old, sick and disabled cows. An incidental activity of selling milk was being carried out, which resulted in receipt of money on the sale of milk. The contention of the Revenue was that the activity of selling milk obtained from the cows was in the nature of trade, business or commerce and*

thus the charitable status was hit by the proviso to Sec. 2(15) of the Act. The aforesaid proposition advanced by the Revenue was squarely negated by the Hon'ble High Court. As per the Hon'ble High Court, the incidental activity of obtaining milk while taking care of the cows would not be hit by the proviso to Sec. 2(15) of the Act because selling of milk by itself could not be construed to be an activity in the nature of trade, commerce or business having regard to the facts of the case. It was noted that the dominant activity being carried out by the assessee was to take care of the old, sick and disabled cows, which fell within the purview of Sec. 2(15) of the Act and any incidental activity carried out, which resulted in receipt of money would not attract the proviso to Sec. 2(15) of the Act unless there was a profit motive. Quite clearly, in the factsituation before the Hon'ble High Court, the motive and the purpose of the activities was to take care of old, sick and disabled cows and not to earn profit by selling milk, which was only an incidental activity; and, accordingly, the assessee was found eligible for registration u/s 12A of the Act.

18. In this background, if we are to examine the case made out by the Revenue in the instant, we do not find any finding at all by the Assessing Officer or even by the CIT(A) that any of the activities of the assessee are with a profit motive so as to attract proviso to Sec. 2(15) of the Act. The stream of incomes noted by the Assessing Officer in para 10 of the assessment order on account of advertisement and subscription income, seminar income, sale of books and periodicals, etc. are not shown to be carried out with any profit motive and rather, the explanation consistently advanced by the assessee has been to the effect that such activities are only incidental to its object of promoting and safeguarding rubber industry. In fact, in para 6 of the assessment order, a portion of the submissions furnished by the assessee have been reproduced wherein assessee specifically asserted that dissemination of information and publication of magazine relating to Rubber industry in India and developments abroad was a substantive activity carried out, which was for the charitable purpose of promoting the interests of Rubber industry and trade. Therefore, in view of the aforesaid discussion, in our view, the Assessing Officer erred in invoking proviso to Sec. 2(15) of the Act to treat the activities of the assessee as being non-charitable specifically considering the fact that no material or evidence has been led to show that there was any profit motive in carrying out such activities. Pertinently, there is no rebuttal at any stage to the assertions of the assessee that its activities in the instant years are similar to the activities in the past years.

19. Therefore, in view of the aforesaid discussion, we set-aside the order of CIT(A) and direct the Assessing Officer to allow the exemption u/s 12A of the Act to the assessee.

20. Before parting, we may also advert to the stand of the Assessing Officer that assessee was a mutual association as it was intended for the benefits of its members who were involved in rubber trade and industry. Being a mutual association, as per the Assessing Officer, it was entitled to the benefits of Principle of Mutuality and, therefore, any surplus remaining from the dealings with the members was exempt. Therefore, according to the Assessing Officer, such an institution could not be eligible for the benefits of Sec. 11/12 of the Act as it was a mutual association existing for promotion of interests of its members. In

our considered opinion, the said approach of the Assessing Officer is clearly misguided. In this context, it would suffice for us to reproduce hereinafter the following extract from the judgment of the Hon'ble Delhi High Court in the case of PHD Chamber of Commerce & Industry (*supra*) :-

“16. A survey of the decided cases shows that trade and professional associations have been held entitled to the exemption under Section 11. An association of businessmen who sold goods on hire purchase [Add. CIT vs. South India Hire Purchase Association [1979] 116 ITR 793 (Mad.), an association of traders dealing in photographic and connected trades [CIT v. South Indian Photographic & Allied Trades Association [1987] 166 ITR 166/[1986] 26 Taxman 485 (Mad.) and an association consisting of Kirana Merchants (Madras Kirana Merchants Association v. CIT [1978] 111 ITR 156) were held by the Madras High Court to be eligible for the exemption under Section 11 notwithstanding that some of the associations charged their members fees for specific services rendered. Other cases on similar lines are:

NAME OF CASE	CITATION	ASSOCIATION OF
Banaras Brass Merchant and Manufacturers Association	(2000) 241 ITR 70/117 Taxman 568 (All.)	Brass Merchant and Manufacturers
CIT v. Gayathri Women Welfare Association	(1993) 203 ITR 389/67 Taxman 528 (Kar.)	Women's Welfare
CIT v. Silk and Art Silk Mills Association Ltd.	(1990) 182 ITR 38/48 Taxman 20 (Bom.)	Silk Mills
CIT v. A. P. Bankers & Pawnbrokers Association	[1988] 170 ITR 476/[1987] 34 Taxman 433 (AP)	Bankers & Pawnbrokers
CIT v. Bengal Mills and Steamers Presbyterian Association	[1983] 140 ITR 586/[1981] Taxman 78 (Cal.)	Mills and Steamers Presbyterian
CIT v. Nachimuthu Industrial Association	[1982] 138 ITR 585/ 14 Taxman 224 (Mad.)	Industrial Association
Add. CIT v. Madras Jewellers and Diamond Merchants Association	[1981] 129 ITR 214 (Mad.)	Jewellers and Diamond Merchants
Add. CIT v. Automobile Association of Southern India	[1981] 127 ITR 370/5 Taxman 77 (Mad.)	Automobile owners

The predominant intention theory was applied in these decisions and it was found that none of these associations worked for a profit and they were essentially associations established for the protection of interests of businessmen carrying on a particular trade.”

21. In fact, the Hon'ble Delhi High Court specifically considered the receipts derived by a Chamber of Commerce and Industry for performing specific services to its members. The following discussion in the order of the Hon'ble Delhi High

Court would show that such income was found to be entitled for benefits of Sec. 2(15) r.w.s. 11 of the Act provided, of course, there was no profit element in such services. “

*15. CIT vs. Andhra Commerce of Chamber (supra) introduced the possibility of some of the trade, professional or other similar association being entitled to the exemption under Section 11. It seems to us that all that Section 28(iii) does is to constitute certain income of the association to be business income without affecting the scope of the exemption under Section 11. Section 2(15) which incorporates the definition of “charitable purpose” as including relief of the poor, education, medical relief and the advancement of any other object of general public utility, on the lines of what Sir Samuel Romilly suggested to the Court in *Morice v. Durham, Bishop of Durham (1805) 10 Ves Jr. 522*, shows that several mutual associations may also fall within the definition. On this basis, a Gymkhana Club formed to promote physical fitness, sports and games and social intercourse amongst the members has been held entitled to the exemption under Section 11 by the Madras High Court in *Commissioner of Income-tax v. Ootacamund Gymkhana Club (1977) 110 ITR 392*; an association formed for the general benefit of the members of the legal profession was held eligible for the exemption by the Supreme Court in *Commissioner of Income-tax v. Bar Council of Maharashtra, (1981) 130 ITR 28*; a public utility undertaking such as a State Road Transport Corporation was held eligible for the exemption by the Supreme Court in *Commissioner of Income-tax v. Andhra Pradesh State Road Transport Corporation 159 ITR 1*. In all these cases the common thread which was noticed to run through was the absence of any motive of private profit. These decisions do establish that the receipts derived by a chamber of commerce and industry for performing specific services to its members, though treated as business income under Section 28(iii) would still be entitled to the exemption under Section 2(15) read with Section 11, provided there is no profit motive.”*

22. Therefore, so far as the Principle of Mutuality is concerned, the same is with reference to the services vis-a-vis the members and qua the income received by assessee from non-members, the other provisions of the Act would govern. In any case, an entity cannot be denied charitable character merely because some element of its income is exempt from the Principles of Mutuality. Thus, on this aspect also, we find no reason to uphold the stand of the Revenue.

23. In the result, we hereby set-aside the order of CIT(A) and the Assessing Officer is directed to allow the benefit of Sec. 11/12 of the Act to the assessee and thereafter recompute the income, as per law.

3.11. In view of the aforesaid observations and respectfully following the judicial precedents, we hold that assessee is entitled for claim of exemption u/s.11 of the Act in respect of the interest income, exchange gain and miscellaneous income totalling into Rs.1,48,65,975/-, accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced on 17/07/2020 by way of proper mentioning in the notice board.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 17/07/2020
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