

आयकर अपीलीय अधिकरण “आई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “I” BENCH, MUMBAI

श्री बी.आर.मित्तल, न्यायिक सदस्य एवं श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।
BEFORE SHRI B. R. MITTAL, JM AND SHRI SANJAY ARORA, AM

आयकर अपील सं./I.T.A. No. 7436/Mum/2011
(निर्धारण वर्ष / Assessment Year: N.A.)

Inter-connected Stock Exchange Investors Protection Fund (ISE IPF) C/. Inter-connected Stock Exchange of India Ltd. Tower No.7, 5 th Floor, International Infotech Park, Sector 30A, Vashi, Navi Mumbai-400 703	बनाम/ Vs.	Director of Income Tax (Exemption) Room No.616, 6 th Floor, Piramal Chamber, Lal Baug, Parel, Mumbai-400 012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAATI 8422 Q		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by	:	Shri A. H. Dalal & Shri Rajesh V. Shah
प्रत्यर्थी की ओर से/Respondent by	:	Shri Praveen Kumar

सुनवाई की तारीख / Date of Hearing	:	16.08.2013
घोषणा की तारीख / Date of Pronouncement	:	20.09.2013

आदेश / ORDER

Per Sanjay Arora, A. M.:

This is an Appeal by the Assessee agitating the Order by the Director of Income-Tax (Exemption), Mumbai (‘DIT(E)’ for short) dated 23.08.2011, rejecting the assessee’s application for registration u/s.12A of the Income Tax Act, 1961 (‘the Act’ hereinafter).

2.1 Opening the arguments for and on behalf of the assessee, it was submitted by its counsel, Shri A. H. Dalal, that the assessee-appellant is a Trust formed and settled on 29th day of June, 2009 by Inter-connected Stock Exchange India Ltd. (ISEL), a company formed by the coming together of the 23 (the trust deed mentions the said number at 36 though/ PB pgs. 04 - 15) regional Stock Exchanges of India to provide a common platform for trading in shares and securities. The assessee-trust was formed in pursuance of the Securities and Exchange Board of India (SEBI) guidelines/regulations for investor protection, with the sole aim of creating a Fund which could provide compensation to the investors in case of loss on account of default by any member of a participating, recognized Stock Exchange. The same is a public charitable cause, falling within the scope of the term 'charitable purpose' as defined u/s. 2(15), vide the last limb thereof, i.e., the advancement of any other object of general public utility. The ambit of the same is well-settled per a number of decisions by no less than the hon'ble apex court; it clarifying per its recent decision in *CIT vs. Gujarat Maritime Board* [2007] 295 ITR 561(SC) the said term to be of the widest connotation. There is, as such, no denying the fact that the object of the Trust qualifies to be a charitable purpose under the Act. The Revenue has, however, denied the benefit of registration on the ground that the same does not cater to the members of the public at large, but only to the members of the public who invest in shares. It is not necessary that the objects of a trust or fund, to qualify as for a charitable purpose, should be applicable to all the members of the public, and it would suffice if they are so to members drawn from a cross-section of the public engaged in a particular trade or activity, as the investing community in the instant case. Reference for the purpose was drawn by him to the decision in the case of *Ahmedabad Rana Caste Association vs. CIT* [1971] 82 ITR 704 (SC), copy of which is placed at pages 60-63 of the assessee's paper-book (PB).

In fact, continuing further, he would submit that such investor protection Funds set up by the Bombay and the Calcutta Stock Exchanges have already been granted registration as 'charitable funds' under the Act by the Department, and much prior to the

creation of such Fund/s by the other recognized stock exchanges on being mandated by SEBI, the regulatory body overseeing the management of the security transactions and capital markets, including allied legislation, in India. As such, the stand of the Department in the instant case is both untenable in law, and even otherwise inconsistent and, thus, incomprehensible.

2.2 The Id. DR, on the other hand, would submit that the assessee's objects, with reference to which it claims to be set up for charitable purpose/s, falls under the last category of such purposes, inclusively defined u/s. 2(15) of the Act, i.e., advancement of any other object of general public utility. A *proviso* to the provision stands inserted by Finance Act, 2008 w.e.f. 01.04.2009, so as to exclude the same from the ambit of the provision where it involves any activity in the nature of trade, commerce or business, or any activity of rendering any services in relation to any trade, commerce or business, where the same is 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 instant case, the funding of the activities of the assessee-trust is by way of contributions received from the stock exchange/s, and which are further received by them from the companies listed on the stock exchange, by way of a separate charge, i.e., as contribution to the consumer protection fund. As such, the assessee's claim of it being a charitable purpose in terms of section 2(15) would not be applicable after the said amendment in law, i.e., w.e.f. A.Y. 2009-10. The only difference is that the assessee, instead of receiving such contributions directly from the beneficiaries, the members of the participating stock exchanges, does so indirectly, the ostensible source being the stock exchange/s, even as admittedly it is only the members of the respective stock exchanges who have a stake in its resources, and which are further raised from the companies listed thereat by way of a fee or cess. The indirect manner of receiving such fees or consideration would not, however, impact the applicability of the law, as amended, which clearly provides for the exclusion from the ambit of a charitable purpose activities falling within the last limb of section 2(15) where a cess or fees or consideration *qua* the same is charged. Therefore, *Gujarat Maritime*

Board, the respondent-company in the case of *CIT vs. Gujarat Maritime Board* (supra), would also be not liable to be considered as a charitable institution under the amended law, which applies in the instant case. The matter stands abundantly explained by the CBDT vide its Circular No. 11/2008 dated 19.12.2008, placing a copy of the same on record. This would also serve to distinguish the assessee's case from that of the funds established or set up by the Bombay and the Calcutta Stock Exchanges respectively, which were granted registration by the Department as per the extant law, i.e., as it stood prior to its amendment by Finance Act, 2008.

On a query by the Bench that, so however, the contributions under reference, i.e., received from the recognized stock exchanges and/or members thereof, stand already excluded from the ambit of the 'total income' under the Act u/s.10(23EA). Further, that the income of the stock exchanges is subject to tax, and which would also, therefore, include the cess or fee levied by way of consumer protection fund to the companies listed thereat. As such, the plea of the application of the *proviso* to section 2(15) to such contributions, so as to exclude the assessee's activity from the purview of charitable purpose, may not be of any import inasmuch as such funding of the assessee-trust is already provided for by law, according it tax-exempt status u/s.10(23EA). To that, he would reply by stating that in that case there ought to be no need for the assessee to apply for registration u/s.12AA as a public charitable trust; its principal source of funding, i.e., by way of contributions afore-said, being already exempt from tax u/s.10(23EA). The assessee, by doing so, seeks to enlarge the scope of the exemption from tax as accorded to it by law, i.e., by extending it to income from other activities, viz., trade income and the interest on the parking of its surplus funds. On the Bench requiring him to specify the said activity or the income generated thus, euphemistically termed by him as 'trade income', he was however unable to specify any, restricting his observation to only interest income, which the assessee may stand to earn by deposit/investment of its surplus funds with the bank or any other permissible avenues.

2.3 In rejoinder, the ld. AR would submit that it is by now a well settled position that it is not necessary for the activities of a trust or fund to constitute a 'charitable purpose' for it to be granted registration under the Act. Though of-course such registration is necessary for the applicability and the availment of benefit u/s.11 & 12, the effect of registration would not *ipso facto* lead to the grant of exemption u/s.11 r.w.s. 12 of the Act, as where the objects or the purpose of utilization of the funds is not deemed to be for a charitable or religious purpose. However, the registration could not be denied on that basis. For this, he would refer to, among others, the decision by the tribunal in the case of *Rajasthan Housing Board vs. CIT* [2012] 51 SOT 383 (JP), adverting to and reading from the relevant part thereof (PB pages 99-102). Its stands amply clarified that the Assessing Officer (AO) is empowered to examine the allowability of exemption u/s.11 where the Revenue considers the object/s as not charitable. The same would not have a bearing as regards the granting of registration u/s.12AA of the Act is concerned. In the instant case, in fact, the *proviso* to s. 2(15) has no application, and the assessee's activities squarely fall within the ambit of a charitable purpose, so that considered either way, registration thereto could not be denied.

3. We have heard the parties, and perused the material on record.

3.1 The first aspect that needs to be clarified in the instant case is that it is a case of refusal to grant registration u/s.12AA(1), and not of withdrawal of registration already granted, i.e., u/s.12AA(3) of the Act. In this regard it would be pertinent to reproduce the relevant part of the order by the tribunal in the case of *Maharashtra Housing & Area Development Authority v. ADIT(E)* [2013] 58 SOT 196 (Mum), upholding its earlier order in *Rajasthan Housing Board* (supra), relied upon by the assessee. The registration u/s.12AA is granted by the Commissioner where he is satisfied about:

- (a) the objects of the trust or institution; and
- (b) the genuineness of the activities thereof.

The issue in *Rajasthan Housing Board* (supra) was of withdrawal of registration u/s. 12AA(3), so that after reproducing the relevant parts of the provision, i.e., 12AA(1) & 12AA(3), the Tribunal in *Maharashtra Housing & Area Development Authority* (supra) opined as follows (para 701, pg. 204):

“Thus, it is only upon being satisfied about the objects of the applicant, as well as about the genuineness of its activities that the Commissioner is obliged to register a trust/institution as charitable, by an order in writing, being also required to do so where not so satisfied. Clearly, the satisfaction *qua* the ‘objects’ is only with regard to their being for a charitable (or religious) purpose/s. It cannot but be otherwise; the registration being only toward the applicant being a public charitable (or religious) trust or institution under the Act. This, in fact, is the edifice or the *terra firma* on which the provision rests. As such, even though the registration certificate or the communication in its respect may not, or is not required to, contain an explicit finding or mention as to the satisfaction with regard to the objects of the trust or institution being for charitable purpose/s, that is the basis upon which, or a condition precedent to the grant of the status of a public charitable entity in-so-far as the Act is concerned, that the registration there-under confers.”

[emphasis, by underlining, ours]

We, thus, concur with the argument of the Id. DR that *Gujarat Maritime Board*, the respondent-company in the case *Gujarat Maritime Board* (supra) could not be granted registration u/s.12AA(1) under the amended law. We, therefore, are not in agreement with, and reject the argument of the Id. AR that the assessee-appellant is liable to be registered as a charitable institution u/s.12AA *de hors* the applicability of section 2(15) of the Act, i.e., even if its objects are not charitable in nature in terms of s.2(15).

3.2 Coming, next, to the objections, i.e., the reason/s that inform the order of the Id. DIT (Exemption) toward the assessee’s objects being not charitable, we shall consider the same in seriatim, as under:

(a) *that the appellant fund is for the benefit of the specific persons who invest in a particular market, and not for the general public.*

As explained by the apex court in the case of *Ahmedabad Rana Caste Association* (supra), 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 leads to the benefit the whole mankind or all persons in a particular country or even state, and it would be sufficient if the intention is to benefit a section of the community, *sufficiently defined and identifiable by some common quality of a public or impersonal nature*. What is to be seen is the intention to benefit a section of the public as distinguished from a specified individual or group. As such, we find no merit in the said objection by the Id. DIT (E).

(b) *that the contribution which the participating member stock exchange is required to make to the appellant-fund is toward defined services, so that the same, as well as the interest earned thereon, would be liable to being taxed, and which is sought to be evaded by seeking registration as the charitable institution.*

It would be relevant to refer to the relevant provision, i.e., section 10(23EA) of the Act, granting exemption to the income by way of contributions received by the recognized stock exchange. The same reads as under:

Incomes not included in total income.

10. In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included –

(1)

(2)

(23EA) and income by way of contributions received from recognized stock exchanges and the members thereof, of such Investor Protection Fund set up by recognized stock exchanges in India, either jointly or separately, as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part, with a recognized stock exchange, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall accordingly be chargeable to income-tax;

Our first observation in this regard is that once it is decided that the assessee's principal object is for the advancement of an object of any general public utility, under which

clause the assessee's claim to being for a charitable purpose in terms of section 2(15) lies, it would not be material if the income by way of contributions from the member stock exchanges is otherwise tax exempt u/s. 10(23EA) or not. Whether, therefore, the income of the trust is otherwise liable to tax or not, which shall be entitled to exemption u/s.11 only upon it being applied for a charitable purpose/s, it would, in our opinion, be of no consequence or relevance in determining the question of it being a charitable institution or not, and which should, therefore, be liable to be registered as such, i.e., where otherwise eligible therefor.

Continuing further, we having found this to be not a relevant consideration, it is, therefore, immaterial whether the applicant's funds in the instant case are liable to be shared with the contributing stock exchange/s or not. On a specific query being put to the Id. AR during hearing it stood clarified that the contributing stock exchanges do not retain any share or right in the amount contributed by them or their members.

So however, to the extent it is by way of performance linked, or even a uniform charge on the companies listed on the stock exchange/s, as, say, a percentage of their revenue, in our view, the same could be an arrangement to indemnify their members by charging them a particular amount, even though termed as a 'contribution'. The said Members may well seek insurance in respect of the losses liable to be sustained in the course of and in pursuance to their trade, with the insurance company creating such a fund, and for which it may charge an insurance premia. On the other hand, if the contributions is not linked to any service, made voluntarily by the recognized stock exchange, with it retaining no lien or right on the said contribution, no charge as to the same being hit by the *proviso* to s. 2(15) would hold and, consequently, the Revenue's objection would not be valid.

We have perused the trust deed forming part of the application for registration under Form 10A. The trust is formed to serve the cause of the investing public at large. Though the investor concerns are sought to be adequately met through the bye laws and regulations of the stock exchanges, as well as the guidelines issued from time to time by

SEBI, the capital market regulator, which in fact are equally applicable to the applicant-fund also, yet in view of the procedures and proximites thereof, the needs of the investors are not possible to be met in all cases and, in any case, with sufficient dispatch, i.e., as may be warranted in the exigencies of the situation. In fact, the investor's complaint is to be finally settled on the basis of the decision by the Investors Service Committee of the settlor-company, i.e., ISEL. Further, the Deed makes it abundantly clear that the Fund monies shall be toward settling the claims of the investors and not to compensate the individual members of the stock exchange who have defaulted or otherwise incurred losses. We, therefore, have no doubt in our own mind that the object is one for advancement of general public utility; the fund having been set up only in pursuance to and comply with the advisory/s issued by the SEBI to the recognized stock exchanges from time to time.

The only issue that, therefore, survives is with regard to the business model or the funding of the applicant fund. This is not for the reason that the contributions to the fund by the member stock exchange are exempt u/s. 10(23A), as the Id. DR would point to us. *As explained, the same, to our mind, is irrelevant; it is for the assessee to see as to which course of action is more beneficial or desirable to it.* Besides, exemption u/s. 10(23EA) is subject to the notification by the Central Government, to which there is no reference in the orders of the authorities below. Our reason for the same is that if the said funding by way of contribution by the stock exchanges is, in turn, recovered from the individual member brokers, the arrangement would in essence becomes one of insurance by the individual brokers of the stock exchange to meet their liabilities arising in the course of their trade. This is as, simply put, the loss to the investor arising on account of the default of the broker is only the broker's liability, and a trade liability at that. This then assumes the form of an underwriting arrangement, or an insurance scheme under the aegis of the stock exchange, which is only a trade association set up or formed for the benefit of its members. The only difference is that such a fund instead of being created by the settlor stock exchange within itself, is so done by way of a separate fund. The word

‘consideration’ in *proviso* to section 2(15) is, to our mind, wide enough to cover such indirect funding, if any.

However, a comprehensive and holistic reading of the trust deed would allay all such misgiving/s or inference/s, and, in our clear view there is no scope for taking any such view. Firstly, as a condition for an eligible claim, the relevant member of the stock exchange is to be declared as a ‘defaulter’ following the prescribed procedure. Two, the corpus of the fund is to be built through, *inter alia*, share of listing fees, interest on 1% listing deposit, paid and kept by the issuer companies with the respective stock exchanges. An individual member of a particular member stock exchange is not called upon to pay any direct charges to the applicant fund. In fact, a part of the auction money of the defaulting member is also, in terms of the SEBI circular (FITTC/FII/02/2002 dated 15.05.2002), made over to the corpus of the fund. Accordingly, the object of the applicant cannot be as a service in relation to any trade, etc. Further, even assuming so, the same does not involve any consideration inasmuch as no *quid pro quo* can be attributed to the mandatory contributions to the fund by the participating stock exchanges. In our considered view, therefore, the applicant fund is a public charitable fund, set up to advance an object of general public utility, and has been wrongly denied registration as one by the Revenue. We, accordingly, vacating the findings of the competent authority vide the impugned order, direct it to grant registration applied for. We decide accordingly.

4. In the result, the assessee’s appeal is allowed.

परिणामतः निर्धारिती की अपील स्वीकृत की जाती है ।

Order pronounced in the open court on September 20, 2013

Sd/-

Sd/-

(B. R. MITTAL)

(SANJAY ARORA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 20.09.2013

व.नि.स./Roshani, 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 - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**