आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'SMC', मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL MUMBAI BENCHES "SMC", MUMBAI

श्री, बी.आर. बास्करन, लेखाकार सदस्य एवं श्री ललित कुमार, **न्यायिक सदस्य, के समक्ष ।**

Before Shri B.R.Baskaran, AM and Shri Lalit Kumar, JM

ITA No.3808/Mum/2015 : Asst.Year 2010-2011

The Asstt.Commissioner of Income-tax (Exemption) – I(1) Mumbai.	**बनाम**/ Vs.	Institute of Chemical Technology University of Mumbai N.M.Parekh Road, Matunga Mumbai – 400 019. **PAN : AAATI4951J.**
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी **की ओर से /Appellant by : Shri Anu A.G.Bhatkar (CIT-DR)**

प्रत्यर्थी **की ओर से /Respondent by : Shri Kishor Chaudhari**

सुनवाई की तारीख / **Date of Hearing : 17.08.2015**		घोषणा की तारीख / **Date of Pronouncement : 28.10.2015**

आदेश / O R D E R

Per Lalit Kumar (JM) :

The present appeal is filed by the Revenue against the order of the Commissioner of Income-tax (Appeals) – 7, Mumbai, dated 27.03.2015, relates to the assessment year 2010-2011.

2. The grounds raised by the Revenue read as follows:-

"1. Whether on the facts of the case and in law the ld.CIT(A) erred in accepting that the income from the professional fees of Rs.53,18,171 is incidental income.

2. Whether on the facts and in the circumstance of the case and in law the ld.CIT(A) erred in ignoring the fact that the assessee is paying fees to professors and collecting charges from outside parties and net balance is offered as income, which is a commercial activity.

3. The appellant prays that to the extent of above grounds the order of the Commissioner of Income tax (Appeals)-7, Mumbai be set aside and that of the Assessing Officer be restored."

3. Briefly stated the facts of the case are that the assessee is an Institute of Chemical Technology (ICT) Mumbai, was established as a Department of Chemical Technology on 1st October, 1993 by the University of Mumbai. Subsequently, the assessee was declared as an autonomous Institute and a deemed University by the Central Government in the year 2008. The CIT(A) has exempted the income generated by the assessee for rendering the consultancy services through its professors to various organizations under the provisions of law. The reasons given by the CIT(A) are mentioned in para 6, 7 and 8 of the impugned order, which are reproduced as under:-

"6. I have considered the above submissions of the appellant, the assessment order passed by the A.O., the documents furnished by the appellant as well as the decisions cited in this regard. There is no dispute regarding the fact that the appellant has been declared as a deemed university by the Government of India as per notification dated 12 September, 2008. So far as the consultancy services are concerned, it is seen that the services are rendered by the professors in their personal capacity and not by the appellant Institute. Apart from receiving the consultancy fee and handing over the share of the professors to them, the appellant has no other role to play in the said activity. No expenditure is incurred by the appellant for earning of such income. The role of the appellant Institute is restricted to giving permission to its professors to undertake consultancy assignment, from which the appellant is able to mobilize resources for its own objects. This is one of the ways to mobilize resources for the appellant Institute, in view of the expectations of the UGC, which has issued separate "guidelines of incentive for resource mobilization during 11th

plan from 2007 to 2012", which, as one of its objectives has "To encourage university to provide consultancy ON PAYMENT BASIS not only to the industries but to the government, and other bodies and society at large on vital issues of national importance" (a copy of the UGC guidelines in this regard has been submitted). Therefore the activity of mobilization of resources through consultancy services automatically becomes an ancillary / incidental object of any University / Institute. Hence, in my view, the AO was not justified in observing that the provision of consultancy services is not one of the incidental objects of the appellant Institute.

7. Since, provision of consultancy services is not included in the terms of employment of the employee professors of the appellant Institute, therefore, as a compensation for the breach of contract of the terms of employment, the appellant charges a part of the consultancy fees from its employee professors. Such consultancy fee received by the appellant is in the nature of passive income, as the appellant itself is not involved in providing consultancy. Hence, being ancillary / incidental object of the appellant Institute, the consultancy fees earned by the appellant cannot be denied exemption under section 11 of the Act.

8. So far as the controversy between sections 11(4) and 11(4A) is concerned, the appellant has cited decision of ITAT Cochin in the case of Ashish Super Marcato (supra), wherein it has been held that section 11(4) defines the words "property held under trust" to include "a business undertaking so held". Firstly, the appellant, as is evident from the facts of the case discussed above, is not carrying out any business itself and the activity of providing consultancy services is being carried out by its professors. And even if such activity is deemed to have been carried out by the appellant, it is only ancillary / incidental to the objects of the appellant, as has been discussed above. Thus, in my opinion, the appellant trust also benefits from the provisions of section 11(4A), because the

business if any being carried out by the appellant is incidental / ancillary to the objects of the appellant trust. So far as maintenance of separate books of account is concerned, the appellant has maintained separate ledger of consultancy fee receipts. Since there is no question of expenses, assets or liabilities in this regard, any further requirement of maintaining any separate account would not be there."

4. Whereas, the Revenue in support of the case relied upon the order passed by the Assessing Officer, more particularly observing in para 4.3 and 4.4, which read as under:-

"4.3 The assessee's contention is perused along with the details submitted during the year. It is seen that the assessee institute undertakes research projects, provides training and is also called upon to study and give its considered opinion on products / processes related to its activities. From the details of the consultancy fees received it is seen that the research / training is held practically every month and that too it is mostly held on the last day of the month. Further, on perusal of the TDS claims made by the assessee, it is seen that major Companies have deducted tax u/s 194C and 194J, which is in respect to TDS deducted for payment made on account of contracts and TDS on account of professional and technical services provided. Here, it is also pertinent to mention that nowhere in the objects of the institute, mention regarding providing of consultancy is made nor anywhere is it mentioned that providing consultancy services is an incidental objects to the main objects of the institute. Against the receipts of the Consultancy fees of Rs.91,19,356/-, the assessee has shown payment of Rs.38,01,185/- made to the professors, which shows that it is mainly an activity of consulting by professors under the roof of institutes and there is no major role of students of educational purpose as stated vide the assessee's submission.

4.4 Considering the continuity, magnitude, quantum and frequencies of the activities, which is read in conjunction with the organized manner in which the same are being conducted, it is thus obvious that the same are being conducted with an intention to make profits in the shield of charitable activities. The intentions to make profit is further substantiated by the fact, that irrespective of the continuity of an explicit motive thereof, assessee has not maintained separate books of account as envisaged by the specific provisions of Section 11(4) and (4A) of the Income Tax Act, 1961. Separate books of accounts means separate Bank Account, separate Trial Balance, separate Profit and Loss Account and separate Balance Sheet. The assessee trust has not maintained any separate books of accounts so that such activities be hindered under the blanket of charitable activities. Thus, to the extent of revenue earned on such activities, by no stretch of imagination, can be regarded as charitable in view of provisions of Section 2(15) of the Income Tax Act, 1961 read with Section 11 and 12 of the Act. In view of the discussion held, the contention of the assessee is not acceptable and the net consultancy fees of Rs.53,18,171/- is taxed as business income u/s 11(4A) of the Income Tax At, 1961. Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 are initiated separately for filing of inaccurate particulars."

6. Revenue is in appeal.

5. We have heard the parties and perused the relevant material on record. Before going to the merits of the case, it will be relevant to state the provisions of law as applicable in the case. Section 2(13) defines business which is under:-

"2(13) : "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture."

5.1 Section 2(15) provides as under:

"2(15) : charitable purpose includes relief of the poor, education [yoga] medical relief, [preservation of environment (including water sheds, 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 [twenty-five lakh rupees] or less in the previous year;] "

Since the case pertains to the assessment year 2010-2011, therefore, the amendment which came into force with effect from 01.04.2016, is not reproduced hereinabove.

5.2 Section 11(4) provides as under:-

"For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the

[Assessing] Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes. "

5.3 Section 11(4A) provides as under:-

"Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business."

5.4 From the conjoint reading of section 2(15) and 11(4A), it is clear that 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, for a cess or fees or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, shall not be for the purposes of charitable unless such activities is incidental to the attainment of the object of the trust and separate books of account are maintained by such trust qua profit and gains.

5.5 In the present case, the assessee was established as a Department of Chemical Technology on 1st October, 1993 by the University of Mumbai and since in the year 2008 it was declared as an Autonomous Institute and deemed University by the Central Government. The main aims and object of the Institute are to provide instructions, study, teaching, training and research

in various branches of Science and Technology. Though it is the case of the assessee that by virtue of the University Circular bearing No.508 of 1985 dated 7th September, 1985, the revised terms and conditions under which teachers / professors are permitted to undertake the consultation work. At this stage, it is relevant to reproduce the relevant paragraphs of the said Notification :-

> *"2. Normally at any time only two consultations may be permitted concurrently. Any request for an additional consultation may be examined on the merit of the case.*
>
> *2A. The consultancy work should not interfere with the normal teaching / research work of the department / University and other duties which may be assigned to staff by University authorities.*
>
> *3. Consultation work may be either for a specific project or a specific period.*
>
> *4. Every request for the services of a member of teaching staff as consultant to an industry, business house, etc., should be addressed to the Director / Head of the Department, but the industry or business house, as the case may be, be given the freedom to have a particular member of the teaching staff of their choice for being appointed as consultant.*
>
> *6. Permission may be granted by the Head of the Department with reference to other universities, research institutions and investigational research work undertaken on behalf of government, business or industry.*
>
> *11. All honoraria received for consultation work shall be shared between the University and the consultant on the basis of 1/3 and 2/3.*

12. Total amount received by a teacher after deducting the University's share in any one year as (i) honoraria for consultation work, (ii) honoraria for expert advise or opinion, industrial training during vacation etc. and (iii) the sitting fees for attending meetings of Boards of Directors of companies in the Public or Private Sector taken together should not exceed Rs.50,000/- provided, however, that the Executive Council may grant permission to a teacher to accept an amount in excess of Rs.50,000/- per annum, on the merits of the case and on such terms and conditions as the Executive Council may lay down.

15. Sitting fees for attending meetings of the Board of Directors of companies in the Public or Private Sector may be permitted to be retained by a teacher in full, subject to the condition that the total amount received by the teacher after deducting University's share in any one year as (i) honoraria for consultation work, (ii) honoraria for expert advice or opinion, industrial training during vacation etc. and (iii) the sitting fees for attending meetings of Board of Directors of companies in the Public or Private Sector taken together does not exceed Rs.50,000/-.

16. Honorarium received by a teacher in respect of assignments like expert advise or opinion, industrial training during vacation etc. may be permitted to be retained by a teacher in full, provided that the total amount of remuneration received for such work does not exceed Rs.6,000/- per annum, subject to the condition that the total amount received by a teacher after deducting University's share in any one year as (i) honoraria for consultation work, (ii) honoraria for expert advice or opinion, industrial training during vacation etc., and (iii) the sitting fees received by him for attending meetings of Boards of Directors of companies in the Public or Private Sector taken together does not exceed Rs.50,000/-."

5.6 It is contended by the assessee during the course of argument that UGC while issuing separate guidelines of incentives for resource mobilization during 11th plan from 2007 to 2012, has observed that - "To encourage university to provide consultancy ON PAYMENT BASIS not only to the industries but to the government, and other bodies and society at large on vital issues of national importance". The assessee, during the course of argument, had also handed over one of the sample letter issued by the Hindustan Petroleum Corporation Limited, which reads as under:-

"The Director
Institute of Chemical Technology,
N.Parekh Marg, Matunga (East)
Mumbai 400 019, India

Sub : Process consultancy by Professor (Dr.) V.V.Mahajani

Dear Sir,

We at Bharat Petroleum would like to have expert advisory services of Professor (Dr.) V.V.Mahajani for our Corporate R&D Centre, Greater Noida.

For aforementioned purpose, BPCL is willing to pay a sum of Rs.6.00 lakhs which includes Institute share of Rs.2.00 lakhs and Professor Mahajani's consultancy share of Rs.4.0 lakhs. In addition, service tax as applicable on the entire amount i.e. Rs.6.00 Lakhs shall be paid by BPCL.

We shall also bear all expenses for Air travel, and local hospitality such as accommodation in Noida / Delhi, local transport.

We shall appreciate very much your consent to have services of Dr.V.V.Mahajani.

Sd/-
N.V.Choudhary."

5.7 The Assessing Officer, after relying upon the provisions of section 2(15) r.w.s. 11(4A) of the Act, submits that the income accrued to the assessee on account of consultancy work given by the Professors is required to be taxed separately and is not an exempt income within the meaning of law. Per contra, the assessee contends that the income of the assessee is an exempt income, and therefore, is required to be exempt. It was also contended that for providing consultancy services by the Professors is an incidental activity of imparting education, and therefore, in furtherance of advancement of the education. It was also contended that the assessee is not doing anything rather the Professors are independently providing consultancy services to various Government and other organizations and it was only sharing the fees between the assessee and the Professors. It was also contended that two ledger account showing consultancy fees received and paid are the only accounts, which are required to be maintained and are being maintained by the assessee. The assessee in support of its case, relied upon various judgments, including – (i) Narain Swadeshi Weaving Mills [(1954) 26 ITR 765 (SC)], (ii) Ashish Super Marcato v. DDI (Exemption, Ernakulam), (iii) Sri Pedda Jeeyangar Mutt v. ITO 31 ITD 324, (iv) Tolani Education Society v. DDIT (Exemptions) (2013) 351 ITR 184, (v) M/s.Queen's Education Society v. CIT 2015 (3) TMI 619, (vi) Indian Chamber of commerce v. ITO 101 ITR 796, (vii) Divya Yog Mandir Trust v. JCIT ITA

No.387/Del/2013 and (viii) ADIT (E) v. The Delhi Public School Society ITA No.4344/Del/2011. By relying upon the above said judgments, the assessee sought to justify that providing the consultancy services is an activity incidental to the attainment of the object of the trust, and therefore, exempted from tax.

5.8 We find that invariably, the consultancy services provided for the specific project or a specific purpose which has direct co-relation with the education imparted by the assessee-University should come within the realm of services imparted for the attainment of the object of the trust. But in the present case, a sample letter from Bharat Petroleum Corporation Ltd. placed on record clearly shows that the expert advice services were sought from Dr. V.V.Mahajani for the corporate R & D Centre, Greater Noida. The letter dated 29th October, 2010 has been reproduced hereinabove was addressed to the Director, Institute of Chemical Technology (the assessee). Therefore, it is not right on the part of the assessee to allege that it is not rendering any services, rather, its Professors are rendering the services. The juristic person like the assessee can only execute its work either through its trustees or employees. Since the employees of the assessee trust (juristic person) are rendering consultancy / advice services for a fee and the part of the fee is also coming to the chest of the assessee, therefore, in our opinion, the activity of the assessee is not covered by the provisions of section 2(15) of the Act and the assessee is not entitled to any exemption for the consultancy fees. The reliance on the definition of the business is of no help to the assessee. The judgment of Narain Swadeshi Weaving Mills (supra) clearly provides that “no general principle could be laid down which would be

applicable to all cases and that each case must be decided on its own circumstances according to ordinary common sense principles.

5.9 The Assessing Officer, after scrutinizing the record, has held that "considering the continuity, magnitude, quantum and frequencies of the activities, which is read in conjunction with the organized manner in which the same are being conducted, it is thus obvious that the same are being conducted with an intention to make profits in the shield of charitable activities." The profit generated out of the said consultancy services is not required to be exempted. The Circular of the University dated 31.07.1985 clearly postulates various things including para 2A, which provides that the consultancy work should not interfere with the normal teaching / research work of the department / university and other duties which may be assigned to staff by University authorities. The Circular further provides in para 12, 15 and 16 that the annual fees should not be more than Rs.50,000 per month or Rs.6,00,000 per annum. The fees which had been collected for consultancy work was Rs.91,19,356. This clearly shows that the magnitude, and therefore, the same cannot be deemed as an activity incidental to the advancement of the object of the trust. The object of the trust as mentioned hereinabove is "…… and the consultancy does not fall within the objects of the trust." More over once the Professor is travelling from Mumbai to Delhi or any other destination without any other associate Professor or student, in our opinion, there will not be any value addition to the students. As a matter of fact, huge amount has been earned by the Professors through this consultancy work, though the same is separately taxed but on account of the work done by the Professors of the University, the University being the

employer had also earned. In view of the above, the consultancy work done by the assessee-University (through the modus of sharing of revenue with its Professors) is not in any way relatable to the aims and object for which the assessee was established, therefore, we hold that the assessee is not entitled for any exemption under the provisions of the Act. This Tribunal is not oblivious to the fact that if the Professors of the assessee / gives consultancy / advice work on regular basis, that will have the colour of the advice given by the assessee. Further the said consultancy work will also impair the regular studies of the students.

5.10 The judgment relied upon by the assessee in the case of Ashish Super Marcato (supra) is a case which provided the difference between section 11(4) and 11(4A). In the present case, the assessee's case does not fall in section 11(4). Because for the purpose of attracting section 11(4), the income is earned from the property held under the trust. In assessee's case, there is no property held by the assessee and the income generated is not from the property held by the assessee, therefore, it does not fall under section 11(4). On the contrary the case of the assessee will fall under proviso to section 11(4A) and since there is no co-relation between the activity of consultancy with the aims and objects of the trust, therefore, the income in the hands of the assessee as its shares of consultancy work rendered by the Professors, is required to be excluded from exemption.

5.11 The judgment in the case of Sri Pedda Jeeyangar Mutt (supra) is not on the consultancy fees, but it was on the sale of *prasadam*, and therefore, not applicable to the facts of the present case.

5.12 In the case of Tolani Education Society (supra) relied upon by the assessee, was a case for admission of the student rather it was a case of generation of surplus income. Surplus income of the trust is separately dealt with u/s 11, therefore, the same is not attracted.

5.13 The other two judgments viz. in the case of Indian Chamber of commerce (supra) and Divya Yog Mandir Trust (supra) are not applicable in the case of the assessee. Though it is submitted that the even if the consultancy fees is treated as business income, there is no question of taxing the same, because the entire amount has been spent for the purpose of education. This argument advanced by the assessee is not applicable to the assessee in view of the provisions of law.

5.14 The Hon'ble High Court of Punjab & Haryana in the case of **Regional Computer Centre Vs.**: **Commissioner of Income Tax** [2009] 311 ITR 182 (P&H) in the identical facts and circumstances had held that the assessee is not entitled for exemption under the Act. The relevant paragraphs of the judgment are reproduced herein below:-

> ***"11**. The provisions of **sections 11** (4) and **11**(4A) of the Act fell for consideration of the hon'ble Supreme Court in the case of CIT (Asst.) v. Thanthi Trust MANU/SC/1555/2001 : [2001]247ITR785(SC) . Dealing with the controversy relating to the assessment years 1984-85 to 1991-92 and applying the provisions as it existed at that time, which is relevant to the case in hand, their Lordships' observed as under (page 795 of 247 ITR and page 716 of [2001] 2 SCC 716):*
>
> *22. Sub-**section** (4) of **Section 11** remains on the statute book, and it defines property held under trust for the purposes of that **section** to include a business so held. It then states how such income is to be*

*determined. In other words, if such income is not to be included in the income of the trust, its quantum is to be determined in the manner set out in Sub-**section** (4).*

*12. It is true in respect of the assessment year 1992-93, the benefits of **Section 11** was extended because Sub-**section** (4A) of **Section 11** had further undergone change with effect from April 1, 1992. However, in respect of the assessment year of 1984-85, which is relevant to the case in hand, the benefit could not be extended.*

*13. In the present case, there are categorical findings recorded by the Tribunal that although one of the objects of the assessee RCC was to impart computer training but that was not its sole purpose. It has further been found that the major source of income as reflected in the statement of profit and loss account was from consultancy work. The assessee RCC was not considered to be existing solely for educational purposes simply because its services were used by colleges, universities, Government Departments or other public sector organisations. That alone would not bring its case within the parameters of **Section** 111(4A)(b) of the Act. The Tribunal has placed reliance on a report submitted by the assessee RCC itself, which provided that the assessee RCC was not only to become self-sufficient but it was also to become profitable. When the aforementioned findings are viewed in the light of bare perusal of **Sections** 2(15), 10(22), **11**(4) and **11**(4A) of the Act as well as in the light of the judgment of the hon'ble Supreme Court in the case of CIT (Asst.) v. Thanthi Trust MANU/SC/1555/2001 : [2001]247ITR785(SC) , then it becomes clear that the benefit of **Section 11** of the Act could not be availed of in respect of any income being profit and gains of business unless it is proved that the business was being carried on by a trust wholly for public religious purposes and the business consisted of printing and publication of books or publication of books or is of a kind notified by the Central Government in this behalf in the Official Gazette. It further required that separate books of account were maintained by the trust or institution in respect of such business and that the business was carried on by an institution wholly for charitable purposes and the work in connection with the business was mainly carried on by the beneficiaries of the institution.*

*14. The argument of Mr. Mukhi that the business was being carried on by the beneficiaries of the assessee RCC is liable to be rejected because the requirement of Sub-**section** (4A)(b) of **Section 11** is not that the business is carried on for the benefits of the institution but it is required to be carried on by the beneficiaries of the institution. The*

beneficiaries like the Punjab University, Punjab Engineering College, various Government departments are not carrying on the business merely because the officers from those departments are ex officio members of the executive council. Even otherwise the argument over looks the requirement of ***Section 11****(4A)(b) of the Act that the business is carried on wholly for charitable purposes. The findings of fact are also against the assessee RCC that, it is not a charitable institution. Therefore, the argument does not deserve acceptance."*

5.15 In view of the foregoing reasons and in the facts and circumstances of the case, we hold the order of the Assessing Officer is justified in not granting exemption to the assessee. We, therefore, set aside the impugned order and allow the appeal of the Revenue.

6. परिणामतः राजस्व की अपीलें स्वीकृत की जाती है । In the result, Revenue's appeal is allowed.

Order pronounced on this 28th day of Oct, 2015.

आदेश की घोषणा दिनांकः को की गई ।

Sd	sd
(B.R.Baskaran)	**(Lalit Kumar)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 28th Oct, 2015.

Devdas*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A) - 7, Mumbai
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 (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**