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# IN THE INCOME TAX APPELLATE TRIBUNAL
# MUMBAI BENCH "A", MUMBAI

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND**
**SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA NO. 3994/MUM/2016 : A.Y : 2011-12**

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| All India Rubber Industries Association<br>601, Pramukh Plaza, Cardinal Gracious Road, Chakala, Andheri (E), Mumbai 400 099. (Appellant)<br>**PAN : AAACA7076R** | Vs. | ADIT(E) – II (2), Mumbai<br>(Respondent) |

**ITA NO. 1368/MUM/2016 : A.Y : 2012-13**

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| All India Rubber Industries Association<br>601, Pramukh Plaza, Cardinal Gracious Road, Chakala, Andheri (E), Mumbai 400 099. (Appellant)<br>**PAN : AAACA7076R** | Vs. | ITO(E) – I (1), Mumbai<br>(Respondent) |

**ITA NO. 247/MUM/2017 : A.Y : 2013-14**

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| All India Rubber Industries Association<br>601, Pramukh Plaza, Cardinal Gracious Road, Chakala, Andheri (E), Mumbai 400 099. (Appellant)<br>**PAN : AAACA7076R** | Vs. | ACIT(E) – I (1), Mumbai<br>(Respondent) |

**Appellant by : Ms. Aarti Vissanji**
**Respondent by : Shri V. Justin**

**Date of Hearing : 24/08/2018**
**Date of Pronouncement : 12/10/2018**

**O R D E R**

**PER G.S. PANNU, AM** :

The captioned three appeals by the assessee involve common issues, therefore, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. The appeal pertaining to Assessment Year 2012-13 is taken as the lead case, which is directed against the order of CIT(A)-1, Mumbai dated 22.12.2015, pertaining to the Assessment Year 2012-13, which in turn has arisen from the order dated 11.02.2015 passed by the Assessing Officer, Mumbai under section 143(3) of the Income Tax Act, 1961 (in short 'the Act')

2. In this appeal, the Grounds raised by the assessee read as follows :-

*"1. The learned CIT (Appeals) erred in denying the deduction u/s 44A- "special provision for deduction in case of trade, professional or similar association" to the assessee, a Trade Association registered u/s 12A of the Income-tax Act, 1961. eligible and claiming such deduction u/s 44A of the Act.*

*2. The learned CIT (Appeals) erred in fact and law by concluding:*

*(i) "that the appellant is providing services to its members in lieu of membership fees being paid."; and*
*(ii) that this amounted to "remuneration received for rendering any specific services to such members."*

*in denying the deduction u/s 44A of the Act*

*3. The learned CIT (Appeals) erred in applying the ratio in "Surat City Gymkhana v/s DCIT (Guj) 254 ITR 733" in denying the deduction u/s 44A of the Act.*

*The denial of the deduction u/s 44A is erroneous, perverse and ought to be set aside and the special deduction allowed.*

*4. The learned CIT (Appeals) erred in fact and law in denying the assessee the benefit of the exemption of section 11 of the Act:*

*(i) by misapplying CBDT circular No 11/2008 and disregarding the submissions made by the assessee*

*(ii) by confirming the finding by Assessing Officer that the decision of the jurisdictional High Court in the case of "CIT V/s Western India Chamber of Commerce Ltd 13 ITR 67 (Bom)" was not applicable to the assessee and failing to appreciate the distinguishing facts from the decision of the Gujrat High Court in the "Ahmedabad Mill Owners Association Case (106 ITR 725) (Guj)".*

*and erroneously concluding that the assessee was not formed with the object of general public utility and holding that it was a "mutual association" only for its members.*

*5. In disregarding the submissions made by the assessee regarding its activities from inception and the continuous enjoyment of the exemption U/s 11 of the Act, the learned CIT (Appeals) appeals has failed to appreciate that the character of the assessee's charitable activities in pursuance of objects of general public utility do not become non-charitable merely by "revenue authorities taking a view of statutory provision in a letter year."*

*6. The learned CIT (Appeals) erred in stating that "no submission with reference to other points made during the course of appellate proceeding" and in disregarding the submissions and representations made in discussing the appeal.*

*7. The appellant prays that the order be set - aside and the exemption u/s 11 the Act be restored."*

3. The appellant before us is a company which was founded in 1945 and is registered u/s 23 of the Companies Act, 1913, which corresponds to Sec.

25 of the Companies Act, 1956. Broadly speaking, its objects are for promoting and safeguarding rubber industry in India. Assessee is also registered u/s 12AA of the Act with the Commissioner. For Assessment Year 2012-13, it filed its return of income declaring NIL income, which was subject to scrutiny assessment.

4. The Assessing Officer noted the objects of the assessee and was of the view that it was an association of members existing for its members only and, therefore, it was a mutual association. The Assessing Officer also noted that assessee was carrying out activities in the nature of trade, business or commerce and/or providing services in relation to trade, business or commerce and, therefore, it was hit by proviso to Sec. 2(15) of the Act which was inserted w.e.f. 01.04.2009. On being show caused on the aforesaid aspects, assessee pointed out that it was registered as a 'charitable institution' u/s 12A of the Act and carrying on objects of general public utility. On the issue of mutuality, assessee contended that so far as the subscription revenue earned from its members was concerned, it was governed by the Principle of Mutuality, and the same was exempt from tax. On other activities, including those relating to the non-members, assessee pointed out that it was carrying on objects of general public utility and being registered u/s 12A of the Act, it was entitled to the benefits of exemption under Sec. 11/12 of the Act. Assessee also explained before the Assessing Officer that it was publishing a magazine for dissemination of information relating to the Rubber industry in India and developments abroad. It was explained that such magazine is circulated to the members while the non-members were entitled for the magazine for a nominal subscription in order to mitigate the cost of publication. The same was also circulated on a gratis

basis to the public through libraries, concerned Departments of the Government, etc. The assessee also explained that the magazine contained technical research, data and other important articles written by persons in the field of Rubber technology and was also used by the students in the field of Rubber technology. Further, assessee was also publishing a monthly bulletin for members, etc. for use towards dissemination and communication of information relating to Rubber industry. The various Objects clauses of the Memorandum of Association were highlighted by the assessee in this regard. In sum and substance, the plea of the assessee was that dissemination of information and publication of a magazine was a substantive activity, which was in furtherance of a charitable object of general public utility.

5. The Assessing Officer, however, disagreed with the assessee and held that assessee was a mutual association and, therefore, "*not a charitable one*". Therefore, assessee's receipts from non-members and other sources such as income received from advertisements, sale of books and periodicals, magazine subscription, interest income on fixed deposits and cumulative deposits, seminar income and other income amounting to Rs.1,03,43,425/- was treated as receipt from non-members and thus, hit by the amended proviso to Sec. 2(15) of the Act. While computing the total income, the Assessing Officer allowed the expenses claimed of Rs.54,85,615/- and thereby deduced the total taxable income of Rs.48,57,810/- and denied the benefits of exemption under Sec. 11/12 of the Act. This action of the Assessing Officer has since been affirmed by the CIT(A) more or less for the same reasons. Against the aforesaid, assessee is in further appeal before us.

6. Before us, the learned representative for the assessee vehemently pointed out that the lower authorities have misdirected themselves in denying the claim of exemption under Sec. 11/12 of the Act. It has been specifically pointed out that the Assessing Officer unjustly denied the claim of exemption u/s 11 of the Act on the ground that only a section of persons in the society were benefitted, i.e. members of the association. In this context, the learned representative submitted that it is a well-settled proposition that even where the benefits are for a section of the public, it would still be regarded as 'charitable purpose' so long as it involves objects of general public utility and charitable status could not be denied merely because the activities do not benefit the whole of mankind. Secondly, it is sought to be pointed out that the Assessing Officer has misdirected himself in holding that the Principles of Mutuality and charitable purpose are mutually exclusive. Thirdly, it is pointed out that the registration of the assessee u/s 12A of the Act continues to hold and, therefore, it was not open for the Assessing Officer to re-examine and re-evaluate the objects of the assessee and say that the same are not for charitable purpose unless it can be established that the activities being carried out are not in accordance with the objects. The learned representative pointed out that the activities of assessee stand on a similar footing as in the past years and in view of the continuation of registration u/s 12A of the Act, the objects could not be said to be lacking in charitable purpose. For this proposition, reliance has been placed on the judgment of the Hon'ble Gujarat High Court in the case of *Hiralal Bhagwati vs CIT, 246 ITR 188 (Guj.)*, which has since been affirmed by the Hon'ble Supreme Court in the case of *ACIT vs. Surat City Gymkhana, 300 ITR 214 (SC)*. Further, it is argued that the proviso to Sec. 2(15) of the Act introduced by the Finance Act, 2008 w.e.f. 01.04.2009 has been wrongly

invoked by the Assessing Officer to treat the activities of the assessee as being non-charitable. On this aspect, reference has been made to the following decisions, which according to her involved identical situation :-

i) The Indian Merchants Chamber vs DDIT(E), ITA No. 4076/Mum/2013 dated 29.06.2016
ii) Indian Chamber of Commerce vs ITO, 37 ITR Trib 688 (Kol)
iii) ITO(E) vs Indian Leather Products Association, 156 ITD 393 (Kol)
iv) PHD Chamber of Commerce & Industry vs DIT(E), (2012) 28 taxmann.com 161 (Delhi)

7. It has been vehemently argued that none of the activities carried out by the assessee can be said to be in relation to any trade, commerce or business so as to be hit by the first proviso to Sec. 2(15) of the Act. It has also been pointed out that merely because some incidental or ancillary activities carried out in furtherance of its predominant objects are against a fee or charge, which generates a surplus, it could not be said that there was any profit motive so as to invite the restriction contained in the first proviso to Sec. 2(15) of the Act. The aforesaid plea is based on the point that in order to invoke the proviso to Sec. 2(15) of the Act, it is essential to establish that the activities in question are carried out with a profit motive. In this connection, reliance has been placed on various decisions, viz. *India Trade Promotion Organization vs DGIT (Exemptions), 371 ITR 333 (Del); Institute of Chartered Accountants of India vs DGIT (Exemptions), 347 ITR 99 (Del.); DIT (Exemptions) vs Shree Nasik Panchvati Panjrapole, (2017) 150 DTR 249 (Bom.)*.

8. It was, therefore, contended that the assessment made by the Assessing Officer denying the relief under Sec. 11/12 of the Act is unjustified and the income as returned by the assessee deserves to be restored.

9. On the other hand, the ld. DR appearing for the Revenue has defended the orders of the authorities below by placing reliance thereon. The ld. DR has primarily reiterated the stand of the Assessing Officer, which we have already noted in the earlier paras and is not being repeated for the sake of brevity. In particular, the ld. DR has referred to the discussion in the assessment order to the effect that assessee being predominantly a mutual association, its objects could not be taken to be charitable as the two concepts are contradictory to each other. It was also canvassed by the ld. DR that the activities of the assessee are predominantly for the benefits of its members and not for public at large and, therefore, the same could not be treated to be charitable in nature.

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 non-members, 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 non-charitable 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 fact-situation 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* |
|---|---|---|
| *CIT v. 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 Section11. 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.

24. It was a common point between the parties that in the Assessment Years 2011-12 and 2013-14 also, the substantive dispute stands on similar footing to that considered by us in the earlier paras in relation to Assessment Year 2012-13 and, therefore, our decision in Assessment Year 2012-13 will apply *mutatis mutandis* to these appeals, except for an additional point raised by the Assessing Officer in Assessment Year 2013-14, which is agitated by the assessee by way of Ground of appeal no. 5, which reads as under :-

*“5. The learned CIT(Appeals) erred in fact and law in holding that the assessee’s contribution to the corpus of “Rubber Skill Development Centre” a Section 25 Company formed under the Prime Minister sector skill development programme was in violation of Section 13(1)(d) of the Income Tax Act, 1961.”*

25. In the assessment for Assessment Year 2013-14, the Assessing Officer has denied the claim of exemption under Sec. 11/12 of the Act on one more Ground, namely, that assessee had invested sum of Rs.18,75,000/- in Rubber Skill Development Centre, which was in violation of Sec. 13(1)(d) r.w.s 11(5) of the Act.

26. On this aspect, the stand of the assessee was that Rubber Skill Development Centre is a company under the Companies Act, 1956 which enjoys licence u/s 25 of the Companies Act, 1956 and that it was a Special

Purpose Vehicle (SPV) formed with the approval of the Government of India. Assessee also pointed out that Rubber Skill Development Centre is also registered u/s 12AA of the Act with the Commissioner of Income-tax. Before us, the learned representative for the assessee pointed out that the impugned contribution is towards the Share Capital, i.e. towards the corpus of Rubber Sector Skill Council and such contribution is to be understood as application of funds towards the promotion of objects of the assessee-association. It was pointed out that it was not in the nature of any investment inasmuch as Rubber Sector Skill Council was itself a Sec. 25 mandated company under the Companies Act, 1956 and, therefore, no dividend could be declared by it. It was, therefore, pointed out that it is in the nature of an outright contribution towards an entity, which is involved in activities in furtherance of the objects of the assessee also.

27. On the other hand, the ld. DR appearing for the Revenue has referred to the decision of the CIT(A) in para 5.2(i), wherein it is noticed that the registration u/s 12A of the Act of the said Rubber Skill Development Centre has since been set-aside by the Commissioner u/s 12AA(3) of the Act. It was, therefore, contended that order of the Assessing Officer does not require any interference on this count.

28. In reply, the learned representative pointed out that subsequent to the impugned decision of the CIT(A), Commissioner of Income Tax, Delhi vide his order no. DEL-RR26005-10032017/7344 dated 10.03.2017 has allowed registration u/s 12A of the Act, a copy of which is placed on record. It was,

therefore, contended that the basis adopted by the CIT(A) to deny the exemption no longer holds good.

29. We have carefully considered the rival submissions. In the instant, assessee has contributed Rs.18,75,000/- towards the capital of a concern which is a Sec. 25 registered company under the Companies Act, 1956. Sec. 13(1)(d) of the Act, *inter-alia*, prescribes that benefits of Section 11 or 12 of the Act shall not be available if any funds of the institution are invested in a mode other than those prescribed in Sec. 11(5) of the Act. No doubt, investment in shares of another concern is not a mode of investment prescribed in Sec. 11(5) of the Act; so however, the case set-up by the assessee herein is that it has made a contribution towards the corpus of the investee institution which is also a Sec. 25 company under the Companies Act, 1956. Notably, such companies are prohibited from declaring any dividend on its Share Capital and, therefore, in that sense, a person holding Share Capital in such a concern is not entitled to any return. Secondly, it is also clearly brought out that Rubber Sector Skill Council has been funded by the assessee along with ATMA as approved by the National Skill Development Corporation, i.e. Government of India in terms of a Memorandum of Understanding dated 16.03.2012, as noted by the Assessing Officer in para 6.1 of his order. It is also evident from the material on record that the said concern also holds registration u/s 12A of the Act. Considering all these aspects, in our view, it is not a case of investment of funds as envisaged u/s 11(5) r.w.s. 13(1)(d) of the Act, and rather it is a case where the money has been contributed towards promotion of the objects of the assessee-association itself. Thus, same cannot be treated as a violation

falling within the purview of Sec. 13(1)(d) r.w.s. 11(5) of the Act. Thus, on this count also, assessee cannot be held ineligible for the benefits of Sec. 11/12 of the Act. Thus, on this aspect also, assessee succeeds.

30. Resultantly, all the captioned appeals of the assessee are allowed.

Order pronounced in the open court on 12th October, 2018.

| Sd/- | Sd/- |
|---|---|
| **(RAVISH SOOD)** | **(G.S. PANNU)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Mumbai, Date : 12th October, 2018

*SSL*

Copy to :

1) The Appellant
2) The Respondent
3) The CIT(A) concerned
4) The CIT concerned
5) The D.R, “A” Bench, Mumbai
6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai