

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAIPUR” BENCH, RAIPUR**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI PAWAN SINGH, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 219/RPR/2019)

Confederation of Pharma Dealers Association 11. G. E. Road, Bajrang Market, Raipur (C.G.) - 492001	बनाम/ Vs.	The Commissioner of Income Tax (Exemption) Room No. 201, II Floor, Income Tax Office, II, III & IV Floors, Metro Walk Building, E-5, Arera Colony, Bittan Market, Bhopal – 462016 (M.P.)
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAABC1140R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Veekaas S Sharma, C.A.
प्रत्यर्थी की ओर से/Respondent by :	Shri R. K. Singh, CIT.-D.R.

सुनवाई की तारीख / Date of Hearing	11/08/2021
घोषणा की तारीख /Date of Pronouncement	27/10/2021

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax(Exemption), Bhopal (‘CIT(E)’ in short), dated 27.09.2019 passed under s. 12AA(1)(b)(ii) of the Income Tax Act, 1961 (the Act).

2. As per the grounds of appeal, the assessee has essentially challenged the denial of registration under s.12AA of the Act on the ground that activities undertaken by the assessee do not fall within the definition of Section 2(15) of the Act.

3. Briefly stated, the assessee is a trade association meant for promoting the business of pharma dealers and protecting the rights and interest of its members who are engaged in pharma business. The object clause as contained in the memorandum/bye laws of the assessee society are noted hereunder:

- “(1) To protect the rights and interests of drug dealer members, make them aware of their duties and make a complete and effective organization for their all round development.*
- (2) To construct complex related to pharmaceutical business and solve all the problems related to pharmaceutical business from time to time.*
- (3) To promote and spread the spirit of brotherhood, fraternity, patriotism, true self-respect and public service among drug dealers members.*
- (4) To develop physical, mental, literary, social, cultural status of drug dealer members and organize seminars and workshops related for pharmaceuticals business for increasing knowledge of members.*
- (5) To get the laws detrimental to the interest of drug dealer members amended, make the new laws that are necessary and administer the implementation of these laws.*
- (6) To abstain from initiating the movement nor sanctioning it till the legal remedies for resolving each business related problem are exhausted, decision to be taken by Governing Body based on majority if deemed necessary.*
- (7) To inculcate the spirit of working for public interest with honesty, dedication and enthusiasm amongst the drug dealers members.*
- (8) To publish regular newsletters and publications for spreading information and 'knowledge among drug dealers and make them aware.*
- (9) To conduct elections in the presence of supervisor and present the details of income and expenditure in the specified time period.*

(10) To achieve the aforesaid objections only law abiding, truth and non-violence means and principles shall be adopted and followed.”

4. The assessee society claims to be engaged in the charitable activities falling within the ambit of expression ‘the advancement of any other object of general public utility’ as contained under s. 2(15) of the Act. Based on this premise, the assessee filed application on 30.03.2019 electronically before the CIT(E) seeking registration of the society under s. 12AA of the Act to enable it to avail the benefits of Section 11 & Section 12 of the Act. After raising queries on the application, the CIT(E) passed the impugned order under s.12AA(1)(b)(ii) of the Act dated 27.09.2019 and rejected the application of the assessee for registration under s.12AA of the Act.

5. Aggrieved, the assessee preferred appeal before the Tribunal. The learned counsel for the assessee referred to the application form, the object clause etc. and submitted that the CIT(E) has misapplied the law in the facts of the case while denying the registration. It was submitted that for denial of registration, the CIT(E) has mainly observed that:

- (a) The assessee is a mutual concern and the benefits of the assessee society are limited to its members and thus it is a mutual concern operating on the principles of mutuality, as such, the benefit is not meant for public at large.
- (b) The assessee society has developed the market place after purchasing the land in its name and the land so purchased has been leased out to its members. The contribution from the members is just like donation and the members have derived the benefit from donation by way of land/developed plots leased out to the members.
- (c) For denial of exemption, the CIT(E) has also observed that the assessee society purchased the land out of the contributions made by the members, however, in reciprocation of the contribution, the assessee gave the land

after development of market and development of plots to its members, and, consequently, the land is not appearing in the balance sheet.

6. In defense, the learned counsel for the assessee pointed out that as regards disclosure of land in the balance sheet, the Auditor has given the observations in his audit report at page no.29 of the paper book. The assessee society had purchased land out of contribution paid by the members, right from the beginning, the members made contributions essentially for allotment of developed plots and thus the contribution was not without consideration or an act of philanthropy. It was thus contended that the CIT(E) misinterpreted the facts and did not appreciate the distinction between the 'contribution' and 'donation' inasmuch as the members never intended to give donation which would mean parting money without consideration. It was further submitted that there is no dispute over the fact that the assessee society had purchased the land for developing the market place out of the contribution of the members. Also there is no dispute over the fact that the assessee purchased the land in its own name vide the registered purchased deed. Further, there is no dispute over the fact that the assessee had developed the market place for its members engaged in pharma business. It is further an undisputed fact that developed plots were allotted to its members in proportion to their contributions by way of lease agreement for 99 years. Learned counsel also pointed out that the land purchased has been duly recorded in the regular books of accounts and all the expenses incurred on development of land have also been accounted for in the books of accounts and disclosed in the balance sheet. The statutory approvals and clearance were obtained by the assessee society for development of the market place.

6.1 In this factual backdrop, the learned counsel pointed out that the expression 'public' employed in Section 2(15) of the Act includes 'section of public' and thus there is no impediment for registration merely on the ground that the trust is meant for the advancement of pharma dealers. Reference in this regard was made to the following decisions:

- i. *DIT vs. Bharat Diamond Bourse (2003) 259 ITR 0280 (SC)*
- ii. *Addl. CIT vs. Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR 1 (SC)*
- iii. *Ahmedabad Rana Caste Association vs. CIT (1971) 82 ITR 704 (SC)*
- iv. *CIT vs. Andhra Chamber of Commerce (1965) 55 ITR 722 (SC)*
- v. *CIT vs. Federation of Indian Chambers of Commerce and Industry (1981) 130 ITR 186 (SC)*
- vi. *All India Rubber Industries Association vs. Addl.CIT & Ors. (2018) 173 ITD 615 (Mumbai-Trib.)*
- vii. *CEO Clubs India vs. DIT (Exemption) (2012) 32 CCH 0405 (Mumbai-Trib.)*
- viii. *Agricultural Produce & Market Committee, Telhara & Ors. vs. CIT (2005) 24 CCH (Mumbai) 0350 (Nagpur-Trib.)*
- ix. *CIT vs. Chhattisgarh Urology Society (2018) 303 CTR 299 (CG)*

6.2 The learned counsel next submitted that the assessee society as per its main objects and other objects *inter alia* seeks to promote patriotism, feelings of brotherhood, love towards nation and attitude of public service on the principle of charity amongst its members for their all round development and growth in every sphere of life and in order to achieve its object. The assessee society organizes seminar/ workshop to achieve such sacred purposes. The learned counsel adverted our attention to one of such seminars conducted by the Income Tax Officials for creating awareness amongst members about their statutory duties under the provisions of Act in particular and duties towards the nation in general and role of income tax in nation building.

6.3 Other line of arguments raised on behalf of the assessee are listed hereunder:

- (a) The object of the assessee society includes its aim to inculcate the spirit of working for public interest with honesty, dedication and enthusiasm among drug dealer members. To achieve such object, the assessee society organizes donation camp also. The assessee society strives to provide hygienic and healthy infrastructure to enable members to carry on trade in organized manner under well-developed infrastructure.
- (b) The activities of assessee society fall within the fourth limb of Section 2(15) of the Act i.e. 'the advancement of any other object of general public utility' which carries a very wide connotation.
- (c) The area of operation of the assessee society extends to the whole state of Chhattisgarh as can be seen from memorandum of association of the assessee society.
- (d) The assessee is essentially a trade association formed with the object of protecting the rights and interest of members engaged in the pharma business. The similarly placed trade association with like objects have been held to be eligible for registration under s.12AA of the Act on the ground that their objects were found to be falling within the expression 'any other object of general public utility' as employed in Section 2(15) of the Act.
- (e) A reference was made to the decision of Surat bench in *ACIT vs. Gujarat Hira Bourse* dated 22.06.2021, wherein the Finance Minister's speech in Parliament was quoted with reference fourth limb to the said Proviso to Section 2(15) of the Act. The Finance Minister in the said speech stated that the Chambers of Commerce and similar organizations rendering services to their members would not be affected by the amendment and their activities would continue to be regarded as 'the advancement of any other object of general public utility'.
- (f) CBDT Circular No.11 of 2008 dated 19th December, 2008 explained the amendment to Section 2(15) of the Act. As per the circular, where the industries or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, this would not fall under the purview of Proviso to Section 2(15) of the Act owing to the principles of mutuality. However, if such organizations have dealings with non-members, their claim to be chargeable organizations would now be governed by the additional conditions stipulated in the proviso to Section 2(15) of the Act. The CBDT Circular has also observed that whether the object of the assessee falls within 'the advancement of any other object of general public utility' is a question of fact and therefore, each case has to be decided on its own facts and no generalization is possible.

- (g) The mutual concern operating on the principles of mutuality is not debarred from claiming exemption u/s.11 & 12 of the Act by virtue of registration u/s.12AA of the Act. The decision of the coordinate bench in *All India Rubber Industries Association vs. Addl.CIT & Ors. (2018) 173 ITD 615 (Mumbai-Tribunal)* was referred to and relied upon in this regard.

6.4 The learned counsel further contended that similarly placed trade associations have been held to be eligible for registration under s.12AA of the Act:

- i. *Addl.CIT vs. Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR 1 (SC)*
- ii. *CIT vs. Gujarat Maritime Board (2007) 295 ITR 561 (SC)*
- iii. *CIT vs. Andhra Chamber of Commerce (1965) 55 ITR 722 (SC)*
- iv. *CIT vs. Chhattisgarh Urology Society (2018) 303 CTR 299 (CG)*
- v. *Shri Sarafa Association vs. CIT & Anr. (2007) 294 ITR 262 (MP)*
- vi. *Chhattisgarh State Cricket Sangh vs. DCIT (Exemption) (2019) 56 CCH 73 (Raipur-Trib.)*
- vii. *All India Rubber Industries Association vs. Addl.CIT & Ors. (2018) 173 ITD 615 (Mumbai-Trib.)*
- viii. *Confederation of Real Estate Developers Association of India vs. ACIT (Exemption) (2021) 209 TTJ (Mumbai) 160*

6.5 Dealing with scope of enquiry, the learned counsel submitted that at the time of considering the eligibility for registration under s.12AA of the Act, the CIT(E) has to only examine the objects of the assessee society and genuineness of the transaction. The scope of enquiry does not go beyond this as provided under s.12AA(1)(ab) of the Act. The judgment rendered by the jurisdictional High Court in *CIT vs. Chhattisgarh Urology Society (2018) 303 CTR 299 (CG)* was referred.

6.6 The learned counsel contended that the assessee society do not belong to a particular community/family and any person engaged in pharma business can become member of assessee society regardless of his cast, creed or religion and without discrimination.

6.7 In summation, the learned counsel submitted that the trade association has been formed for the advancement of public utility with reference to the pharma dealers. In the wake of long line of judicial precedents wherein the registration was granted to other associations in similarly placed situations, it was urged that the assessee should also be treated similarly and registration claimed w.e.f. 01.04.2018 by an application dated 30.03.2019 in terms of provisions of Section 12A(2) of the Act should be allowed.

7. The learned DR for the Revenue, on the other hand, relied upon the order of the CIT(E).

8. We have carefully considered the rival contentions and perused the order passed by the CIT(E) under s.12AA of the Act. The case laws referred to and relied upon as well as the paper book containing material as referred, has been taken note of.

8.1 At the outset, we take note of the observations made by the Hon'ble Chhattisgarh High Court in *CIT vs. Chhattisgarh Urology Society (2018) 303 CTR 299 (CG)*. The essence of decision is that the provisions contained under s.12A of the Act nowhere empowers the CIT(E) to assess the objects *vis-à-vis* the books of accounts. Even otherwise, it is not to be seen at the stage of application as to whether the fulfillment of the charitable trust would eventually benefit the members of the society. Some possible benefits to the members would not effect the genuineness of the objects of the trust *per se*. The order passed by the CIT(E) does not say in definite terms that the objects of the society are not charitable in nature. Merely because the trust consists of Urologist Doctors and the charitable society may mutually benefit those members, the object itself would not cease to be charitable in nature. Thus, as per

judgment of Jurisdictional High Court, the larger aim of objects is required to be kept in mind.

8.2 On perusal of the order of the CIT(E), we are unable to find the observations of the CIT(E) anywhere that the objects of the assessee *per se* are not genuine. On perusal of the objects of the assessee society as noted in paragraph no. 3, one cannot say that the objects are not charitable in nature.

8.3 The Hon'ble Supreme Court in *DIT vs. Bharat Diamond Bourse (2003) 259 ITR 0280* has held that if the primary or dominant purpose of institution is charitable and another object which by itself may not be charitable but is merely ancillary or incidental to the primary or dominant object, it would not prevent the institution from validly being recognized as a charity. The test to be applied is whether the object which is said to be non-charitable is the main/ primary object of the trust/ institution or it is ancillary or incidental to the main object which is charitable.

8.4 In a majority judgment of Hon'ble Supreme Court in *ACIT vs. Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR 1 (SC)*, it was observed that:

"The test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to subserve the charitable purpose or to earn profit. Where profit making is the predominant object of the activity, the purpose, though an object of general public utility would cease to be a charitable purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit. It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation but would also reflect unsound principle of management. We, therefore, agree with

Beg. J. When he said in Sole Trustee, Loka Sikhshana Trust's case [1975] 101 ITR 234, 256 (SC) that:

"If the profits must necessarily feed a charitable purpose under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity."

Thus essentially, where the purpose does not involve the carrying on of any activity for profit and where the profit making is not the real object, the trust would be entitled to avail the benefits emanating from registration under the Act.

8.5 The Chennai Bench of the Tribunal in *Japanese Chamber Of Commerce Industry vs. DIT (Exemptions) (2014) 160 TTJ (Chennai) 356* reproduced the extracts from the decision of Delhi Bench of Tribunal in *Japan Chamber of Commerce & Industry In India vs. Director of IT (Exemptions) (2008) 116 TTJ (Del) 61 : (2008) 7 DTR (Del)(Trib) 277* which reads as under:-

" So far as object No. 6 is concerned, there can be no doubt that it is a charitable object since inviting intellectuals, industrialists, scholars, tends to enlighten the faculties of the members which is to their ultimate benefit and may help them in becoming more evolved and better human beings. In fact, the Rajas than High Court in CIT vs. Jodhpur Chartered Accountants Society (2002) 174 CTR (Raj) 504 : (2002) 258 ITR 548 (Raj) has held that organizing such seminars and conferences to educate people in different fields of knowledge is a charitable object of general public utility without any profit motive."

Carrying on of similar activities were thus approved for registration.

8.6 We find that the Mumbai Bench of the Tribunal in *Confederation of Real Estate Developers Association of India vs. ACIT (Exemption) (2021) 209 TTJ (Mumbai) 160* has held as under:-

"Since the asses see-trust has been set up with the object to address the national issues related to real estate sector and better standards for its all member associations, having 21 State chapters, 220 city chapters and 20,000 members, it can safely be held to be for the benefit of a

particular section of the public and not for any specified individual. Accordingly, the view taken by the lower authorities that as the assessee trust was set up for providing facilities to a limited group of people and not for the benefit of the general public at large, therefore, it could not be held to be a trust set up for advancement of any other object of general public utility cannot be sustained and is hereby vacated.—Ahmedabad Rana Caste Association vs. CIT (1971) 82ITR 704 (SC) followed.

For the attainment of its objects, viz., to act as a group of associations/federations functioning at national and State level with an object to address the national issues relating to real estate sector and better standard for its all member associations, to encourage fraternity, feelings of co-operation and mutual help among the members of the confederation in respect of the subjects connected with the common good of trade, industry and profession of building, construction and development of funds, and to encourage adoption and promotion of fair business practices according to an ethical code of fair business practices and to maintain efficiency, dignity and integrity of the confederation, the assessee-trust had to carry out certain activities, i.e., holding conventions, exhibitions, meetings, etc. Insofar carrying out of such activities are concerned, carrying on of the same for the furtherance of the objects of the assessee-trust on a standalone basis would not take the colour as that of a trade, commerce or business. The holding of convention by the assessee trust, and the resultant receipts therein generated by it, i.e., participant fees, sponsorship fees (from advertisers) etc., were clearly in the nature of activities that were carried out by the assessee with the sole intent of attaining the object for which the trust was established."

8.7 We find that the Hon'ble Supreme Court in *CIT Vs. Gujarat Maritime Board (2007) 295 ITR 561* has held that "When an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility. Similar view expressed in *CIT vs. Andhra Chamber of Commerce (1965) 55 ITR 722 (SC)*.

8.8 In the light of ratio of various decisions, some of which have been quoted above, it is evident that the objects of the assessee trust meant for benefit of pharma dealers would undoubtedly fall within the fourth limb of Section 2(15) of the Act i.e. 'the advancement of any other object of general public utility' which has been held to be very wide in its connotation in several judicial pronouncements noted above. The assessee society in the instant case is stated to be

engaged in promotion of trade and commerce related to pharma business, protecting the rights and interests of its members, making its members aware about their duties, conducting seminars and workshops and organizing awareness camps and educating them about health and safety, cleanliness and also creating awareness about the legal provisions and duties and obligations under Income Tax Act and other laws to help them becoming a law abiding citizens. In this background, we are of the opinion that endeavors of the assessee society tantamounts to advancement of public utility and hence making such objects charitable in nature and susceptible to s.2(15) of the Act. Significantly, we simultaneously notice from the judicial precedents referred to in preceding paragraphs that it is not necessary that object of general public utility should be beneficial to the whole mankind. The object beneficial to a section of the public is also an object of general public utility. Hence, the case of the assessee gets covered in the fourth limb of Section 2(15) of the Act i.e. 'the advancement of any other object of general public utility'. This being so, the assessee would be entitled to the benefit meant for charitable trust as contemplated in the scheme of the Act.

9. We also advert to the other objection of the CIT(E) that assessee society has purchased the land and distributed the same to its members by way of 99 years of lease. In similar facts situation, the co-ordinate bench of Tribunal in *ACIT vs. Gujarat Hira Bourse* ITA No. 2917/Ahd/2014 dated 22.06.2021 observed as under:

"If the primary object of an entity like "Chamber of Commerce, professional association, a bar council, etc" is the promotion of any trade, industry, profession, etc. the fact that the business community or the profession as the case may be would be benefit therefrom, would not take away the object from the realm of object of general public utility and, therefore, they would be held established for a charitable purpose. In view of the above factual and legal position, it is quite clear that the

object of the assessee is of general public utility and does not hit by first proviso to section 2(15) of the Act.

To establish a bourse for promotion of exports of diamond, gems, pearl and jewellery and to provide infrastructure and other facility for this purpose, to develop and establish an international trading, center in India for all those engaged as manufacturers, traders, exporters and importers, brokers, commission agent of diamonds, gems, pearls and jewellery, to establish for the benefit of members of the bourse, effective liaison with other Agencies dealing in same trade, to establish, construct and run gems and jewellery park to provide all infrastructural facilities to its members and to host and organize gems and jewellery trade fares, exhibitions etc. in India and abroad.

It was further highlighted that the assessee has acquired a land on lease from Gujarat Industrial Development Corporation (GIDC), a government of Gujarat undertaking for the specific purpose of development of Gems and Jewellery Park with the conditions that land can be allotted to members only and no profit can be made of the activities of bourse. It was also mentioned that the plots would be allotted to members related to gems and jewellery business only which cannot be sublet/transferred without the approval of bourse. The assessee explained the legal provisions of section 2(15) of the Act also relying on the various decisions or Hon'ble Supreme Court and other High Courts and also the Circular No. 11/2008, dated 19.12.2008 issued by CBDT. "

Hence, merely leasing of developed plots to its members on the basis of their respective contributions does not make the assessee ineligible for registration as a charitable entity *per se*. We also do not find merit in the contention of the CIT(E) that land purchased by the society is not appearing in the balance sheet. As pointed out on behalf of the assessee, the land purchased by the assessee society has been duly disclosed in the Schedule 'A' 'Land and Land Development' of the balance sheet and thus disclosed in a particular manner.

10. While the assessee is a mutual concern and operating on the principles of mutuality, this by itself would not place any embargo for registration under s.12AA of the Act and to avail associated benefits under s.11 & s.12 of the Act having regard to CBDT Circular No. 11/2008 dated 19.12.2008 coupled with the decision of

the co-ordinate bench in *All India Rubber Industries Association vs. Addl.CIT & Ors. (2018) 173 ITD 615 (Mumbai)*.

11. The objects of the assessee society when read in the light of judicial precedents expounding the law in this regard, the conclusion is inescapable that the objects of the assessee is for charitable purpose within the meaning of Section 2(15) of the Act and the assessee is entitled in law for registration under s.12AA of the Act. Consequently, we set aside the impugned order of the CIT(E) dated 27.09.2019 and direct the CIT(E) / competent authority to grant registration under s.12AA of the Act as sought by the assessee society.

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

Order pronounced on 27/10/2021 by placing the result on the Notice Board as per Rule 34(4) of the Income Tax (Appellate Tribunal) Rule, 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

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2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर /
DR, ITAT, RAIPUR
6. गार्ड फाइल / Guard file.

By order,

Sr. Private Secretary
ITAT, Raipur (on Tour)