

IT : Where assessee-trust incorporated with a dominant object to secure accurate figures of circulation of newspapers and periodicals published in country to assist advertisers in estimating value of any publication for reaching consumers was continuously allowed exemption under section 11, since there was no change in activity of assessee, amendment of proviso to section 2(15) would not make activity of assessee as commercial in nature

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[2018] 96 taxmann.com 421 (Mumbai - Trib.)

IN THE ITAT MUMBAI BENCH 'A'

Audit Bureau Circulations Wakefield House

v.

Additional Director of Income Tax, (Exemption), Range -11 Mumbai*

G.S. PANNU, ACCOUNTANT MEMBER

AND AMARJIT SINGH, JUDICIAL MEMBER

IT APPEAL NOS. 5681 (MUM.) OF 2015 AND 6393 (MUM.) OF 2016

[ASSESSMENT YEARS 2011-12 & 2012-13]

JULY 31, 2018

Section 2(15), read with section 11, of the Income-tax Act, 1961 - Charitable purpose (Objects of general public utility) - Assessment years 2011-12 and 2012-13 - Assessee-company, registered under section 12A, was incorporated with a dominant object to secure accurate figures of circulation of newspapers and periodicals published in country through a standard process of independent audit to assist advertisers in estimating value of any publication for reaching consumers - Assessee was continuously claiming and allowed exemption under section 11 - During relevant assessment year, assessee was denied exemption on ground that in view of amended provision of section 2(15), activity of assessee was to be considered as a commercial activity - It was noted that revenue could not be substantiate that in what circumstances objects of assessee became commercial in nature - Whether since there was no change in activity of assessee since past years, amendment by insertion of proviso to section 2(15) would not make activity of assessee as trade, business and commerce in nature specifically in circumstances when there was not a single instance of any business on record carried on by assessee - Held, yes [Para 8] [In favour of assessee]

FACTS

- The assessee-company, ABC was incorporated with a dominant object to secure accurate figures of circulation of newspapers and periodicals published in the country through a standard process of independent audit to assist the advertisers in estimating the value of any publication for reaching consumers. Bureau was also giving ABC certificate at free of cost to members and in case members required any extra copies, the same was provided on nominal charge to recover the cost of copying. The Bureau obtained the registration under section 12A and thereafter, the assessee was continuously claiming the exemption under section 11 and the exemption was allowed.

- During the relevant assessment year, the Assessing Officer withdrew the exemption under section 11 in pursuant to the amended provision of section 2(15). The Assessing Officer was of the view that the Bureau independent audit of circulation figures essentially assist the advertiser in estimating the value of benefit of advertisement in a periodicals or newspapers. It was the advertiser of advertising agencies that benefited from circulation figure. There was no utility/benefit to the general public. The assessee also received the contribution and entrance fees. The same was considered as a commercial activity in view of the provision under section 2(15). The depreciation was also disallowed and the income of the assessee was assessed.
- On appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officer.
- In instant appeal the assessee contended that after the amendment of section 2(15) the claim of the assessee was declined whereas there was no change in the objects of the assessee. Further, the claim by the assessee under section 11 was declined in the assessment years 1989-90 & 1990-91 which was allowed by the Tribunal in the assessee's own case and the nature of the work of the assessee did not change till date. Further, the Memorandum of Association speaks about object of the assessee which nowhere lead the nature of the work of assessee as commercial in nature, therefore, the finding of the Commissioner (Appeals) was not sustainable and the claim of the assessee was liable to be allowed.

HELD

- The objects of the assessee nowhere changed however after the amendment the provision under section 2(15) the claim of the assessee under section 11 was declined. [Para 7]
- No doubt, it is required to be seen whether the object of the assessee falls within the purview of section 2(15) or not. There is no change of the object of the assessee. The main object of the assessee was that the assessee has to secure accurate circulation figure and data relating to all periodicals and media that sell advertising space and in regard to such publication to obtain information as to area of distribution and fix standard forms and method of ascertaining the circulation figures. Bureau also records information and circulate it to the members which consist of publisher of newspaper/magazines advertising and media agencies advertisers and Government publicity Department. It also distribute information relating to aforesaid matters to the Government and other association having objects and similar to those of this associations. The bureau certifies circulation figures of members publication based and on comprehensive audit by the auditor from a panel of approved auditors. This is one of the main activity of the assessee company. How the objects became commercial in nature is not understandable. The objects of the company are for the ultimate benefit of the public, but in what circumstances the objects of the assessee become commercial in nature, is not substantiated by the revenue in fact, even a single transaction of trade or commercial or business has not been referred to by the revenue. There was no change in the activity of the assessee since past years, and the amendment by insertion of the proviso under section 2(15) would not make the activity of the assessee as trade, business and commerce in nature specifically in the circumstances when there is not a single instance of any business on record. The

dominant purpose if any is charitable and incidental activities are not required to be treated as business in nature. So far as the claim in connection with member's contribution and entrance fees are concerned, the same is not liable to be chargeable to tax in view of the law settled in *CIT v. Wellington Sports Club* [2008] 302 ITR 279 (Bom.) etc. Further, the claim of the assessee under section 11 was declined in the years of 1989-90 & 1990-91 by revenue which was allowed by the Tribunal in the assessee's own case. Since then there was no change in the objects of the assessee till date. Merely coming into existence of provision of section 2(25) nowhere makes the object of the assessee commercial in nature. Instances of business and profession are also not on record. Taking into account all the facts and circumstances of the case, the Commissioner (Appeals) has wrongly denied the claim of the assessee under section 11 which is liable to be allowed in the interest of justice. Accordingly, the issue is decided in favour of the assessee against the revenue. [Para 8]

- So far as the claim of the assessee in connection with the interest on deposit are concerned, the said income doesn't falls within the principle of mutuality which is not liable to be allowable. However, the appellant stated that the said interest income has already been offered to tax in the return of income for the assessment year 2011-12. [Para 9]
- Another issue raised by the assessee is in connection with the confirmation of the disallowance of capital expenditure incurred by the appellant as application of income for the objects of the trust. The assessee raised the exemption under section 11 and also claimed the capital expenditure incurred for fix assets. Assessing Officer disallowed the same on the ground of claim of depreciation on the said amount. There is no claim of depreciation. Since there is no plausible reason on record to decline the claim of the assessee, therefore, the finding of the Commissioner (Appeals) on this issue and restored this issue before the Assessing Officer to decide the issue afresh in accordance with law. Accordingly, this issue is decided in favour of the assessee against the revenue. [Para 10]

CASE REVIEW

CIT v. Wellington Sports Club [2008] 302 ITR 279 (Bom.) and *Bangalore Club v. CIT* [2013] 29 taxmann.com 29/212 Taxman 566/350 ITR 509 (SC) (para 9) followed.

CASES REFERRED TO

Bombay Presidency Golf Club Ltd. v. DIT (Exemptions) [2012] 23 taxmann.com 319/52 SOT 149 (URO) (Mum.) (para 5), *Hiralal Bhagwati v. CIT* [2000] 246 ITR 188 (Guj.) (para 5), *Bar Council of Maharashtra v. CIT* [1980] 126 ITR 27 (Bom.) (para 5), *Trustees of Shri Khot Hindu Steel Mandal v. CIT* [1994] 73 Taxman 648/209 ITR 396 (Bom.) (para 5), *Bangalore Club v. CIT* [2013] 29 taxmann.com 29/212 Taxman 566/350 ITR 509 (SC) (para 5), *CIT v. Wellington Sports Club* [2008] 302 ITR 279 (Bom.) (para 5) and *Indian Chamber of Commerce v. ITO* [2014] 52 taxmann.com 52 (Kol. - Trib.) (para 8).

Sunil Nahta, AR, for the Appellant. **Rajesh Kumar Yadav, DR,** for the Respondent.

ORDER

Amarjit Singh, Judicial Member - The assessee has filed the above mentioned appeals against the order dated 21.10.2015 & 16.09.2016 passed by the Commissioner of Income Tax (Appeals)-1, Mumbai

[hereinafter referred to as the "CIT (A)"] relevant to the assessment years 2011-12 & 2012-13 respectively.

ITA NO.5681/M/2015:-

2. The assessee has filed the present appeal against the order dated 21.10.2015 passed by the Commissioner of Income Tax (Appeals)-1, Mumbai [hereinafter referred to as the "CIT (A)"] relevant to the assessment years 2011-12.

3. The assessee has raised the following grounds: —

"1(a) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) (hereinafter referred as CIT (A)) erred in confirming the action of the Ld. Assessing Officer of denial of claim for exemption under section II of the Income Tax Act, 1961 to the appellant by invoking the proviso to section 2(15) of the Income Tax Act, 1961 and the reasons assigned for doing so is wrong and contrary to the facts and circumstances of the case, provisions of Income Tax Act, 1961. and Rules made there under

1(b) On the facts and in the circumstances of the case and in law, the lower authorities erred in holding the appellant activity in the nature of trades commerce or business and thereby erred in holding that the appellant is not eligible for claim of exemption u/s 11 of the Income Tax Act, 1961.

2 On the facts and in the circumstances of the case and in law, the lower authorities erred in holding that interest of Rs. 77,91,750 earned on Fixed deposit with schedule banks is chargeable to tax being not covered by principles of mutuality without appreciating the fact that the appellant has already considered the same as a taxable receipts and the reasons assigned for doing so is wrong and contrary to the facts and circumstances of the case, provisions of Income Tax Act, 1961, and Rules made thereunder.

3 On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in not allowing capital expenditure of Rs. 15000 incurred by the appellant as application of income for the objects of the Trust and the reasons assigned for not doing so is wrong & contrary to the facts of the case, the provisions of the Income Tax Act, 1961 and the rules made thereunder.

4(a) On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in upholding the action of the learned Assessing Officer of treating subscription received from members Rs. 1,22,92,183 and entrance fees of Rs. 7,61,075/- as income chargeable to tax without appreciating that the said receipts are exempt from income tax under the principle of mutuality and the reasons assigned for doing so are wrong and contrary to the facts of the case, provisions of the income tax Act, 1961 and rules made thereunder.

4(b) On the facts and in the circumstances of the case and in law, the learned CIT (A) action of charging to tax the subscription received from members and entrance fees is contrary to the decision of the Hon'ble ITAT in the appellant's awn case in ITA No. 285 & 286/Bom/95 for A.Ys 1989-90 & 1990-91.

The appellant craves leave to add, alter, amend and/or modify all or any of the above grounds of appeal on or before the date of hearing."

4. The brief facts of the case are that the assessee filed its return of income for the A.Y. 2011-12 on 28.09.2011 along with the income & Expenditure Account, Balance Sheet and Audit Report in form no. 10B declaring total income at Rs. Nil. The institution was registered as a Charitable Organization with DIT (Exemption), Mumbai u/s. 12A vide Registration No. INS/14619 dated 11/11/1982. The assessee accordingly claimed exemption u/s. 11 of the I.T. Act, 1961. The case was selected for scrutiny,

therefore, notices u/s. 143(2) & 142(1) of the Act along with questionnaire were issued and served upon the assessee. The Assessing Officer withdrew the exemption u/s. 11 of the I.T. Act, 1961 in pursuant to the change in the definition of Section 2(15) of the I.T. Act, 1961. The assessee was incorporated as a company under Section 25 for the purpose of securing accurate circulation figures and data relating to all periodicals and media and sell advertising space and also information as to the area of distribution of periodicals so as assist the advertisers in estimating the value of any publication for advertising purposes. For ascertaining the circulation figure, the assessee conducted an independent audit of its members. The Bureau gives a certificate of circulation to its members on the basis of the audit report. The ABC certificate indicates the actual number of circulation of newspapers, magazines, etc. This copy was said to be printed and supplied to members on no profit no loss basis. The ABC certificate was used by members as authenticated proof of figures of circulation with advertisers and other agencies. The publishers also used to get their quota of newsprint based on this certificate. In view of the amended provision of Section 2(15) of the Act, the notice was given to the assessee and after getting the reply the Assessing Officer was of the view that the Bureau independent audit of circulation figures essentially assist the advertiser in estimating the value of benefit of advertisement in a periodicals or newspapers. It is the advertiser of advertising agencies that benefited from circulation figure. There was no utility/benefit to the general public. The assessee also received the contribution to the tune of Rs. 1,22,92,183/- and entrance fees of Rs. 7,61,075/-. The same was considered as a commercial activity in view of the provision u/s. 2(15) of the Act. The said claim was also disallowed when the assessee claimed on the basis of the principle of mutuality by treating as same a commercial in nature. The depreciation was also disallowed and the income of the assessee was assessed to the tune of Rs. 90,78,180/-. The assessee filed an appeal before the Commissioner of Income Tax Appeals Mumbai who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

ISSUE NOs.1:-

5. Under this issue the assessee has challenged the denial of claim for exemption u/s. 11 of the Act, 1961 by invoking the provision u/s. 2(15) of the Act. The Ld. Representative of the assessee has argued that the assessee company was incorporated on 28.04.1948 under the Companies Act, 1956 with the name as Audit Bureau Circulations Limited with a dominant object to secure accurate figures of circulation of newspapers and periodicals published in the country through a standard process of independent audit to assist the advertisers in estimating the value of any publication for reaching consumers. The Bureau gives ABC certificate at free of cost to members and in case members requires any extra copies, the same is provided on nominal charge to recover the cost of copying. The Bureau obtained the registration u/s. 12A of the I.T. Act, 1961 on 11.11.1982 and thereafter, the appellant was continuously claiming the exemption u/s. 11 of the I.T. Act and the exemption was allowed by Income Tax Authority but after the amendment of Section 2(15) of the Act, the claim of the assessee was declined whereas there was no change in the objects of the assessee, therefore, the finding of the CIT (A) is wrong against law and facts and is liable to be set aside. It is also argued that the claim by the assessee u/s. 11 of the I.T. Act, 1961 was declined in the A.Y. 1989-90 & 1990-91 which was allowed by the Hon'ble ITAT in the assessee's own case in ITA. No.285/Bom/1995 dated 28.04.1995 and the nature of the work of the assessee did not change till date but the claim of the assessee has wrongly been declined, therefore, the finding of the CIT (A) is not liable to be sustainable in the eyes of law. It is argued that the clause 3,4 & 8 of the Memorandum of Association speaks about object of the assessee which nowhere leads the nature of the work of assessee as commercial in nature, therefore, the finding of the CIT (A) is not sustainable and the claim of the Assessee is liable to be allowed. It is also argued that after amendment of Section 2(15) of the Act, the claim of the mutuality has also wrongly been declined by revenue which is also liable to be allowed in the interest of justice. In support of the said contention, the Ld. Representative of the assessee has relied upon the cases titled as *Bombay Presidency Golf Club Ltd. v. DIT (Exemptions)* [2012] 23 taxmann.com 319/52 SOT 149 (URO) (Mum.), *Hiralal Bhagwati v. CIT* [2000] 246 ITR 188 (Guj.), *Bar*

Council of Maharashtra v. CIT [[1980](#)] [126 ITR 27 \(Bom.\)](#), *Trustees of Shri Khot Hindu Steel Mandal v. CIT* [[1994](#)] [73 Taxman 648/209 ITR 396 \(Bom.\)](#), *Banglore Club v. CIT* [[2013](#)] [29 taxmann.com 29/212 Taxman 566/350 ITR 509 \(SC\)](#) and *CIT v. Wellington Sports Club* [[2008](#)] [302 ITR 279 \(Bom.\)](#). However, on the other hand, the Ld. Representative of the department has strongly relied upon the order passed by the CIT (A) in question. With due regards to the contention raised by the Ld. Representative of the parties and perusing the record, we noticed that the claim of the assessee has been rejected due to the change in definition of Section 2(15) of the I.T. Act, 1961. The assessee company was incorporated on 28.04.1948 under Companies Act 1956. The Bureau obtained license u/s. 25 of the Companies Act 1956 on 25.11.1988 and name was changed to Audit Bureau Circulations. The company got the registration u/s. 12A of the I.T. Act, 1961 on 11.11.1982. Since then the assessee was allowed to get the benefit of exemption u/s. 11 of the I.T. Act, 1961. The claim of the assessee for exemption u/s. 11 of the Act was declined in the year of 1989-90 & 1990-91 which was allowed by Hon'ble ITAT in appeal. In brief, the claim of assessee was allowed till the present order was passed after the amendment in Section 2(15) of the Act. Before going further it is necessary to advert the object of the assessee's company on record. Clause 3 of the Memorandum of Association is hereby reproduced below:—

"3. The objects for which the Association is established are: a) To secure accurate circulation figures and data relating to all periodicals and media that sell advertising space and in regard to such publications to obtain information as to area of and fix standard forms and methods for ascertaining the net sales figures and generally all information that Will be of assistance to advertisers in estimating the value of an publication for advertising purposes and to record such information and circulate it to members of this Association and, publications and the circulation of them for the benefit of members of this Association such service to be known as the A.B.C. service or by such other name or description as the Council fl91ttftn may determine from time to time.

(aa) To set up a new division .of the Bureau to be known as 'National Readership Studies Council' in the field of Readership Studies for carrying out Readership Surveys covering all major publications published In India, whether or not such publications are audited by the Bureau or are publications of Bureau's members, arid to record, collect and distribute such readership surveys and all information relating thereto to all users thereof, who may require the same for estimating, the value of such publications published in India. irrespective of whether or not such users are members of the Bureau.

(aaa) The company may undertake circulation audits, digital audits of publications printed and published within India or outside India as well as measurements of websites carrying advertisements through any electronic device and disseminate such information to all members,

(b) To collect and distribute amongst members of this Association information relating to all forms and methods of advertising.

(bb) To secure, collect, circulate and distribute information relating to all or any of the matters specified in the preceding three Sub-Clauses (a), (aa) and (b) amongst any Government in India or abroad or any statutory authority constituted by any such Government interested, directly or indirectly in advertising, and amongst associations, bureaux, societies, institutions and federations. whether in India or elsewhere and whether or not members of this Association, having objects similar to those of this Association.

(bbb) To promote, join as member, associate, or otherwise he interested in, and take hold and dispose of shares in, any other company, association, bureau, society, institution, federation or other organisation, whether in India or elsewhere, having objects similar to those of this Association, or otherwise in any manner concerned with advertising or carrying on any business capable of being conducted so as directly or indirectly to benefit this Association.

(c) To purchase, take on lease or in exchange, hire or otherwise acquire any real or personal property and any rights or privileges which the Association may think necessary or Convenient for the promotion of its objects, and to construct, maintain and alter any buildings or erections necessary or convenient for the work of the Association.

(d) To sell, let, mortgage, dispose of or turn to account all or any of the property or assets of the Association as may be thought expedient with a view to the promotion of its objects.

(e) To undertake and execute any trusts which may law-fully be undertaken by the Association and may be conducive to its objects.

(f) To borrow or raise money for the purposes of the Association on such terms and on such security as may be thought fit.

(g) To invest the moneys of the Association not immediately required for its purpose in or upon such investments, securities or property as may be thought fit.

(h) To establish and support or aid in the establishment and support of any charitable or benevolent associations or institutions and to subscribe or guarantee money for charitable or benevolent purposes in any way connected with the purposes of the Association or calculated to further its objects.

(i) To do all such other things as are incidental as the association may think conducive to the attainment of the above objects or any of them.

(j) To pay all the expenses connected with the formation and incorporation of the Association-

(k) Except as otherwise expressly stated to do all or any of the foregoing things anywhere.

PROVIDED that the Association shall not support with its funds any object or endeavour to impose on or procure to be observed by its members or others, any regulation, restriction or condition which if an object of the Association would make it a Trade Union."

6. However, clause 4, 5a and 8 is also necessary to be reproduced on record for ready reference:—

"4. The 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, by way of dividend, bonus or otherwise howsoever by way of profit to the members of the Association.

PROVIDED that nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Association, or to any memorandum of the Association in return for any services actually rendered to the Association, nor prevent the payment of interest at a rate not exceeding 6 percent per annum on money lent or reasonable and proper rent for premises demised or let by any member of the Association; but so that no member of the Council of Management or Governing Body of the Association shall be appointed to any salaried office of the Association paid by fees, and that no remuneration or other benefit in money or money's worth shall be given by the Association to any member of such Council or Governing Body except repayment of out-of-pocket expenses and interest at the rate aforesaid on money lent or reasonable and proper (rent for premises demised or let to the Association provided that the provision last aforesaid shall not apply to any payment to any gas, electric lighting, water or cable company of which a member of the Council of Management or Governing Body may be a member, or any other company in which such member shall not hold more than one hundredth part of the capital, and such member shall not be bound to account for any share of profits he may receive in respect of any such

payment.

5 (a) One half of the members for the time being of the Council of Management of the Association (hereinafter called the Council") shall consist of proprietors or publishers of newspapers or other periodicals which carry advertising and who are members of the Association or their representatives.

(b) The other half of the members for the time being of the Council, shall consist of and include both (i) members of the Association who advertise commodities or services in any newspaper or periodical, or their representatives and (ii) members of the Association who are advertising agents or their representatives.

6. The liability of the members is limited.

7. Every member of the Association undertakes to contribute to the assets of the Association, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Association contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding Rupees Fifteens

8. If upon the winding up or dissolution of the Association there remains after the satisfaction of all As debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the members of the Association, but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Association, and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Association under or by virtue of Clause 4 hereof, such institution or institutions to be deter-mined by the memorandum of the Association at or before the time of dissolution, or in default thereof by the High Court of Bombay and if and so far as effect cannot be given to such provision then to some charitable object."

7. The objects of the assessee nowhere changed however after the amendment the provision us/2(15) of the Act the claim of the assessee u/s. 11 of the Act was declined. The amended provision u/s. 2(15) is hereby reproduced below:—

"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:

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein in (twenty five lakh rupees) or less in the previous year."

8. No doubt, it is required to be seen whether the object of the assessee falls within the purview of Section 2(15) of the Act or not. There is no change of the object of the assessee. The main object of the assessee is that the assessee has to secure accurate circulation figure and data relating to all periodicals and media that sell advertising space and in regard to such publication to obtain information as to area of

distribution and fix standard forms and method of ascertaining the circulation figures. Bureau also records information and circulate it to the members which consist of publisher of newspaper/magazines advertising and media agencies advertisers and Government publicity Department. It also distribute information relating to aforesaid matters to the Government and other association having objects and similar to those of this associations. The bureau certifies circulation figures of members publication based and on comprehensive audit by the auditor from a panel of approved auditors. This is one of the main activity of the assessee company. How the objects became commercial in nature is not understandable. The objects of the company are for the ultimate benefit of the public, but in what circumstances the objects of the assessee become commercial in nature, is not substantiated by the revenue in fact, even a single transaction of trade or commercial or business has not been referred to by the revenue. There was no change in the activity of the assessee since past years, and therefore, the amendment by insertion of the proviso u/s. 2(15) of the Act would not make the activity of the assessee as trade, business and commerce in nature specifically in the circumstances when there is not a single instance of any business on record. The dominant purpose if any is charitable and incidental activities are not required to be treated as business in nature. In this regard, we also find in support of law settled in *Bombay Presidency Golf Club Ltd. (supra)*, *Indian Chamber of Commerce v. ITO [2014] 52 taxmann.com 52 (Kol. - Trib.)*, *Bar Council of Maharashtra (supra)* and *Hiralal Bhagwati (supra)*. So far as the claim in connection with member's contribution and entrance fees are concerned, the same is not liable to be chargeable to tax in view of the law settled in *Wellington Sports Club (supra)* etc. Further, we noticed that the claim of the assessee u/s. 11 of the I.T. Act, 1961 was declined in the year of 1989-90 & 1990-91 by revenue which was allowed by the ITAT in the assessee's own case. Since then there was no change in the objects of the assessee till date. Merely came into existence of provision of Section 2(25) of the Act nowhere makes the object of the Assessee commercial in nature. Instances of business and profession are also not on record. Taking into account all the facts and circumstances of the case, we are of the view that the CIT (A) has wrongly denied the claim of the assessee u/s. 11 of the Act which is liable to be allowed in the interest of justice. Accordingly, we order, The issue no. 1 and 4 are decided in favour of the assessee against the revenue.

ISSUE NO.2 :-

9. So far as the claim of the assessee in connection with the interest on deposit are concerned, we are of the view that the said income doesn't falls within the principle of mutuality which is not liable to be allowable in view of the law settled *Bangalore Club (supra)*. However, the appellant stated that the said interest income has already been offered to tax in the return of income for the A.Y.2011.12.

ISSUE NO.3 :-

10. Issue no. 3 is in connection with the confirmation of the disallowance of capital expenditure of Rs. 15,000/- incurred by the appellant as application of income for the objects of the trust. The assessee raised the exemption u/s. 11 of the Act and also claimed the capital expenditure incurred for fix assets to the tune of Rs. 15,000/-. AO disallowed the same on the ground of claim of depreciation on the said amount. There is no claim of depreciation. Since there is no plausible reason on record to decline the claim of the assessee, therefore, we set aside the finding of the CIT (A) on this issue and restored this issue before the AO to decide the issue afresh in accordance with law. Accordingly, this issue is decided in favour of the assessee against the revenue.

In result, appeal filed by the assessee is hereby ordered to be partly allowed.

ITA NO.6393/M/2016;-

11. The assessee has filed the present appeal against the order dated 16.09.2016 passed by the commissioner of income tax (A)-1, Mumbai [hereinafter referred to as the "CIT (A)"] relevant to the

assessment year 2012-13.

12. The assessee has raised the following grounds:—

"1. 1(a) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) (hereinafter referred as "CIT (A)") erred in confirming the action of the Ld. Assessing Officer of denial of claim for exemption under section 11 of the Income Tax Act, 1961 and the reasons assigned for doing so is wrong and contrary to the facts and circumstances of the case, provisions of Income Tax Act, 1961, and Rules made there under.

1(b) (i) On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) (hereinafter referred as "CIT (A)") erred in confirming the action of the Ld. Assessing Officer of denial of claim for exemption under section 11 of the Income Tax Act, 1961 to the appellant 'by invoking the proviso to section 2(15) of the income Tax Act, 1961 and the reasons assigned for doing so is wrong and contrary to the facts and circumstances of the case, provisions of income Tax Act, 1961, and Rules made there under.

(ii) On the facts and in the circumstances of the case and in law, the lower authorities failed to appreciate that, the amended provisions of section 2(15) do not change the character or exempt status of the Assessee.

1(c) On the facts and in the circumstances of the case and in law, the lower authorities erred in holding that the membership subscription and entrance fees are tainted with commerciality and beyond the scope of mutuality and thereby erred in denying the appellant's claim for exemption u/s. 11 of the Income Tax Act, 1961, and the reasons assigned for doing so is wrong and contrary to the facts and circumstances of the case, provisions of Income Tax Act, 1961, and Rules made there under.

I (d) (i) On the facts and in the circumstances of the case and in law the action of lower authorities in holding the appellant activity in the nature of trade, commerce or business and thereby in holding that the appellant is not eligible for claim of exemption u/s. 11 of the Income Tax Act, 1961 which is contrary to the decision of the Hon'ble ITAT in the appellant's own case in ITA No. 285 & 286/Bom/95 for A.Y's 1989-90 & 1990-91-(II) That the order of the Assessing Officer is legally unsustainable as under section 13(8) read with section 2(15), the Assessing Officer cannot challenge the primary activities of the assessee based on which the charitable status was granted and reaffirmed by the Hon'ble ITAT in the appellant's own case in ITA no. 285 & 286/Bom/95 for AX's 1989-90 & 1990-91.

1(e) On the facts and in the circumstances of the case and, in law, the learned CIT (A) erred in confirming the action of the Ld. Assessing Officer of denial of claim for exemption under section 11 of the Income Tax Act, 1961 to the appellant by invoking the provisions of section 13(1)(c)(ii) & 13(2)(g) r.w.s. 13(3)(cc) of the Income Tax Act, 1961 and the reasons assigned for doing so is wrong and contrary to the facts and circumstances of the case, provisions of Income Tax Act, 1961 and Rules made there under.

2(a) On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in upholding the action of the learned Assessing Officer of treating subscription received members Rs. 1,45,12,844 and entrance fees of Rs. 1,58,750/- as income chargeable to tax without appreciating that the said receipts are exempt from income tax under the principle of mutuality and the reasons assigned for doing so are wrong and contrary to the facts of the case, provisions of the Income Tax Act, 1961 and rules made thereunder.

2(b) On the facts and in the circumstances of the case and in law, the action of lower authorities in

charging to tax the subscription received from members and entrance fees is contrary to the decision of the Hon'ble ITAT in the appellant's own case in ITA No. 285 & 286/Bom/95 for AX's 1989-90 & 1990-91.

The appellant craves leave to add, alter, amend and/or modify, all or any of the above grounds of appeal on or before the date of hearing."

13. The facts of the present case are that quite similar to the facts of the case as narrated in the above mentioned appeal bearing no. 5681/M/2015, therefore, there is no need to repeat the same, however, the figure is different.

ISSUE NO.1 & 2:-

14. These issues have already being discussed and decided by us while deciding the issues no. 1 and 4 in ITA. No. 5681/M/2015. Therefore, the said issues are being decided in favour of the assessee against the revenue on similar lines.

15. In the result, the appeals filed by the assessee is hereby partly allowed.

Tanvi

*In favour of assessee.