

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

SHRI PRAMOD KUMAR, VICE PRESIDENT
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 5762/MUM/2015
(ASSESSMENT YEAR: 2011-12)

ITA No. 5761/MUM/2015
(Assessment Year: 2012-13)

&

ITA No. 6888/MUM/2016
(Assessment Year: 2013-14)

M/s Association of Mutual Funds in India,
701, 7th Floor, One India Bulls Centre,
Tower 2, Wing B, 841, Senapati Bapat -
Marg, Elphinstone Road,
Mumbai - 400013
[PAN: AAACA5550A]

..... Appellant

Deputy Commissioner of Income Tax
(Exemption)-1(1), Mumbai,
Room No. 503, 5th Floor,
Piramal Chambers, Lalbaug,
Mumbai - 400012

Vs

..... Respondent

Appearances

For the Appellant/Assessee : Shri Samir Kapadia/ Nitesh Joshi
For the Respondent/Department : Shri Milind Chavan/ Mehul Jain

Date of conclusion of hearing : 10.06.2022
Date of pronouncement of order : 06.09.2022

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These three appeals have been filed by the Appellant/Assessee against the three separate orders passed by the Commissioner of Income Tax (Appeals)-1, Mumbai [hereinafter referred to as 'CIT(A)'], for the Assessment Years 2011-12, 2012-13 and 2013-14 whereby the CIT(A) has confirmed the order passed by

Assessing Officer denying the claim of exemption under Section 11 of the Act made by the Appellant and dismissed the appeal filed by the Assessee against the respective assessment order passed under section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'].

2. Since both the sides agreed that the identical grounds have been raised in similar facts and circumstances in the present appeals, the appeals were heard together and are being disposed by way of a common order. For the sake of convenience, we would discuss the facts pertaining to appeal for Assessment Year 2011-12.

ITA No.5762/Mum/2015 (Assessment Year 2011-12)

3. The Assessee has raised the following grounds of appeal:
 1. *"The learned Commissioner (Appeals) erred in confirming the order of the learned Assessing Officer on denial of exemption u/s 11 and 12 to your appellants.*
 2. *The learned Commissioner (Appeals) was not justified in upholding the view of the Assessing Officer that the first proviso to section 2(15) applied to your appellants.*
 3. *The learned Commissioner (Appeals) was not correct in taking the view that your appellant was carrying on an activity in relation to trade, commerce or business.*
 4. *The learned Commissioner (Appeals) erred in stating that your appellant had not brought on record any documentary evidence-in support of its claim that it had rendered services to the public at large, and in ignoring the indirect benefit to the public provided by your appellants.*

5. *The learned Commissions (Appeals) has erred in upholding the view of the Assessing Officer that your appellant's activities are limited to its members.*
6. *The learned Commissioner (Appeals) failed to appreciate that the regulatory functions performed by your appellant proved that its activities were not in relation to trade, commerce or business.*
7. *The learned Commissioner (Appeals) failed to appreciate that CBDT Circular No 11 of 2008 did not preclude mutual associations from claiming the benefit of being treated as charitable organizations.*
8. *The learned Commissioner (Appeals) erred in not disposing of the appellant's ground pertaining to allowance of expenses incurred in earning the income, on merits, and in merely directing the Assessing Officer to dispose of your appellant's rectification application, without giving any other directions in this regard.*

Relief Sought

Your appellants pray that the order of the learned Assessing Officer be modified by allowing exemption u/s 11 and 12 to your appellants, and that the expenses of Rs. 3,32,93,766/- incurred in earning the income be allowed as a deduction."

4. The brief facts of the case are that the Appellant, a Section 25 Company incorporated under the provisions of the Companies Act, 1956 and holding valid registration under Section 12A of the Act, filed its return of income on 30.09.2011 declaring 'Nil' income after claiming exemption under Section 11 and 12 of the Act. The case of the Appellant was selected for scrutiny. During the assessment proceedings, the Appellant was asked to explain why the income from registration fees, certification test fee, receipts from sale of publication and other income as reflected in Income & Expenditure Account should not be taxed

in the hands of the Appellant as the same were not covered by the principle of mutuality. In response, vide letter, dated 21.03.2014, the Appellant submitted that the Appellant is engaged in charitable activities and the provisions of First Proviso to Section 2(15) of the Act are not attracted. The registration fee, certification fee, receipts from sale of publication, etc. were eligible for exemption under Section 11 read with Section 2(15) of the Act. However, the Assessing Officer, vide Assessment Order. dated 28.03.2014, passed under Section 143(3) of the Act rejected the submission/ explanation of the Appellant and denied exemption under Section 11 of the Act in respect of receipts from non-member amounting to INR 4,78,98,410/-. The Assessing Officer observed that where industry or trade association claims to be, both, charitable institution and mutual organization, their claim to be charitable organizations would be governed by the provisions contained in First Proviso to Section 2(15) of the Act as regards their dealings with non-members are concerned. The Appellant is predominantly a mutual association where members contribute only for the purpose of their own benefit and therefore, the Appellant is not a charitable institution since a charitable institution is for the benefit of public and not for the mutual benefit of the contributors to the common funds. Accordingly, the Assessing Officer treated the Appellant as a mutual association and did not tax the receipts from its members. However, the Assessing Officer denied exemption under Section 11 read with Section 2(15) of the Act and brought to tax gross receipts from non-members without allowing any deduction for expenditure incurred.

5. Being aggrieved, the Appellant went in appeal against the Assessment Order before the CIT(A) and filed detailed submissions highlighting the objects of the Appellant and the critical role played by the Appellant in the mutual funds ecosystem by carrying out investor education programs, publishing investor education material, disseminating critical data information relevant for investment decision, redressal of investor grievances as well as the work undertaken by the Appellant as per mandate received from Securities & Exchange Board of India (SEBI) which include certification and registration. It was contended on behalf of the Appellant that registered under Section 12A was granted to the Appellant after examination of the objects of the trust which did not include any profit motive. However, the CIT(A), not being convinced, dismissed the appeal holding that merely because registration has been granted to the Appellant under Section 12A of the Act does not automatically entitled the Appellant to get exemption under Section 11 read with Section 2(15) of the Act, the operations/activities of the Appellant and the claim of exemption under Section 11 of the Act is to be examined and tested on year to year basis. The CIT(A) concluded that though in the present case there has been no change in the activities undertaken by the Appellant as compared to the earlier years, there has been violation of conditions required to be fulfilled to qualify as charitable institution on account of the amendment in Section 2(15) of the Act. By operation of law the activities which were earlier qualified as charitable were now rendered non-charitable. In case this contention of the Appellant of providing indirect benefit to the public is accepted then all mutual benefit organization would qualify as charitable

organization. As regards the applicability of the proviso to Section 2(15) of the Act, the CIT(A) concluded that for denying exemption under Section 11 of the Act it was not necessary that the Appellant should be carrying out any business trade or commerce. It would suffice if the Appellant carried on activities which directly or indirectly facilitate rendering of any service in relation to trade, commerce or business. The fact that some work was carried out by the Appellant for and/or on behalf of the SEBI does not mean that the Appellant had itself assumed the role of SEBI. Further, provision to Section 2(15) of the Act did not carve out any exception for a regulatory body such as SEBI. Relying upon Circular No. 11, dated 19.12.2008 issued by Central Board of Direct Taxes (CBDT), the CIT(A) concluded that even the aforesaid circular provided that where a trade or industry association claimed to be both charitable institutions or mutual organization and there activity are restricted to contributions from and participation of only its members, the same would not fall with the purview of proviso to Section 2(15) of the Act on account of principle of mutuality, however, their dealings with non-members would be governed by the additional conditions contained in proviso to Section 2(15) of the Act. The CIT(A), thus, vide order dated 26.10.2015 dismissed the appeal filed by Appellant.

6. Being aggrieved, the Appellant/Assessee is in appeal before us.
7. The Learned Authorised Representative for the Appellant took us through the objects of the Appellant and the submission filed before CIT(A) to impress upon us that the fact that the Appellant is engaged in charitable activities undertaken for the

benefit of public at large and not just its members. The primary contention advanced by him was that the Appellant was granted registration under Section 12A/12AA of the Act after examination of its objects which were held to be charitable in nature. Prior to the introduction of amendment to Section 2(15) of the Act, the Appellant was granted exemption under Section 11 of the Act. There has been no change in the objects of the Appellant-company. The provisions contained in proviso to Section 2(15) of the Act were attracted only where the objects of an organization involved carrying out any activity in the nature of trade, commerce and business with the object of earning profits. The Appellant does not carry on any activity in the nature of trade, commerce or business. The majority of receipts are from the registration, examination and certification work carried on by the Appellant under the aegis of SEBI which is the securities market regulator working for the benefit of investors and general public. The Learned Authorised Representative for the Appellant took us through some of the directives issued by SEBI to establish that SEBI has issued directives directly addressed to the Appellant which are required to be adhered to by the Appellant. He submitted that the Appellant has been at the forefront of promoting transparency and in disseminating information. Appellant is also actively involved in a variety of initiatives aimed at spreading education and awareness amongst the public at large. The Appellant holds investor education camps and publishes material/information (such as daily Net Asset Values of all mutual funds) on its website which is available for the benefit of all the investors and potential investors. The work undertaken by the Appellant must be seen as public service

and cannot be equated with private initiatives, carried on with commercial motives. The objects of the Appellant would not get converted from charitable to non-charitable merely because the receipts exceed the specified limit. The insertion of proviso to the section 2(15) of the Act impacts only those entities which are carrying on commercial activities and claiming exemption on the ground that the activities are for advancement of objects of public utility. Since the Appellant was never engaged in commercial activity, there would be no impact of the amendment on the Appellant. In support of his contentions, the Learned Authorised Representative relied upon the judgment of the Hon'ble Bombay High Court in the case of Shree Nashik Panchvati Panjrapole reported in 397 ITR 501 (Bombay).

8. The Ld. Departmental Representative relied upon the order passed by the lower authorities and reiterated the reasoning given by the Assessing Officer and CIT(A) for denying Appellant's claim for exemption to the Appellant under Section 11 of the Act summarized in paragraph 4 and 5 above.
9. We have heard the rival submissions and perused the material on record including the judicial precedents relied upon by the parties during the course of hearing. The case of the lower authorities is that after the insertion of First Proviso to Section 11 of the Act, the activities of the Appellant which earlier qualified as charitable were, on account of amendment to Section 2(15) of the Act effective from 01.04.2009, were rendered non-charitable. Whereas the contention of the Appellant is that the objects of the Appellant continue to be charitable as there is no change in the objects/activity of the

Appellant. Further, since the Appellant is not engaged in any activity in the nature of trade, commerce or business, the provisions of First Proviso to Section 2(15) of the Act are not attracted leaving intact the exemption under Section 11 of the Act hitherto enjoyed by the Appellant.

10. Section 11 of the Act provides for exemption in respect of income derived from property held under a trust for 'charitable purpose' subject to fulfillment of conditions specified therein. Section 2(15) of the Act which defines 'charitable purpose' was amended by the Finance Act 2008, w.e.f. 01.04.2009 with the insertion of the proviso. The amended Section 2(15) of the Act reads as under:

"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 is ten lakh rupees or less in the previous year;"
(Emphasis Supplied)

11. In his speech, the then Minister of Finance had stated that the genuine charitable organizations would not be affected by way

of the above amendment. The relevant extract of the speech is as under:

"180. 'Charitable purpose' includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade commerce or business and earning income have sought to claim that their purpose would also fall under 'charitable purpose'. Obviously, this was not the intention of Parliament and, hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected."
(Emphasis Supplied)

12. This position was further clarified by the Circular No. 11 of 2008 issued by the Central Board of Direct Taxes on 19.12.2008. The aforesaid circular provided that the Proviso to Section 2(15) would be attracted in cases where the object of 'general public utility' is only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Since no generalization was possible, each case would be decided on its own facts. The relevant extract of which reads as under:

"3. The newly inserted proviso to section 2(15) will apply only to entities whose purpose is 'advancement of any other object of general public utility' i.e., the fourth limb of the definition of 'charitable purpose' contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

3.1 There are industry and trade associations who claim exemption from tax under section 11 on the ground that their objects are for charitable purpose as these are covered under 'any other object of general public utility'. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants. Therefore, where industry 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, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2(15).

3.2 In the final analysis, however, whether the assessee has for its object 'the advancement of any other object of general public utility' is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of 'general public utility' will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible. Assessee, who claim that their object is 'charitable purpose' within the meaning of section 2(15), would be well advised to eschew any activity which is in the nature of trade, commerce or business or the rendering of any service in relation to any trade, commerce or business. (Emphasis Supplied)

13. In the case of Addl. Commissioner of Income Tax v. Surat Art Silk Cloth Manufacturers Association: [1980] 121 ITR 1 (SC), while examining the meaning of 'charitable purpose' as defined in Section 2(15) of the Act as it stood prior to the abovesaid amendment, the Hon'ble Supreme Court held as under:

'17. The next question that arises is.....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 any 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.....' (Emphasis Supplied)

Thus, the Hon'ble Supreme Court had laid down the test of predominant object to examine whether the activities of an assessee would qualify to be charitable.

14. In the case of Institute of Chartered Accountants of India vs Director General Income-Tax (Exemptions), Delhi: [2013] 358 ITR 91 (Delhi), while dealing with provision of Section 2(15) of the Act as amended by the Finance Act, 2008, the Hon'ble Delhi High Court, after taking note of the above judgment of the Hon'ble Supreme Court, held that the test of predominant object would continue to apply to determine whether an assessee is carrying on business or not. The relevant extract of the aforesaid judgment reads as under:

"65. The fact that the petitioner institute charges a uniform fee from all students for coaching would not exclude the

petitioner from the ambit of Section 2(15) of the Act unless it is found that the petitioner falls within the scope of the first proviso to Section 2(15) of the Act i.e. the petitioner carries on any trade, business or commerce or any activity of rendering any service in relation to any trade, commerce or business, for a cess or a fee.

66. As stated earlier the matter was remanded to DGIT(E) to consider the submissions of the petitioner that it had been incurring administrative expenses which were much greater than the surplus and that had resulted due to the coaching provided to the students. Having erroneously come to the conclusion that the petitioner was carrying on business, the DGIT(E) has rejected the submission of the petitioner that its common administrative expenditure exceeded the surplus generated from coaching, as being not relevant. The DGIT(E) has also failed to consider that the activities being pursued by the petitioner are not with the object of earning profit but with the object of imparting knowledge and skill to ensure that Chartered Accountants in India have the requisite skill and professional competence and comprehend the code of ethics to be followed by them.

67. The expressions "trade", "commerce" and "business" as occurring in the first proviso to section 2(15) of the Act must be read in the context of the intent and purport of section 2(15) of the Act and cannot be interpreted to mean any activity which is carried on in an organised manner. The purpose and the dominant object for which an institution carries on its activities is material to determine whether the same is business or not. The purport of the first proviso to section 2(15) of the Act is not to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee. The object of introducing the first proviso is to exclude organizations which are carrying on regular business from the scope of "charitable purpose". The purpose of introducing the proviso to Section 2(15) of the Act can be understood from the Budget Speech of the Finance Minister while

introducing the Finance Bill 2008. The relevant extract to the Speech is as under:-

'....."Charitable purpose" includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purposes would also fall under "charitable purpose". Obviously, this was not the intention of Parliament and, hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected.'

The expressions "business", "trade" or "commerce" as used in the first proviso must, thus, be interpreted restrictively and where the dominant object of an organisation is charitable any incidental activity for furtherance of the object would not fall within the expressions " business", "trade" or "commerce".

68. xx xx

69. In the case of Addl. CIT v. Surat Art Silk Cloth Mfrs. Association [1980] 121 ITR 1/[1979] 2 Taxman 501 (SC), the Supreme Court held as under:

"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 any out the charitable purpose and not to earn profit, it would not lose its character of a charitable purpose merely be cause some profit arises from the activity."

70. Although in that case the statutory provisions being considered by the Supreme Court were different and the utilisation of income earned is, now, not a relevant consideration in view of the express words of the first proviso to section 2(15) of the Act, nonetheless the test of dominant object of an entity would be relevant to determine whether

the entity is carrying on business or not. In the present case, there is little doubt that the objects of the activities of the petitioner are entirely for charitable purposes.

71. Although, it is not essential that an activity be carried on for profit motive in order to be considered as business, but existence of profit motive would be a vital indicator in determining whether an organisation is carrying on business or not. In the present case, the petitioner has submitted figures to indicate that expenditure on salaries and depreciation exceeds the surplus as generated from holding coaching classes. In addition, the petitioner institute provides study material and other academic support such as facilities of a library without any material additional costs. The Supreme Court in the case of Abdul Bakshi & Bros. (supra) held as under:

"The expression "business" though extensively used a word of indefinite import, in taxing statutes it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure." [Emphasis supplied]

72. There is nothing on record to indicate the assertion of the petitioner that its activities are not fuelled by profit motive is incorrect. Absence of profit motive, though not conclusive, does indicate that the petitioner is not carrying on any business." (Emphasis Supplied)

15. The above judgment of the Hon'ble Supreme Court in the case of Surat Art Silk Cloth Manufacturers Association (supra) and the judgment of Hon'ble Delhi High Court in the case of Institute of Chartered Accountant of India (supra) were quoted with approval by the Hon'ble Bombay High Court in the judgment in the case of Director of Income Tax (Exemptions) vs. Shree Nashik Panchvati Panjrapole: [2017] 397 ITR 501 (Bombay) which was cited by the Ld. Authorised

Representative for the Appellant. The relevant extract of the aforesaid judgment read as under:

“18. We may also refer to another decision of the Delhi High Court in ICAI v. DGIT (Exemption) [2013] 358 ITR 91 (Delhi), where the Court observed at para 67 thereof as under :—

'The expressions "trade", "commerce" and "business", as occurring in the first proviso to section 2(15) of the Act, must be read in the context of the intent and purport of section 2(15) of the Act and cannot be interpreted to mean any activity which is carried on in an organised manner. The purpose and the dominant object for which an institution carries on its activities is material to determine whether the same is business or not. The purport of the first proviso to section 2(15) of the Act is not to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee. The object of introducing the first proviso is to exclude organizations which are carrying on regular business from the scope of "charitable purpose". The purpose of introducing the proviso to section 2(15) of the Act can be understood from the Budget Speech of the Finance Minister while introducing the Finance Bill, 2008. ...

The expression "business", "trade" or "commerce" as used in the first proviso must, thus, be interpreted restrictively and where the dominant object of an organisation is charitable any incidental activity for furtherance of the object would not fall within the expressions "business", "trade" or "commerce".'
(Emphasis supplied)

19. In fact the Revenue has not been able to show that the view taken by the Apex Court in Surat Art Silk Cloth Mfg Association (supra), Gujarat High Court in Sabarmati Ashram Gaushala Trust in Tax Appeal No. 1162 of 2013 (supra) and the Delhi High Court in ICAI [2012] 347 ITR 99 (Delhi) and ICAI [2013] 358 ITR 91 (Delhi) laying down the dominant activity test should not commend to us. Therefore, the view taken by the Tribunal in the present facts cannot be found fault with. (Emphasis Supplied)

16. On perusal of the above judgments, it becomes clear that even after the amendment to Section 2(15) of the Act the dominant

object test is to be applied for determining whether an assessee is engaged in business, trade or commerce, and/or any activity in the nature of business, trade or commerce. As per Circular No. 11 of 2008 issued by CBDT, the aforesaid determination is a question of fact to be decided keeping in view facts and circumstances of each case as no generalization is possible.

17. Keeping in view the facts of the present case, we are of the view, that the Appellant is engaged in charitable activity. We have examined the objects of the Appellant. The Appellant has not been established with the objects of earning profits. The Appellant was registered under Section 25 of the Companies Act, 1956, which specifically applies to entities which intend to apply their profits, if any, and/or other income in promoting its objects, and prohibits the payment of any dividend to its members. In the present case, there is no dispute regarding the nature of activities undertaken by the Appellant. The genuineness of the activities undertaken by the Appellant has not been doubted by the Revenue. It is not the case of the Revenue that the activities of the object of 'general public utility' carried on by the Assessee in the present case is only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. For the preceding assessment years the activities undertaken by the Appellant were accepted as being for the benefit of general public and therefore, for advancement of general public utility. However, for the relevant assessment year the Revenue has taken a stand that the activities undertaken by the Appellant are for the benefit of members resulting in indirect benefit to the

general public even though, admittedly, there has been no change in the facts as compared to preceding assessment years. The case of the Revenue is that on account of amendment to Section 2(15) of the Act the objects/activities of the Appellant have become non-charitable even though there has been no change in the facts as the objects/activities of the Appellant continue to be the same. In our view, the approach of the Revenue cannot be countenanced. Circular No. 11 of 2008 issued by the CBDT clearly provides that whether an assessee has for its object 'the advancement of any other object of general public utility' is a question of fact to be examined keeping in view the facts of each case. It is admitted position that the Appellant was registered under Section 12A of the Act since 09.01.1996 and was granted the benefit of exemption in terms of Section 11 of the Act in the preceding assessment years even though the Appellant had receipt registration fee for certified agents, certification test fee etc. It is admitted position that the registration and certification activities were carried out by the Appellant as per the directives of SEBI. Further, the Appellant has been holding investor education camps and publishes material/information. In our view, the aforesaid activities of the Appellant are directed towards the benefit of investors and potential investors forming part of the general public and are not limited to the benefit of its members. The Appellant has also maintained separate accounts in respect of these activities. As regards activities of the Appellant directed towards the benefit of its members are concern, the Assessing Officer has granted the benefit of principle of mutuality in respect of the same.

18. In view of the above, the Assessing Officer is directed to allow exemption under Section 11 of the Act to the Appellant. Ground No. 1 to 7 raised by the Appellant are, therefore, allowed. Ground No. 8 is disposed off as being infructuous.

In the result, the present appeal is allowed.

ITA No.5761/Mum/2015 (Assessment Year 2012-13)

ITA No.6888/Mum/2016 (Assessment Year 2013-14)

19. Both the sides agreed that all the grounds raised by the Appellant in the Appeals for the Assessment Year 2012-13 and 2013-14 are identical to the grounds raised in appeal for the Assessment Year 2011-12 with only difference being that no ground corresponding Ground No. 8 raised in appeal for the Assessment Year 2011-12 pertaining to allowance of expenses has been raised in appeals for the Assessment Year 2012-13 and 2013-14 since the Assessing Officer has allowed deduction for the expenses while computing taxable income.
20. Given the identical factual matrix, our findings/conclusion on grounds raised in appeal for Assessment Year 2011-12 shall apply mutatis mutandis to the corresponding grounds raised in appeal for the Assessment Year 2012-13 and 2013-14. Accordingly, Ground No. 1 to 7 raised in appeal for the Assessment Year 2012-13 and Ground No. 1 to 7 raised in appeal for the Assessment Year 2013-14 are allowed whereas Ground No. 8 is disposed off as being infructuous. Accordingly, the appeal for Assessment Year 2012-13 (ITA No. 5761/MUM/2015), and for Assessment Year 2013-14 (ITA No. 6888/MUM/2016) filed by the Appellant/Assessee are allowed.

21. In result, all the three appeals preferred by the Appellant/Assessee are allowed.

Order pronounced on 06.09.2022.

Sd/-

(Pramod Kumar)
Vice President

Sd/-

(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 06.09.2022
Alindra, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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