

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/TAX APPEAL NO. 1064 of 2018****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE J.B.PARDIWALA****Sd/-****and****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

GUJARAT RAJYA KAMDAR SABHA UNION MACHIWADI
 Versus
 THE INCOME TAX OFFICER

Appearance:

MR MANISH J SHAH(1320) for the Appellant(s) No. 1

MRS KALPANAK RAVAL(1046) for the Opponent(s) No. 1

CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA**Date : 07/01/2020****ORAL JUDGMENT****(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)**

1. This tax appeal under Section 260A of the Income Tax Act, 1961 (for short "the Act, 1961") is at the instance of an

assessee (a Trade Union) and is directed against the order passed by the Income Tax Appellate Tribunal dated 21st March, 2018 in the ITA No.251/Srt/2017 for the A.Y.2009-10.

2. The facts, giving rise to this tax appeal, may be summarized as under;

2.1 The assessee is a registered trade union bearing Registration No.G2221 issued by the Registrar of Trade Union, State of Gujarat dated 14th August, 1981. On 10th April, 2008, the Managing Committee of the Union passed an unanimous resolution that as a result of compromise arrived at between the Gujarat Rajya Kamdar Sabha and Perstop Chemical (I) Pvt. Ltd. in the Court, whatever amount is received from the Company, would be fully distributed to the workers of Perstop Chemical (I) Pvt. Ltd., Vapi.

2.2 In such circumstances, referred to above, a settlement was arrived at on 15th May, 2008 which was reduced into writing in the form of memorandum of settlement between the Company, i.e, the employer and the assessee-Union. By virtue of the memorandum of settlement, all disputes pending before the Industrial Tribunal, Surat including the individual disputes pending before the Labour Court, Valsad came to be settled. Clause-40 of the Settlement Deed reads thus;

“40) it is agreed by and between the parties that on an authorized resolution of the committed and written authorization of individual workmen, the company will deduct 20% as union contribution to be deducted from all the amount of arrears back wages, legal dues and strike wages, as the case may be payable to workmen as a result of this settlement. Such deducted/recovered amount shall be remitted by cheque in the name of union within a period of 15 days from payment made to

workmen.”

2.3 In view of the aforesaid settlement, the Union received payment of Rs.60,96,818/-, and the same came to be credited in the separate Bank Account No.10868677243 maintained with the State Bank of India, Chikhli Branch. The amount which came to be credited by four different cheques is as under;

DATE	AMOUNT
22.05.2008	Rs.4,88,66/-
15.09.2008	Rs.24,63,400/-
26.11.2008	Rs.3,50,442/-
12/12/08	Rs.27,94,315/-
Total	Rs.60,96,818/-

2.4 It appears that, thereafter, notice under Section 148 of the Act for the A.Y. 2009-10 came to be issued for the reopening of assessment of the assessee-Union based on some information received from the Investigating Wing. The basis for reopening of the assessment was the receipt of Rs.60,96,818/- by the Union, as referred to above. The Assessing Officer, in the assessment order, observed in paras- 3,4 and 5 as under;

“3. I have carefully gone through the reply filed by the assessee. The assessee AOP accept that sum of Rs.60,96,818/- has been received by them however, the facts remained that(as it is discussed in the show cause notice) an amount lying with Chikhli branch of SBI has not been shown by the assessee (para 2.1 and 2.2 of show cause) moreover, it is a fact that out of the amount received nothing has been paid to the workers during the Financial Year. Assessee claims itself as a custodian of amount received. However, assessee does not disclose that why the disbursement is not made as per the terms of agreement.

4. *The amount received is revenue receipt and not the capital receipt because no capital assets has come in to existence the revenue receipts is liable to the tax if terms of the settlement is not complied with. Once the said amount is received the assessee AOP is in complete command and control as if income belonging to them. The controversial amount is distributed to the workers at later date is an application of income. An application of income is the diversion of income and therefore, the entire income of Rs.60,96,818/-is liable to be charge to taxed u/s. 4 r.w.s. 2(24) and 56 of the IT. Act as income from other sources. Penalty proceedings u/s. 271(1)(c) of the I.T. Act are separately initiated for concealment of income.*

5. *On verification of bank statement of the assessee, bank account no. 10868677243 of Chikhli branch of SBI it is seen that interest amount of Rs.34,050/was credited. On verification of computation of income of the assessee it is seen that assessee has not shown the said interest income from bank, which is undisclosed income and therefore requires to be added to the total income of the assessee for the year under consideration. Penalty proceedings u/s.271(1)(c) of the I.T. Act are separately initiated for concealment of income.”*

2.5 Ultimately, the assessment was undertaken under Section 143(3) of the Act and order was passed to calculate the tax and interest payable under Section 234B of the Act. The Income Tax Officer issued demand notice including penalty notice under Section 271(1)(c) of the Act for concealment of income.

2.6 The assessee carried the assessment order in appeal before the Commissioner of Income Tax. The Commissioner of Income Tax (Appeals), vide order dated 17th October, 2017, dismissed the appeal. While dismissing the appeal, the Commissioner of Income Tax (Appeals), observed as under;

“In the appellate proceedings, the appellant has objected

to the reopening of assessment vide ground of appeal No.1. The AR of the appellant contended that the reopening was bad in law as no income escaped assessment and it was further contended that the A.O. did not properly dispose of the specific objections raised at the time of re-assessment proceedings. From the copy of order dated 21.11.2016 disposing of the objections against reopening by the A.O., I find that the A.O. has passed a speaking order against the objections raised by the appellant. In the said order, the A.O has mentioned that the receipts of Rs.60,96,818/- was not disclosed in the books of account of the appellant union. Considering these facts, it is apparent that the reopening of the current case is fully in accordance with the provisions of the Act and therefore ground of appeal No.1 challenging the reopening is hereby dismissed.

Vide ground of appeal No.2, the appellant has contended that the addition of Rs.60,96,818/- is not justified on the ground that the payment of 20% of the employees dues as union contribution cannot be taxed as the amount received by the union had direct nexus and settlement arrived at between the parties. The contribution from the employer received is incidental to the activities of services rendered by the union in resolving dispute between member workers and the employer with the intention of welfare of the member workers. It was also claimed that the appellant union had passed resolution to give the amount so received from the employer to the employees and the employees had overriding charge on this amount. The appellant has also relied on judgment of Mumbai ITAT in the case of *Mumbai Mazdoor Sabha* 75 taxmann.com 134. From the facts brought out in the assessment order and submissions made in the appellate proceedings, there is no documentary evidence filed to support the appellant's claim of overriding charge of the employees neither there were any evidences furnished to indicate that the appellant union had incurred expenses pertaining to the employees towards the negotiation and settlement of disputes with the employer. Even though the settlement was reached on 16.05.2008, there was no evidence of incurrance of any expenditure and distribution of surplus to the member employees. This finding of the A.O in the assessment order, was not controverted by the appellant either during assessment or during current appellate proceedings. Thus,

the amount of Rs.60,96,818/- becomes a receipt which is not in the form of contributions from the member neither voluntary contributions received from employer towards the expenses incurred on behalf of the member's welfare. Such receipts cannot be tax exempt on the principle of mutuality neither these receipts can be treated as income from house property or other sources which is exempt u/s. 10(24) of the Act for the registered trade union. In the absence of any evidences of incurrance of any expenditure for welfare of member workers or expenses for pursuing the dispute on behalf of member workers, these receipts take the form of professional fee of the union in facilitating the dispute resolution between the employees and the employer. Almost whole receipts were found lying idle in the bank account till 31.03.2009 which further corroborate the fact that the said receipts were outright income of the appellant trade union. The appellant has relied on the decision of Mumbai ITAT in the case of Mumbai Mazdoor Sabha wherein the Hon'ble Bench had allowed the voluntary contribution deducted by employer and paid to the union as exempt income on the principle of mutuality. In the said case, the Hon'ble Bench had found that the union had incurred expense for welfare of member workers as well as expenses for pursuing the legal disputes in the courts and other forums. The Hon'ble Bench also found that after incurrance of various expenses on behalf of the member workers pertaining to disputes, the remaining voluntary contributions received from employer were payable to the member workers. In the current case, there is no such incurrance of expenses shown by the appellant union even the receipts were duly accounted in the books of account of the union. Thus, the decision of Hon'ble ITAT Mumbai in the case of Mumbai Mazdoor Sabha is not applicable to the facts of the current case. Therefore, the addition of Rs.60,96,818/- as taxable receipts/income of the appellant union is hereby confirmed. Ground of appeal No. 2, is thus dismissed. "

2.7 The assessee, being dissatisfied with the order passed by the Commissioner of Income Tax (Appeals), carried the matter further by preferring an appeal before the Income Tax Appellate Tribunal, Surat. The Income Tax Appellate Tribunal,

vide order dated 21st March, 2018, dismissed the appeal. While dismissing the appeal, the Appellate Tribunal observed as under;

"9. We have considered the facts and heard the rival submissions. We find that the assessee AOP has not filed any return of income whereas specific information received from investigation wing has revealed that assessee has received an amount of Rs.60,96,818/-, hence, the assessment was reopened by issue of notice u/s. 148 of the Act. Further, the information collected from SBI, Chikhli u/s. 133(6) showed the amount credit in the Bank Account No.1068677243 as credit of receipt amount Rs.60,96,818/by way of 4 cheques on various dates. It is seen that this amount was received by the assessee by 12.12.2008. However, this bank account was not shown in the audited balance sheet as on 31.03.2009 which were audited and signed by CA M/s. M.S. Chokshi & Co., 29.07.2009. It is further seen that the assessee has furnished annual report for financial year 2008-09 relevant to assessment year 2009-10 to the office of Labour Commissioner, Gandhinagar in which also the balance appearing aforesaid account at Rs.56,09,737/- was not also disclosed. We further find that the settlement was reached on 16.05.2008 and the amount of Rs.60,96,818/- was received till 12.12.2008, but there was no evidence of incurring any expenditure and distribution of surplus to the member employees. Thus, we find that the findings recorded by the Assessing Officer and the CIT (A) were not controverted by the Id. Authorised Representative of the assessee. Therefore, the receipts under consideration becomes a receipt which is not in the form of contributions from the members, neither voluntary contributions received from employer towards the expenses incurred on behalf of the members welfare. Therefore, such receipts cannot be treated as exempted u/s. 10(24) of the Act.

10. It is further noticed that almost the whole receipts were lying idle in the bank account till 31.03.2009 which corroborates the fact that the said receipts were not professional income of the assessee trade union. Therefore, the decision relied in the case of Mumbai Majdur Sabha (supra) is rightly distinguished by the Id.

CIT(A). Since the amount claimed to have been received on behalf of union was not shown in the books of accounts. Therefore, concept of principle of mutuality between the members does not supply to the present facts of the case. Hence, the decision relied in the CIT vs. Bus Operators Association (supra) and CIT vs. Standing Conference of Public Enterprises of the case are not applicable to present facts of the case. In the light of these facts and considering the finding of the lower authorities, we do not find any infirmity in the order of Id. CIT (A). Accordingly, no inference is called for. Therefore, the ground No. II(1) to (4) is devoid of merit, hence, therefore dismissed. "

2.8 Being dissatisfied with the order passed by the Tribunal, the assessee is here before this Court with the present appeal.

3. This tax appeal came to be admitted on the following substantial question of law;

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the receipt of Rs.60,96,818/- is taxable income in the hands of the assessee?"

Submissions on behalf of the assessee

4. Mr. Manish Shah, the learned counsel appearing for the assessee vehemently submitted that the Income Tax Appellate Tribunal committed a serious error in dismissing the appeal thereby affirming the two orders passed by the Lower Authorities, i.e, the Assessing Officer as well as the CIT (A). According to Mr. Shah, the amount received by the Union by way of settlement with the Company cannot be termed as an income as defined under Section 2(24) of the Act, 1961. Mr. Shah would further submit by inviting our attention to Section

10(24) of the Act that any income chargeable under the heads “Income from house property” and “Income from other sources” of the registered Union within the meaning of Trade Union Act, 1926 formed, primarily, for the purpose of regulating the relations between the workmen and employer or between the workmen and workmen cannot be included in toto. As provided under Section 10 of the Act, in computing the total income of a previous year of any person, any income falling within any of the clauses under Section 10 of the Act shall not be included.

5. Mr. Shah pointed out a very palpable inconsistency in the findings recorded by the Assessing Officer and the Appellate Tribunal. Mr. Shah pointed out that what weighed with the Appellate Tribunal is the fact that the settlement was reached on 16th May, 2008 and the amount was received by 12th December, 2008, but there was no materials of such amount being credited or distributed amongst the employees. On the other hand, Mr. Shah pointed out that the Assessing Officer, in the assessment order, in para-4, in clear terms, has noted that the amount has been distributed amongst the workers at a later date. Mr. Shah further submitted that the finding recorded by the Assessing Officer is that the income could be termed as one from other sources and once the income is termed to be from other sources, the same would be covered by Section 10(24) of the Act and the assessee would be exempt from paying any tax on the same.

6. In such circumstances, referred to above, Mr. Shah prays that there being merit in his appeal, the same be allowed and the substantial question of law, as formulated by this Court,

may be answered in favour of the assessee and against the Revenue.

Submissions on behalf of the Revenue

7. On the other hand, this appeal has been vehemently opposed by Ms. Raval, the learned standing counsel appearing for the Revenue. Ms. Raval would submit that no error, not to speak of any error of law, could be said to have been committed by the Tribunal in dismissing the appeal and thereby affirming the two orders passed by the subordinate authorities.

8. Ms. Raval very fairly submitted that it is not in dispute that the amount has been disbursed amongst the employees. According to Ms. Raval, the factum of settlement is also not in dispute. However, the only issue in dispute is with regard to the distribution of the amount amongst the employees. In such circumstances, referred to above, Ms. Raval prays that there being no merit in this appeal, the same be dismissed.

ANALYSIS

9. Section 2(24) of the Act defines the term "income". Section 2(24) of the Act reads thus;

"2(24) " income" includes-

(i) profits and gains;

(ii) dividend;

(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such

purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in subclause (iv) or sub- clause (v) of clause (23C) of section 10].

Explanation.- For the purposes of this sub- clause," trust" includes any other legal obligation;]

(iii) the value of any perquisite or profit in lieu of salary taxable under clauses (2) and (3) of section 17;

(iiia) any special allowance or benefit, other than perquisite included under sub- clause (iii), specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit;

(iiib) any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living;]

(iv) the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid;

(iva) the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in clause (iii) or clause (iv) of sub- section (1) of section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee (such person being hereafter in this sub- clause referred to as the " beneficiary") and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary;]

(v) any sum chargeable to income- tax under clauses (ii) and (iii) of section 28 or section 41 or section 59;

(va) any sum chargeable to income- tax under clause

(iiia) of section 28;]

(vb) any sum chargeable to income- tax under clause (iiib) of section 28; ⁶ (VC) any sum chargeable to income-tax under clause (iiic) of section 28;]

(vd) the value of any benefit or perquisite taxable under clause (iv) of section 28;

(ve) any sum chargeable to income- tax under clause (v) of section 28;]

(vi) any capital gains chargeable under section 45;

(vii) the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of provisions contained in the First Schedule;

(viii) Omitted by the Finance Act, 1988 , with effect from April, 1988 . It was inserted by the Finance Act, 1964 , w. e. f 1- 4- 1964 .]

(ix) any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever;]

(x) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 (34 of 1948), or any other fund for the welfare of such employees;]

interest in the company or a relative of the director or the other person. 4 The word ' income' is of the widest amplitude and it must be given its natural and grammatical meaning. The definition of income in section 2 (24) is inclusive. The purpose of the definition is not to limit the meaning of ' income' but to widen its net and the several clauses therein are not exhaustive of the meaning of income; even if a receipt did not fall within the ambit of any of those clauses, it might still be income if it partook the nature of income. The words" other

games of any sort' were of wide amplitude and their meaning was not confined to mere gambling or betting activities. Assuming that the expression "winnings" had acquired a particular meaning viz. receipts from activities of a gambling or betting nature only, it did not follow that monies received from non- gambling or non- betting activities were not included within the ambit of income. The assessee participated in a car rally and won a prize. The car rally was a contest, if not a race and the assessee entered the contest to win it. What he got was a return for his skill and endurance. It was "income" construed in its widest sense. Though it was casual in nature, it was nevertheless income."

10. Once the factum of settlement is not disputed couple with the factum of receipt of a particular amount from the Company, and as observed by the Assessing Officer in the assessment order that the amount has been distributed amongst the employees, the case would squarely stand covered under Section 10(24) of the Act. Though the contribution from the employer is received as per the settlement agreement, it is only incidental to the activities of the services of the assessee in resolving the dispute between the member workers and the employer with the intention of advancement of welfare of the members. We take notice of the decision of the Tribunal referred to and relied upon on behalf of the assessee before the Appellate Tribunal in the present case. We are referring to the decision in the case of **Mumbai Mazdoor Sabha vs. Assistant Commissioner of Income Tax**, (2016) 75 taxmann.com 134. The facts of the said case are almost identical with the case on hand. We are quite convinced with the line of reasoning assigned by the Tribunal with respect to exemption under Section 10(24) of the Act. We quote the relevant portion of the said judgment.

"It is not a case of receiving any amount or income by

doing an activity which is not for achieving the objects of the assessee. The amount received by the assessee from the employers has a direct nexus with the negotiation and settlement arrived between the parties. The role of the assessee of negotiating on behalf of the workers for settlement of disputes between the worker and the employers is limited only in respect of the disputes between the member workers and employers. Therefore, the activity of the assessee cannot be generalized in the nature of professional service or occupational service open to general public but it is, otherwise, permitted under the by-laws and constitution of the assessee as well as Trade Union Act. Though the contribution from employer is received as per the tripartite agreement, however, it is only incidental to the activity of services of the assessee in resolving the disputes between the member workers and the employers with the intention of advancement of welfare of members. The negotiation and settlement of disputes between the workers and employers is a composite activity and the contribution received from the employer cannot be taken as a separate activity of the assessee but it is a part and parcel of activity of achieving the object as per the constitution/by-laws of the assessee. Therefore, when the predominant object of the activity of the assessee is to arrive at a settlement of disputes between the workers and the management in the interest and welfare of the workers and not to earn any income or profit then the contribution received from the employers on account of the settlement between the workers and the employers cannot be said to be the business/professional or occupational income of the assessee. Therefore, the said amount of contribution received from the employers at the most would be the income of the assessee as income from other sources and cannot be regarded as business income and accordingly **exempt u/s 10(24) of the Income Tax Act**. Apart from the contribution received by the assessee from workers, the fund received by the assessee from employers is otherwise for the purpose of achieving the objects being a welfare body of the workers and excess fund if any after meeting out the expenses incurred on account of activity performed by the assessee, are refunded to the members as bonus then the said consideration received on account of settlement cannot be treated as business income earned by the assessee."

11. We are in complete agreement with the aforesaid observations of the Tribunal. We take notice of the fact that the decision of the Tribunal in Mumbai Mazdoor Sabha (supra) has been referred to by the Appellate Tribunal in para-8 of its impugned order. The only reason for the Tribunal in not following the dictum of the said order of the Tribunal is that the amount credited into the Bank Account of the State Bank of India, Chikhli Branch was not shown in the audited books of account and balance-sheet as on 31st March, 2009. According to the Appellate Tribunal, as the assessee failed to show the receipts in its audited books of account, the dictum of law as laid in Mumbai Mazdoor Sabha would not be applicable.

12. We are afraid, we are not in agreement with such finding recorded by the Appellate Tribunal. In fact, in the entire impugned order passed by the Appellate Tribunal, there is no worthy discussion of Section 10(24) of the Act.

13. In the overall view of the matter, we are convinced that the Appellate Tribunal committed an error in dismissing the appeal preferred by the assessee.

14. In the result, this appeal succeeds and is hereby allowed. The impugned order passed by the Appellate Tribunal is hereby quashed and set aside. The substantial question of law, formulated by this Court, is answered in favour of the assessee and against the Revenue.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

Vahid