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

BEFORE SHRI P. M. JAGTAP, HON'BLE VICE-PRESIDENT (KZ) &
SMT. MADHUMITA ROY, HON'BLE JM

आयकरअपीलसं./ITA Nos.1147 & 1148/Kol/2018

(निर्धारणवर्ष / Assessment Years:2013-14 & 2014-15)

Creative Museum Designers **Block: GN. Sector-V, Bidhannagar, Kolkata-7000091**	**Vs.**	**ITO, Exemption, Ward-1(1), Kolkata**
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AAECC 7738 E**		
(Appellant)	**..**	**(Respondent)**

आयकरअपीलसं./ITA No.1608/Kol/2019

(निर्धारणवर्ष / Assessment Years:2015-16)

Creative Museum Designers **Block: GN. Sector-V, Bidhannagar, Kolkata-7000091**	**Vs.**	**ITO, Exemption, Ward-1(1), Kolkata**
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AAECC 7738 E**		
(Appellant)	**..**	**(Respondent)**

Appellant by : Shri Siddhartha P Dutta, Advocate
Respondent by : Smt. Ranu Biswas, Addl. CIT Sr. DR

सुनवाईकीतारीख/ Date of Hearing : 04/08/2020

घोषणाकीतारीख/Date of Pronouncement : 14/08/2020

आदेश / O R D E R

Per Smt. Madhumita Roy, JM:

The instant bunch of appeal preferred by the assessee is directed against the order passed by the Learned CIT(A)-25 Kolkata, arising out of the order passed by the ITO, Exemption, Ward-1(1), ,Kol under Section 143(3) of the Income Tax Act, 1961(hereinafter referred to as "the Act") for Assessment Year 2013-14, 2014-15& 2015-16 respectively whereby and whereunder denial of exemption under Section 11 of the Act to the appellant applying the proviso to section 2(15) read with section 13(8) of the Act has been challenged.

2. For the sake of convenience we take revenue's appeal in ITA No. 1147/Kol/2018 for A.Y. 2013-14 as a lead case.

This brief facts leading to the case is this that the assessee company upon being granted license under Section 25 of the erstwhile Companies Act, 1956(Section 8 of the Companies Act, 2013) as a non-profit entity, under the membership of National Council of Science Museum (NCSM) an autonomous body, formed under the Ministry of Culture, (Govt. of India), is registered under Section 12(A) of the Act vide order No. DIT(E)/388/2012-13/C-223/3482-84 dated 04.03.2013. The assessee engaged in the particular activities of taking up all kinds of museum/science centre projects on turnkey basis, filed its return of income for Assessment Year 2013-14 on 30.09.2013 declaring income at nil. During the course of assessment proceeding, upon perusal of the documents furnished by the assessee, particularly the audited accounts, it revealed that the assessee received an amount of Rs. 1,06,30,400/-as sale of services. It was further found that different organizations had deducted tax at source under Section 194J of the Act while making payment to the assessee. Further that, the assessee had booked amount received from RBI in its revenue. Upon further examination of the matters, it was found that the assessee decided to set up a museum in the premises belongs to Reserve Bank of India at 8, Council House Street in terms of an agreement entered into by and between the assessee and the Reserve Bank of India (in short 'RBI'). In fact the assessee becomes the successful bidder in an open tender process floated by RBI for setting up the said museum project on turnkey basis and hence awarded with the said contract for executing the work.

3. Taking into consideration this particular aspect of the matter, the Learned Assessing Officer came to a finding that the assessee is engaged in full-fledged commercial activities during the year and applying the 6th limb of the definition of 'charitable purpose' under the 1st proviso of Section 2(15) read with Section 13(8) of the Act denied the claim of the assessee under Section 11 of the Act and assessed the assessee's income at Rs. 99,23,870/-, which was in turn, confirmed by the First Appellate Authority. Hence, the instant appeal before us.

4. At the time of hearing of the instant appeal the Learned counsel appearing for the assessee submitted before us that the object of the assessee is to take up all kinds of museum/science centre projects on turnkey basis including conceptualization design and development of exhibits, exhibition of gallery, construction of building and structures including installation and supply of related technology to client institution for and on behalf of government concerns, local municipal body, bank and PSU for increasing the education and knowledge all over the nation for the utility of citizen/public which is nothing but imparting education in the form of financial literacy and awareness about museums. He further added that the activities of the assessee is only charitable in nature and thus entitled to the exemption available under Section 11 of the Act; neither the activity is attracted by the 1stproviso to Section 2(15) read with Section 13 (8) of the Act. The order of rejection of the claim of exemption u/s 11 of the Act, is therefore, not sustainable in the eyes of law as argued by the Ld. AR.

In support of his argument the Learned counsel appearing for the assessee relied upon the judgments passed by the Co-ordinate Bench in ITA Nos. 37-38/Kol/2018 in the matter of Indian Leather Technologies Association-versus-ITO(Exemption)- Kolkata, in ITA No. 1491/Kol/2012 in the matter of Indian

Chamber of Commerce - versus -ITO(Exemption)-1, Kolkata and in I.T.A No. 381/ Kol/ 2016, in the matter of M/s Credai Bengal – vs. – CIT(Exemption), Kolkata. A copy of each of the judgment passed by the Coordinate Bench have been annexed to the paper book filed before us.

5. On the other hand the Learned Departmental Representative submitted before us that the activities of the assessee were performed out of the contract being an agreement entered into between the assessee and the Reserve Bank of India. He further reiterated that no charitable element is reflecting in the activities of the assessee and therefore the Learned Departmental Representative relies upon the order passed by the authorities below in rejecting the claim of exemption of the assessee available under Section 11 of the Act.

6. We have heard the rival submissions of the respective parties, we have also perused the relevant materials available on record including the judgments relied upon by the Learned AR.

7. The short point involved in this particular case is this as to whether the activities of the assessee in the year under consideration is coming under the purview of its claim u/s 11 of the Act or it is within the periphery of the last limb of the First proviso of Section 2(15) of the Act under the definition of "charitable purpose" i.e. Advancement of any other object of general public utility.

8. The case of the assessee is this that since the activity in the year under consideration relates to construction of the building and structure of the reserve Bank's Museum – cum - financial literacy centre at Kolkata although under ,the guidance of the RBI the same is charitable in nature since ultimately it relates to non-formal science education/programs/activities and scheme and therefore,the income is entitled to exemption under section 11 of the Act. The further plea of the assessee is this that whether the activity is carried out by it is in line of its objectives has not relevant at all otherwise the registration u/s 12AA would have been cancelled and consequently the benefit u/s 11 read with Section 13 would have been automatically denied without showing any further reason thereof.

However, such contentions made by the assessee was found to be an acceptable by the revenue. The Learned Assessing Officer rejected the claim of the assessee holding the assessee's activities falling under the periphery of 6 limb of the definition of "charitable purpose " as envisaged under section 2 (15) of the Act. The activity carried out by the assessee with the sole objective of earning motive as of the observation made by the revenue.

9. In order to address the issue we would like to mention the letter dated June 8, 2012 issued under the signature of the chiefGeneral Manager, Reserve bank of India, Kolkata, whereby and whereunder the selection of vendor for the RBI Museum project at Kolkata in favour of the appellant was intimated. The assessee was selected to execute the project of Reserve Bank's Museum, Financial Literacy Centre at Kolkata on a turnkey basis as it appears from the said letter annexed at page 19 of the paper book filed before us. It further appears that there was also a financial bid conducted by the RBI where the appellant mentioned certain terms and condition for such project. It is relevant to mention that such terms and conditions given by the appellant was not finalised rather kept pending by the RBI authority as it also reflects from following clause of the said letter dated 08.06.2012:

> *"5. We have some concerns about the terms and conditions mentioned in your financial bid. We will separately email goes to you for clarifications."*

From the other terms and condition, as appearing therein, it could be it gathered, that the RBI is actually incurring the expenditure to set up the said museum and the assessee is to execute such work as dictated by the RBI as a contractor in lieu of money and then leave. No further assignment has been given on the appellant by the RBI in this regard as it evident from the said letter under reference. Needless to mention that the appellant is working as an agent deputed by RBI.

Further that it would not be out of place to mention that the price bid proposed by the assessee connotes some sort of profit element which is why the RBI authority kept it pending further, negotiation.

Apart from that we would also like to reproduce the following relevant clauses of the Memorandum of Association filed by the assessee as on record before us appearing at page 13 to 18 of the paper book:

Memorandum of Article of Association

4. To apply for tender, purchase or otherwise acquire any contract and concessions for or in relation to the construction, execution, carrying out, equipment, improvement, management, administration, or control or works and conveniences and to undertake, execute, carryout, dispose of, or otherwise turn to account the same.

5. To enter into any contract or arrangement for efficient conduct of the business of the Company or any part thereof and to sub-let any contracts from time to time.

6. Subject to the provisions of the Companies Act, 1956, to invest, buy or otherwise acquire and hold shares in any other Company having objects, altogether or in part, similar to those of this Company to underwrite solely or jointly with another, shares in such Company and to invest buy or otherwise acquire shares in any other Company if the acquisition of such shares seems likely to promote further or benefit the business or interests of this Company.

7. To sell, let out on hire, or otherwise deal with, all or any of the property of the Company, whether immovable or movables including all and whatever description of apparatus or appliances, on such terms and conditions as the Company may think fit.

8. To enter into partnership or into any arrangement for sharing or pooling profits, and resources, amalgamation, union of interests, co-operation, joint venture, reciprocal concessions or otherwise or amalgamate with any person or Company carrying on or engaged in or about to carry on or engage in any business or transaction which this Company is authorized to carry on or engage in any business undertaking or transaction which may seem capable of being carried on or conducted so as to directly or indirectly benefit this Company or otherwise calculated directly or indirectly to render any of the Company's properties or rights for the time being profitable.

9. To sell let. exchange or otherwise deal with the undertaking of the Company or any part thereof for such consideration as the Company may think fit and in particular for shares, debentures, bonds, or securities of any other Company having objects altogether or in part similar to those of this Company.

10. To pay for any properties, rights or privileges acquired by the Company, either in shares of the Company or partly in shares and partly in cash or otherwise.

11. To promote and undertake the formation of any institution or Company for the purpose of acquiring all or any of the assets, properties and liabilities of the Company or for any other purpose which may seem directly or indirectly *calculated to benefit this Company or form subsidiary Company or companies and to carry on business which may seem capable of carrying conveniently the business or objects of this Company and to acquire any interest in any industry or undertaking.*

16. To borrow or raise money or to receive money on deposit at interest or otherwise for purpose of financing the business of the company in such manner as the company may think fit, and in particular by the issue of debenture stock, perpetual or otherwise, including debenture or debenture stock convertible into shares of this company, perpetual annuities; and in security of any such money so borrowed, raised or received, to mortgage, pledge or change the whole or any part of the property, assets or revenue of the company present or future, including its uncalled capital by assignment or otherwise or to transfer or convey the same absolutely or in trust and to purchase, redeem or pay off any such securities.

It appears that those above mentioned clauses are indicative enough to profit oriented intent; such indication is further being confirmed by the assessee's activities as done by it in the year under consideration as already narrated hereinbefore.

Assuming the activities of the appellant is for advancement of any other object of general public utility but undoubtedly it is in the nature of trade; commercial activities is glaring on the face of it. The construction of museum though done by the assessee the same is guided by the Agreement entered into by and between the assessee and the RBI. We find the assessee has been deputed by RBI as a mere agent for the construction of the museum which constitutes a commercial activity. The assessee before us is only to execute the work endorsed to it in lieu of money and then leave.

Though the assessee got registered under section 12AA of the Act, the present activities, as reflected from the submissions made by the assessee and also from the corroborative evidences only show the commercial activities particularly in the absence of any core project enunciated by the assessee for public utility directly without the influence of any other authorities. Needless to mention participating in some project work at the instance of RBI upon been successful in a tender process does not qualify the activities of the assessee as charitable purposes particularly when the same is done in lieu of money and if anyone is spreading financial literacy then it is RBI who is funding the project of setting up the museum and on the contrary the assessee's earning upon execution of the project work deputed by the Principal i.e. RBI.

In this regard, we have furthered considered the judgment passed by Hon'ble Co-ordinate Bench of Kolkata Tribunal in the case of Indian Leather Technologists Association vs. ITO (Exemption) in ITA Nos. 37 & 38/Kol/2018 for A.Ys. 2009-10 & 2010-11 dated 07.06.2019. The facts of the case is completely different than that of the fact as evidence on record in the case in hand before us. In that particular case the business or activity was done for promotion of leather business where the main object of the institution was charitable in nature, then the activities carried out towards the achievement of the said, being incidental or ancillary to the main object, even if resulting in profit and even if carried out with non members, where all held to be charitable in nature.

We have also further considered the judgment passed by the Hon'ble Co-ordinate Bench of Kolkata Tribunal in the case of Indian Chamber of Commerce vs. ITO(Exemption), Kolkata in ITA Nos. 1491 & 1284/ Kol/2012 for A.Ys. 2008-09 & 2009-10 dated 02.12.2014. The said organization was an association of various industrialists formed for development of trade, industry and commerce having operation all over the country and abroad. It was set up for the purpose of protection of Indian business and registered under Section 12A of the Act as 'Charitable Association'.

It is a fact that if the primary purpose of an institution was advancing of object of general public utility, it would remain charitable even if an incidental on or ancillary activity or purpose for achieving the main purpose was profitable in nature which was the observation made by the Apex Court as well as in the said order as relied upon by the ld. AR.

We have also further considered the judgment of Co-ordinate Bench of Kolkata Tribunal in the case of M/s Credai Bengal vs. CIT(E) in ITA No.

381/Kol/2016 for A.Y. 2011-12 dated 30.09.2016. In this particular matter the fact relates to expenses incurred to organize fair outside India where it was held by the Hon'ble Tribunal that where assessee's object of promotion of construction industry in India had been accepted by the revenue for granting registration under section 12 AA merely because the assessee held fairs in India and abroad which generated surplus fund to the assessee, it being incidental to main object of the assessee could not be said to be commercial activity of the assessee and there was no violation of the provision of section 2 (15) of the Act.

It is pertinent to mention that the type of business and / or activities rendered by the assessee as referred in those judgments as relied upon by the Learned AR in order to claim the exemption u/s 11 in the year under consideration is completely different from that of the fact available before us in the present case. These judgements have no manner of application to the instant case before us when we find that the activities of the assessee before us is indicative enough of profit oriented intent moreso when the activities /project by the assessee is done at the behest of the RBI for general public utility. The clauses of the memorandum of Association clearly clarify the actual status of the appellant read with the letter dated 08.06.20 12 issued by RBI

It is the settled principle of law that the claim under Section 11 is to be extended to a registered organization under Section 12A of the Act provided the activities of such organization should be in consonance with the objects of the section. In the case in hand though the assessee is a registered concern under Section 12A of the Act as a charitable institution, the actual work done by the assessee in the year under consideration is not charitable in nature particularly when no formal and systematic educational function is discharges by it rather commercial in view of the receipt on turnkey project basis, from RBI in lieu of the service rendered by the assessee which involves the activities carrying on in the nature of trade, commerce or business for consideration coming under the periphery of First Proviso to Section 2(15) of the Act which has already been clarified by the First Appellate Authority. We, thus, find no infirmity in the order impugned passed by the First Appellate Authority observing the project under contract with RBI for setting up of the financial museum by the assessee does not reflect discharging of any formal and systematic education rather the same is enough indicative for the commercial purposes, rejection thereon, in our considered opinion, is just and proper so as to warrant any interference. Thus, the assessee has no legs to stand upon in order to claim the relief u/s 11 of the Act and hence in the absence of any merit we dismiss the appeal preferred by the assessee.

10. ITA Nos. 1147 & 1147/Kol/2018 for A.Y. 2013-14 & 2014-15 - the ground of appeal raised here is identical to that of the ground already been dealt with by us in ITA No. 1608/Kol/2019 for A.Y. 2015-16 and in the absence of any changed circumstances the same shall apply mutatis mutandis.

11. In the result, all the three appeals of the assessee are dismissed.

Order pronounced in the Court on 14.08.2020

Sd/-	**Sd/-**
(P. M. JAGTAP)	**(MADHUMITA ROY)**
उपाध्यक्ष / VICE-PRESIDENT	**न्यायिकसदस्य / JUDICIAL MEMBER**

कोलकाता /Kolkata;
दिनांक/ Date: 14/08/2020
(*SB, Sr.PS*)

Copy of the order forwarded to:
1. Creative Museum Designers
2. ITO, Exemption, Ward-1(1), Kolkata
3. C.I.T(A)-
4. C.I.T.- Kolkata.
5. CIT(DR), KolkataBenches, Kolkata.
6. Guard File.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches