

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

BEFORE SHRI N.V.VASUDEVAN(J.M) AND SHRI RAJENDRA (A.M)

ITA NO. 3503/M/2011

CEO Clubs India,  
2, Vatika, 14, Baptista Road,  
Vile Parle (West),  
Mumbai - 56.  
PAN:AADCC 1695D  
(Appellant)

Vs. The DIT(Exem),  
Piramal Chambers,  
6<sup>th</sup> Floor, Lalbaug,  
Mumbai -12.  
(Respondent)

Appellant by : Shri A.H.Dalal  
Respondent by : Shri V.V.Shastri  
  
Date of hearing : 01/05/2012  
Date of pronouncement : 16/05/2012

ORDER

PER N.V.VASUDEVAN, J.M

This is an appeal by the assessee against the order dated 9/3/2011 of DIT(E), Mumbai passed under section 12AA (1)(b)(ii) r.w.s. 12A of the Act. The concise grounds raised by the assessee read as follows:

"I. The learned Director of Income-tax (Ex.) erred in refusing to register the Appellant u/s.12AA read with Sec.12A of the Income Tax Act on the ground that the Appellant has been formed with the main object of providing networking facilities to the Chief Executive Officers (CEO) and promotion of entrepreneurship and the same cannot be held to be charitable in nature of general public utility.

II. The DIT(E) erred in holding that the Appellant was engaged in carrying out activities outside India, as a conference was held in Thailand of Executives from India and attended by other Executives from Bangkok."

2. The assessee was incorporated as a Private Limited Company on 11/09/2007. The Company passed special resolution for alteration of the Memorandum of Association object clause in keeping with the requirements of Sec.25 of the Companies Act, 1956. The Assessee was given a license under section 25 of the Companies Act 1956 dated 10/3/2010 by the Government of India, Ministry of Corporate Affairs. The assessee has its main objects as under:

“To promote and provide networking facilities to the Chief Executive Officers (CEOs) of both private and public companies for improving the quality and profitability of their enterprises by providing a platform for CEOs for exchange of ideas and promotion of entrepreneurship through shared experience in India and to apply its income or profits if any solely for the promotion of its objects and for the promotion of commerce in India and abroad.”

3. The assessee applied for grant of registration under section 12A of the Act. The DIT(E) on perusal of the object clause was of the view that the same was not charitable in nature and there was a restriction regarding membership only of CEO's of the company. According to the AO the assessee was, therefore, not entitled to grant of registration under section 12A of the Act. Accordingly a show cause notice was issued to the assessee by DIT.

4. In reply the assessee submitted that its objects and activities are “Charitable” within the meaning of section 2(15) of the Income tax Act, 1961, The Assessee also submitted that it was a non-profit association registered as a section 25 Company for a charitable purpose with the object of advancement of general public utility. The main object is to promote and provide networking facilities to the Chief Executive Officers (CEOs) of both private and public limited companies for improving the quality and profitability of their enterprises by providing a platform for CEOs for exchange of ideas and promotion of entrepreneurship through shared

experience in India and to apply its income or profits if any solely for the promotion of its objects and for the promotion of commerce in India and abroad. The main object further provides that none of the objects of the company shall be carried out on commercial basis. The company is in nature of chamber of commerce providing networking facilities to CEOs of the industry for promotion of trade and commerce and the activities are covered by advancement of other object of general public utility judicially confirmed by apex court in the case of Surat Art Silk Cloth Manufacturers Association (1980) 121 ITR 1 and CBDT circular No. 11/2008. The Assessee also submitted that the Hon'ble Supreme Court in the case of DJT(Exemption) vs. Bharat Diamond Bourse 259 JTR 280 has also held that establishing facilities to promote diamond export, effective liaison between India and abroad, promote trade and export and import of diamonds is an object to promote trade and commerce which qualifies as object of general public utility. The Assessee also submitted that various judicial pronouncements of the apex court and various High Courts confirm the view that all Chambers of Commerce and Industry, federations, registered societies and trade associations, companies incorporated without a profit motive are to be regarded as established for the general public utility within the meaning of section 2(15) of the Income-tax Act, 1961. The dominant activity of the CEO Club is to promote commerce, art, global co-operation by networking and other useful objects connected with the CEO's of enterprises. The expression "object of general public utility" as per Supreme Court decision in case of Andhra Chamber of Commerce is not restricted to the objects beneficial to whole of mankind. An object beneficial to a section of public is an object of general public utility. To serve a charitable purpose, it is not necessity that the object should be to benefit the whole of mankind or even all the persons living in a particular country or province. It is sufficient if the intention is to benefit a section of the public as distinguished from specified individuals. It was also submitted that the activities and events organized by CEO Clubs

India in recent past would show that it has undertaken several activities in the nature of educative seminars, training sessions for imparting of modern techniques of management, promotion of corporate social responsibility, organizing seminars and conferences for leadership, personal effectiveness, promotion of brand India, managing professionalization and globalization in family managed business etc. All these activities are in the nature of promotion of trade and commerce and education of CEOs for effective management of their enterprise is regarded as activity for advancement of object general public utility.

5. The DIT was however not satisfied with the claim of the Assessee. He held that the objects, as spelt out above, were clearly not for the benefit of public as a whole but rather are confined to specific members only, which are CEOs of companies and was commercial in nature. Hence the assessee trust cannot be termed as charitable association falling within the definition of section 2(15) of the I.T. Act, 1961. For any institution to be characterized as public charitable trust, it should have objects for the benefit of general public and not for any specific members. In this regard, if we look at the main object, the intention is to provide networking facilities to various CEO of companies to improve quality or profitability of their enterprise clearly suggest that the activities of the institution is in the commercial field. Under no stretch of imagination it can be thought of charitable in nature which is for benefit of public as a whole or to a section of public. The activities of the institution seeking registration are for the benefit of companies only for their better production or better profitability who are engaged in commercial activities. Thus the object of the institution cannot be taken to be charitable in nature falling within the definition of section 2(15) of the I.T. Act.

6. Apart from the above, the DIT also held that from the details filed on record it was seen that the Assessee had been carrying out the activities

outside India. In this regard he referred to the fact that most of the activities are held either in Dubai, China and Thailand. He held that as per the provisions of Income-tax Act, 1961, it is necessary for the trust/institution to carry out the activities within India. In this regard he referred to the decision of the Hon'ble Bombay High Court in the case of CIT vs. State Bank of India (169 ITR 298) wherein it was held that where the trustees were given the direction to apply income for charitable purpose either in India or abroad, no part of the income of the trust would be entitled to exemption, even though factually no part had been utilized outside India. The ratio of the said case also disentitles from any relief being granted in favour of the Trust.

7. The DIT also held that the membership clause of the memorandum of Association places a restriction on becoming its members of only individual heading an organization or to any corporate member, which includes any company, association or body corporate. The above restrictive clause according to the DIT prescribes a specific qualification of becoming a CEO of a company, to become a member of the Assessee. According to the DIT therefore, the objects of the trust and the reason for which the trust has been formed are for general public utility. The DIT therefore held that the Assessee does not satisfy the prerequisite conditions for grant of registration u/s.12AA of the Act.

8. Aggrieved by the order of the DIT(E) the assessee has preferred the appeal before the Tribunal. We have heard the submissions of the learned counsel for the Assessee who reiterated the stand of the Assessee as was put forth before the DIT(E). The learned DR relied on the order of the DIT(E).

9. We have considered the rival submissions. The first reason assigned by the DIT for denying registration to the Assessee u/s.12A of the Act was that the objects of the Assessee are not for the benefit of general public but for

specific members viz., benefit of companies who are engaged in commercial activities to improve their production or profitability. Sec.2(15) of the Act defines Charitable Purchase to include relief of the poor, education, medical relief, and the advancement of any other object of general public utility. 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. In *Surat Art Silks Cloth Manufacturers Association 121 ITR 1 (SC)*, the Hon'ble Supreme Court had to deal with the question as to what is object of general public utility. The facts were that the assessee, a company registered under s. 25 of the Companies Act, 1956 had the following as its objects: "(a) to promote commerce and trade in art silk yarn, raw silk, cotton yarn, art silk cloth, silk cloth and cotton cloth; (b) to carry on all and any of the business of art silk yarn, raw silk, cotton yarn, as well as art silk cloth, silk cloth and cotton cloth, belonging to and on behalf of its members; (c) to obtain import licences for import of art silk yarn, raw silk, cotton yarn, and other raw materials as well as accessories required by its members for the manufacture of art silk, silk and cotton fabrics; (d) to obtain export licences and export cloth manufactured by the members; (e) to buy and sell and deal in all kinds of cloth and other goods and fabrics belonging to and on behalf of the members; . . . (n) to do all other lawful things as are incidental or conducive to the attainment of the above objects." The income and property of the assessee were liable to be applied solely and exclusively for the promotion of the objects set out in the memorandum and no part of such income or property could be distributed amongst the members in any form or utilised for their benefit either during its operational existence or on its winding up or dissolution. The assessee's income was derived primarily from two sources: (i) an annual subscription collected from

its members at the rate of Rs. 3 per power loom, in regard to which it was conceded by the department that it was exempt from tax; and (ii) commission of a certain percentage of the value of licences for import of foreign yarn and quotas for purchase of indigenous yarn obtained by the assessee for its members. This commission was credited separately in a building account and out of this amount the assessee constructed a building. The Tribunal held that the primary purpose for which the assessee was established was to promote commerce and trade in art silk, silk yarn and cloth as set out in clause (a) and the other objects in clauses (b) to (e) were merely subsidiary objects; that the primary purpose was plainly advancement of an object of general public utility and did not involve the carrying on of any activity for profit within the meaning of s. 2(15) of the Income-tax Act, 1961, because whatever activity was carried on by the assessee in fulfillment of the primary purpose was for advancement of an object of general public utility and not for profit; and that, therefore, the assessee's income was exempt from tax under s. 11(1). On further appeal the Hon'ble Supreme Court held that the objects specified in clauses (b) to (e) were merely powers incidental to the carrying out of that dominant and primary purpose; (ii) that the dominant or primary purpose of the promotion of commerce and trade in art silk, etc., was an object of public utility not involving the carrying on of any activity for profit within the meaning of s. 2(15) of the Act.

10. From the aforesaid decision it is clear that object which seeks to promote or protect the interest of a particular trade or industry are object of public utility. The main objects of the Assessee was to promote networking facilities to the CEOs for improving the quality and profitability of their enterprises by providing a platform for CEOs for exchange of ideas and promotion of entrepreneurship through shared experience in India. We are of the view that it cannot be said that the dominant or primary objects of the

Assessee are not charitable. It cannot also be said that it is not for public purpose as it is restricted to only CEOs. Advancement or promotion of trade, commerce and industry leading to economic prosperity ensures for the benefit of the entire community. That prosperity would also be shared by those who engage in the trade, commerce and industry but on that account the purpose is not rendered any less an object of general public utility. The objection of the DIT for denying registration on this ground is therefore found to be without any basis.

11. The other objection of the DIT was that the activities of the Assessee were not confined to India and therefore registration cannot be granted. The basis for these observations is that conferences were to be held outside India. We are of the view that holding of conferences abroad would not make the activities of the Assessee being carried out outside India. The benefits of such conference will ultimate go to Assessee and its members. It cannot be said that the activities of the Assessee were carried on outside India.

12. We are of the view that none of the reasons assigned by the DIT for rejecting the claim for registration can be sustained. We direct that the Assessee be allowed registration as prayed for by it. The appeal of the Assessee is allowed.

13. In the result the appeal of the Assessee is allowed.

Order pronounced in the open court on the 16<sup>th</sup> day of May 2012

Sd/-  
(RAJENDRA )  
ACCOUNTANT MEMBER

Sd/-  
(N.V.VASUDEVAN)  
JUDICIAL MEMBER

Mumbai, Dated 16<sup>th</sup> May 2012

Copy to: 1. The Appellant 2. The Respondent 3. The CIT City –concerned  
4. The CIT(A)- concerned 5. The D.R”C” Bench.

(True copy)

By Order

Asst. Registrar, ITAT, Mumbai Benches

MUMBAI.

Vm.