IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai

Before Shri I.P. Bansal, Judicial Member and
Shri B. Ramakotaiah, Accountant Member

ITA No. 5802/Mum/2011
(Assessment year: 2008-09)

ADIT (E)-(2), Room No.504, Piramal Chambers, 5th Floor, Parel, Mumbai 400 012	Vs.	Fellowship of the Physically Handicapped, FPH Building, Lala Lajpatrai Marg, Haji Ali, Mumbai 400 034 PAN: AAATF 0551 D
(Appellant)		**(Respondent)**

Department by: Shri Rajarshi Dwivedi, DR
Assessee by: Shri Vipul B. Joshi

Date of Hearing: 17/09/2012
Date of Pronouncement: 19/10/2012

O R D E R

Per B. Ramakotaiah, A.M.

This is an appeal by the Revenue against the orders of the CIT (A)-1 Mumbai, dated 8.5.2011. We have heard Ld. DR and Ld. Counsel for assessee.

2. Briefly stated, assessee, an AOP Trust filed total income at Nil. AO was of the opinion that assessee claimed exemption under section 10(23C)(iiiad)/(iiiae), whereas it was assessee's contention that it claimed exemption under section 11. AO denied the claim of exemption under section 10(23C) stating that assessee does not fulfill the conditions. In addition AO was also of the opinion that assessee, being granted registration under section 12A by the CIT on the basis of the memorandum of association dated 16.02.1956, made substantial changes in the said memorandum of association. Relying on the decision of the Hon'ble High Court of Allahabad in the case of Allahabad Agricultural Institute and another Vs. Union

of India, 291 ITR 116, AO was of the opinion that there is violation of provisions of section 12A and assessee should have obtained fresh registration in Form 10A as per rule 17B of the I.T. Rules, 1962. In view of this the total income of assessee was computed without allowing benefit under section 11. The third contention that was taken by AO was that assessee had rented out its premises to Vodafone, Reliance Communication Ltd, Jyoti Publicity and was also renting out the hall for marriages and parties etc., and has availed special services from M/s Thakkar Caterers from whom it received an amount of ₹.15,40,000/-. As the rent and service charges received are to the tune of ₹.19,28,758/-, these are considered as business receipts and it contravened the provisions of section 11 of the I.T. Act. AO was of the opinion that assessee is not behaving as a charitable organization and the character and focus of assessee has become commercial. For these reasons, AO denied the benefit of section 11 and assessed the income at ₹.78,34,490/- by considering the corpus receipts as income of the year in addition to the surplus in the income expenditure a/c.

3. The learned CIT (A) after considering the submissions of assessee and examining the record gave a finding that assessee had mentioned exemption under section 10 in the computation statement only whereas in the return filed, assessee claim was under section 11 only. Since the column pertains to section 10 was struck off and deduction claimed under section 11 in the return of income, the CIT (A) was of the opinion that assessee's claim was only under section 11. The CIT(A) also further noticed that this fact was brought to the notice of AO during the assessment proceedings and AO had ignored this. He was also of the further opinion that the assessee is not conducting any commercial activity by renting the property for establishing Cell Towers and advertisement boards on the top of the building. The rental income should be treated as

income from house property and not business income and income arising out of the house property should be regarded as property income for the purpose of the Trust. He further noted that assessee Trust is imparting education, medical help and even financial aid to physically handicapped persons and was receiving grant from State Government through the Director of Social Welfare, Maharashtra State. He further recorded the fact that assessee has never amended the objects of the Trust. However, the amendments were made in the rules and regulations i.e. change in the financial year from January to December to April to March and for amending the period of holding the office by Board of the Committee or for revising the Membership fees etc. For making such amendments it was noted that the main object of the Trust has not been amended and therefore, the registration granted by the DIT(E) under section 12A is still valid and AO cannot ignore this fact so long as registration was available to assessee. He also distinguished the ratio of the judgment of the Hon'ble Allahabad High Court relied upon by AO to note that in that case the basis of memorandum of association was changed, whereas in this case it is only procedural rules that were amended. Therefore, there is no change in the objects of the Trust as such. He accordingly directed AO to allow exemption as claimed under section 11 by assessee trust.

4. After considering the rival contentions and examining the record, we are of the opinion that there is no need to disturb the findings of the CIT (A). First of all, AO considered that assessee claimed exemption under section 10(23) whereas in the return of income it correctly claimed deduction under section 11. This is a factual aspect which was examined by the CIT (A) and it was not countered by the Revenue. With reference to the exploitation of the properties by assessee while letting out the terrace for advertisements and for placing cell phone towers, this income

cannot be considered as business income. Since the purpose of the Trust is charitable in nature, it would not loose the character of charitable purpose because some profits arises from other activity. The principles laid down by the Hon'ble Supreme Court in the case of Add.CIT vs. Surat Art Silk Cloth Manufacturers Association, 121 ITR 1 (SC) will apply to the facts of the case. Moreover the income from rent as rightly noted by the CIT (A) cannot be assessed as business income as it becomes income from house property only. Therefore, the finding of CIT (A) that assessee is in the business and using the Trust for its commercial activity is not correct. Further as seen from the annual report placed on record, assessee had receipts of training centre at ₹.20,35,860/-, receipts from State Government to an extent of ₹.32.58 lakhs etc., in addition to general donations, dividends, interests and compensation service charges. The rent received is only ₹.12.59 lakhs and service charges are ₹.9.44 lakhs, which are meager and incidental to the main activity of the Trust. Further once registration under section 12A is granted by the CIT, the benefit thereof cannot be denied by AO unless there are violation as provided under section 11, 12 and 13 of the I.T. Act. These principles were established by the following decisions:

(i) ACIT vs. Surat City Gymkhana (2008) 300 ITR 214 (SC)

(ii) Hiralal Bhagwati vs. CIT (2000) 246 ITR 188 (Guj.)

5. Since there is no change in the object of assessee and as assessee continue to involve itself in charitable purpose for the help of physically handicapped persons and was receiving grant in aid from Govt. of Maharashtra, we are of the opinion that AO’s observations that assessee changed the memorandum of association so that fresh registration is required does not hold good. Therefore, for all these reasons, we uphold the order of the CIT (A) and dismiss the grounds raised by the Revenue.

6. In the result appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 19th October, 2012.

Sd/-	Sd/-
(I.P. Bansal)	**(B. Ramakotaiah)**
Judicial Member	**Accountant Member**

Mumbai, dated 19th October, 2012.

Vnodan/sps

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The concerned CIT(A)*
4. *The concerned CIT*
5. *The DR, "F" Bench, ITAT, Mumbai*

By Order

Assistant Registrar
Income Tax Appellate Tribunal,
Mumbai Benches, MUMBAI