

Gymkhana Club providing sports and other recreational facilities only to its members can't be treated as charitable trust

Summary – The Mumbai ITAT in a recent case of Navi Mumbai Merchants Gymkhana, (the Assessee) held that where assessee-club had been involved in providing sports activities accompanied by facilities like liquor bar, playing cards, restaurant, marriage hall, catering services etc. limited to a certain group of persons, i.e., members of club, activities of assessee-club did not fall in definition of charitable purpose as defined under section 2(15).

Facts

- The assessee trust, claiming itself to be a charitable trust, filed its return of income declaring the total income at *nil*.
- The Assessing Officer noticed that though the assessee trust was granted registration under section 12A, however, the activities of the assessee trust were not charitable activities. He observed that as per income and expenditure accounts, activities of the assessee trust were different from the objects of the trust. The benefits of the trust were not available for all the persons of the society but to the limited persons, *i.e.*, members of the club house only. The club had been providing facilities of playing cards and was also having permit room bar and restaurant for catering and soft drinks and was also having income from hiring of marriage hall/ground which was totally systematic profit earning business of the assessee trust.
- He therefore held that the assessee was not entitled to exemption under section 11. He held that the assessee trust was in fact not a charitable trust rather was a mutual organisation.
- He accordingly taxed the assessee's receipts from non-members and other sources, such as dividend, interest etc. as income of the assessee during the year. He also noticed that the assessee had received royalty income from restaurant, decorators, halls, swimming pool, club house, collection of room rent, playing cards etc. and treated the said income as business income of the assessee and taxed it accordingly.
- On appeal, the Commissioner(Appeals) observed that the assessee trust had been conferred the benefit of exemption under section 11 up to assessment year 2008-09. The sports and other activities carried out by the assessee trust partake the character of general public utility which term is included in the definition of charitable purpose as defined under section 2(15).
- For the current financial year, there was no change of facts and circumstances which may lead to change of status of the assessee trust. He therefore held that the assessee trust was eligible for exemption under section 11. He also held that the assessee trust was entitled to the benefit of mutuality because there was a complete identity between the contributors and the members in the common fund. The facilities of the club were available to the members on contribution basis. He therefore held that the assessee was eligible for benefit of mutuality also. He also set aside the order of the Assessing Officer levying interest under section 234A and 234B.

- On revenue's appeal:

Held

- So far the question of eligibility of the assessee trust under section 11 is concerned, it is observed that the assessee trust has been involved in providing sports and recreational facilities to its members only.
- The Assessing Officer has given a categorical finding that though the membership of the club is open to public but it has been restricted in many ways and it is not easy to get membership of the club even for the persons who count in the society. Even the membership is offered on payment of very high premium. High class premium services, such as facility of liquor bar, playing cards, restaurant, marriage hall, catering services etc. have been provided to the members, which cannot be said to constitute any charitable activity.
- Services can be availed for consideration only by members who constitute high class, influential and rich persons that too on payment of high premium for getting membership of the club. Though the assessee club is also offering the facility of sports to its members that itself, cannot partake the character of charitable activity.
- It is not the case of the assessee trust that such sports activities are provided or have resulted into any benefit to the public at large or any section of the society. The sports activities accompanied by facilities like liquor bar, playing cards, restaurant, marriage hall, catering services etc. limited to a certain group of persons, i.e., members of the club cannot be said to be a charitable activity from which any benefit is derived by the public or section of the public rather the benefits are limited to high and rich distinguishable group of persons, i.e., members of the club only.
- There is no element of charity involved in such an activity rather the activities of the club are meant for leisure and pleasure of the members of the club and the membership has been restricted to certain individuals not to any section of the society.
- Thus, there was no infirmity in the order of the Assessing Officer in holding that the activities of the assessee trust do not fall in the definition of charitable purpose as defined under section 2(15).