IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 92 OF 2016

Commissioner of Income Tax (Exemptions) .. Appellant

v/s.

Builders Association of India ..Respondent

Mr. Ashok Kotangle i/b Padma Divakar for the appellant
Mr. Vipul Joshi i/b Sameer Dalal for the respondent

CORAM : M.S. SANKLECHA &
ANUJA PRABHUDESSAI, J.J.
DATED : 4th MAY, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 12th January, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2009-10.

2. The following re-framed question of law arises for our consideration :-

"Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in law in setting aside the cancellation of Registration u/s 12AA(3) of the I.T. Act, 1961?

3. The respondent assessee which is an Association for Civil and Construction Industry was granted Registration under Section 12A of the Act on 24th March, 1989. For the subject assessment year, the Director of Income Tax (Exemptions) by an order dated 8th February, 2011 in exercise of his powers under Section 12AA(3) of the Act, cancelled the registration granted on 24th March, 1989 under Section 12A / 12AA of the Act. This only on the ground that the respondent was carrying on business in the nature of trade, commerce or business having receipts in excess of Rs.10 lakhs, therefore, excluded from the ambit of charitable purpose under section 2(15) of the Act by the proviso thereto.

4. Being aggrieved with the order dated 8th February, 2011, the respondent carried the issue in an appeal to the Tribunal. By the impugned order, the Tribunal found as a fact that the receipts of the respondent were on account of subscription of members, holding exhibitions, seminars, publishing Journals for its members etc. Thus, not an activity carried out for outsiders for commercial purposes. Moreover, it held that the requirement for cancellation of the registration under Section 12AA(3) of the Act is that the assessee's activities should either be not genuine or not be carried out in

accordance with the objects for which the registration was granted. None of the aforesaid two requirements were found wanting on the part of the respondent assessee by the Commissioner of Income Tax. In the above view, it held that the respondent assessee would not hit by the proviso to Section 2(15) of the Act, which stood amended w.e.f. Assessment Year 2009-10.

5. Mr. Kotangle, learned Counsel appearing for the Revenue very fairly states that the issue arising herein stands concluded against the Revenue and in favour of the respondent assessee by the decisions of this Court in ***Director of Income Tax (Exemptions) Vs. North Indian Association, 393 ITR 206*** and ***Director of Income Tax (Exemptions) Vs. Khar Gymkhana, 385 ITR 162.***

6. In the present facts, we find that the Tribunal has rendered a finding of fact that the respondent is not carrying on any activity in the nature of trade, commerce or business to be hit by the proviso to Section 2(15) of the Act. This finding of fact has not been shown to be perverse in any manner. Thus, in the present facts, the question for consideration does not give rise to a question of law. In any event, as submitted by the Revenue the question stands concluded by the

decision of this Court in North Indian Association (supra) and Khar Gymkhana (supra) against the Revenue.

7. In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

8. Therefore, appeal is dismissed. No order as to costs.

(ANUJA PRABHUDESSAI, J.) **(M.S. SANKLECHA, J.)**