



## Exemption under Section 11 of the Income-tax Act is not available because the taxpayer's object and activities cannot be regarded as 'education'

### Background

Recently, the Chennai Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of FRP Institute<sup>1</sup> (the taxpayer) held that the receipt in the form of stall charges, sponsorship, souvenir charges, etc., by the taxpayer, is not eligible for exemption under Section 11 of the Income-tax Act, 1961 (the Act) since the taxpayer's objects and activity cannot be regarded as 'education'. It can only be regarded as the advancement of any other object of general public utility. The taxpayer's institution has not carried out a significant part of its activities in relation to educational institutions, educational courses, etc. Any short term course or training programme, even if conducted in the past, would not instil it with the character of an educational institution. The taxpayer's objects and activity would fall within the purview of the residuary category of Section 2(15)<sup>2</sup> of the Act. The taxpayer was formed to promote the Indian composite industry, including the up-gradation of FRP composites technology. Its engagement with different stakeholders, including educational institutions, is only to sub-serve that larger purpose.

The Tribunal observed that mere browse at taxpayer's website specifying its objectives cannot be regarded as 'education', but only the advancement of any other object of general public utility. Its members are primarily from various industries, ranging from multinational corporations to small fabricators. It works as a professional body, engaging with any segment related to FRP products or technology in whatever capacity.

### Facts of the case

- The taxpayer is a society, formed in December 1998, duly registered as a charitable institution under Section 12AA of the Act on March 2003. It was formed with an objective to promote the Indian composites industry through collaboration and exchange of information with other likeminded professional societies, government and non-government organisations, R&D Laboratories and educational institutions operating both in India and abroad.
- During the year under consideration, the taxpayer has received stall charges of INR 302.71 lakhs. The said receipt being in excess of INR 25 lacs, would operate to oust its case under the first proviso<sup>3</sup> to Section 2(15) of the Act.
- The Assessing Officer (AO) observed that the taxpayer does not conduct any formal educational courses nor is it affiliated or registered with any authority. Even the open universities possess all the three indicators of an educational institution, i.e., imparting formal training, accountability to authority and control over the students. Therefore, the taxpayer cannot be regarded as an educational

<sup>1</sup> ITO v. FRP Institute (ITA No. 1385/Mds/2015) – Taxsutra.com

<sup>2</sup> Advancement of any other object of general public utility

<sup>3</sup> 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, unless

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility and
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year

institution and its activities can be regarded as the advancement of an object of general public utility and it would be disqualified as a charitable purpose under Section 2(15) of the Act.

- The Commissioner of Income-tax (Appeals) [CIT(A)] held that the scope of education cannot be confined to formal school/college education alone. When the object of the trust was the dissemination of useful knowledge, which will be promoted through conferences, publication of journals, books, bulletins, etc., the trust has to be regarded as established for educational purpose only. In fact, the emerging trend in education point to the growing importance of institutions other than those engaged in formal teaching, and that education would certainly include the activities carried out by the taxpayer in promoting and diffusion of knowledge on composites and connected things.
- Aggrieved by the CIT(A) order, the tax department filed an appeal before the Tribunal.

### Tribunal's decision

- To fall under the gamut of 'education' as a charitable purpose as contemplated under Section 2(15) of the Act, the same must necessarily involve an organised activity in the field of education. It may assume different forms, not necessarily confined to class room study, as open universities that have come about in recent times but has to have elements of scholastic education, discipline, and accreditation.
- In the present case, the institution is in operation since the year 1999, and there is nothing on record to indicate that it has carried out a significant part of its activities towards educational institutions, educational courses, etc.
- Any short term course or training programme, even if conducted in the past, would not imbue it with the character of an educational institution. Further, there is in fact nothing to show that the taxpayer has the necessary resources to pursue the said objective, which shall require, infrastructural apparatus apart, skilled, trained and dedicated manpower.
- A mere browse at home page of taxpayer's website, it indicates that its objectives cannot be regarded as 'education', but the only advancement of any other object of general public utility. Its members are primarily from various industries, ranging from multinational corporations to small fabricators. It works as a professional body, engaging with any segment related to FRP products or technology in whatever capacity, viz. raw-material suppliers, processors, manufacturers, designers, consultants, end-users, even scientists and educational institutions, aiming to include potential users thereof, being a modern day substitute for wood.
- The taxpayer also conducts short term courses for students, yet this would not alter, much less materially, its character as an institution for the advancement and promotion of the FRP and other composites. As is the case with any other professional body, as indeed it claims to be - except for the purpose of income tax, it aims at working in close association with industries and other institutions to upgrade composites technology and the growth of the Indian composites industry.
- The taxpayer's principal receipt, as well as corresponding expenditure, is by way of stall charges, sponsorship, delegate fees and souvenir charges. It is to be held biannually, supplying the society the funds necessary to carry out its other objects as well as fund its activities and other regular expenditure. The Tribunal relied on the decision of the Supreme Court in the case of Delhi Stock Exchange Association Ltd.<sup>4</sup>
- On reading of the object clauses of the taxpayer, it indicates that the taxpayer is formed to promote the Indian composite industry, including the up-gradation of FRP composites technology. Its engagement with different stake-holders, including educational institutions, is only to sub-serve that larger purpose. It is a professional association which provides a platform for the exchange of knowledge among its members, drawn from the relevant industry, the industrial houses, merchandisers, potential users, etc., as well as to convey the developments and trends in the relevant field.
- Research and Development (R&D) also cannot be said to be taxpayer's domain. It is not able to show the expertise, infrastructural facilities, and technically skilled manpower, so as to engage therein. The same being the case qua education as well, is an ongoing process in any industry, offering new products and processes. Technology in that sense is an integral part of modern day life, providing the cutting edge in every industry.
- The taxpayer has also not shown to have the capacity for educational activity in a regular manner. There is no income or expenditure with reference to this activity in its statement. This is only understandable as the academic institutions are only one among the various stakeholders with which the taxpayer engages so that even a receipt from this activity during the year would have no material impact. The engagement with the educational institutions is on the fringe, though, as it appears, is slated to be expanded in the future. Its operations as aforesaid are primarily as that carried out by the industrial/professional association/body.

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<sup>4</sup> Delhi Stock Exchange Association Ltd. v. CIT [1997] 225 ITR 235 (SC)

- As explained by the Supreme Court<sup>5</sup>, any activity would qualify to be education. Any constructive action would, and indeed even a destructive or negative one, inasmuch as it entails a learning experience, as explained by the Supreme Court in the case of Sole Trustee, Lok Sikshana Trust<sup>6</sup>, would be an education in itself.
- It is only the actual conduct of educational courses, where accredited, conducted under the auspices of a formal set up, so as to be recognised in the field of education, which would stand to be regarded as so. The taxpayer's objects and activity thus only fall within the purview of the residuary category of Section 2(15)<sup>7</sup> of the Act, so that first proviso thereto shall apply, clearly debarring the taxpayer on account of its receipt for the year for being subject to exemption under Section 11 of the Act.

## Our comments

The interpretation of what constitutes 'education' has been a matter of debate before the Courts in the case of charitable organisations. The Tribunal has clarified that the word 'education' as used in Section 2(15) 'may assume different forms, not necessarily confined to class room study, as open universities that have come about in recent times, but has to have elements of scholastic education, discipline, and accreditation, i.e., carried out in an organised manner, which stands recognised in the field of education. Mere dissemination of useful knowledge cannot be construed as education. Further, the predominant objective of the organisation must be to impart education, and the organisation must have the necessary resources and infrastructure to actually impart education. Some of the Courts have in the past have interpreted that education should not be considered with a narrow lens. The Madras High Court in the case Sri Thyaga Brahma Gana Sabha had held that the Supreme Court gave an unduly restricted meaning to the word 'education' in Lok Shikshana Trust's case, by restricting it to 'normal schooling' and 'scholastic instruction'. Education, in the context of the law of charity, is not limited to teaching in the narrow sense. However, this decision has reaffirmed the narrow interpretation of 'education' as per the Lok Sikshana Trust's case.



<sup>5</sup> Delhi Stock Exchange Association Ltd. v. CIT [1997] 225 ITR 235 (SC)

<sup>6</sup> Sole Trustee, Lok Sikshana Trust v. CIT [1975] 101 ITR 2234 (SC)

<sup>7</sup> Advancement of any other object of general public utility

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