

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 530/Hyd/2015
Assessment Year: 2010-11

Income-tax Officer
(Exemptions) – 4, Hyderabad. Vs. Society for Promotion of Audit
Continuing Education
(SPACE)

(Appellant) PAN – AAATS 0996 B
(Respondent)

Revenue by : Smt. Suman Malik
Assessee by : None

Date of hearing : 06-03-2017
Date of pronouncement : 31-03-2017

ORDER

PER S. RIFAUR RAHMAN, A.M.:

This is an appeal of the Revenue directed against the order of the learned Commissioner of Income-tax(A) - 9, Hyderabad, (in short 'CIT(A)', dated 13/02/2015 for AY 2010-11.

2. Brief facts of the case are, assessee is a society under the A.P. (Telengana Area) Public Societies Registration Act, 1350 Fasli bearing Regn. No. 2950 of 2000. The assessee is also registered u/s 12A of the Income tax Act with effect from 01/04/2005.

2.1 The assessee filed its return of income for the AY 2010-11 on 14/10/2010 declaring Nil income after claiming exemption u/s 11 of the Income-tax Act, 1961 (in short 'the Act') and subsequently, the case was converted into scrutiny. Accordingly, notices u/s 143(2) & 142(1) of the Act were issued. In the scrutiny proceedings, AO

observed that assessee has prominent aims and objectives as per the Memorandum of Association as below:

i. To take over the State Resource Centre for Adult Education, from Andhra Mahila Sabha on a mutually agreed date and on mutually agreed terms and to run it with the assistance of the Govt. of India.

ii. To prepare and disseminate materials related to the aims and objects of SPACE.

iii. To undertake Preparation of teaching/learning and training materials keeping in view the objectives of functional literacy, in spoken languages, as far as possible and to provide academic and technical resources support for the Total Literacy and Post Literacy Campaigns and Continuing Education Programmes.

iv. To undertake such other functions as may be laid down by the Executive Committee of Society or entrusted by the Government for furtherance of adult continuing education programmes.”

2.2 The AO opined that the above aims and objectives fall under the last limb i.e. advancement of any other object of general public utility as per the definition of section 2(15) of the Act. On perusal of the income and expenditure statement of the assessee, he observed that the assessee has sold books to the extent of Rs. 4,09,22,892/- besides other receipts. He was of the view that the said activities i.e. sale of books would constitute commercial activity within the meaning of amended provisions of section 2(15) of the Act. AO also extracted the income and expenditure account for the year ended 31/03/2010, which is as under:

Expenditure	Amount in Rs.	Income	Amount in Rs.
Purchase of books	3,68,15,166/-	Sale of books	4,09,22,892/-
Packing and forwarding charges	34,00,000/-	Books & Publication	4,97,906/-
Profit	12,05,632/-		
	4,14,20,798		4,14,20,798

2.3 AO opined that the provisions of section 2(15) of the Act clearly envisages that 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, or business or commerce irrespective of the nature or application or retention of the income from such activity.

2.4 The AO observed that the assessee society is involved in the business activity i.e. sale of books/purchase and aggregate value of all such activities exceeds Rs. 10 lakhs. He further observed that assessee purchased the books from M/s VNR Books World and sold the same to Govt. Of A.P. He was of the view that purchase of books and sale of the same would clearly constitute commercial activity, more so, when there is profit involved. He further recorded that a charitable institution, provides services for charitable purposes free of cost and for no gain or profit. In this case, society delivered the books to Anganwadis for which it received the cost of books etc. from the Govt. Of AP. Accordingly, exemption of income claimed u/s 11 by the assessee was denied and brought to tax.

3. Aggrieved with the above order, assessee preferred an appeal before the CIT(A).

4. Before the CIT(A), assessee has submitted that similar issue on identical facts was decided in favour of the assessee by the CIT(A) in earlier year AY 2009-10. The CIT(A) has followed the said order of the CIT(A) in AY 2009-10 vide ITA No. 35/CIT(E)/CIT(A)-9/14-15, dated 13/02/2015 and allowed the appeal of the assessee. The observations of the CIT(A) in AY 2009-10 are extracted below for the sake of clarity:

23. To answer the second question, whether the appellant was engaged in an activity in the nature of trade, business or commerce, it is necessary to examine the terms under which the appellant carried on its activities. The appellant was, therefore, directed to furnish copies of the necessary correspondence and documents and these are being relied upon for the purpose of this appeal u/r 46A(4).

24. *Vide letter in F. No. 6-2/88-AE-I, dated 15.4.1988 of the Joint Educational Adviser of the Ministry of HRD, Government of India, the role and administrative and financial pattern of the SRCs was communicated. The letter, inter alia, stated as follows:*

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(iv) The SRCs will be permitted to create a rolling fund out of the sales proceeds of the books published by them. The prices of the books are to be fixed in consultation with the State Governments, so as to allow a marginal profit only. Apart from utilizing this money for publishing and production of books, the SRCs can also meet the 5% share of their contribution from this fund.

3. The expenditure of SRCs would continue to be met by the Central Government, State Government and the SRC under the existing arrangement which is in the ratio of 80:15:5 per cent respectively "

25. In accordance with the above arrangement and by virtue of its status as the organization running the SRC, the appellant has been certified by the Government of Andhra Pradesh as the agency for supply of pre-school kits and study material for which work orders were placed from time to time at specified rates. There is no doubt that the appellant makes some profit on supply of these books. However, as noted in the letter dated 15.4.1988 of the Joint Education Adviser, Government of India, this moderate profit has been built into the systemic structure of the appellant's mandate to meet its 5% contribution for SRCs'. What is relevant is that the appellant was mandated under the National Literacy Mission to undertake the task of preparation and Supply of teaching material and other aides. The fulfilment of this mandate cannot be termed an activity in the nature of trade, commerce or business.

26. In view of the above, it is held that the appellant does not fall within the purview of the proviso to sec.2(15) and is consequently, eligible for exemption u/s 11."

5. Aggrieved with the above order, the revenue is in appeal before us raising the following grounds of appeal:

- 1. The order of the Ld. CIT(A) is erroneous both on facts and in law.*
- 2. On the facts and circumstances of the case, the Ld.CIT(A) erred in holding that the assessee is entitled to exemption u/s. 11 of the Act for the A.Y.2010-11.*

3. *The Ld.CIT(A) ought to have appreciated that, as per that letter dated 15.04.1998 of the Joint Educational Advisor of Ministry of HRD, Government of India, the SRCs will be permitted to create a rolling fund out of the sales proceeds of the books published by them, whereas in the case of the assessee it has not published any books, but as per its Income & Expenditure etc, has purchased books at a cost of Rs.3,68,15,166/- and has made sale out of the same at a consideration of Rs 4,09,22,892/- and under that circumstances, such activity on part of the assessee being fully covered under advancement of any object of general public utility, the amended proviso to 5ec.2(15) of the Act, is fully applicable to the case of the assessee and hence, it is not eligible for exemption u/s. 11 of the Act.*

4. *It may be mentioned here that even for the A.Y. 2009-10, the order of the Ld.CIT(A) dated 13.02.2015 in ITA No.35/CIT(E)/CIT(A)-9/2014-15, referred to by her in para 5 of the present order, is not acceptable, but the tax effect involved arising from the same, being less than the prescribed monetary limit of Rs. 10 lacs, the Department has not filed appeal against the same before the Hon'ble ITAT, Hyderabad.*

5. *On the facts and circumstances of the case and such activity of purchase and sale of books on the part of the assessee during the previous year relevant to the assessment year 2010-11, being fully covered under advancement of any object of general public utility, the proviso to sec.2(15) of the Act is fully applicable to the case of the assessee and further having regard to the provisions of sec.13(8) of the Act, the assessee is not entitled for exemption u/s. 11 of the Act for the A.Y.2010-11.*

6. *Any other ground that may be urged at the time of hearing of the appeal.”*

6. Considered the rival submissions and perused the material facts on record. On perusal of record, we find that the assessee is a society created to take over the state resource centre for adult education from Andhra Mahila Sabha on a mutually agreed terms and to run it with the assistance of the Govt. of India. As per the aims and objects of SPACE (assessee) and as per the guidance and direction of Govt. of AP, assessee is to procure books and distribute the same to Anganwadis, for which, assessee received cost of the books from Govt. of AP, which is also confirmed by the AO in his order. No doubt, this activity will fall under 5th limb of charitable

activity u/s 2(15) of the Act. i.e. advancement of any other object of general public utility. AO by observing income and expenditure statement of assessee, came to an understanding that assessee is in commercial activity considering buying and selling of books. In our considered view mere buying and selling may not be considered as commercial activity with the presence of some profit, which may be for the purpose meeting certain incidental expenditure in the society. In the given case, assessee has purchased some books and distributed the same as per the directions of Govt. of AP to Anganwadis with a minimum profit of 5% which also fixed in consultation with the State Govt. This 5% margin will be utilized to meet the expenditure in State Resource Centre (SRC) which was taken over by the assessee. As per the income and expenditure statement extracted by the AO, profit earned by the assessee is about 3% which may be applied by the society for the mandate under the National Literacy Mission to undertake the task of procurement and supply of teaching material. Therefore, one cannot jump into conclusion merely because there is buying and selling activity. Whether it is in the nature of commercial activity or not has to be determined. It can be termed as commercial activity when it is carried out with the intention of making only profit. When there is no presence of motive to make profit, it cannot be considered as commercial activity.

6.1 In the given case, rates and profit margin is determined with the consultation of State Govt. and the assessee has no role to play in determining the profit margin in the above transaction. Hence, it clearly shows that presence of profit, which also fixed by the State Govt., does not mean that the assessee is carrying on commercial activity. Moreover, whatever profit generated by the assessee are applied for the mandate under National Literacy Mission or to run/meet the administrative expenses of the society.

6.2 In view of the above observations, in our considered view, assessee is not carrying any commercial activity and the provisions of section 2(15) will not apply to the case of the assessee. Accordingly, we uphold the order of the CIT(A) in directing the AO to allow exemption u/s 11 to the assessee and dismiss the grounds raised by the revenue in this regard.

7. In the result, appeal of the revenue is dismissed.

Pronounced in the open court on 31st March, 2017.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Hyderabad, Dated: 31st March, 2017.

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Copy to:-

- 1) ITO (Exemptions) – 4, Aayakar Bhavan, 2nd Floor, Basheerbagh, Hyderabad.
- 2) Society for Promotion of Adult Continuing Education (SPACE), Andhra Mahila Sabha Campus, Osmania University Road, Hyderabad – 500 007 (TS).
- 3) CIT(A) - 9, Hyderabad
- 4 CIT (Exemptions), Hyderabad
- 5) The Departmental Representative, I.T.A.T., Hyderabad.
- 6) Guard File