

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “SMC”, NEW DELHI  
BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER**

**ITA No.3306/Del/2016  
Assessment Year : 2011-12**

|   |            |   |
|---|------------|---|
| ITO (Exemptions), Ward- 1(3),<br>New Delhi. | <b>Vs.</b> | Data Security Council of India,<br>3 <sup>rd</sup> Floor, Niryat Bhawan,<br>Rao Tula Ram Marg,<br>New Delhi.<br><b>PAN : AACCD 9781 G</b> |
| <b>(Appellant)</b>                          |            | <b>(Respondent)</b>   |

Appellant by : Shri S. K. Jain, Sr.DR  
Respondent by : Shri Gajendra Maheshwari &  
Ms. Swati Thapa &  
Ms. Prerna Chopra, Adv.

Date of hearing : 02-02-2017  
Date of pronouncement : 28-02-2017

**ORDER**

**PER S.V. MEHROTRA, A.M :**

This is an appeal filed by the Revenue against the order dated 15.03.2016 passed by the Commissioner of Income Tax (Appeals)-40 (Exemption), New Delhi, u/s 143(3) of the Income Tax Act, 1961 (in short “the Act”) relating to assessment year 2011-12.

2. Brief facts of the case are that the assessee is a company limited by guarantee not having share capital registered u/s 25 of the Companies Act, 1956. The company was incorporated on 22<sup>nd</sup> August, 2008. The assessee had filed return of income declaring Nil income along with Audit Report u/s

12A(b) in Form No.10B and also Balance Sheet, Income & Expenditure Account with relevant schedules. The Assessing Officer has observed as under :-

*“Originally, the assessee was accorded Registration u/s 12A(a) of the I.T. Act, 1961 vide letter F.No. DIT(E)/12A/2008-09/D-1392/1630 dated 30.03.2009 issued by the Department from the AY. 2009-10 onwards. The registration u/s 12A so granted was withdrawn by the DIT (E), Delhi's order passed u/s 12AA(3) r.w.s. 12A of the I.T. Act, 1961. Subsequently the Ld. DIT (E), Delhi vide his order F. No. DIT (E)/12A/2011-12/854 dated 11.10.2012 has restored the Registration granted u/s 12A vide F. No. DIT (E)/ 12A/2008-09/D-1392/1630 dated 30.03.2009, since inception. The assessee has also been granted certificate u/s 80G(5)(vi) of the Act by the DIT(E), Delhi vide order No. DIT(E)/2012-13/D-1392/1376 dated 11.10.2012 for the period from A.Y. 2010-11 onwards till it is rescinded.*

- A) *The main objects of the assessee includes :-*
- 1) *To promote, encourage, support data protection and information security, maintenance of data privacy of any kind in India carrying out research, dissemination of information, setting of standards, for members providing education, training, conducting meetings, seminars, workshops, conferences interacting with government or non-government bodies, agencies, companies or any other person, taking appropriate legal or any other action by itself or on behalf of its members.*
  - 2) *No objects of the company will be carried by the company without obtaining prior approval/ no objection certificate from concern authority (if any).”*

3. The Assessing Officer examined the documents filed by assessee and observed that the assessee was neither in the field of education, nor in the field of medical relief or relief of poor. He pointed out that the benefit of exemption u/s 11/12 could be extended to assessee only after verifying the applicability of the proviso to section 2(15) since its activities were falling within the scope of “general public utility”. He noted that during the year

under consideration, the assessee had received income under the following heads :-

| <i>Sl.No.</i> | <i>Heads</i>                            | <i>Amount (in Rs.)</i> |
|---------------|---|------------------------|
| 1             | <i>Donation</i>                         | <i>2,00,00,000</i>     |
| 2             | <i>Grants Apportioned</i>               | <i>1,21,87,672</i>     |
| 3             | <i>Participation Fees</i>               | <i>3,86,799</i>        |
| 4             | <i>Membership Fees</i>                  | <i>6,81,250</i>        |
| 5             | <i>Sponsorship Fees</i>                 | <i>1,03,90,522</i>     |
| 6             | <i>Interest from bank and on refund</i> | <i>1,60,223</i>        |

4. He observed that the grants apportioned & sponsorship fees were received from different parties and copy of the TDS certificates were filed in support of these receipts. He concluded that these were in the nature of Fee from Professional/ Technical Services/ Contractual receipts and, therefore, commercial in nature. Accordingly, he show-caused the assessee as to why these two receipts be not treated as being covered by provisions to section 2(15). After considering the assessee's submissions, he concluded that these activities were clearly in the nature of trade and commerce and rendering services in relation to trade/ commerce/ business more particularly because assessee had charged service tax on the amount so received by it. Further TDS had been deducted by the parties u/s 194C and 194J of the Act as a contractor and as professional/ technical services.

4.1 As regards donation of Rs.2 crore received from NASSCOM during the year, he referred to the contents of the resolution passed by the

NASSCOM in its executive meeting held on 07.01.2014. The same is reproduced hereunder :-

*“Resolved that a grant of Rs.2 crore be made by NASSCOM to the 'Data Security Council of India' during the period of the FY 2011-12 for the furtherance of the following NASSCOM's objectives i.e.*

- 1. Promote the art and science of IT software and services for use in all types of computing equipment.*
- 2. Encourage and assist balanced development of the IT software and services Industry.*
- 3. To 11 .....*
- 12. Edit, print and publish journals, books pamphlets and other material relevant to the software profession.*
- 13. Collect, tabulate and circulate information and statistics of value to industry.”*

5. From the above, he concluded that the donation had been given to the assessee to promote the objects of the NASSCOM and not for any charity. He also referred to the confirmation received from M/s Verizon Communication India Pvt. Ltd. (VCIPL). The same is reproduced hereunder :-

*“The confirmation has also been received from M/s Verizon Communication India Pvt. Ltd. (VCIPL). This company has stated that during the AY 2011-12, VCIPL was engaged in the business of providing telecommunication services in the nature of internet and data transmission services in India to its various corporate customers. VCIPL has submitted that the following services were rendered by the Data Security Council of India:*

- 1. Sponsorship of an event organized by Data Security Council of India & Indian Banking Association.*
- 2. Sponsorship of joint event in the nature of a road show conducted by VCIPL and Data Security Council of India to promote VCIPL's services.*
- 3. Sponsorship of annual IT Security Summit conducted by Data Security*

*Council of India.”*

6. From the above, he concluded that the assessee was providing professional services to the various organizations, as per their requirement, in a systematic manner. He further observed that the assessee had been providing services to a particular industry to safeguard their business interest and not to the general public at large, which is the main element for charitable purpose. He, accordingly, concluded that amended proviso to section 2(15) is applicable in the case of assessee and determined the total income at Rs.49,32,480/- as under :-

| <i>Total Income declared</i> |               |  | <i>NIL</i>            |
|------------------------------|---------------|--|-----------------------|
| <i>Add:-</i>                 |               |  |                       |
|                              | <i>i.</i>     | <i>Surplus as per Income &amp; Expenditure A/c</i>                           | <i>Rs. 6,24,705/-</i> |
|                              | <i>ii.</i>    | <i>Depreciation disallowed</i>   | <i>Rs. 2,71,266/-</i> |
|                              | <i>iii.</i>   | <i>Restrictive grants as discussed above</i>                                 | <i>Rs.42,32,815/-</i> |
|                              |               |  | <i>Rs.51,28,786/-</i> |
|                              | <i>Less:-</i> | <i>Depreciation allowed on addition to fixed assets in the current year.</i> | <i>Rs. 1,96,308/-</i> |
|                              |               | <i>Assessable Income</i>   | <i>Rs.49,32,478/-</i> |
|                              |               | <i>Rounded off to u/s 288A</i>   | <i>Rs.49,32,480/-</i> |

7. Before Id. CIT(A), the assessee had furnished Memorandum of Association (MOA) of assessee company, the main objects from which have been reproduced earlier while considering the Assessing Officer's objections. Apart from the two main objects mentioned by Assessing Officer, there was one more object, which was, that none of the objects of the company will be carried out on commercial basis. These objects have

been reproduced by Id. CIT(A) in his order. The other objects, incidental to or ancillary to the attainment of the main objects, were as under :-

***“OBJECTS INCIDENTAL OR ANCILLARY TO THE ATTAINMENT OF THE MAIN OBJECTS:***

- 1. Help members, interested organization, government authorities and statutory bodies prevent and combat any misuse of intellectual property rights, illicit or unauthorized use, copying dealing, distribution, reproduction, duplication, selling of any kind of data, information or intellectual property, in any place by any person or persons in any manner whatsoever, through all mediums of communications, whether online or offline, including but not limited to, print media, electronic media and the internet.*
- 2. Take effective steps to raise awareness among stakeholders in IT/ ITES and user industry of information security and privacy protection through appropriate awareness, education, training, research and capacity building programmes.*
- 3. Strive to position itself as an institution dedicated to ensure, promote, encourage, and support data protection and information security, maintenance of data privacy, intellectual property rights in data and software, fraud prevention, of any kind in India or abroad by combining, developing, monitoring and enforcing the appropriate data privacy and security standards to be evolved and adopted by the company.*
- 4. To promote awareness or assist in the operation or implementation of the Information Technology Act, 2000, and any other relevant Act(s) and any legislation, rules, regulations and guidelines as amended from time to time and prevailing for the time being in force, which may seem conducive to the Company's objects."*

8. The assessee pointed out that in view of the objects to be carried out by the assessee, it was evident that assessee was setup with the predominant objective to improve national capabilities by promoting data protection, develop security and privacy codes and standards and encourage implementation of the same. It was further pointed out that while the immediate goal of the assessee was to raise the level of security and privacy of IT and BPO service providers to ensure that India is secure destination

for global sourcing, the assessee also promoted best practices for domestic industry segments like banking, telecom and e-governance. It was further pointed out that unless India is able to project itself as a destination having capability to protect the confidential data, the entire IT and BPO industry would not be able to survive. Further, it was pointed out that in the present scenario when the entire critical/ confidential information is stored in soft form, data protection is emerging as one of the most important critical aspect of technological advance, to combat any misuse of intellectual property rights, illicit or unauthorized use, copying, dealing, distribution, reproduction, duplication, selling of any kind of data, information or intellectual property. After narrating the pre-dominant object, as noted above, the assessee further pointed out that it was working with various Government/ Semi-government agencies on various projects, with or without the aid of DIT and NASSCOM. Further, it was pointed out that besides developing and promoting such practices, the assessee was launching various programs to reach out to educational institutions and security vendors to encourage collaborative working with the IT/ BPO companies, and other verticals such as banking and telecom. The assessee further pointed out that it was also building up similar platforms for helping law enforcement agencies in handling cyber-crimes. The assessee had also

given gist of events organized by it, which have been reproduced from pages 4 to 6 of Id. CIT(A)'s order. The assessee further pointed out that it was duly registered u/s 12A which was subsequent to the change of definition of section 2(15) under the Income Tax Act. The assessee further pointed out that it is a company registered u/s 25 of the Companies Act, which status is granted only to a company incorporated/ promoted for a charitable purpose. It could not carry on any activities for profit and had to work as non-profit organization and to apply the entire income for charitable purposes. Further, the assessee pointed out that as per clause X of the MOA no part of the income/ funds of the assessee could be distributed amongst its members as profit and in the event of dissolution of the company, any surplus shall vest in any other company incorporated u/s 25 of the Companies Act having similar objects as that of the assessee. Further, Clause VI of the MOA provides further safeguard that any alternation in MOA would require prior authorization from the regulatory authorities. As regards the activities of the assessee being non-commercial, the assessee pointed out as under :-

***“No commercial activity***

*On perusal of the aforesaid, it will kindly be appreciated that not only there is an overriding mandate on the appellant to pursue its objects and carry on the activities on no-profit basis, but the appellant, as a matter of fact, too, carries out its activities on no-profit basis. None of the receipts of the appellant were from any of the commercial activities.*



*DSCI is also focused on capacity building of Law Enforcement Agencies for combating cybercrimes in the country and towards this; it operates several cyber labs across India to train police officers, prosecutors and judicial officers in cyber forensics.*

*DSCI so far has trained more than 49,000 personnel from police, prosecution, judiciary, banking industry and other government departments in various cyber forensic trainings which range from 5-day full time hands on trainings to short courses and few guest lectures. The overall model has been conceptualized based on the Public-Private-Partnership model through DSCI's cyber lab program.*

*DSCI is involved in the following activities for capacity building of Indian Law Enforcement and other departments:*

- a) Conducts 5-day training programs as well short courses of 3 days and awareness program of 1 day for police officers, prosecutors and judiciary.*
- b) Conducts Special training programs for other government departments like North Eastern Police Academies, Vigilance department-Indian Railways, PSU Banks.*
- c) Provides support to Law Enforcement Officers in Technical investigation.*
- d) Published standard operating Procedures (SOP) for Cyber- crime investigations and standardized training material for Law enforcement in the form of Cyber Crime Investigation Manual that is used as a reference by police officials in investigating Cybercrimes.*
- e) Conducts several Cyber Safe Programs in various cities- Week-long social awareness campaigns on cyber security targeting citizens from students, home users and working professionals through open group discussions, Road shows, Quizzes, conferences, etc.*

*In the light of the aforesaid, there is, it is submitted, no warrant at all to draw any adverse inference from the nature of receipts of the appellant. In view of the above submissions, it is respectfully submitted that the activities of the appellant are not at all covered by the mischief of proviso to section 2(15) of the Act.*

*Based on the above we wish to highlight that the basis on which the appellant company has been incorporated has not been noticed by the AO while passing his order. The Appellant company is bound by law to carry out activities without any profit motive and this gets strengthened by the fact that the company has been issued an exemption certificate under Section 12AA of the Income Tax Act, 1961. The appellant received 80% of its receipts from NASSCOM during the year."*

9. Ld. CIT(A), after considering the aforementioned submissions of assessee allowed the assessee's appeal observing in para 5.3 as under :-

*“5.3 The reason given by AO and the submission of the appellant are considered. The AO has linked the activities of the appellant with NASSCOM and has considered the appellant as a service provider to NASSCOM, thus denying the benefit of section 11 on the premise of commercial activities during the year. Thus, the assumption of the Ld. AO on considering the amount received as a professional service is incorrect and bad in law. However, nomenclature of a particular receipt does not change the real character and objective of a transaction. The nature of activities is a matter of facts and needs to be analyzed on the basis of its prime objectives. Since, the genuineness and reasonableness of the activities of the appellant is not in question and it is only the nomenclature which has resulted in the denial of the exemptions, the same is incorrect. In view of this, ground 2 and 3 of appeal are allowed.”*

10. Being aggrieved, the Department is in appeal before the Tribunal and has taken following grounds of appeal :-

*“1. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in holding that the activities carried out by the assessee are not in the nature of trade, business or commerce or rendering services in relation to the same.*

*2. Whether on the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs.42,32,815/- made by the AO on account of restricted grants.*

*3. The appellant craves leave to add, to alter or amend any grounds of appeal raised above at the time of hearing.”*

11. Ld. DR referred to page 4 of the Assessing Officer's order and pointed out that Assessing Officer after examining the nature of activities carried on by the assessee pointed out that the same satisfies the features of business. He further pointed out that the Assessing Officer has also observed that assessee had charged service tax on the amount of fees received by it and TDS was also deducted by party u/ss 194C and 194J as

applicable. Ld. DR further pointed out that after considering the assessee's submissions that it had no profit motive in carrying on its activity, the Assessing Officer pointed out that assessee had not given any specific explanation as to how it was not covered by the amended definition of section 2(15) of the Act. He pointed out that even after being registered u/s 25 of the Companies Act, the assessee had been involved in providing professional services. He, therefore, submitted that the provisions of proviso to section 2(15) were clearly attracted in assessee's case.

12. Ld. counsel for the assessee, after elaborately narrating the facts, referred to page 76 of the Paper Book, wherein, schedule of restricted grants received by assessee is contained to demonstrate that grants were received from various Government agencies. He further pointed out that no grant was received during the year from NASSCOM. Ld. counsel further referred to page 33 to 36 of Paper Book, wherein, order u/s 80G(5)(vi) of the Income Tax Act, 1961 read with Rule 11AA of the Income Tax Rules, 1962 dated 06.04.2010 of the DIT (Exemptions), Delhi, is contained rejecting the assessee's application for exemption u/s 80G. Ld. counsel referred to para 3 of the order and pointed out that ld. DIT (Exemptions) had specifically observed that activities undertaken by the assessee were covered by the last limb of section 2(15) i.e. any other objects of general public utility. He

further referred to para 6 and 7 of the order and pointed out that it was also observed that assessee does not qualify for continuation of registration u/s 12A/12AA. He referred to page 37 to 41 of Paper Book, wherein, the order of DIT (Exemptions), Delhi dated 24.03.2011 cancelling the registration granted u/s 12A is contained. Ld. counsel referred to page 44 to 55 of Paper Book, wherein, the Tribunal's order against the aforementioned order is contained, in which, the orders cancelling the grant of exemption u/s 80G and 12A were set-aside and the matter was restored to the authorities below. Ld. counsel referred to page 56 of Paper Book, wherein, order of DIT (Exemptions) dated 11.10.2012 is contained, restoring back the registration u/s 12AA(3) since inspection. Ld. counsel further referred to page 57, wherein, order u/s 80G(5)(vi) is contained entitling the assessee exemptions under the said section, wherein, the following conditions have been mentioned, which are reproduced hereunder :-

*“2. This exemption is valid for the period A.Y. 2010-11 ONWARDS TILL IT IS CONDITIONS :-*

*ii) Every receipt issued to donor shall bear the number and date; of this order and shall state the date up to which this certificate is valid from A.Y. 2010-11 ONWARDS TILL IT IS RESCINDED.”*

13. Ld. counsel pointed out that the Assessing Officer has passed the order on 31<sup>st</sup> March, 2014 after the grant of registration u/s 12A and

exemption u/s 80G though he had specifically examined the nature of receipt as per direction of the Tribunal. Ld. Counsel relied on the decision of Hon'ble Delhi High Court in the case of Institute of Chartered Accountant of India & Another vs. DIT (E), (2013) 358 ITR 91 (Delhi).

14. I have considered the submissions of both the parties and perused the record of the case. The facts are not disputed. The activities undertaken by assessee are in the field of cyber security for increasing level of security and privacy of IT and BPO service providers in public life to ensure that India is secure destination. In the present day of technological advancement when the use of internet and other technological support services has immensely entered into day to day working of an individual where payments are made and amounts are received through internet, it is in the interest of all that the confidential data of every individual is fully secured. It cannot be denied that the potential of cyber threats is increasingly recognized in every walk of life because of increased use of internet in various utility services like transport, telephone, electricity, water, etc.. Therefore, the potential of cyber threats is increasingly recognized for their impact on the lives of individuals, as attacks are increasingly targeting critical infrastructure like, utilities, transport, oil and energy and hence the ability to disturb social harmony and interactions, urge to cause unrecoverable damages to

businesses and ability to harm national security posture. Admittedly, the assessee is imparting very valuable services in this regard and training officials of police, banking, and other personnel in technical field. The grants received by assessee are mainly from Government. One of the major objections of Assessing Officer was that assessee was imparting services to NOSSCOM. This objection is devoid of any merit because it is the pre-dominant object of assessee which is to be examined for deciding whether the assessee was carrying on charitable activities or not. The assessee was registered u/s 25 of the Companies Act which clearly shows that it could not carry on any activities for profit purposes. It is well settled law that while carrying on pre-dominant objects, if the assessee is earning some incidental surplus that will not prejudice the assessee's claim of being charitable in nature. I, therefore, find no reason to interfere with the order of Id. CIT(A).

15. In the result, the appeal of the Department is dismissed.

Order pronounced in the open court on this 28<sup>th</sup> day of February, 2017.

**Sd/-**  
(S.V. MEHROTRA)  
ACCOUNTANT MEMBER

Dated : 28-02-2017.

*Sujeet*

*Copy of order to: -*

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar  
ITAT, New Delhi