

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

AND

SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A. No.5408/DEL/2015	
A.Y. : 2012-13	
DCIT(E), CIRCLE 2(1), ROOM NO. 2408, 24 TH FLOOR, E-2 BLOCK, PRATYAKSH KAR BHAWAN, DR. S.P. MUKHERJEE MARG, CIVIC CENTRE, NEW DELHI - 110 002 (ASSEESSEE)	VS. PHD CHAMBER OF COMMERCE AND INDUSTRY PHD HOUSE, OPPOSITE ASIAN GAMES VILLAGE, NEW DELHI - 110 016 (PAN: AAACP1438L) (RESPONDENT)

Revenue by : Sh. Shravan Gotru, Sr. DR
Assessee by : Sh. Mukul Bagla, CA

ORDER

PER H.S. SIDHU : JM

The Revenue has filed this Appeal against the impugned Order dated 15.6.2015 of the Ld. CIT(A)-40 (Exemption), New Delhi relevant to assessment year 2012-13.

2. The grounds raised in the Appeal read as under:-

"1. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the assessee is not

eligible for exemption u/s. 11 of the I.T. Act, 1961.

2. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact the assessee is rendering specific services to its members as well as non-members and charging fees from them which is liable to be taxed under the head 'Profits & Gains of Business and Profession' and as such, its activities are not charitable in nature.*
3. *That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that principle of mutuality is not applicable in the case as the contribution by members over and above Rs. 50,000/- become beneficiaries as per section 13(3)(b) of the I.T. Act, 1961.*
4. *That the appellant craves to be allowed to add any fresh grounds of appeal and / or deleted or amend any of the grounds of appeal."*

3. The brief facts of the case are that the assessee filed its return declaring NIL income on 28.9.2012 alongwith the Audit Report dated 19.9.2012. The return of the assessee was processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act) and the case was selected for scrutiny. Notices u/s. 143(2) of the Act was issued on 06.08.2013 and Notice u/s. 142(1) of the Act issued on 15.4.2014 respectively. In response to notices, the A.R. of the assessee attended the proceedings from time to time and filed the requisite details which were examined. The books of accounts were also produced and the same were also examined on test check basis. The AO observed that the assessee is a charitable company registered u/s.25 of the Companies Act, 1956 and is also registered u/s. 12AA of the I.T. Act vide order dated 23/05/1994. The assessee is an association of professionals, traders and industrialists etc. of Punjab, Haryana & Delhi (PHD) and was formed on 26/04/1951 to promote and protect the interests of the members of the society. The assessee has been enjoying the exemption u/s 11(1) but the same was denied first during the A.Yrs. 2006-07 & 2007-08 mainly on the ground that the assessee was involved in trade, commerce or business as the assessee was receiving the fees and other income from the non-members also. The assessee was in appeal against the order of the AO and the Ld. CIT(A) had allowed

the appeal of the assessee. The Department, had filed the appeal against the order of the Ld. CIT(A) and the Tribunal had allowed the exemption but had directed to maintain separate books of accounts u/s 11(4A). The assessee had filed the appeal in the Hon'ble Delhi High Court and the Hon'ble High Court has treated the assessee as a charitable institution u/s 11(1) vide its order dated 19/10/2012 in ITA No. 368-369/2012. The AO had denied the exemption u/s 11(1) for the A.Y. 2008-09 again on the same grounds but the same was allowed by the Ld. CIT(A)-XXI, Delhi vide the order dated 15/11/2012 relying on the order of the Hon'ble Delhi High Court for the A.Y. 2006-07 & 2007-08. The AO had denied the exemption for the A.Y. 2009-10 also on the same grounds but the same was allowed by the Ld. CIT(A)-XXI, Delhi vide the order dated 31/01/2013 relying on the order of the Hon'ble Delhi High Court of the A.Y. 2006-07 & 2007-08. The departmental appeal for the A.Y. 2008-09 & 2009-10 has been dismissed by the ITAT, Delhi vide the order dated 11/05/2015 in ITA No. 248 & 1572/De1/2013 vide Para 22 to 26. The AO denied the exemption for the A.Y. 2010-11 & 2011-12 also mainly on the ground that the assessee is involved in trade, commerce or business and the assessee is hit by the mischief of proviso of section 2(15) but the same was allowed by the Ld. CIT(A) in the appellate orders dated

18/12/2014 and 04/02/2015. The AO has again denied the exemption u/s 11(1) on the similar ground for the current A.Y 2012-13 by invoking the mischief of the Proviso of section 2(15) mainly on the ground that the assessee is involved in trade, commerce or business vide the order of the AO. The assessee is in appeal against the order of the AO and it was submitted that the AO is not justified to deny the exemption u/s 11(1) as the assessee is a charitable institution and the assessee is not involved in any trade, commerce or business and is also not hit by the proviso of section 2(15). It was submitted that the assessee is an association of persons of professionals and the businessman and are involved in the activity of promoting the general cause and interest of its members. It was also submitted that the facts of the case of this year are also similar to the case of A.V 2006-07 & 2007-08 and 2008-09 & 2009-10 and the orders of the Ld. CIT(A)-XXI, Delhi should be followed allowing the exemption/s 11(1) and the case of the assessee is also covered in its favour by its own case by the order of the Hon'ble Delhi High Court for the A.Y 2006-07 & 2007-08 vide the order dated 19/10/2012. It is also submitted that the appeal of the assessee for the A.Y. 2010-11 & 2011-12 has also been allowed by the Ld. CIT(A) in the appellate orders dated 18/12/2014 and 04/02/2015 and accordingly the same should be followed. Ld. CIT(A) has

observed that the assessee is an association of professional and businessman to protect and promote the interest of its members. The income of the assessee is from membership fees from its members, specialized services, services and facilities, meetings, seminars and training programmes, sale of publication etc. The income of the assessee from other non-members of the institution are more and as such the principle of mutuality is apparently not applicable in the case of the Assessee. However, the case of the assessee is covered in its favour by the orders of his predecessor for the AY 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12 and also by the order of Hon'ble Delhi High Court in the assessee's own case for the A.Y 2006-07 & 2007-08 as discussed earlier. The departmental appeal for the A.Y 2008-09 & 2009-10 has been also dismissed by the Tribunal as discussed above. After considering all the facts and circumstances of the case, Ld. CIT(A) was of the view that there is no sufficient reason to deviate from the appellate orders of the Ld. CIT(A) of the earlier years allowing the exemption u/s 11(1) and accordingly the AO was directed to allow the exemption u/s 11(1) with all the consequential benefits vide impugned order dated 15.6.2015. Aggrieved with the order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

4. Ld. Sr. DR relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal.

5. Ld. A.R. of the Assessee relied upon the order of the Ld. CIT(A) and stated that the same may be upheld.

6. We have heard both the parties and perused the records, especially the impugned order. We find that Ld. CIT(A) has observed that the assessee is an association of professional and businessman to protect and promote the interest of its members. The income of the assessee is from membership fees from its members, specialized services, services and facilities, meetings, seminars and training programmes, sale of publication etc. It is also noted that the income of the assessee from other non-members of the institution are more and as such the principle of mutuality is apparently not applicable in the case of the assessee. We further note that the case of the assessee is covered in its favour by the orders of the Ld. CIT(A)'s predecessors for the Assessment years 2006-07 to 2011-12 and also by the order of the Hon'ble Delhi High Court in assessee's own case for the AY 2006-07 & 2007-08. The Departmental Appeal for the AY 2008-09 & 2009-10 has also been dismissed by the Tribunal. Therefore, the Ld. CIT(A) has rightly observed that there is no sufficient reason to deviate from the

appellate orders of the Ld. CIT(A) of the earlier years allowing the exemption u/s. 11(1) and accordingly, the AO was directed to allow the exemption u/s. 11(1) with all consequential benefits, which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the grounds raised by the Revenue and accordingly, we dismiss the Appeal filed by the Revenue.

7. In the result, the appeal filed by the Department stand dismissed.

Order pronounced in the Open Court on 06/09/2017.

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

Date 06/09/2017

SRBHATNAGAR

Copy forwarded to: -

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

By Order,

Assistant Registrar, ITAT, Delhi Benches