

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “F”, NEW DELHI
BEFORE SH. R.S.SYAL, VICE PRESIDENT
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER
ITA No. 6630/Del/2015
(Assessment Year: 2011-12)**

DCIT(e) Circle-2(1) New Delhi	Vs	Technology Development Board Wing-A, Ground Floor, Vishkarma Bhawan, Saheed Jeet Singh Marg, New Delhi PAN: AAALT0531B
(Appellant)		(Respondent)

Assessee by : Sh. P.K.Gupta, CA
Revenue by : Sh. Gaurav Juneja, Sr. DR.

Date of hearing : 13.11.2017
Date of pronouncement : 14.11.2017

ORDER

PER BEENA A. PILLAI, J.M :

Present appeal has been filed by revenue against order dated 07/09/15 passed by Ld. CIT (A)-40, New Delhi for assessment year 2011-12, on the following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the exemption u/s 11 disregarding the facts of the case.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the assessee is apparently not involved in any trade, commerce or business, without appreciating the fact that the assessee society was doing business by earning royalty in a systematic manner within the meaning of amended provisions of section 2(15) of the Income Tax Act.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the addition on account of royalty without discussing any facts in the order.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the appeal of the assessee without specifically adjudicating the issue of provision for gratuity.”

2. Brief facts of the case are as under:

Assessee filed its return of income for the year under consideration declaring total income at “Nil” after claiming application of income as per the provisions of section 11 and 12 of the Act. Return was processed under section 143 (1) of the Act and notice under section 143 (2) of the Act was issued and served upon the assessee. Representatives of assessee attended the proceedings before the Ld.AO and filed all necessary documents/evidences/details as called for.

3. During the assessment proceedings Ld. AO observed that assessee had earned income from grants, royalty, interest, dividends and other miscellaneous income. It is also observed that assessee has been registered under section 10 (23C) (iv) of the Act. Ld. AO observed that assessee had received royalty amounting to

Rs.58,20,551/-. Ld. AO was thus of the opinion that as the aforesaid receipt was in the nature of business/commerce receipt, it could not be included, as assessee was doing business in the garb of being a Charitable Organisation. Ld. AO therefore asked assessee to furnish explanation as to why not, royalty received to be covered under the 1st proviso to section 2 (15) of the act.

4. Assessee Vide letter dated 25/02/14 submitted its reply, wherein it was submitted that, one of the objects of the assessee was to provide assistance in the field of research and development institutions engaged in developing indigenous technology or adaption of imported technology for commercial application as may be recognized by the Central Government. It was also submitted that the collection was a very small percentage of the total outlay and does not vitiate the true character of the funds and does not also would *ipso facto* change the same to be realised from an activity in the nature of trade, commerce or business activity.

5. Ld. AO thus disallowed the claim of assessed, and invoked the 1st proviso to section 2 (15) of the Act. Ld. AO also disallowed an amount of Rs. 38,000/- which was a provision made towards payment of gratuity for retiring employee towards the end of the financial year relevant to the assessment year under consideration.

6. Aggrieved by the order passed by Ld. AO, assessee preferred appeal before Ld. CIT (A).

7. Ld. CIT (A) observed that assessee is promoted by the Ministry of Science and Technology, and Senior Government Officers are the ex-officio members of the governing body of the assessee. It was also observed by Ld. CIT (A) that assessee is mainly involved in the promotion and commercialization of indigenized technology and give loans and grants to the industry for development and promotion of technology and receives fees or royalty in case there is successful launch of the technology by the industry or the party.

8. Ld. CIT (A) also observed that assessee had been enjoying the benefit of exemption under section 11(1) and that Ld. AO had denied exemption for the 1st time for assessment year 2010-11 on the same ground that, assessee was involved in trade, commerce or business. Ld. CIT (A) thus while deciding the issue in favour of assessee relied upon the decision of Hon'ble jurisdictional High Court in the case of India trade promotion organisation versus DGIT (E) reported in 53 Taxmann.com 404 (Delhi) 2015 wherein the Hon'ble court has held that on mere receipt of fee or charge cannot be said that assessee is involved in any trade, commerce or business. Ld. CIT (A) observed as under:

“3.10. After considering all the facts and circumstances of the case, I am of the view that apparently the assessee is not involved in any trade, commerce or business and as such the mischief of proviso of section 2 (15) is not applicable and the case of the assessee is also covered by the assessee's own case by appellate order dated 18/03/15 and the assessee can be allowed as a relief or exemption under section 11 (1) as a charitable institution and accordingly the AO is directed to allow the

exemption under section 11 (1) with all the consequential benefits and the additions made by AO are deleted.”

9. Aggrieved by the order of Ld. CIT (A) revenue is in appeal before us now.

10. **Ground No. 1** raised by revenue's general in nature and therefore does not call for adjudication.

11. **Ground No. 2 and 3** has been raised by revenue against the findings of Ld. CIT (A) in respect of assessee not being involved in any trade, commerce or business.

12. At the outset Ld.AR submitted that Hon'ble jurisdictional High Court in the case of assessee for assessment year 2010-11 has passed an order deciding the issue in favour of assessee Vide order dated 09/12/16 in ITA No. 416/2016. He placed reliance upon the decision passed by Hon'ble Delhi High Court, and submitted that the issue has now been settled by the order passed by Hon'ble court for assessment year 2010-11.

13. Ld.Sr.DR did not raise any arguments after perusing the order passed by Hon'ble Delhi High Court in assessee's own case.

14. We have perused the submissions advanced by both the sides in the light of the records and the decisions relied upon by Ld. AR.

Hon'ble Delhi High Court has decided the issue regarding the receipt of royalty fees as under:

“..... Even otherwise, the question of law urged, i.e., whether the royalty received fell within the mischief of the proviso to section 2 (15) of the Income Tax Act, 1961 is absolutely illegal ground on account of several judgments by this including that the judgment in ITPO vs. DGIT (Exemptions) (2015) 371 ITR 333 (Delhi). No substantial question of law arises. The appeal is dismissed.”

15. It is observed that Hon’ble Delhi High Court has also placed reliance upon its own decision which was considered by Ld. CIT (A) while deciding the issue at the 1st appellate stage. In our considered view the issue now stands settled by various decisions of Hon’ble jurisdictional High Court as well as preceding assessment year of assessee itself. We therefore do not find any merit in the ground raised by revenue.

Accordingly **Ground No.2 & 3** raised by revenue stands dismissed.

16. Ground No. 4 is in respect of the issue of provision for gratuity. Ld. Sr.DR submitted that Ld. CIT (A) has failed to adjudicate this issue.

17. On perusal of the order passed by Ld.CIT (A), we agree with the submissions advanced by Ld. Sr.DR. We accordingly are inclined to set aside this issue back to the file of Ld. CIT (A) in directing him to adjudicate upon this issue. Ld. CIT (A) may decide the issue as per law.

18. Accordingly this ground raised by the revenue stands allowed for statistical purposes.

19. In the result appeal filed by the revenue stands partly allowed.

(Order pronounced in the Open Court 14/11/2017.)

Sd/-
(R.S.SYAL)
VICE PRESIDENT

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Date: 14.11.2017

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copy of order to: -

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

True Copy

By Order
ITAT, New Delhi

S.No.	Details	Date
1	Draft dictated on	13.11.2017
2	Draft placed before author	13.11.2017
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement on	
7	File sent to Bench Clerk	
8	Date on which the file goes to the Head Clerk	
9	Date on which file goes to the A.R.	
10	Date of Dispatch of order	