In the Income-Tax Appellate Tribunal,
Delhi Bench 'G', New Delhi

Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member

ITA No. 4755/Del/2016
Assessment Year: 2010-11

Income Tax Officer (E), Ward 2(3), New Delhi. **(Appellant)**	**vs.**	Wrestling Federation of India, Room No. 10 & 11, NDMC Building, Palika Place, Panchkuian Road, New Delhi. PAN- AAATW0613M **(Respondent)**

ITA No. 2063/Del/2017
Assessment Year: 2012-13

Income Tax Officer (E), Ward 2(3), New Delhi. **(Appellant)**	**vs.**	Wrestling Federation of India, 21, Ashoka Road, New Delhi . PAN- AAATW0613M **(Respondent)**

Appellant by	Sh. Sanjay Tripathi, Sr. DR
Respondent by	Sh. K.P. Ganguli, Advocate

Date of Hearing	01.11.2018
Date of Pronouncement	03.12.2018

ORDER

Per L.P. Sahu, A.M.:

These two appeals have been directed by the Revenue against two orders passed by the ld. CIT (As) 36 and 40 for the assessment years 2010-11 and

2012-13 dated 09.06.2016 and 23.01.2017 respectively on the following ground of appeals :

Grounds raised in appeal No.4755/Del/2016 (A.Y. 2010-11):

1. 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 ignoring the fact that the assessee has not obtained approval u/s. 11(1)(c) from the CBDT to incur the expenditure outside India for a charitable purpose which tends to promote international welfare in which India is interested to the extent to which such income is applied to such purpose outside India.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the receipts are on account of sponsorship fee and royalty are in the nature of business income within the meaning of provisions of sub-section 4A of section 11 of the I.T. Act. The assessee failed to maintain separate books of accounts as per sub section 4A of the Section 11 of the I.T. Act."

Ground raised in appeal No.4755/Del/2016 (A.Y. 2010-11):

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law in ignoring the fact that the receipts are on account of sponsorship and royalty are in the nature of business income and hits the amended proviso of section 2(15) of the Income Tax Act, 1961."

2. The facts attending to both these appeals are similar in nature and therefore, both these appeals are being disposed of by this consolidated order for the sake of convenience and brevity. We, therefore, take up the appeal for A.Y. 2010-11, the decision on which will apply *mutatis mutandis* in appeal for assessment year 2012-13.

3. The brief facts of the case are that the assessee is a society registered under Societies Registration Act, 1860 vide Registration No. S – 3225 dated 22/01/1967. The Society is also Registered under Section 12A of the Income Tax Act vide Registration Number DIT(E)/2004-05/W-171/03/120 dated 27.04.2004 and claimed exemption under Section 11/12 of the Income Tax Act. The assessee showing Nil income, filed form No. 10B. The case was selected for scrutiny and statutory notices were issued to the assessee. During the course of scrutiny proceedings the Assessing Officer observed that the assessee has shown royalty income of Rs. 2,45,000/- and sponsorship fee of Rs. 12,75,000/-. He also observed that these amounts have not been received from the members; therefore, it is in the nature of business receipts. The assessee had claimed exemption on the above amounts. In this regard the assessee was asked to justify this claim. Reply was filed by the assessee. The Ld. Assessing Officer observed that the end use of business profit for charitable purpose is of no relevance due to amendment in Section 2(15) and the payer has also deducted TDS, since the main activity of the assessee falls under the category of general public utility, therefore, the first proviso to Section 2(15) of the Act is invoked and receipt on account of royalty and sponsorship fee is stated as business income of the assessee within the meaning of first proviso to Section 2 (15) of the Income Tax Act and no expenditures have been incurred by the assessee towards earning of these incomes. Therefore, he added the total receipts of Rs. 15,20,000/- (Rs. 2,45,000+12,75,000) as income of the assessee. He further observed from the income and expenditure account of the assessee that the assessee debited a sum of Rs. 1,18,72,543/- for international championship expenses and incurred outside India. In this regard the assessee was asked to justify and issued show cause notice regarding the expenditure incurred outside

India for the championship of sports as per Section 11 (1) (c) of the Income Tax Act. In response to show cause notice, the assessee filed reply dated 01.03. 2013 and 18/03/2013. In the reply the assessee submitted that as per Foreign Exchange Management (Currency Account Transactions) Rules, 2000, international/national/state-level sports bodies are not required to take permission of this ministry or Reserve Bank of India for remittance of prize money/sponsorship of sports activity and he also referred to Schedule II of the Foreign Exchange Management (Currency Account Transactions) Rules, 2000, which clearly says that prior approval of Central government is not required in case of remittance of prize money/sponsorship of sports activity abroad International/national/state-level sports bodies. The assessee is an organisation of national level. The Ld. Assessing Officer noted that out of Rs. 1,18,72,543/- a sum of Rs. 98,27,626/- have been incurred for purchase of foreign currency from New Found Land Enterprises (P) Ltd. and given to WFI representatives going for competitions abroad for incurring it outside India pertaining to International Championship. Expenses have been incurred outside India without the permission of the CBDT in this behalf as envisaged under Section 11 (1) (c) of the Income Tax Act, therefore, the Assessing Officer disallowed a sum of Rs. 98,27,626/- for non application of income in India and added into the total income of the assessee. Aggrieved from the order of the Ld. Assessing Officer the assessee appealed before the Ld. CIT (A) and made written submissions before him also. The Ld. CIT (A) after considering the order of the Assessing Officer and submissions of the Assessee, allowed the appeal of the assessee. The revenue was not satisfied from the order of the Ld. CIT (A). Hence, this appeal before the Tribunal by Revenue.

4. The Ld. DR relied on the order of the Assessing Officer and submitted that the assessee is engaged in the business activities, receiving royalty and sponsorship fee as income and the payer has also made TDS on the payments made to the assessee, which cannot be deemed to be incurred as a charitable purpose as per amended provisions of Section 2 (15) of the Income Tax Act. Therefore, the exemption u/s 11/12 of the Income Tax Act has rightly been denied by the Assessing Officer. He further submitted that the assessee has incurred expenditure for the purchase of foreign currency India, which cannot be termed as an application of income in India because the Foreign currency was spent outside India. In view of the fact and circumstances of the case the order of the Assessing Officer should be restored.

5. The Ld. Authorised Representative of the assessee relied on the order of the Ld. CIT (A) and reiterated the submissions made before CIT (A). He further submitted that the assessee is engaged in organising the sports of Wrestling within and outside India and Registered in the name of Wrestling Federation of India (WFI) . The royalty and sponsorship fee have been received for the organising of sports. It is not a regular business income of the assessee. He further submitted that the foreign currency was purchased for the Sportsman to meet out the expenditure on their stay outside India and for lodging and boarding during the tournaments. As per the Foreign Exchange Management (Currency Account Transactions) Rules, 2000, International/National/State-level sports bodies are not required to take permission of Ministry or Reserve Bank of India for remittance of prize money / sponsorship of sports activity outside India. The expenses incurred in foreign exchange during international events are not the expenses of WFI as WFI receive the grant-in-aid from the Government of India towards the boarding / lodging etc. for the team members

who participate in the international events. The assessee has followed the guidelines of the Ministry, therefore, Section 11 (1) (c) will not apply. The Ld. CIT (A) is justified to delete the additions made by the Assessing Officer. In addition to the above the Ld. AR also filed paper book containing 98 pages in which he has submitted a written synopsis and relying some case laws as under :

- (2015) 372 ITR 699 (SC) QUEEN'S EDUCATIONAL SOCIET VS CIT
- (2015) 43 ITR 656 (TRIB) DELHI DIT (EXEMPTION) VS ALL INDIA FOOTBALL FEDERATION .
- (2018) 403 ITR 49 (DELHI) DIT (E) VS DELHI PUBLIC SCHOOL SOCIETY
- (2018) 400 ITR 0066 (AP) PRINCIPAL COMMISSIONER OF INCOME TAX VS INSTITUTE FOR DEVELOPMENT AND RESEARCH IN BANKING TECHNOLOGY.
- (2017) 58 ITR (Trib) 0431 (Chennai) Dy Commissioner of Income Tax vs Tamil Nadu Cricket Association .
- (2017) 55 ITR (Trib) 149 (DELHI) SOCIETY FOR PARTICIPATION RESEARCH IN ASIA VS INCOME TAX OFFICER (E).

6. After hearing the both sides and perusing the entire materials available on record and orders of the authorities below, we are of the opinion that the Ld. CIT (A) has done good reasoned order which needs no interference. The findings reached by the ld. CIT(A) in the impugned order read as under :

> "7. During the appellate proceedings the assessee submitted that it is a not-for-profit society promoted by the Govt. of India and duly registered under the Societies registration Act, 1860. It is a charitable trust and its income is not liable to tax. The AO added Receipts of Rs.15,20,000/- as business income but did not consider the related expenses for the said receipts. The assessee comes under 5th limb of the charitable purpose i.e. advancement of any other object of general public utility and all the activities and events carried out among the members for the promotion of sports & games is not considered commercial activities but Charitable purpose u/s. 2(15) of the Act. Such entities will not be

eligible for exemption u/s 11 if they carry on commercial activities. However, whether such entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope and frequency of the activity. Regarding disallowance of Rs. 98,27,696/- in respect of application of income, the assessee submitted that during the year, amount of Rs. 98,27,696/- was incurred for purchase of foreign currencies disbursed in India to 'India Team Member' for participating in international competitions on account of TA/DA. This expenses was incurred out of this specific purpose grant sanctioned and received from 'Govt. of India.' The Govt. release the specific purpose grant in India currency and 'WFI' being a facilitating agency is required to disburse the payment to the team members in CHF (Swiss France or US $ as per the requirement of the FILA and organizing federation).

As per the stipulated conditions of the sanction, Foreign currency is disbursed in India to the specific participant/team member by M/S New Found Land Enterprises Pvt. Ltd. who raises their invoice in 'WFI, in respect of currency disbursed by them to the 'India Team Members' and WFI in-turn makes payment/reimbursement in India Rupees to M/S New Found Land Enterprises Pvt. Ltd. During the course of assessment proceedings it was submitted and demonstrated that on this account, the entire payment was made in India, in Indian rupees and no amount was ever spent/incurred by WFI outside India. However, the AO without appreciating the facts of the case, invoked Section l1(l)(c). Regarding disallowance of telephone exp. Rs. 42,480 out of Rs. 91,947 claimed by the assessee, it was explained that expenses related to Sh. G.G Mander, President of WFI but the actual user of the said Telephone connection is the Premises of the Federation Office. The assessee relied on a number of case laws, mainly on the decision in case of All India Football Federation (2015), 43 ITR 656.

8. I have gone through the Assessment order & submissions made by the assessee & the case laws quoted. The main objectives of the federation is to promote the game of wrestling both at the national and international level. The major issue of addition in the case are whether the proviso to Section 2(15) applies in view of .the receipts under the head of royalty and sponsorship fee as the assessee is involved in the activities pertaining to objects of general public utility. Secondly, whether proviso to Section l1(1)(c) applies to the assessee case as the income has been applied for payment for foreign currency to the team participants for participating in competition outside India and the approval of CBDT has not been taken. The third issue is whether telephone expenses of Rs.42,480/- are in violation of Section 13(1)(c) r.w.s 13(3) of the Act. It is seen that the assessee is a sport body recognised by the Ministry of Youth Affairs and Sports for promotion of Wrestling in India. The AO while assessing has treated the royalty and the sponsor receipts as business income of the assessee alleging that it was carrying on a activity in the nature of trade, commerce or business. The assessee has relied upon the case of All India Football Federation adjudicated by Delhi ITAT vide order dated 23.09.2015 and in the case of National Rifle Association of India vide order dated 25.04.2016. In the case of All India Football Federation A.Y. 2009-10 (43 ITR 656), the ITAT Delhi has adjudicated as under:

> *"37. In view of the above discussion and judicial pronouncements, what needs to be emphasised is whether the receipt of amounts by way of sponsorship from various parties*

would make the activity "commercial" as held by the AG. The mere fact that the appellant society had generated sponsorship funds, during the course of carrying on the ancillary objects, shall not alter the character of the main objects so long as the predominant object continues to be charitable and not to earn the profit.

38. Therefore, we hold that the respondent assessee is entitled to exemption of income under the provision of Section 11 of the Act. Further, the proviso of Section 2(15) of the Act cannot be applied to the appellant society as it is not engaged in any activity which is in the nature of trade, commerce and business. Accordingly, we direct the AG to allow the exemption under the provisions of Section 11 of the Act.

39. We therefore dismiss this ground of the Revenue. "

In case of the National Rifle Association of India, the ITAT in its order dated 25.04.2016 adjudicated as under:

"6. Applying the ratio laid down in the above cases to the facts of the present case, we have no demur to hold that the objects of the Respondent assessee are aimed at improving Shooting being the national game and aiming at building of world class teams having international standards. The question of private gain or profit motive cannot be attributed to the assessee being association which promotes Shooting with Sports Authority of India. Respectfully following the above decisions of the Hon'ble Apex Court as well as the Tribunal, we are inclined to hold that the handling charge and the 'sponsorship fees are received which are incidental for the fulfilment of the objects of the society and as such, there is no justification for the additions made by the AO and accordingly, the same are deleted. Accordingly, ground raised by the Revenue stands dismissed. "

9. It is evident that the assessee is not involved in any business activity as there is no apparent motive to earn profit. The royalty and sponsorship fees which are received are incidental for the fulfillment of the objectives of the assessee. The receipts are not being used as business receipts in order to be utilised as profit to any person but instead is used to promote the sport of wrestling. Though the assessee has objectives of general public utility, considering the activities and the objects of the federation as also going by the case laws quoted above, the proviso to Section 2(15) shall not apply to the assessee. The addition made on account of royalty and sponsorship fees may therefore be deleted.

10. Next is the issue of expenditure of Rs. 98,27,696/- incurred for purchase of foreign currency disbursed in India to the Indian team members for participation in international competition. The assessee has explained that the purchase of foreign currency was made from the agency in India. These are not the expenses of the assessee as grants are received from the Government of India. The tickets are directly given through the Government agency and for foreign exchange, the funds are rooted through WFI by the Govt. of India. Hence it is not for the use of the assessee. The assessee was asked vide note sheet dated 23.02.2016 as to why the decision of Delhi

High Court in the case of NASSCOM 345 ITR 362 regarding the expenditure on foreign currency and applicability of Section 11 (1)(c) should not be applied to it. The assessee replied as under:

'The Contention that words "to the extent to which such income is applied to such purpose in India" appearing to Section l1(1)(c) of the Act only require that charitable purpose should be confined to India. This is the view of Delhi High Court in the case of DIT vs National Association of Software and Services Companies (Nasscom) (Delhi) (2012) 345 ITR 362 (Delhi). In the case of appellant no meeting or championship, events or activities were organised or held by the Wrestling Federation of India, abroad/outside India. The income was spent only in India. Even the foreign currency were purchased in India spent in India by disbursing to the wrestlers in India for the boarding and lodging to take part in the international championship held abroad and won brown, silver and gold Medals for India. A ledger copy of New Found Land Enterprises Pvt. Ltd. for a sum of Rs. 98,27,696/- along with narration of invoice and payment thereof attached herewith for your kind information. Hence, the case of the Appellant is not hit by expression in Section 11 (1) (c) of the Act.

11. The contention of the assessee that no meeting or championship events etc. was organized /held by the assessee outside India, is acceptable as the money was spent only on the players who were representing India in the international arenas. Thus, it is for promoting the interest of the country internationally and promoting sport of wrestling both nationally and internationally. Hence, it cannot be held to be applied to such purposes outside India. The addition made on this account may therefore be deleted specially since it is not for the welfare of the assessee but for participation of India players in wrestling."

Considering the above discussion made by the ld. CIT(A), we do not find any infirmity in the order of the CIT (A). The assessee has received royalty and sponsorship fee towards organizing of the sports activity it is not a regular business activity of the society which has been spent for the object of the Society. The ld. CIT(A) has given cogent reasoning for holding that provision to section 2(15) would not apply in the facts of the present case, against which there is nothing on record from the side of the Revenue. In respect of the other issue the assessee has complied the procedures laid down by the Government of India for organizing the sports aboard. The case laws cited by the AR of the assessee could also not be controverted on behalf of the Revenue. We, therefore,

do not find any justification to interfere with the impugned order. Accordingly, the appeal of the Revenue deserves to fail.

7. As already mentioned, the issue involved in appeal for A.Y. 2012-13 is also same in the identical facts and circumstances of the case. We, therefore, on the same reasoning affirm the order of the ld. CIT(A) in this case also, as there is no contrary material on record to discard the findings of the ld. CIT(A) in this appeal also. Accordingly, the appeal of the Revenue for A.Y. 2012-13 also deserves to be dismissed.

8. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on 03.12.2018.

Sd/-	Sd/-
(H.S. Sidhu)	**(L.P. Sahu)**
Judicial member	**Accountant Member**

Dated: 03.12.2018
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Copy of order forwarded to:

(1)	*The appellant*	*(2)*	*The respondent*
(3)	*Commissioner*	*(4)*	*CIT(A)*
(5)	*Departmental Representative*	*(6)*	*Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi