

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DLEHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

ITA No. 7653/Del/2018

Delhi Police Welfare and Recreational Club Fund, C/o Kapil Goel, Advocate
F-26/124, Sector-7, Rohini, New Delhi. **vs.** CIT (Exemption),
New Delhi

PAN : AACAD8779Q
(Appellant)

(Respondent)

Appellant by : Sh. Kapil Goel, Advocate
Respondent by: Ms. Nidhi Srivastava, CIT/DR

Date of hearing: 28.06.2021

Date of order : 28.06.2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the order dated 28/9/2018 passed by the Commissioner of Income Tax (Exemptions), New Delhi ("Ld. CIT(E)") in the case of the Delhi Welfare And Recreational Club Fund, Delhi ("the appellant") rejecting the application for grant of registration under section 12A of the Income Tax Act, 1961 (for short "the Act"), the appellant filed this appeal.

2. Brief facts of the case, relevant for the disposal of this appeal, are that the appellant is engaged in the activity to promote welfare and recreational activities of the personnel (gazette, subordinate police

officers, civilians and class IV employees of Delhi police) and the expenditure was to be incurred on articles of sports-indoor and outdoor games, cost of uniforms etc supplied to teams, magazines and periodicals, entry fee for tournaments, hiring of grounds, hiring, repair and purchase of furniture for the club, conveyance expenses incurred locally, entertainment (exclusive excursion trips), film shows, hiring of accommodation for the club's functions, cultural and sports programs and interdepartmental meets. According to the appellant, sports activities are covered under the definition of "charitable purpose" as per section 2 (15) of the Act; that the fund is not engaged in any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity; and that the fund not earned any income from advancement of any other object of general public utility.

3. The assessee filed an application on 28/3/2018 in form No. 10 AA seeking registration under section 12 AA of the Act. Ld. CIT(E), however, rejected the said application on the ground that the objects of the club as mentioned in aims and objects of standing order No. 270 of Commissioner of Police, Delhi clearly establishes that the primary objective of the appellant club is to rescue the benefit to its members of Delhi police personnel only and are not to public at large or general public; that the income and expenditure accounts also establish the fact that the expenditure incurred for Delhi police personnel and not to public at large or general public; and that it is the settled principle of law that

providing benefits to individual or group of individuals would not be a charitable purpose, but providing benefit to general public or section of public would be termed as charitable purpose. On this premise, Id. CIT(E) held that provision of benefit only to its members of Delhi police violates the provisions of section 2(15) of the Act, the compliance of which is mandatory for registration under section 12A of the Act. Application of the appellant was, accordingly, rejected.

4. Assessee therefore filed this appeal stating that the appellant is incorporated for promotion of welfare and recreational activities amongst the personnel of Delhi police which object fulfils the test of section 2(15) and the reasoning of the Id. CIT(E) that the appellant does not cater to benefit of general public or section of public is clearly misconceived as welfare of police personnel only. Ld. AR placed reliance on the decision of the Hon'ble Andhra Pradesh High Court in the case of CIT vs. Andhra Pradesh Police Welfare Society (1984) 148 ITR 287 AP ("AP Police Welfare Case") and also the view taken by the Mumbai Bench of this Tribunal in the case of Bank of India Retired Employees Medical Assistance Scheme vs. DIT (exemption) in ITA No. 6844/mum/2013 for the assessment year 2011-12 by order dated 3/10/2018 ("Bank of India case").

5. Per contra, it is argued by the Ld. DR that as rightly found out by the Id. CIT(E) the appellant is engaged in the activities which benefits only the police personnel of Delhi and none else, and, therefore, it cannot be said that the appellant is providing benefits to general public or section of public. On this premise, she submitted that the Ld. CIT(E) is justified in

rejecting the application and no interference with such finding is warranted.

6. We have gone through the record in the light of the submissions made on either side. Insofar as the nature of activity of promotion of welfare and recreational activities of the police personnel, by its nature, is concerned, Ld. CIT(E) does not dispute whether it falls in the purposes of section 2(15) of the Act. Only objection is that the aims & objects of standing order No. 270 of Commissioner of police, Delhi clearly establish that the primary objective of the appellant club is to provide benefit to its members of Delhi police personnel only and not to public at large or general public and, therefore, it violates the provisions of section 2 (15) of the Act. This is the sole basis for rejection of the request of the assessee for registration section 12A of the Act. Precisely this is the argument of the Ld. DR also.

7. In AP Police Welfare Case (supra), Hon'ble Andhra Pradesh High Court considered a similar question in the light of the decision reported in *Oppenheim vs. tobacco securities trust Co Ltd* (1951) 1 All ER 16, *IRC v. City of Glasgow Police Athletic Association* (1953) 1 All ER 747 (HL), and *Ahmedabad Rana Caste Association vs. CIT* (1971) 82 ITR 704 (SC) and held that insofar as public employment is concerned and in particular the government formed by, for and of the people is the employer, even it is to be taken in a restrictive sense, and the employer is the representative of the public or the people -in the ultimate analysis, it is the public that is the employer; *qui facit per alium facit per se*, and so, to the service rendered by the employees in the public employment, the beneficiaries are the public. On this test the court reached a conclusion that AP Police

Welfare Association which is a charitable in its objects, as is quite apparent from the very objectives laid down under the rules framed thereunder, is a body that would constitute “a section of the public” and so, the fund founded for the benefit of such section should be treated as charitable in its object, attracting thereby the exemption from the exigibility to tax.

8. In Bank of India case (supra), the Bombay Bench of Tribunal after noticing a Catena of decisions and while following the decision of the Hon’ble Andhra Pradesh High Court in the case of Andhra Pradesh Police Welfare Society reached a similar conclusion.

9. From the above, it is clear that the issue involved in this matter is no longer res Integra and is squarely covered by the judicial decisions for a long time. In the absence of any change in the facts or law holding the field, we find it difficult to take a different view or not to follow the binding precedent of the higher judicial fora. We accordingly, following the same, hold that the appellant, the Delhi Police Welfare And Recreational Club Fund is charitable in its objects and is a body that constitutes a section of the public, and so, the fund founded for the benefit of such section should be treated as charitable in its objects, attracting thereby the exemption from the exigibility to tax. With this view of the matter, we set aside the impugned order passed by the Id. CIT(E) and hold that the appellant is eligible for registration under section 12 A of the Act and direct its registration thereunder accordingly.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 28th day of June, 2021.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 28/06/2021
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