

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 225/DEL/2018 (A.Y 2012-13)

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| ITO (E) Ward-2(2) Room No. 2410, 24 th Floor, E-2 Block, Pratyaksh Kar Bhawan, Dr. Shyama Prasad Mukherjee Civic Centre, Jawahar Lal Nehru Marg, New Delhi (APPELLANT) | Vs. | Sports Good Export Promotion Council IE/6, Swami Ram Tirth Nagar, New Delhi PAN: AAICS0377F (RESPONDENT) |
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I.T.A. No. 2356/DEL/2018 (A.Y 2013-14)

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| ITO (E) Ward-2(2) Room No. 2410, 24 th Floor, E- 2 Block, Pratyaksh Kar Bhawan, Dr. Shyama Prasad Mukherjee Civic Centre, Jawahar Lal Nehru Marg, New Delhi (APPELLANT) | Vs. | Sports Good Export Promotion Council IE/6, Swami Ram Tirth Nagar, New Delhi PAN: AAICS0377F (RESPONDENT) |
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I.T.A. No. 2357/DEL/2018 (A.Y 2014-15)

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| ITO (E) Ward-2(2) Room No. 2410, 24 th Floor, E- 2 Block, Pratyaksh Kar Bhawan, Dr. Shyama Prasad Mukherjee Civic Centre, Jawahar Lal Nehru Marg, New Delhi (APPELLANT) | Vs. | Sports Good Export Promotion Council IE/6, Swami Ram Tirth Nagar, New Delhi PAN: AAICS0377F (RESPONDENT) |
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| Assessee by : | Ms. Rano Jain, Adv and Ms. Mansi Jain, CA |
| Department by: | Shri Sumit Kumar Verma, Sr. D. R.; |
| Date of Hearing | 21.09.2022 |
| Date of Pronouncement | 23.09.2022 |

ORDER**PER YOGESH KUMAR U.S., JM**

These three appeals are filed by the assessee against the separate order dated 31/10/2017, 31/01/2018 and 31/01/2018 of the Ld. Commissioner of Income Tax (Appeals)-40, Delhi [hereinafter referred to CIT (Appeals)] for Assessment Years 2012-13, 2013, 14 & 2014-15 respectively.

I.T.A. No. 225/DEL/2018 (A.Y 2012-13)

2. The grounds of appeal are as under:-

1. On the facts and in the circumstances of the case and in law, whether the Ld. CIT (A) was correct in holding that spending by the trust outside India without the approval of the CBDT u/s 11(1)(c) of the Act is permissible, despite that the facts and ration of relied upon cases were not directly related to application of section 11 (1)(c) of the Act.

2. On the facts and in the circumstances of the case and in law, whether the Ld. CIT (A) erred in not appreciating the decision of the Hon'ble Delhi High Court in the case of NASSCOM, in which the Hon'ble Court held that non observance of the condition in section 11 (1)(c) of the Act amounts to treating the said section 'infructuous'.

3. *On the facts and in the circumstances of the case and in law, whether the Ld. CIT (A) was correct in not appreciating that it was not established that the amount given as grant for specified purpose was actually utilized for the said purpose.*

4. *On the facts and in the circumstances of the case and in law, whether the Ld. CIT (A) was correct in not appreciating as to whether it is open and permissible for a trust to receive any amount for any activity, which is not forming part of its income u/s 11 and 12 of the Act, especially after incorporation of proviso to section 2(15) of the I. T. Act.*

5. *On the facts and in the circumstances of the case and in law, whether the Ld. CIT (A) was correct in treating of the Govt, grant as exempt income, not to be included as receipt without appreciating that as per I. T. Act no such exemption has been made for Govt, grants, even though for specific purposes.*

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

3. The assessee during the year under consideration earned income from Government grant, financial income, participation charges, specialized fairs, trade contribution, membership admission and subscription fee and other income. The return of income for Assessment Year 2012-13 was filed declaring total income at NIL after claiming application of income as per provision of Section 11 & 12 of the Act. The return was processed u/s 143(1) of the Act, the case was selected for scrutiny and the notices were issued to the assessee. The assessee has participated in the assessment proceedings through its representative. During the assessment proceedings, it has been noticed that as per the balance sheet, the assessee has incurred expenses in foreign currency outside India under the head "Expenses on

Specialized fairs and Buyers Seller Meet Abroad” amounting to Rs. 3,24,65,367/-. As per the A.O, the same is in contravention to provision of Section 11(1) (c) of the Act, before the approval of Central Board of Direct Taxes.

4. It is the case of the assessee before the Assessing Officer that ‘as per Section (11)(1)(a) of the Act following income shall not be included in the total income of the previous year of the person in receipt of the income derived from property held under trust wholly for charitable or religious purpose, the extent to which such income is applied to such purposes in India and where any such income is accumulated or set apart for application to such purposes in India. In the organization in subject, Exhibitions organized abroad would not make activities of the assessee being carried out outside India. The benefits of such exhibitions will ultimately go to the assessee and its members. Hence it cannot be said that activities of the assessee were carried outside India. Therefore, the expenses under the head “expenses on specialized fairs and buyers seller meet aboard of Rs. 3,24,65,367/- would be the income applied for charitable or religious purpose in India as per Section 11(1)(a) of the Act’.

5. The Ld. A.O is of the opinion that as per Section 11(1) of the Act, income applied on activities outside India is not liable for exemption, unless the charitable organization happens to be trust created before 01/04/1952 or engaged in promotion of International Welfare in which India is interest and the Central Board of Direct Taxes has granted the exemption by general or special order. Therefore, the said expenses incurred by the assessee has been disallowed and passed assessment order on 20/03/2015 by computing taxable income at Rs. 3,24,65,367/- as against the NIL return of income.

6. As against the assessment order dated 20/03/2015 the assessee has preferred an Appeal before the CIT(A) and the Ld.CIT(A) has deleted the addition made by the Ld. A.O. vide order dated 31/10/2017.

7. Aggrieved by the order dated 31/10/2017, the Revenue has preferred the present appeal on the grounds mentioned above.

8. We have heard the parties, perused the material on record and gave our thoughtful consideration.

9. It is found from the record that the Ld.CIT(A) has considered the assessment order submission of the assessee and the remand reports both by Assessing Officer as well as comments of Joint Commissioner of the Income Tax and also the rejoinder of the assessee. While dealing with the appeal filed by the assessee and it is found by the Ld.CIT(A) that the grant in aid has been sanction for participation in specific events mentioned hereunder:-

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| i. | Participation in ISPO 2010 at Germany |
| ii | Participation in Spielwarenmesse International Toy Fair at Germany |
| iii | Participation in American International Toy Fair at America |

10. The Ld.CIT(A) further found the following in respect of above grant are as under:-

- a). Grants have to be kept in separate account with State Bank of India/ its subsidiaries/Nationalized Banks.
- b). Detailed account of each payment are to be kept together with the documents/vouchers etc. as evidence of actual expenditure.
- c). Grant is not to be diverted or utilized for the purpose other than that for which it is sanctioned. It has also been mentioned that the execution of project/study for which the grant is made shall not be entrusted to another institutions or organizations.
- d). The accounts of project shall be open for audit by the sanctioning authority and also by the Pay and Account Office of the Department of Commerce as per Rule 211 of the GFR and will be subject to audit by the C&AG of India.
- e). Any unspent amount with interest at the rate of 10 per cent from the date of release of the fund is to be surrendered to the Government of India.”

11. Thus, it is evident that the grants are given specifically for participation in a particular events held in abroad, the grant approval includes a condition that a separate account for the projects have to be maintained. The assessee has utilize the funds as per the terms and conditions of the grant and the grants are not to be utilized in any other purpose than for which it is issued and also that the execution of the project is not be entrusted to any other organization. Further, the up spent grant along with interest @10% from the date of release of the fund has to be reimbursed by the Government. Therefore, from the above facts, it is evident that the assessee is not free to use the funds voluntarily as per its own whims and fancies and the same has to be spent as per the terms and conditions of the grant.

12. The Hon’ble Delhi High Court in the case of Director of income Tax Vs. Society for Development Alternatives (2012) 205 Taxman 373 Delhi has held as under:-

"The findings recorded by the Tribunal are that the assessee had received grants for specific purposes from the Government, non-Government, foreign institutions, etc. These grants were to be spent, as per the terms and conditions of the grants. The amount, which remained unspent at the end of the year, got spilled over to the next year and was treated as unspent grant. The Tribunal, therefore, held that the assessee was not free to use the grants voluntarily as per its sweet will and, thus, these grants were not voluntary contribution as per section 12. [Para 7]

In view of the aforesaid factual position, the appeal preferred by the revenue was liable to be dismissed. [Para 10]"

13. Further, in the case of Society for integrated Development in urban and rural areas (SIDUR) Vs. DCIT, (2004) 90 ITD 493 (Hyd) the issue regarding treatment of tide up grants was considered by the Tribunal wherein it was held that voluntarily contributions covered by Section 12 are those contributions freely available to the assessee without any stipulation, which the assessee can utilize towards his objectives according to its own discretion and judgment. The tide up grants for a specific purpose would only mean that the assessee which was voluntarily organization, had agree to act as a trustee of a special fund granted by the donor with the result that it need not be pooled or integrated with the assessee is normal income or corpus. In the said case, the reliance had also been based on the findings in the case of Nimral Agricultural Society Vs. Income Tax Officer. The relevant extract is as under:-

"10. The grants received from Bread for the World were for specific purposes. The grants which are for specific purposes do not belong to the assessee-society. Such grants do not form corpus of the assessee or its income. Those grants are not donations to the

assessee so as to bring them under the purview of section 12 of the Act. Voluntary contributions covered by section 12 are those contributions freely available to the assessee without any stipulation which the assessee could utilize towards its objectives according to its own discretion and judgment. Tied-up grants for a specified purpose would only mean that the assessee, which is a voluntary organization, has agreed to act as a trustee of a special fund granted by Bread for the World with the result that it need not be pooled or integrated with the assessee's normal income or coitus. In this case, the assessee is acting as an independent trustee for that grant, just as same trustee can act as a trustee of more than one trust. Tied-up amounts need not, therefore, be treated as amounts which are required to be considered for assessment, for ascertaining the amount expended or the amount to be accumulated.

11. The assessee should have actually credited that, grant in the personal account of the donor, Bread for the World and any amount spent against that grant should have been debited to that separate account of the donor. That incoming and outgoing need not be reflected in the income and expenditure account of the assessee. At the end of the project, the balance, if any, available to the credit of Bread for the World, the donor, could be treated as income of the assessee, if the donor did not insist for the repayment of the balance amount."

14. The similar view has also been taken in the case of CIT Vs. M/s State Urban Development Society in ITA No. 210/2011 dated 29/10/2011 wherein it is held as under:-

“The Tribunal held that the society is acting as a nodal agency receiving grant from Government of India and state Governments and distributes to district authorities for implementation of various Schemes of Government of Indian and supervising the execution of Schemes. It has no discretion to utilize the amount as per own requirements. It also found that in case of nonutilization at the close of the Scheme, the funds are to be refunded along with interest to the Government of India and state Governments. The grants received by the assessee do not belong to the assessee-society. The grants do not form corpus of the assessee nor is it income of the assessee under Section 11 of the Act. Such grants are not the donations or voluntary contributions under Section 12 of the Act. Thus, the grants received by the assessee should not be considered either as income or for ascertaining the amount expended or amount to be accumulated. Provisions of Section 11 and 12 of the Act are not applicable for grants received by the assessee under the Schemes It further held that the assessee is statutorily required to file its intention of expanding the accumulated funds in future by way of Form No. 10.”

15. In view of the above binding decisions and in view of the discussions made as above, we do not find any legal infirmity or error in the order of the Ld.CIT(A) in deleting the addition made by the A.O and we find no merits in the grounds of Appeal of the Revenue. accordingly the Ground No. 1 to 6 of the Revenue are dismissed. **Accordingly, Appeal in ITA No. 225/Del/2018 is dismissed.**

ITA No. 2356/Del/2018 and 2357/Del/2018

16. In view of the dismissal of ITA No. 225/Del/2018, since the similar issues involved in ITA No. 2356/Del/2018 and 2357/Del, the present Appeals filed by the Revenue are dismissed in terms of the order made in ITA No. 225/Del/2018.

17. In the result, Appeal of the Revenue in ITA No. 2356/Del/2018 and 2357/Del/2018 are dismissed.

Order pronounced in the open court on : **23/09/2022.**

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated : 23/09/2022

**R.N* Sr PS*

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI