

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “F”: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA Nos. 2915, 2916 & 2917/DEL/2023
Asstt. Yrs: 2015-16, 2016-17 & 2017-18**

Income-tax Officer (Exemption), Ward-2(4), New Delhi.	<u>Vs</u>	Professional Assistance for Development Action, Delhi. PAN: AAATP0345D
APPELLANT		RESPONDENT
Assessee represented by	Shri K.V.S.R. Krishan, CA; & Shri Aman Goel, CA	
Department represented by	Shri Vivek Vardhan, SR. dR	
Date of hearing	10.04.2024	
Date of pronouncement	22.04.2024	

ORDER

PER KUL BHARAT, JM:

The captioned appeals, by the Revenue, are directed against separate orders of the National Faceless Appeal Centre (NFAC), Delhi, pertaining to the assessment years 2015-16, 2016-17 & 2017-18. Since identical grounds have been raised for adjudication, all these appeals were heard together and are being disposed of by a consolidated order for the sake of convenience and brevity.

2. Common grounds raised by the Revenue for the assessment years in question are as under:

“i. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the activities of the assessee are charitable in*

nature and that the assessee is eligible for exemption u/s 11 of the Income-tax Act, 1961 (the Act) by not appreciating that the activities of the assessee involve rendering of services in relation to carrying on of a trade, commerce or business and hence, hit by the proviso to section 2(15) of the Act.

ii. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in directing the AO to allow the exemption u/s 11(1) of the Act without appreciating the fact that the assessee cannot be treated to be engaged in a charitable activity and that the AO has rightly denied the exemption.

iii. The Ld. CIT(A) while deciding the matter, relied upon the decision of Hon'ble ITAT in assessee's own case for AY 2011-12 in I.T.A. no3662/Del/2015. The Hon'ble ITAT while deciding the said appeal relied upon the decision of Hon'ble Delhi High Court in the case of India trade Promotion Organization Vs DGIT(E)-53 Taxmann.com 404 (Delhi) 2015 wherein the Hon'ble High Court, while interpreting the proviso to section 2(15) held that mere on the basis of receipt of fee or charge cannot be said that the assessee is involved in any trade, commerce or business. However, the Revenue had not accepted the decision of this Hon'ble Court in the case of India trade Promotion Organization Vs DGIT and filed SLP before the Hon'ble Supreme Court of India. Moreover, the said judgment of the Hon'ble Delhi High Court is no longer relevant on the issue in question, in view of the judgment dated 19.10.2022 of Hon'ble Supreme Court in the case of CIT Ahmedabad Urban Development Authority, whereby the Court has recorded its findings regarding the interpretation of the changed definition of 'charitable purpose' (w.e.f. 01.04.2009) as well as later amendments and other related provisions of the Act. In the said judgment, the Hon'ble Supreme Court has specified certain parameters to determine whether the activities of the trust having object of general public utility are charitable in nature or they are in the nature of trade, commerce etc. The Ld. CIT(A) has erred in not deciding this case in the light of judgment of Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority.

iv. The Appellant craves leave to add, alter, amend, append or delete any of above grounds."

2.1 The only issue involved in the grounds of appeal is whether the assessee is eligible for exemption u/s 11 of the Income-tax Act, 1961 (the “Act”).

3. Facts, in brief, as culled out from the material available on record, is that the assessee is engaged in activities for upliftment of the poor, providing training and skill development of the poor in the rural areas, in the backward districts of the State like Bihar, Jharkhand, Orissa, Madhya Pradesh, Chhattisgarh and West Bengal etc. The assessee gets grants from Central and State Government and also donation from the various organizations like, GATES Foundation etc. The assessee has been allowed benefit of exemption u/s 11 of the Act continuously up to A.Y. 2010-11. However, in A.Y. 2011-12 onwards, the assessee has been denied said exemption by the AO by invoking proviso to section 2(15) of the Act. In appeal, the First Appellate Authority allowed the exemption under section 11 of the Act with all consequential benefits. For A.Y. 2011-12 to 2014-15, the Tribunal has upheld the decision of the CIT(A), holding that the assessee is not engaged in any trade, commerce or business and thus proviso of section 2(15) is not attracted to the case of the assessee. The instant appeals, preferred by the Revenue, against orders of First Appellate Authority, pertain to A.Y. 2015-16, 2016-17 & 2017-18.

4. At the outset, learned counsel for the assessee submitted that the issue involved is squarely covered in favour of the assessee and against the Revenue by earlier orders of the Tribunal in assessee’s own case, consistently holding that assessee is not engaged in any trade, commerce or business and thus mischief of proviso to Section 2(15) of the Act is not attracted in assessee’s case. He submitted that impugned orders of the learned First Appellate Authority for the assessment years in question being in consonance with earlier decisions of the Tribunal and facts of the case in all the years remaining the same, are to be affirmed. He also

submitted that the orders of the Tribunal in respective assessment years have also been affirmed by the Hon'ble High Court of Delhi. In support of his contention, learned counsel has also filed copies of respective orders of the Tribunal and the Hon'ble High Court.

5. Per contra, learned DR opposed the submissions and relied on the order of AO, denying benefit of Section 11 of the Act.

6. Having heard rival submissions and perusing the material available on record, including the orders of the Tribunal in earlier years, we find that in assessee's case for A.Y. 2014-15, the Tribunal vide its order dated 23.09.2021, rendered in ITA no. 3313/Del/2018, has decided the issue in favour of the assessee and dismissed Revenue's appeal, inter alia, observing as under:

“(C) We have heard both sides and perused the materials available on record. Both sides are in agreement that facts and circumstances for Assessment Year 2014- 15 (to which the present appeal pertains) are Identical to facts and circumstances of Assessment Years 2011-12, 2012-13 and 2013-14. The Ld. CIT(A) has also made his observation in paragraph 4.1.6 of her aforesaid impugned appellate order dated 13.02.2018, the relevant portion of which has already been reproduced in foregoing paragraph No. (B) of this order. Neither side has brought any materials for our consideration to persuade us to take a view different from the view already taken by Co-ordinate Benches of ITAT, Delhi in assessee's own case by aforesaid orders dated 3.09.2019, 8.12.2020 and 23.02.2021 of Co-ordinate Benches of ITAT, Delhi, wherein issues have been decided in favour of the assessee in identical facts. Neither side has brought to our attention any distinguishing facts and circumstances for Assessment Year 2014-15 (to which the present appeal pertains) from facts and circumstances of the aforesaid orders dated 3.09.2019, 8.12.2020 and 23.02.2021 of Coordinate Benches of ITAT, Delhi. The Co-ordinate Benches of ITAT, Delhi have already decided the issues in dispute in favour of the assessee vide aforesaid orders dated 3.09.2019, 8.12.2020 and 23.02.2021 listed in foregoing paragraph no. (B.1) of this order. For ease of reference, the relevant portion of the aforesaid order dated 3.09.2019 passed by Co-

ordinate Bench of ITAT, Delhi in assessee's own case, for Assessment Year 2011-12 in ITA No 3662/ Del/2015 are reproduced as under:

“2. Briefly stated facts of the case as culled out from the order of the lower authorities are that the assessee is registered under the Societies Registration Act, 1860 and also registered under section 12AA(1) of the Income-tax Act, 1961 (in short 'the Act') as a charitable society vide order dated 27/10/1984 of the competent authority. The assessee is engaged in activities for upliftment of the poor, providing training and skill development of the poor in the rural area in the backward districts of the states like, Bihar, Jharkhand, Orissa, Madhya Pradesh, Chhattisgarh and West Bengal etc. The assessee gets grant from Central and State Government and also donation from the various organization like, 'Gate foundation' etc. The assessee has been allowed benefit of exemption under section 11(1) of the Act continuously up to assessment year 2010-11, however, in the instant assessment year the assessee has been denied said exemption by the Assessing Officer invoking the mischief of the proviso to section 2(15) of the Act. On further appeal, the Ld. CIT(A) allowed the exemption under section 11(1) of the Act with all consequential benefits. Aggrieved, the Revenue is in appeal before the Tribunal, raising the grounds as reproduced above.

3. Before us, the Ld. DR relied on the order of the Assessing Officer and referred to main objects of the assessee listed on page 2 of the assessment order. He Submitted that the assessee is engaged in providing training/technical assistance, capacity building, provide know-how and technical guidance, develop and promote technologies and their application in the field, assist development agencies, to do planning and information of development projects, to assist development agencies and funding various organization and in view of the services rendered, the assessee receives fees from its clients. He invited our attention to the fact that tax was also deducted at source on grants received by the assessee. He submitted that the assessee falls under the sixth limb of 'advancement of object of general public utility' and is engaged in rendering services in relation to carrying on trade or commerce or business against a sum of fee received and thus the proviso to section 2(15) get attracted in the case of assessee. Further, he referred to para 4.6 of the order of the Ld. CIT(A) wherein he has concluded that apparently the assessee was not

involved in any trade, commerce or business. The Ld. DR submitted that the Ld. CIT(A) has not applied his mind to the facts of the case as he himself was not confirmed that the assessee was not engaged in trade, commerce or business. The Ld. DR referred to page 46 of the paper-book filed by the assessee and submitted that the assessee was not having any independence of working and its projects were being completely monitored by the donors. Accordingly, he submitted that the Assessing Officer has rightly denied exemption under section 11(1) of the Act invoking proviso to section 2(15) of the Act.

4. On the contrary, the Ld. counsel of the assessee filed a paper-book containing pages 1 to 231 and relied on the order of the Ld. CIT(A). The Ld. counsel referred to various pages of the paper-book to substantiate that the assessee was engaged in projects related to providing relief to the poor. He specifically referred to page 53 of the paper-book wherein the grant was sanctioned by 'Sir Dorabji Tata Trust' to enable the assessee for strengthening rural livelihoods in the economically poor regions of India. He also drew our attention to page 26, 29, 30 & 34 of the paper-book highlighting the project done in backward areas particularly 'Scheduled Castes' and 'Scheduled Tribes' communities of various states for taking up issues affecting their lives, including accessing basic services, rights and entitlements and their participation in local governance structure. The Ld. counsel referred to CBDT Circular No. 11/2008, dated 19/12/2008 and highlighted that the relief to the poor includes welfare of the economically and socially disadvantaged or needy. According to him, the activities of the assessee being in furtherance to the cause of disadvantaged women or children or a small and marginal farmers etc. same falls under the charitable activity of 'relief to poor'.

5. The Ld. counsel submitted that even the proviso to section 2(15) is not applicable as no extra fee has been charged for implementing the project work of various agencies. He further submitted that even in case of entities engaged in advancement of object of general public utility, merely receiving fee or charge, cannot make the assessee as involved in trade, commerce or business as held in the case of India Trade Promotion Organization Vs. DGIT(E) 53, Taxman.com 404 (Delhi). He further submitted that in the case of ICAI Vs DGIT(E) 347 ITR 99(Del) Hon'ble Court has held that profit motive test should be satisfied for holding whether the entity is engaged in trade or

commerce or business and there should be facts and other circumstances which justify that the activity undertaken is in the nature of the business. According to the Ld. counsel the Assessing Officer has failed to justify with cogent evidences that activity of the assessee is in the nature of the trade, commerce or business.

6. He further submitted that the assessee has been allowed the benefit of section 11 of the Act consistently from its registration. He submitted that even after the newly amended provision of section. 2(15) of the Act by the Finance Act, 2008 the assessee has been allowed benefit of section 11 in assessment year 2009-10 and 2010-11, which have been completed under section 143(3) of the Act by the Assessing Officer. He referred to assessment order for assessment year 2010-11 and submitted that the Assessing Officer have taken due note of the activities of the assessee and held the same as to be charitable in nature within the meaning of section 2(15) of the Act. He submitted that in view of the rule of consistency, the assessee is entitled to exemption under section 11(1) of the Act as there is no change in the facts in the year under consideration as compared to assessment year 2009-10 and 2010-11. In support of the contention of the rule of consistency, the Ld. counsel relied on the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang versus CIT (1992) 193 ITR 321 (SC).

“7. We have heard rival submission of the parties and perused relevant material on record, including paper-book filed by the assessee. According to the Assessing Officer, the activity of the assessee falls under "advancement of general public utility", and the assessee being engaged in business of providing services against fee, the activity is out of domain of charitable purpose in view of the proviso to section 2(15) of the Act. The contention of the assessee before us is that the activity of the assessee falls under the main limb of definition of the charitable purpose of relief to poor. The alternative contention of the assessee is that even if the activities of the assessee are considered under the limb of advancement of general public utility, same is not in the nature of trade, commerce or business as no profit motive is involved in providing the services and no extra fee is charged from the clients except cost of the projects.

7.1 As far as the activity of the assessee under the limb of advancement of general public utility is concerned, we find that

learned Assessing Officer has not brought on record any evidences which could suggest that the activities of the assessee have been carried out with profit motive. The Ld. DR also even could not controvert the fact that the assessee has not charged any fee from the clients except the cost of project actually incurred. In the sanction letter of grant to the assessee, there is mention of supervision or monitoring of the activities by the donor, but that in itself is not sufficient to hold that any profit motive is involved. It is quite normal that the donor want to verify whether the grants have been incurred for the intended purpose, which in our opinion, is in any manner does not establish that the activities of the assessee is business activity. The Ld. CIT(A) following the decision of the Hon'ble Delhi High Court has decided the issue in favour of the assessee observing as under:

"4.4 I have considered the order of the AO and the submissions of the assessee and I find considerable merit in the submissions of the assessee that the mischief of Proviso of section 2(15) is not apparently applicable as, the assessee is not involved in any trade, commerce or business. The assessee is very much a charitable society and is working for the welfare of the poor and rural people and is very much eligible for exemption u/s 11(1) and the AO has not made out any specific case to show that the assessee is involved in any trade, commerce or business.

4.5 Recently the Hon'ble Delhi High Court in the case of India Trade Promotion Organization vs. DGIT(E), 53 Taxmann.com 404 (Delhi) 2015 (order dated 22/1 / 2015 has upheld the constitution validity % the proviso of section 2(15) which was under challenge being discriminatory in view of the Article 14 (Equality before law) of the Constitution of India but the Hon'ble High Court has read down the strict and literal interpretation of the Proviso of section 2(15) and has held that mere receipt of fee or charge cannot be said that the assessee is involved in any trade, commerce or business and has accordingly allowed the relief to the ITPO case vide Para 58 and 59 of the order.

4.6 After considering all the facts and circumstances of the case, I am of the view that apparently the assessee is not apparently involved in any trade, commerce or business and as

such the mischief of Proviso of section 2(15) is not applicable and the assessee can be allowed the relief or exemption u / s 11(1) as a charitable society and accordingly the AO is directed to allow the exemption u/s 11(1) with all the consequential benefits."

7.2 In our considered opinion, the assessee is not engaged in any trade, commerce or business and thus mischief of proviso of section 2(15) is not attracted in the case of the assessee. Accordingly, we uphold the finding of the Ld. CIT(A) on the issue in dispute."

*(C.2) The aforesaid order dated 23.09.2021 of Co-ordinate Bench of ITAT, Delhi was followed by Co-ordinate Bench of ITAT, Delhi for Assessment Years 2012-13 and 2013-14 in aforesaid orders dated 8.12.2020 and 23.02.2021 respectively. In identical facts and circumstances the issues in dispute were already been decided in favour of the assessee by aforesaid orders dated 03.09.2019, 8.12.2020 and 23.02.2021 of Co-ordinate Benches of prod AT Delhi, for Assessment Years 2011-12, 2012-13 and 2013-14 respectively. In view of the foregoing, and respectfully following the aforesaid orders dated 03.09.2019, 8.12.2020 and 23.02.2021 of Co-ordinate Benches of ITAT, Delhi in assessee's own case, in identical facts and circumstances, for Assessment Years 2011-12, 2012-13 and 2013-14 respectively, we decide the issues in dispute in the present appeal before us, t o0, in favour of the assessee. Accordingly, we decline to interfere with the impugned appellate order dated 13.02.2018 of the Ld. C*Pi(A) and dismiss this appeal filed by Revenue."*

6.1 Undisputedly, for the assessment years under consideration there is no change in facts and circumstances. The impugned orders of the learned First Appellate Authority for the assessment years in question are in consonance with earlier orders of the Tribunal. Therefore, respectfully following binding precedence, we see no reason to take a contrary view for the assessment years under appeal. Consequently, respective orders of learned CIT(A) for A.Y. 2015-16, 2016-17 & 2017-18 are affirmed. Grounds of appeal raised by the Revenue are dismissed.

7. Appeals of the Revenue are dismissed.

Order pronounced in open court on 22nd April, 2024.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI