

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'D', NEW DELHI**

**Before Sh. N. K. Saini, AM and Ms. Suchitra Kamble, JM**

**ITA No. 5862/Del/2015 : Asstt. Year : 2011-12**

Dy. Commissioner of Income Tax (E), Circle-2(1), New Delhi	Vs	The Associated Chambers of Commerce and Industry of India, 5, Sardar Patel Marg, Chankyapuri, New Delhi-110001
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAATT4704C</b>		

**Assessee by : Sh. Ved Jain, Adv.**

**Revenue by : Sh. Umesh Chand Dubey, Sr. DR**

<b>Date of Hearing : 24.11.2016</b>	<b>Date of Pronouncement : 25.11.2016</b>
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**ORDER**

**Per N. K. Saini, AM:**

This is an appeal by the department against the order dated 28.08.2015 of Id. CIT(A)-40 (Exemption), New Delhi.

2. Following grounds have been raised in this appeal:

*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.*

*“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring that fact that as per proviso to section 11(l)(c) on the I. T. Act, 1961, the expenses incurred by the assessee outside India on account of foreign traveling were not allowable as application of income as the assessee was not notified by the CBDT in this regard.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring that Hon'ble jurisdiction High Court in the case of DIT(E) Vs. National Association of Software and Services Companies (NASCOM) has referred to the judgement of Bench of three judges of Hon'ble Apex Court in H.E.H. Nizam's Religious Endowment Trust vs. Commissioner of Income Tax (1966) 59 ITR 582 wherein ratio has been laid down 'the state did not like to forgo the revenue in favour of charity outside the country', has held income applied outside India cannot be considered as application of **income** of the trust in India for charitable purposes in the absence of CBDT's notification u/s 11(1)(c) of the I.T. Act, 1961 in this regard."*

3. During the course of hearing the ld. Counsel for the assessee at the very outset stated that the issue under consideration is squarely covered by the order dated 31.08.2015 of this bench of the ITAT in assessee's own case in the preceding year in ITA No. 6525/Del/2013. It was further stated that the said order has been confirmed by the Hon'ble Jurisdictional High Court (Copies of the above said orders were furnished which are placed on the record).

4. In his rival submissions the ld. DR could not controvert the aforesaid contention of the ld. Counsel for the assessee.

5. We have considered the submissions of both the parties and perused the material available on the record. It is noticed that an identical issue having similar facts was a subject matter of adjudication in the preceding year in assessee's own case in ITA No.6525/Del/2013 wherein relevant findings have been given in paras 4 to 8 of the order dated 31.08.2015 and read as under:

4. *We have heard both the sides and carefully perused the relevant material placed on record. Ld. DR supporting the action of the AO submitted that the Ld. CIT(A) has erred in ignoring the fact that as per proviso to section 11(1)(C) of the Income Tax Act, 1961, the expenses incurred by the assessee outside India on account of foreign traveling were not allowable as application of income as the assessee was not notified by the CBDT in this regard. Ld. DR vehemently contended that the CIT(A) has erred in ignoring that Hon'ble jurisdictional High Court in the case of DIT(E) vs. National Association of Software and Services Companies (NASCOM) has referred to the judgment of Bench of three judges of Hon'ble Apex court in H.E.H. Nizam's Religious Endowment Trust vs. Commissioner of Income Tax (1956) 59 ITR 582 wherein ratio has been laid down that the state did not like to forego the revenue in favour of charity outside the country. Ld. DR further pointed out that in this case, the Hon'ble Apex Court has held that income applied outside India cannot be considered as application of income of the assessee Trust in India for charitable purposes in absence of CBDT's Notification u/s 11(1)(c) of the Act in this regard. Ld. DR finally prayed that the impugned order may be set aside by restoring that of the AO.*

5. *Ld. counsel of the assessee supporting the impugned order submitted that in the case of Gems & Jewellery Promotion Council vs ITO reported as 68 ITD 95 ITAT Mumbai on the similar issue of foregoing travelling expenses, the Tribunal has allowed the relief to the assessee on the ground that the foreign travelling expenses are for the purposes of promotion of trade and industry in India. Ld. Counsel of the assessee further pointed out that similar issue was also raised before ITAT 'I' Bench Delhi in the case of ICAI vs DIT(E) Delhi in ITA No.1853/Del/2010 wherein foreign travelling expenses were allowed on the ground that the expenses are for the purposes of main objective of the assessee. Ld. Counsel also took us through para no. 2.1 and 2.2 of the impugned order and submitted that as per explanation and submissions of the assessee, it is apparent that the foreign travelling expenses of the assessee were incurred for the purposes of promotion of trade and industry in India as the main objective of the assessee is to promote trade and industry for which sending a delegation of foreign countries is an essential part of main objective. Ld. Counsel finally submitted that appeal of the revenue is devoid of merits and the same may kindly be dismissed.*

6. *On careful consideration of above submissions of both the sides, at the very outset, we note that the CIT(A) has granted relief for the assessee with following observations and conclusion:-*

*“2.1 The assessee is in appeal against the order of the AO and it is submitted that the assessee is a charitable organization and it is registered u/s 12A and the income of the assessee is also exempt u/s 11. It is submitted that the main objective of the assessee is to promote trade and industry in India and for this various trade delegations are sent to foreign countries but the main purpose is to promote*

*trade and industry in India. It is submitted that although the expenditure is incurred for the foreign traveling but the same is for the main objectives of promoting trade and industry in India for the purposes in India. It is submitted that the case of the assessee is also fully covered by the case of Gems and Jewellery Promotion Council vs. ITO 68 ITD 95, Bombay ITAT in which there was a similar issue of foreign traveling expenses and the Hon'ble Tribunal has allowed relief to the assessee on the ground that the foreign traveling expenses are for the purposes in India. It is also submitted that the similar issue also came up in the case of ICAI vs. DIT (Exemption) Delhi in ITA No. 1853/Delh/2010 (I Bench, ITAT, Delhi) in which there were foreign traveling expenses and the tribunal has allowed the same on the ground that the expenses are for the purposes in India.*

*2.2 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. It is apparent that the foreign travelling expenses of the assessee are for the purposes in India as the main objective of the assessee is to promote trade and industry for which sending of delegations to foreign countries is part of the main objective. After considering all the facts and circumstances of the case I am of the view that there is no proper justification for disallowing the foreign traveling expenses and accordingly the addition made by the AO is deleted.”*

*7. On vigilant perusal of the judgment of Hon'ble Supreme Court in the case of H.E.H. Nizam's Religious Endowment Trust vs. Commissioner of Income Tax (supra), we are in agreement with the contention of the ld. Counsel of the assessee that the facts of the present case are distinguishable from that case. On careful reading of said judgment of Hon'ble Supreme Court, it is amply clear that in that case, the*

*assessee Nizam's Trust was denied exemption in regard to the application of income from property as per second part of clause (i) of section 4(3) of the Income Tax Act 1922 (as applicable at that time) which were applied or finally set apart for religious or charitable purposes outside taxable territories. In the present case, it is not the case of the revenue that the assessee association applied its income or receipts outside taxable territories because the issue before us only relates to expense towards foreign travelling of delegation sent by the assessee association for the purposes of promotion of trade and industry in India which is the main object of the assessee association. In view of above, we respectfully hold that the benefit of the ratio of the said decision of Hon'ble Supreme Court in the case of H.E.H. Nizam's Religious Endowment Trust vs. Commissioner of Income Tax (supra) is not available for the revenue as the facts and circumstances of the present case are distinguishable from that case.*

8. *Undisputedly and admittedly, the main objective of the assessee association is to promote trade and industry in India that in the present era of economic globalization, sending delegation to foreign countries cannot be held as outside the ambit of main objective of the assessee association. Per contra, from the Article of Association available at page 3 to 38 of the assessee's paper book, it is vivid that the main objects as contained in clause (3) of the Memorandum of Association, objectives cannot be fulfilled without sending foreign delegation and, therefore, foreign travelling expenses incurred by the assessee cannot be held as application of income outside taxable territories of the assessee. Therefore, we are inclined to agree with the conclusion of the CIT(A) and we are unable to see any infirmity, perversity or any other valid reason to interfere with the same. Accordingly, ground no. 1 and 2 of the revenue being devoid or merits are dismissed."*

6. The aforesaid order of the ITAT has been affirmed by the Honorable Jurisdictional High Court in ITA 343/2016 vide order dated 24.05.2016 by holding in para 4 of the order as under:

*“4. The ITAT examined the Articles of Associations of the Respondent Assessee and came to the conclusion that foreign travel expenses incurred by it cannot be termed as application of income outside the taxable territories of the Assessee. The Court does not find any legal infirmity in the view taken by the ITAT. No substantial question of law arises. The appeal is dismissed.”*

7. In view of the above, we do not see any merits in the appeal of the department.

8. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 25/11/2016)

**Sd/-**  
**(Suchitra Kamble)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 25/11/2016**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**