

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH SMC NEW DELHI
BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER
ITA No.234/Del/2017
Assessment Year 2012-13**

Income Tax Officer (E), Ward-1(2), New Delhi.	Vs.	M/s. Indian National Theatre Trust, 4, Safdar Hasmi Marg, New Delhi. PAN: AAATI 1040E
(Assessee)		(Respondent)

Assessee(s) by :	Shri Anunav Kumar, Adv.
Revenue by :	Ms. Bedobani Chaudhuri, D.R.

सुनवाई की तारीख/Date of Hearing : 20/04/2017

घोषणा की तारीख /Date of Pronouncement: 25/04/2017

ORDER

This appeal of the assessee arises from the order of learned CIT(A)-40, Delhi, vide order dated 03.10.2016 for the assessment year 2012-13.

2. The assessee has raised the following grounds of appeal.

“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 assessee was predominantly engaged in the activities of hiring out of auditorium and providing space for rent in lieu of fee, which were commercial in nature and hence, 1st proviso to Section 2(15) of the Income Tax Act, 1961 is applicable in this case.”

3. The brief facts of the case are that the assessee is a trust which was constituted by the Trust Deed/Memorandum of Association dated 15.02.1958 and is also registered under section 12AA(1) on 09.02.1977. The main activity of the assessee is to promote artistic and cultural expression through dance and drama etc. The assessee owns an auditorium at 4, Safdar Hashmi Marg, New Delhi which was claimed to have been used for promoting the objects of the trust. For this the auditorium is also rented out to the public. The assessee also supports

activities of another charitable organization, Sri Ram Centre for Performing Arts, which has similar objects and the assessee also gives donations to it. The main income of the assessee is from rental income of the auditorium and investments. The Assessing Officer analyzed the activities of the trust in view of the amendment in section 2(15) and categorized its activities in the category of "advancement of any other object of general public utility". Further, taking note of the facts that the principle activity of the assessee trust was letting out the auditorium with clear profit motive, it was concluded that in view of amended provisions of section 11 was denied to the assessee trust.

4. Learned CIT(A) confirmed the action of the Assessing Officer.

5. I have heard the rival contentions and perused the facts of the case. The issue is covered by the decision of Hon'ble High Court of Delhi in assessee's own case vide judgment in ITA No.499/2012 dated 05.11.2012 for the assessment year 2008-09 and the relevant decision is reproduced hereinbelow:

"3. We have heard counsel for the parties. Revenue claims to be aggrieved by the order dated 10.10.20 II of the Income Tax Appellate Tribunal (Tribunal, for short) in ITA, No.3795/Del/2011. It urges that the impugned order holding that assessee is entitled to exemption under Section 11 is erroneous. The assessee trust claimed and was granted exemption. Its main objects are promotion of artistic and cultural expression through dramas, music and education etc. in its own auditorium. For the relevant assessment year 2008-09 it returned a total income of Rs.1,67,83,000/-. It incurred expenditure of Rs.23 lakhs towards repairs and maintenance and other running expenses in the maintenance or the building. "Nil income" return was filed on account of the fact that receipts were exempted. The assessment order inter alia ruled that the expenditure towards donation (Rs.23 lakhs) made to other trust was inadmissible and that since the respondent-assessee did not carry out any charitable activity but merely let out its premises to other organization as well auditorium to other theatre groups etc., it was engage in a commercial activity,

4. The assessee's appeal was allowed by the Appellate Commissioner who relied upon his previous orders as well as those of the Tribunal. The revenue unsuccessfully appealed to the Tribunal Ld. counsel for the appellant revenue urged that letting out the auditorium to other parties and part of the premises did not constitute charitable purpose. It was emphasized that in the absence of any cultural activity such as staging in-

house production etc., the assessee could not claim to be carrying on any activity that can qualify as charitable. It was urged in addition that the donation made to the tune of Rs.23 lakhs could not have been allowed since that did not amount to application of income for a charitable purpose.

5. Counsel for the assessee relied upon the previous orders of the ITAT, particularly common order dated 22nd April, 1999. Reliance was also placed upon the judgment of this Court in CIT vs. M/s. Indian National Theatre Trust New Delhi ITR 134/1986, which had affirmed that order on 13.11.2007.

6. This Court has considered the submissions. The assessee had in its return before the Assessing Officer stated as follows:

As per the aforesaid letter your goodself have observed that income and expenditure of our Trust are mainly related to property held by us at 4, Safdar Hashmi Marg, New Delhi, expenditure incurred is not related to charitable activities except donation paid to certain parties. Your goodself had observed that on the basis of above it appears that there is absence of any philanthropic & charitable activities on the part of the trust.

In this connection we are have to submit that our was formed as Charitable Trust in 1958. It was duly registered u/s 12A vide Registration no. DLI(C)(T-422) Dt.9/2/1977. The trust is the owner of an auditorium constructed at plot measuring 0.603 Acres situated on Barakhamba Road (opposite Mandi House) i.e. 4, Safdar Hashmi Marg, New Delhi. The trust is using the Auditorium for carrying on charitable purposes. Object of the Trust is a promote artistic and cultural expression through drama, music, education cognate activities. Accordingly the Auditorium is made available for performance in the nature of dance drama, music, education etc. Auditorium is made available for normally to schools, colleges, theatre groups etc. Our trust takes nominal charges for making the auditorium available for such activity only with a view to meet partly running cost. It is emphatically stated that activity of making available auditorium to other institution for the purpose of promoting dance, drama, music etc is in the nature of charitable activities and same does not result in any earning to the trust. With a view to earn income for the purpose of carrying on the charitable activities, the trust had partly let out the premises so as to earn regular income. The deficit of making available the auditorium for promoting dance, drama, music, education etc. is met out of the said rental income. Further, our trust also supports charitable activities being carried by other on charitable institutions having objects consistent with our object by way of making donations to them. The aforesaid position is being there for number of years and charitable activities of our trust have always been accepted in the past. "

7. The Assessing officer however rejected the contention stating that the assessee used to charge market rates while hiring or letting out auditorium. We discern no material to warrant that conclusion. Apart from hiring of the auditorium, the assessee received rents on account of letting out some portion of its premises to M/s. Benett & Coleman. That cannot be termed unreasonable. In view of the fact that the previous orders in which tile claim or the assessee to be a charitable trust was upheld, we do not see any reason to interfere with the impugned order in this aspect. As far as second question i.e. donation of Rs.23 lakhs is concerned, this Court noticed that the same has not been urged on behalf of the revenue in its appeal. Nevertheless this aspect is covered by the previous ruling in ITR 134/1986 dated 13.11.2007. The Court observed in that

judgment as follows:

"11. As far as the third question is concerned, on examining the orders passed by the authorities, in which the objects of both the Assessee Trust as well as the Shriram Centre for Art and Culture have been discussed, we are of the considered view that the Tribunal was correct in its conclusion that the sum of Rs.50,000/- deposited with Shrirain Centre for Art and Culture should be treated as an application of the income of the Trust. The word application has to be given a wider interpretation keeping in view the purpose for which the provision has been introduced. "

8. For the above reasons there are no substantial questions of law which arises for consideration by this Court in the present appeal; the same is accordingly dismissed."

6. The decision of the Hon'ble High Court has been followed in assessee's own case in ITA No.6032/Del/2012 for the Assessment Year 2009-10 where Revenue appeal has also been dismissed accordingly. In the facts and circumstances of the case and the decision of Hon'ble High Court of Delhi and ITAT Delhi Benches, the learned CIT(A) has rightly allowed the appeal of the assessee and I find no infirmity in his order. Accordingly, all the grounds of the assessee are dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on this day 25th April, 2017

Sd/-

(B.P. JAIN)

ACCOUNTANT MEMBER

Dated: 234/04/2017

Prabhat Kumar Kesarwani, Sr.P.S.

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi