

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6588/Del./2015
(ASSESSMENT YEAR : 2011-12)**

ITO (E), Ward 1 (3), vs. M/s. Consumer Electronics &
New Delhi. Appliances Manufacturers Association,
Wave – 1, F – 4/23, 4th Floor,
Plot No.D – 6, Sector 18,
Noida – 201 301.

(PAN : AAATC0558R)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Smt. Rano Jain & Shri Ashish Chadha,
Advocates

REVENUE BY : Shri Atiq Ahmad, Senior DR

Date of Hearing : 21.09.2017

Date of Order : 03.10.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Income-tax Officer (E), Ward 1 (3), New Delhi (hereinafter referred to as 'the Revenue'), by filing the present appeal, sought to set aside the impugned order dated 14.09.2015 passed by the Commissioner of Income-tax-40, New Delhi qua the assessment year 2011-12 on the grounds inter alia that :-

“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the benefits of section 11 & 12 of the Income Tax Act ignoring the fact that the assessee activities involve rendering of services in relation to carrying on of a commerce or business and hence, proviso to section 2(15) of the I.T. Act, is clearly applicable in case of the assessee.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : the assessee is a society registered under Societies Registration Act, 1860 and has been accorded registration under section 12A(a) of the Income-tax Act, 1961 (for short ‘the Act’) vide order dated 15.01.1996. Assessee company was constituted on 17.08.1992 with main object to promote the development of the Consumer Electronics & Appliances Industry like Television, Video, Audio, Games, Toys, Electronic Clocks and watches, Microwave Ovens etc. and components used in these products, through the development of a healthy and progressive activity in research and development, manufacture, trade, commerce, sale and use of these items; to promote a feeling of fraternity and unanimity among its members on all subjects connected with their common good; and to promote fair completion and healthy practices among manufacturers, dealers and users of Consumer Electronic items.

3. During the assessment proceedings, AO noticed that the assessee is neither in the field of education nor in the field of medical relief or relief for poor and invoked the provisions contained under provisions of section 2(15) of the Act. Being dissatisfied with the submissions made by the assessee, AO came to the conclusion that the activities carried out by the assessee society is in the nature of trade, commerce or business and thus failed to fulfill the requirements of sections 11, 12A (b) and 13 of the Act.

4. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has allowed the appeal by allowing the benefit of exemption u/s 11 (1) of the Act to the assessee society as a charitable institution with consequential benefits. Feeling aggrieved, the Revenue has come up before the Tribunal by way of challenging the impugned order passed by Id. CIT (A).

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Before proceeding further, we would like to extract the provisions contained u/s 2(15) of the Act, proviso, for ready reference :-

“2. In this Act, unless the context otherwise requires,—

.....

(15) "charitable purpose" includes relief of the poor, education, [yoga,] medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

[Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of 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, unless—

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;]]”

7. Undisputedly, the assessee society is registered u/s 12A(a) of the Act. Perusal of the Memorandum of Association of Consumer Electronics and Appliances Manufacturers Association, the assessee society, apparently shows that the same was set up as a charitable institution to work for development of consumer electronics and appliances industries like television, video, audio etc. and the activity in research and development, manufactures, trade, commerce, sale, etc. and to promote a feeling of fraternity

and unanimity among its members of all subjects connected with their common good.

8. Now, in the backdrop of the objects of the assessee society enshrined in Memorandum of Association, which have undisputedly not been changed, the sole question arises for determination in this case is :-

“as to whether by virtue of its activities the assessee society falls within the mischief of provisions of section 2(15) of the Act.”

9. AO proceeded to invoke proviso to section 2(15) of the Act on the sole ground that since the assessee has received payments on account of subscription received, admission fee received, meeting & conference contribution, interest, misc. income, CEAMA News receipts, contribution for market study and contribution for anti dumping case from different parties, these activities are in the nature of trade, commerce and rendering services in relation to the trade, commerce and business. The AO has also not brought on record any material if the assessee society is carrying out activities which are not enshrined in the Memorandum of Association, a primary document, to control the activities of the assessee society.

10. Hon'ble Delhi High Court in case of ***India Trade Promotion Organization vs. Director General of Income-tax (Exemptions)*** –

(2015) 371 ITR 333 (Del.) while deciding the identical issue held

as under :-

“Section 2(15), read with section 10(23C) of the Income-tax Act, 1961 - Charitable purpose – Object of general public utility (Proviso) - Whether in deciding whether any activity is in nature of trade, commerce or business or is one for rendering any service in relation to any trade, commerce or business it has to be examined whether there is an element of profit making or not - Held, yes - Whether expression 'charitable purpose', as defined in section 2 (15) cannot be construed literally and in absolute terms and it has to take colour and be considered in context of section 10(23C)(iv) - Held, yes - Whether correct interpretation of proviso to section 2(15) would be that it carves out an exception from charitable purpose of advancement of any other object of general public utility and that exception is limited to activities in 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 - Held, yes - Whether thus if dominant and prime objective of institution, which claims to have been established for charitable purposes, is profit making, whether its activities are directly in nature of trade, commerce or business or indirectly in rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a 'charitable purpose' - Held, yes - Whether where driving force is not desire to earn profits, but object of promoting trade and commerce not for itself, but for nation, it is clearly a charitable purpose - Held, yes - Whether constitutional validity of proviso to section 2(15) introduced by Finance Act 2008 is to be upheld, however, it is to be read down in manner as indicated above – Held, yes – Whether objects of India Trade Promotion Organization namely are charitable in nature - Held, yes [Paras 43,46,47,58 & 59] [In favour of assessee]”

11. When we examine the dominant and primary object of the assessee society in the light of the decision rendered by Hon’ble Delhi High Court in case cited as **India Trade Promotion Organization** (supra), the activities of the assessee society are not

in the nature of trade, commerce or business nor rendering any service in relation to any trade, commerce or business.

12. When we further examine nature of activities being carried out by the assessee society duly extracted by Id. AO in assessment order, the same are not in the nature of trade and commerce by any stretch of imagination. For ready reference, nature of activities carried out by the assessee society are reproduced as under :-

Sl.No.	Heads	Amount (in Rs.)
1	Subscription received	34,49,307
2	Admission fee received	15,000
3	Meeting & Conference Contribution	28,56,479
4	CEAMA News receipts	16,44,362
5	Interest	7,56,480
6	Contribution for Market Study	4,00,000
7	Contribution for Anti Dumping case	5,00,000
8	Misc. Income	60,470

13. In view of what has been discussed above, we are of the considered view that there is no illegality or perversity in the impugned order passed by the Id. CIT (A), hence present appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 3rd day of October, 2017.

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

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 3rd day of October, 2017
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-40, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.