

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'C', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 165/Del./2015
Assessment Year:2010-11**

I.T.O. (Exemption), Ward 1(2), New Delhi. (Appellant)	vs.	Indian National Theatre Trust, 4, Safdar Hahmi Marg, New Delhi. PAN- AAATI1040E (Respondent)
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Appellant by	Sh. Arun Kumar Yadav, Sr. DR
Respondent by	Sh. V.P. Gupta, Advocate

Date of Hearing	10.10.2017
Date of Pronouncement	11.10.2017

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the Revenue challenging the order of Id. CIT(A)-XI, New Delhi dated 09.10.2014 for A.Y. 2010-11 on the following ground :

- "1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) has erred in holding that the assessee society is a charitable organization despite the fact that the assessee society was doing business within the meaning of amended provisions of section 2(15) of the Income Tax Act, 1961."*
2. As emerged from the above ground of appeal and the facts attending to the present case, we observe that the only issue to be decided in this appeal is whether the assessee is eligible for exemption on its income u/s. 11 of the IT

Act or not. The brief facts of the case are that the assessee society is registered u/s. 12A of the IT Act with the object to carry out charitable activities to promote artistic and cultural expression through drama, music and education. The assessee company was in possession of premises which also consists of an auditorium which is provided to various charitable institutions for the purpose of artistic and cultural programmes. A portion of the premises was also given on rent to derive regular income to support the charitable activities. The Assessing Officer analyzing the activities of the assessee in terms of amended provisions of section 2(15) of the Act, observed that the assessee was indulged in advancement of object of general public utility and that the principal activity of assessee was to let out the auditorium with clear profit motive and as such the assessee-organization cannot be regarded as charitable organization. He, therefore, denied exemption u/s. 11 of the Act to the assessee-society on its income and accordingly assessed the total income of Rs.1,08,84,519/- to tax. The ld. CIT(A), after following the decisions of ITAT Delhi Benches in assessee's own cases for A.Y, 1986-87 to 1988-89 vide order dated 22.04.1999, decision of High Court in assessee's own case for A.Y. 2008-09 and again the decision of ITAT, Delhi Bench in assessee's case for A.Y. 2009-10, wherein the same activities of the assessee society were held to be charitable in nature, allowed the appeal of the assessee observing as under :

“7.4. It is observed that there is no change in the activities of the appellant Society for the year under consideration and these are similar to AY 2008-09 and 2009-10 and as well as in preceding years wherein the Hon'ble Courts have held that activities conducted by the appellant society are charitable in nature. Therefore, the amended provisions of section 2(15) of the Act is not at all attracted because basic character of the Society has been held to be charitable in nature. In view of the fact that there is no change in the activities of the appellant from earlier years, the findings made by the Hon'ble Courts in earlier years in appellant's own case clearly cover the present issue under appeal. Following the same the grounds of appeal are allowed and the appellant is entitled for exemption u/s 11 of the Act. The consequential grounds of appeal are allowed in view of the main issue decided in the appellant's favour. Therefore, grounds of appeal are allowed.”

3. The learned DR relied on the order of the AO and submitted that the Id. CIT(A) was not justified in allowing the exemption u/s. 11 of the Act ignoring the fact that the activities of the assessee society were not charitable in terms of amended provisions of section 2(15) of the Act. The Id. AR of the assessee-society, on the other relied on the impugned order.

4. Having considered the rival submissions in the light of material available on record, we find no justification to interfere with the impugned order. It is notable that the issue under consideration is squarely covered in favour of the assessee by the decision of Hon'ble jurisdictional High Court in assessee's own case for A.Y. 2008-09 and again by the order of ITAT, Delhi Bench in assessee's case for A.Y. 2009-10, wherein the same activities of the assessee society were held to be charitable in nature. The Id. learned CIT(A)

has reproduced the relevant extracts of the above decisions in the impugned order, against which no material is placed before us on behalf of the Revenue to deviate from the view already formed by Hon'ble jurisdictional High Court as well as by coordinate Bench, as noted above. There being no change in the facts and circumstances of the case, we are not inclined to disturb the findings reached by the Id. CIT(A) in the impugned order while allowing the appeal of the assessee. We, accordingly, find the appeal of the Revenue devoid of merits and liable to be dismissed.

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 11.10.2017.

Sd/-
(H.S. Sidhu)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 11.10.2017

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Copy of order forwarded to:

(1) <i>The appellant</i>	(2) <i>The respondent</i>
(3) <i>Commissioner</i>	(4) <i>CIT(A)</i>
(5) <i>Departmental Representative</i>	(6) <i>Guard File</i>

By order

Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi