

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' NEW DELHI**

**BEFORE SH. N.K.SAINI, ACCOUNTANT MEMBER
AND
SH.K.N.CHARY, JUDICIAL MEMBER**

**ITA No. 2471/Del/2016
(ASSESSMENT YEAR: 2011-12)**

DCIT (E) Circle 2(1), New Delhi	vs	National Accreditation Board for Testing and Calibration Laboratories (NABL) 3 rd Floor, NISCAIR, 14 Satsang Vihar Marg, New Delhi PAN:AAATN3528Q
(Appellant)		(Respondent)
Department by		Sh. Arun Kumar Yadav, Sr. DR
Respondent by		None
Date of Hearing		14.12.2017
Date of Pronouncement		15.12.2017

ORDER

PER K.N. CHARY, JUDICIAL MEMBER

Challenging the order dated 29.2.2016 in Appeal No. 19/2015-16 passed by the Ld. Commissioner of Income Tax (Appeals)-36, New Delhi (hereinafter referred to as "Ld. CIT(A)"), Revenue preferred this appeal on the following grounds:

"i. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in ignoring that assessee's activities fall under the last limb of section 2(15) of the I.T. Act as assessee is generating income from commercial activities.

ii. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in law in ignoring the fact that the objects of the assessee may seem to be charitable, but activities carried out by the society which yielded income to the society are commercial in nature.”

2. Briefly stated facts are that the assessee is formed by the Government of India is a registered society to promote coordinate, guide, implement and maintain a accreditation system for laboratories in accordance with the relevant national and international standards and guides, that it was formed under the aegis of “Department of Science and Technology”, as a Scientific and Industrial Research Organization. Being a society in the field of Science and Technology, the Income of NABL was exempted from tax U/s 10(21) of the Act, for which approval was granted by CBDT U/s 35(1)(II) of the Act vide notification No. 18/2005 (F. No. 203/31/2003-ITA-II) dated 31.01.2005 for the period from 02.09.2000 to 31.03.2003, and that subsequently from 01.04.2005, NABL is registered U/s 12A read with section 12AA of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) vide letter No. DIT (E) 12A/2006/07/N-928/684 dated 30.08.2006.

3. For the AY 2001-12 the assessee filed the return of income of 28.9.2011 showing total income as nil, but the assessment was complete under section 143(3) of the Act on an assessed income of Rs. 7,07,88,794/-. Learned AO was of the view that (i) the functions of the appellant society do indicate that the society is engaged in advancement of objects of general public utility and that precisely was the reason for registration U/s 12Aa having granted, (ii) After the amendment, the scope of “Advancement of General public Utility” has been limited. Now if the society falling under the sixth

limb of “advancement of object of general public utility” is engaged in any form of trade, commerce or business or is involved in rendering of services in relation to carrying on of Trade, Commerce or business, then it will lose its charitable status, (iii) NABL is actually carrying out activities in a commercial manner with a view to earn profit, (iv) Following the amendment to section 2(15), the activities of NABL are no more under the charitable purpose even if the profits earned are used for charitable purposes, hence cannot be given exemption U/s 11 of the Act, as such, exemption U/s 11 and 12 of the Act is disallowed to the appellant society, and (vi) NABL was taxed at the minimum marginal rate of tax on the assessed income of Rs. 7,07,88,794.

4. In the appeal preferred by the assessee, learned CIT(A) found that in respect of earlier years the similar AY's 2009-10 and 2010-11, under the same set of facts as involved a coordinate Bench of this Tribunal gave relief to the assessee, as such, following the same the learned CIT(A) allowed the appeal of the assessee in respect of this AY 2011-12 also.

5. It is the submission of learned AR that the learned CIT(A) followed the decision of the Tribunal rendered for the AY's 2009-10 and 2010-11 wherein, while considering the amendment made to section 2(15) of the Act, the Tribunal held that the assessee is eligible for exemption u/s 11 and 12 of the Act and the assessee was not engaged in any trade, commerce or business and it's dominant and prime objective is charitable in nature in accordance with section 2(15) of the Act, as such, said finding of the learned

CIT(A) may not be interfered with. Learned DR vehemently placed reliance on the assessment order.

6. We have perused the record. Learned CIT(A), vide paragraph no. 7 of his order, recorded that in respect of the assessment year 2009-10 the Tribunal held that the assessee was not engaged in any trade, commerce or business and its dominate and prime objective is charitable in nature in accordance with section 2(15) of the Act as such while following the decision of the Tribunal for the AYs 2009-10 and 2010-11 relief has to be granted to the assessee. There is no dispute that the Tribunal in assessee's own case for the AYs 2009-10 and 2010-11 held that the assessee is entitled to the exemption under section 11 and 12 of the Act inasmuch as the assessee has not been engaged in any trade, commerce or business and its dominate and prime objective is charitable in nature in accordance with section 2(15) of the Act. We do not find any reason to take a different view from the one that was taken in respect of assessment years 2009-10 and 2010-11. With this view of the matter we find neither illegality nor irregularity in the orders of the learned CIT(A) as such we uphold the same. We, therefore, while confirming the impugned order dismissed the grounds of appeal.

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

The order is pronounced in the open court on 15th December, 2017.

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

**Sd/-
(K.N.CHARY)
JUDICIAL MEMBER**

Date:- 15th Dec,2017
SH

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

		Date	
1.	Draft dictated on	14.12.2017	PS
2.	Draft placed before author	15.12.2017	PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	15.12.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	15.12.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		