

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad ' B ' SMC Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member**

**ITA Nos.1700 & 1701/Hyd/2017**

(Assessment Years: 2013-14 & 2014-15 )

Income Tax Officer Vs Kalinga Cultural Trust  
(Exemptions)-2 Hyderabad  
Hyderabad PAN: AAATK 3517 C  
(Appellant) (Respondent)

For Revenue : Smt. N. Swapna, DR  
For Assessee: Shri V.Siva Kumar

Date of Hearing: 16.03.2018  
Date of Pronouncement: 23.03.2018

**ORDER**

Both are Revenue's appeals for the A.Ys 2013-14 & 2014-15 against the common and consolidated order of the learned CIT (A)-9, Hyderabad, dated 16<sup>th</sup> June, 2017. The Revenue has raised the following grounds of appeal:

*"1. The order of the CIT(A) is erroneous, both on facts and in law.*

*2. The CIT(A) erred in allowing exemption to the assessee Trust for the Assessment year 2013-14, without appreciating the fact that the assessee trust is not eligible for exemption u/s.11 of the IT Act, in view of the amended provisions of section 2(15) of the Act, particularly in view of the first proviso to section 2(15) of the Act, instead vide finance Act, 2008, w.e.f.01-04-2009, which is attracted in the case of the assessee for the asst. year 2013-14.*

*3. The CIT(A) ought to have appreciated that the provisions of the first proviso to section 2(15) of the IT Act are attracted to the surplus receipts derived by the*

*assessee towards rental income for the asst. Years 2013-14 ad thus not eligible for exemption u/s.11 of the IT Act”.*

2. Brief facts of the case are that the assessee is a Trust registered u/s 12A of the I.T. Act vide orders dated 23.11.1995. It was created by registration No.6501 of 1994. For the A.Ys 2013-14 and 2014-15, it filed its return of income on 30.09.2013 & 30.09.2014 declaring a total income of Rs.Nil for the respective A.Ys after claiming exemption u/s 11 of the I.T. Act.

3. During the assessment proceedings u/s 143(3) of the Act, the AO observed that the definition of charitable purpose has undergone an amendment by way of proviso to section 2(15) of the Act. He observed that the assessee is maintaining a function hall which is let out for various activities including marriage functions and other cultural functions etc., and that during the previous year, the total receipts from the function hall exceeded the limit fixed under the provisions of section 2(15) of the Act. Therefore, he held that the assessee's activities cannot be termed as charitable activities as per the provisions of section 2(15) of the Act and hence the assessee is not entitled for the benefit of section 11 of the Act. Accordingly, he brought the assessee's income from function hall to tax. Aggrieved, the assessee preferred an appeal before the CIT (A) who allowed the same by following the decisions of the ITAT in the assessee's own case for the A.Y 2011-12 in ITA No.913/Hyd/2015 dated 4.11.2015. Against the relief granted by the CIT (A), the Revenue is in appeal before me.

4. The learned Counsel for the assessee has filed before me a copy of the order of the Tribunal for the A.Y 2011-12 dated 4.11.2015 and I find that the issues raised therein are exactly the same as in the appeal before us and the Tribunal, after following the decision of the Coordinate Bench in the assessee's own case for the A.Ys 2009-10 and 2010-11, has held that the assessee is eligible for the claim of exemption u/s 11 of the Act. The ITAT had also followed the decision of the Coordinate Bench in the assessee's own case for the A.Ys 2006-07 to 2008-09 in ITA Nos. 894 & 895/Hyd/2013 and ITA No.1067/Hyd/2012 to hold in favour of the assessee. The relevant paras of the Tribunal's order are reproduced hereunder for ready reference:

*"6. In its recent decision dated 3.7.2015 in assessee's own cases for the assessment years 2009-10 and 2010-11, the Tribunal, besides taking note of the earlier order of the Tribunal dated 6.6.2014 on this issue for assessment years 2006-07 to 2008-09 (supra), after due consideration of the nature of the activities of the assessee in constructing Jagannadha Temple as well as letting out of the function hall held that the assessee is entitled for exemption under S.11 of the Act for the elaborate reasons discussed in paras 8, 8.1 and 8.2 of the order, which are reproduced below-*

"8. We have considered the submissions of the parties and perused the material on record as well as the orders of revenue authorities. As could be seen from the assessment order, AO has denied exemption u/s 11 to assessee primarily on two reasons, firstly, because assessee is constructing Jagannadha Temple, which, according to AO, is neither in accordance with the aims and objects nor a charitable activity. The second reason is, after introduction of proviso to section 2(15) of the Act, assessee loses its character of trust having been established for charitable purpose as it has earned income by engaging in commercial activities. As far as allegation of AO that construction of temple by assessee is neither in accordance with aims and Kalinga Cultural Trust, Hyderabad objects of assessee nor charitable activity is concerned, it has to be rejected at the threshold in view of the decision of the coordinate bench in assessee's own

case in AYs 2006-07, 2007-08 and 2008-09 in ITA Nos. 894 & 895/Hyd/13 and 1067/Hyd/12, dated 06/06/14 wherein the coordinate bench agreed with the Id. CIT(A) that construction of Jagannadha Temple is not only in furtherance of the aims and objects of assessee society but, is also a charitable activity. In view of the aforesaid, we do not find any merit in the submissions of the Id. DR that construction of Jagannadha Temple is not a charitable activity. As far as the second reason for denying exemption u/s 11 is concerned, it is the allegation of AO that as assessee was involved in commercial activity by generating income by letting out function hall, selling souvenir, etc, it is not eligible for exemption in view of the proviso to section 2(15) of the Act, we are of the view that the same requires deeper analysis. However, before deciding the issue, it is necessary to observe that there cannot be any dispute to the fact that assessee's objects are charitable in nature, as Id. DIT(E) has granted registration to assessee u/s 12A of the Act since the year 1995 and which is continue till date.

8.1. Further, there is nothing on record to suggest that in the intervening period there is any substantial change in the aims and objects of assessee. Therefore, keeping in view the aforesaid facts, it has to be decided whether the introduction of fist proviso to section 2(15) by the Finance Act, 2008 w.e.f. 01/04/09 would automatically disentitle the assessee from being considered as having been established for charitable purpose and thereby depriving it from claiming exemption u/s 11 of the Act. A plain reading of section 2(15) of the Act, also makes it clear that the proviso applies only to the last limb of 'charitable purpose' i.e. advancement of any other object of general public utility'. The intention of the legislature in introducing the proviso to section 2(15) as could be gathered from the speech of the Hon'ble Finance Minister on the floor of Parliament, explanatory notes, departmental circulars, is to deny exemption to trusts or institutions who in the garb of charity are purely engaged in commercial or business activities and whose main intention is to earn profit. The proviso is never meant to deprive genuine trusts and institutions whose main object Kalinga Cultural Trust, Hyderabad is charity but in process of achieving the main object they undertake some income generating activity which is ancillary and incidental to the main object. Further, income generated from such activity is also utilized for achieving the main charitable object. The true import and effect of proviso to section 2(15) of the Act came up for scrutiny before a number of High Courts. The unanimous view of judiciary in this regard is, proviso to section 2(15) has to be applied keeping in mind the dominant object/purpose of the trusts or institutions. Therefore, it has to be seen whether the dominant object of the trust is of charitable nature

in carrying out the object of general public utility or main intention of the assessee is to earn profit. Further, definition of 'charitable purpose' as defined u/s 2(15) of the Act cannot be read in vacuum, but, has to be read along with the exemption provisions. That being the case, a literal interpretation to the proviso to [section 2\(15\)](#) cannot be given if the objects of the exemption provisions are to be given full effect. The Hon'ble Delhi High Court in case of Indian Trade Promotion Organisation Vs. director General of Income-tax (E), 371 ITR 333 while interpreting the effect of proviso to [section 2\(15\)](#) of the Act, after analyzing a number of decisions of the Hon'ble Supreme Court as well as different high courts observed that the only thing which is required to be examined is whether the trust or institution has been established for charitable purposes. The fact that it derives income does not in any way detract from the position that it is not an institution established for charitable purposes. The Hon'ble High Court observed that merely because assessee derives rental income, income out of sale of tickets and sale of publications and income out of leasing out food and beverages outlets in the exhibition grounds does not, in any way, affect the nature of trust as a charitable institution, if, it otherwise qualifies for such a character. It was further observed by the Hon'ble High Court that if a meaning is given to the expression 'charitable purpose' so as to suggest that in case of an institution having an object of advancement of general public utility if derives income it would be falling within the exception carved out in the first proviso to [section 2\(15\)](#) of the Act, then, there would be no institution whatsoever which would qualify for exemption and the exemption provision would be rendered redundant. The Hon'ble Delhi Kalinga Cultural Trust, Hyderabad high Court referred to its own decision in case of Institute of Chartered Accountants of India and another Vs. Director General of Income-tax (E), 358 ITR 91 wherein while interpreting expressions 'trade, commerce and business', as find place in the first proviso to [section 2\(15\)](#), the court held that merely because fees or some other consideration is collected or received by an institution, it would not lose its character of having been established for charitable purpose. The Court observed, in this context, the dominant activity of the institution has to be looked into. If the dominant activity of the institution is not business, trade or commerce, then, any such incidental or ancillary activity would also not fall within the categories of trade or commerce or business. The driving force of the trust or institution should not be a desire to earn profit, but, utilize the same for achieving the charitable objects for which it is established. The Hon'be High Court laying down the principle as to how the proviso to [section 2\(15\)](#) should be construed, held as under:

"58. In conclusion, we may say that the expression "charitable purpose", as defined in [section 2\(15\)](#) cannot be construed literally and in absolute terms. It has to take colour and be considered in the context of [section 10\(23C\)\(iv\)](#) of the said Act. It is also clear that if the literal interpretation is given to the proviso to [section 2\(15\)](#) of the said Act then the proviso would be at risk of running foul of the principle of equality enshrined in [article 14](#) of the Constitution of India. In order to save the Constitutional validity of the proviso, the same would have to be read down and interpreted in the context of [section 10\(23C\)\(iv\)](#) because, in our view, the context requires such an interpretation. The correct interpretation of the proviso to [section 2\(15\)](#) of the said Act would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities 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. In both the activities, in the nature of trade, commerce or business or the activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. If the dominant and the prime objective of the institution, which claims to have been established for charitable purposes, is profit making, whether its activities are directly in the nature of trade, commerce or Kalinga Cultural Trust, Hyderabad business or indirectly in the 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". On the flip side, where an institution is not driven primarily by a desire or motive to earn profits but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an institution established for charitable purposes."

8.2 If we apply the aforesaid principles to the facts of the present case, it is to be seen that as held by the coordinate bench in assessee's own case in the preceding AYs, assessee is pursuing charitable activity in accordance with its aims and objects while constructing the Jagannadha Temple. In fact, the AO himself in assessment order has admitted that income/fund of assessee is utilized in construction of the temple. Further, the coordinate bench in the said order held, by letting out function hall assessee is not involved in commercial activity so as to disentitle it from claiming exemption u/s 11. Therefore, considered in the aforesaid perspective, there being no dispute to the fact that dominant object of assessee is charitable in nature, proviso to [section 2\(15\)](#) cannot be applied to deny exemption to assessee u/s 11 of the Act. In our view, AO without examining the issue in proper perspective has abruptly

concluded that assessee is not entitled to exemption u/s 11 of the Act only because proviso to [section 2\(15\)](#) was introduced w.e.f. 01/04/09. In our view, proviso to [section 2\(15\)](#) of the Act will not apply automatically to every trust or institution irrespective of the fact, whether the dominant object of the trust or institution is charitable purpose or earning profit. When in the present case assessee is registered as charitable institution and there is no change in the aims and objects of assessee in the impugned AY and the activities of assessee over the years remains the same, the proviso to [section 2\(15\)](#) cannot be applied to assessee to deny exemption u/s 11 of the Act. In view of the aforesaid, we do not find any merit in the submissions of the Id. DR so as to disturb the finding of the Id. CIT(A) on this issue. Accordingly, we uphold the order of Id. CIT(A) by dismissing the grounds raised. "

*7. Facts and circumstances of the case in the year under appeal, viz. assessment year 2011-12, being similar to those considered by the coordinate benches of the Tribunal in assessee's own case for earlier years noted above and in the absence of anything to the contrary brought on record by the Learned Departmental Representative, we find no justification to interfere with the impugned order of the CIT(A) on this issue, which is accordingly confirmed".*

5. Respectfully following the decision of the Coordinate Bench to which I am a signatory, I do not see any reason to interfere with the order of the learned CIT (A). Thus, the Revenue's appeals for both the A.Ys 2013-14 & 2014-15 are dismissed.

6. In the result, Revenue's appeals are dismissed.

Order pronounced in the Open Court on 23<sup>rd</sup> March, 2018.

**Sd/-**  
**(P. Madhavi Devi)**  
**Judicial Member**

Hyderabad, dated 23<sup>rd</sup> March 2018.

**Vinodan/sps**

Copy to:

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- 3 CIT (A)-9 Hyderabad
- 4 CIT – (Exemptions), Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

*By Order*