

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SMT DIVA SINGH, JUDICIAL MEMBER

ITA No.-6784/Del/2017
(Assessment Year: 2014-15)

ITO (E), New Delhi.	Vs	Consumer Electronics & Appliances Manufacturers Association, Wave-1, F-4/23, 4 th Floor, Plot No. D-6, Sector-18, Noida-201301
Revenue by		Sh. S.L. Anuragi, Sr. DR
Assessee by		Sh. Ved Jain, Adv.

Date of Hearing	02.07.2018
Date of Pronouncement	27.07.2018

ORDER

The present appeal has been filed by the revenue assailing the correctness of the order dated 03/08/2017 CITA 40 Delhi pertaining to 2014 – 15 assessment year on the following ground :-

1. “ *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the assessee is not engaged in any trade, commerce or business despite the fact that major receipts of the assessee are commercial in nature.*”
2. At the time of hearing it was the submission of the Ld. AR that the point at issue is fully covered in favour of the assessee by consistent orders of the ITAT in assessee’s own case. Inviting attention to the impugned order it was his submission that in fact the CIT(A) has relied upon the order passed by his predecessor in 2012 – 13 assessment year. It was also his submission that the issue has come up before the ITAT in the earlier years also. Referring to copy of the order dated 03/10/2017 available at paper book pages 74 to 81, it was submitted that the ITAT in ITA/6588/Del/2015 dismissed identical appeal of the revenue on similar facts. Since the present appeal has been filed by the Revenue, it was deemed appropriate to first hear the Ld. Sr. DR.
3. The ld. Sr. DR placed reliance upon the assessment order. However on going through the order of the ITAT available in the paper book in assessee's own case, no contrary fact, circumstance or argument was raised by him to canvass a contrary view.

4. I have heard the submissions and perused the material available on record I find on going through the same that the point at issue stands addressed by the coordinate bench on same set of facts and circumstances. A perusal of the assessment order shows that the AO takes cognizance of the facts noting that the assessee is a society registered under Societies Registration Act, 1860 accorded registration u/s 12A(a) of the Income tax Act, 1961 (for short 'the Act') vide order dated 15.01.1996 with the main object to;

- To take over the existing Consumer Electronics and TV manufacturers Association, a Society registered under the Societies Registration Act, 1860 (XXI of 1860) with all its assets and liabilities.
- 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.
- To promote fair completion and healthy practices among manufactures, dealers and users of Consumer Electronic items.

4.1 The assessing officer took into consideration the fact that the assessee is neither in the field of education nor in the field of medical relief or relief of poor. Accordingly it was his considered opinion that the assessee can be considered for the benefit of exemption under section 11/12 after verifying the applicability of the proviso to section 2 (15) since its activities fell within the scope of 'general public utility'. However on examination of the record it was noticed that the income of the assessee was from subscription received, admission fee received, meeting and conference contribution, CEAMA News receipts, Sponsorship Fee for Seminar etc. received from different parties. The AO was of the view as in the earlier year that it was an activity in the nature of trade and commerce and rendering services in relation to trade/commerce/business. Accordingly, as in the earlier years the assessing officer required the assessee to support its claim. Not convinced with the explanation offered he was of the view that no doubt no profit motive for several decades has been accepted as a valid test however he was of the view that profit motive and manner of application money has no linkage with the carrying on of the activities. It was concluded that once activities carried on by the assessee are in the

nature of trade, commerce or business it is duty of the assessing officer to verify whether the assessee satisfies any of the requirements of section 11, 12, 12 A (p) and 13 of the Act. Considering the language of the statutory provision section 2 (15) to be an unambiguous it was concluded that the Consumer Electronics and Appliances Manufacturers Association is covered by the proviso to amended its definition contained in section 2 (15) of the income tax act since the proviso was applicable with effect from 2009-10 Assessment Year it was held that the assessee is not entitled to the benefit of exemption of income as per provisions of section 11 and 12 of the Act.

5. It is seen that in appeal before the First Appellate Authority relying upon the views taken by his predecessor in 2010 – 11 and 2012 – 13 assessment years considering the objects of the assessee and the decision of the Apex Court in the case of ACIT vs. Andhra Chamber of Commerce (1981) 130 ITR 184 the Delhi High Court in the case of PHD Chambers of Commerce and Industry v DIT(E) (2013) 357 ITR 296/212 Taxman 194/(2012) 28 taxmann.com 61. The CIT(A) proceeded to allow relief to the assessee holding as under:-

“4.1.5. In view of the discussion above and respectfully following the decision of my Ld. Predecessor for assessment years 2010-11, 2011-12 and 2012-13 in appellant’s own case, it is held that the assessee is not involved any trade, commerce business and as such the proviso to section 2(15) is not attracted in the case of the assessee. Further, the cases relied upon by the appellant are also applicable in its case. The Assessing Officer is directed to allow exemption under section 11 with all consequential benefits. Grounds of appeal numbers 1 to 6 are allowed.”

6. Aggrieved by this the Revenue is in appeal before the ITAT. A perusal of the order passed by the Coordinate Bench in similar set of facts and circumstances show that the departmental appeal was dismissed relying upon the position of law as considered in the case of Indian Trade Promotion Organization Vs Director General of income-tax (Exemptions) (2015) 371 ITR 333 (Del.). For ready reference we extract the relevant portion :

“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 earned 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 :-*

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount (in Rs.)</i>
<i>1</i>	<i>Subscription received</i>	<i>34,49,307</i>
<i>2</i>	<i>Admission fee received</i>	<i>15,000</i>
<i>3</i>	<i>Meeting & Conference Contribution</i>	<i>28,56,479</i>
<i>4</i>	<i>CEAMA News receipts</i>	<i>16,44,362</i>
<i>5</i>	<i>Interest</i>	<i>7,56,480</i>
<i>6</i>	<i>Contribution for Market Study</i>	<i>4,00,000</i>
<i>7</i>	<i>Contribution for Anti Dumping case</i>	<i>5.00,000</i>
		<i>60,470</i>

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."

7. In the aforementioned peculiar facts and circumstances in the absence of any distinction either on fact or circumstance brought to my

notice by the Ld. DR I find no good reason to vary the conclusion arrived at being satisfied by the reasoning and conclusion the departmental appeal is dismissed.

8. In the result, the appeal of the Revenue stands dismissed.
This order was pronounced in the open court on 27.07.2018.

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

“Veena”/Poonam(CHD)

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI