

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA*

Before **Shri J.Sudhakar Reddy, Accountant Member** and
Shri S.S.Godara, Judicial Member

ITA No.439-441/Kol/2017
Assessment Years:2009-10,
2011-12 & 2012-13

Income Tax Officer(E), Ward-1(3), 6 th Floor, 10B, Middleton Row, Kolkata-71	बनाम / V/s.	Sasha Association For Craft Producers, 1C, Chatu Babu Lane, Kolkata-700014 [PAN No.AABTS 5580 N]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

आवेदक की ओर से/By Assessee	Shri S.M. Surana, Advocate
राजस्व की ओर से/By Respondent	Shri S.M. Das, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	07-06-2018
घोषणा की तारीख/Date of Pronouncement	15-06-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

These three Revenue’s appeals for assessment year(s) 2009-10, 2010-11 and 2012-13, challenge correctness of the Commissioner of Income Tax (Appeals)-25, Kolkata’s common order dated 20.12.2016, passed in case Nos. CIT(A),Kolkata-25/10043/2014-15,10015/20115-16, 10096//2015-16, involving assessment u/s 147 r.w. 143(3) of the Income Tax Act, 1961; in short ‘the Act’ in first AY and u/s 143(3) of the Act in latter two assessment years; respectively.

2. Both the Learned Representatives state at the outset that the Revenue’s sole substantive ground identically pleaded in these three appeals is that CIT(A) has erred

in law as well as on facts in treating the assessee to be providing “relief of the poor” without having any corresponding specific object clause in its trust deed indicating it to have been advancing other objects of general public utility only as per latter limb of section 2(15) of the Act. Learned Departmental Representative highlights the effect that assessee-society pays the artisans concerned @ 5% of the mark up on cost of products whereas it itself retains the same @ 35%. He therefore quotes section 2(15) 1st proviso to vehemently argue that the assessee’s above activities are covered under general public utility clause and in the nature of trade, commerce and business covered by the said proviso so as to deny it exemption claimed u/s 11 of the Act.

3. We advert to the relevant facts pertaining to the above sole issue. There is no dispute that the assessee-society is registered body with the Registrar of Societies, West Bengal since 18.03.1988. Its objects clauses read as under:-

“3. The objects for which the Society is established are:-

- (i) To assist Producers/Artisans working in or with welfare organizations, co-operative and Registered Societies, and others, engaged in cottage and small scale industries to marketing their products using any suitable marketing channel in the country or abroad.*
- (ii) To assist welfare organizations, co-operative societies, Registered Societies, people engaged in cottage and small scale industries in the form of advances, locating suitable raw material sources, design and technical inputs whenever required in order to meet market commitments or requirements;*
- (iii) To arrange exhibition and meals, organize showrooms/sales counter within the Country or abroad for sale, display of products of the producers associated with the society, with or without help of any other organization having similar aims and objectives that of the society or in collaboration with the Government Departments (Central or State) and Semi Government Organisations;*
- (iv) To take over the assets and liabilities of any society working or defunct with objects similar to that of the Society, subject to approval by the members at a special meeting called for the purpose;*
- (v) To take help/assistance of experts or of any organization for the betterment of the craft products viz design, quality, production and for the economic, social and cultural upliftment of the producers irrespective of caste, creed or sex;*
- (vi) To cooperate and collaborate with national, international and other agencies working with similar and/or allied objectives as this society preferably on specific projects;*

- (vii) *To provide relief to the distressed people during natural calamities viz. famine, drought, flood, earthquake, fire etc.*
 - (viii) *To receive or accept donations, gifts, grant-in-aid, movable or immovable property from either Central or State Government, Municipalities, Corporation, District and Local Bodies or benevolent person or persons or societies, Trusts, Limited Companies – Public or Private, Co-operative body, philanthropic organisations in India or abroad on such terms and conditions as the Managing Committee may consider fit and proper;*
 - (ix) *To hire, purchase, build, acquire or take on rental or lease any movable and immovable property or exchange any rights and privileges for the purposes of the society;*
 - (x) *To borrow money with or without security and/or with or without interest that may be required for the purposes of the society;*
 - (xi) *To invest fund of the society in such manner as the Managing Committee may think fit for the safety and benefit of the society and to convert or change such investments as per decision of the Managing Committee and according to the Acts & Rules of the Government;*
 - (xii) *To enter into any liability for the purpose of the society and to repay or discharge any debt or liability by mortgage, charge, pledge, hypothecation or assignment of any property of the society in such manner as the Managing Committee deems fit and proper;*
 - (xiii) *to incorporate and/or grant affiliation to social service societies with objects; similar to any or all of the society and to cooperate financially or otherwise with any person or persons in aid of and in furtherance of such objects;*
 - (xiv) *the society shall not distribute amongst its members any money in any form at all which the society may have earned as profit and such profits shall be applied solely for the purpose of carrying out the aims and objects of thee society. This shall not, however, prevent payment of remunerations to any person or persons or to any member in return for any Services actually rendered to the society;*
 - (xv) *to do all other activities that are incidental or conducive to the attainment and furtherance of the aims and objects of the society;*
 - (xvi) *to make rules and regulations in connections with the management and control of the society;*
- 4. The income and properties of the society whatsoever derived or obtained shall be applied solely towards the promotion of the objects of the society and no portion thereof shall be paid or divided amongst any of its members by way of profits.”*

4. The assessee applied for its section 12A registration read with 80G of the Act on 03.03.1989 in the prescribed Form 10A. The DIT(E) accepted its registration application vide order dated 27.11.1990 forming part of record before us. There is no

dispute between the parties at all that assessee's main activities are to work with the poor, marginal artisans and woman craft producers as well as rendering necessary assistance to them in enterprise development, skills technical upgradation and providing market excess. The Assessing Officer has admittedly treated the assessee to be eligible for exemption right up to AY 2007-08. His regular assessment order dated 30.11.2009 to that effect forms part of the paper book at page 27.

5. We now come to the dispute between the parties. The Assessing Officer framed re-assessment / assessments (supra) in the impugned three assessment years applying section 2(15) (1st proviso) of the Act *inter alia* on the grounds that its IEC, VAT and CST registration indicated that it is engaged in the business of retailer, exporter and wholesaler of the artisans products concerned having exorbitant profit margin of 35% on production cost (supra), there was no restriction on its membership, the relevant "relief of the poor" clause was nowhere incorporated in its objects and its dissolution clause did not prevent disbursement of profits to trustees and other parties etc. He therefore invoked sections 11, 12 & 13(8) of the Act to disallow assessee's exemption claim.

6. The CIT(A) reverses Assessing Officer's above stated action in his common lower appellate order under challenge. He has first of all considered visuals of the assessee providing all help to a variety of artisan of groups as well as individuals. The said detailed discussion is not reproduced in verbatim for the sake of brevity as it runs into seven pages in lower appellate findings. Learned Departmental Representative is fair enough in not disputing the same during the course of hearing before us. The CIT(A) therefore takes into account CBDT's Circular No.11/2008 making it clear that relief of the "poor" in section 2(15) indicates relief to indigent artisans as well. The assessee has therefore succeeded in lower appellate proceedings.

7. We have given our thoughtful consideration to rival contentions. Learned Departmental Representative reiterates Revenue's stand that the assessee has been wrongly held to be cover "relief of the poor" charitable purpose who rather advances objects of general public utility leading to exclusives u/s. 2(15) 1st proviso squarely

applicable in its case as it has been carrying out the activities concerned in the nature trade, commerce or business only. We find no merit in Revenue's instant sole substantive ground. The Board's circular (supra) hereinabove makes it sufficiently clear that the former category "relief of the poor" includes within its ambit any purpose such as relief to indigent artisans as under:-

*"EXEMPTIO UNDER SECTION 11 IN CASE OF ASSESSEE CLAIMING BOTH TO BE CHARITABLE INSTITUTIONS AS WELL AS MUTUAL ORGANISATINS
CIRCULAR NO.11/2008, DATED 19-12-2008*

*Definition of 'Charitable purpose' under section 2(15) of the Income-tax Act, 1961
Section 2(15) of the Income Tax Act, 1961 ('Act') defines "charitable purpose" to include the following:-*

- (i) Relief of the poor*
- (ii) Education*
- (iii) Medical relief, and*
- (iv) the advancement of any other object of general public utility.*

An entity with a charitable object of the above nature was eligible for exemption from tax under section 11 or alternatively under section 10(23C) of the Act. However, it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of 'charitable purpose'. Therefore, section 2(15) was amended vide Finance Act, 2008 by adding a proviso which states that the 'advancement of any other object of general public utility' shall not be a charitable purpose if it involves the carrying on of

- (a) any activity in the nature of trade, commerce or business; or*
- (b) 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.

2. The following implications arise from this amendment-

2.1 The newly inserted proviso to section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e., relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute 'charitable purpose' even if it incidentally involves the carrying on of commercial activities.

2.2 'Relief of the poor' encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that

- (i) the business should be incidental to the attainment of the objects of the entity, and*
- (ii) separate books of account should be maintained in respect of such business.*

Similarly, entities whose object is 'education' or 'medical relief' would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on account of commercial activity subject to the conditions mentioned above."

Learned Departmental Representative fails to rebut the fact that Assessing Officer has himself accepted the assessee to have been working with poor, marginal artisans and women crafts producers assisting them in enterprise development, skills and technical upgradation as well as in providing them market access for their corresponding products. It is in this backdrop of facts that we observe the assessee to be covered under the specified category of "relief of the poor" as per Board's beneficial circular issued u/s 119 of the Act. We therefore adopt judicial consistency to conclude that the Revenue's instant sole grievance deserves to be rejected. The CIT(A)'s common order under challenge in all these three appeals is affirmed.

8. These three Revenue's appeals are accordingly dismissed.

Order pronounced in open court on 15/06/2018

Sd/-
(लेखा सदस्य)
(J.Sudhakar Reddy)
Accountant Member

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
Judicial Member

*Dkp-Sr.PS

दिनांक:- 15/06/2018 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-Sasha Association for Craft Producers,1C,Chatu BabuLane,Kol-14
2. राजस्व/Respondent-ITO(E) Ward-1(3), 6th Fl, 10B, Middleton Row, Kolkata-71
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A) (e-mail)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता/DR, ITAT, Kolkata (e-mail)
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary,
Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA

Before **Shri J.Sudhakar Reddy, Accountant Member** and
Shri S.S.Godara, Judicial Member

C O R R I G E N D U M

[arising out ITA No.439-441/Kol/2017
Assessment years: 2009-10, 2011-12 & 2012-13]

Income Tax Officer(E), Ward-1(3), 6 th Floor, 10B, Middleton Row, Kolkata-71	बनाम / V/s.	Sasha Association For Craft Producers, 1C, Chatu Babu Lane, Kolkata-700014 [PAN No.AABTS 5580 N]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

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सुनवाई की तारीख/Date of Hearing	07-06-2018
घोषणा की तारीख/Date of Pronouncement	15-06-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This corrigendum is issued in assessee's application dated 06.07.2018 in respect of our order dated 15.06.2018 passed in Revenue's appeals ITA No.439-441/Kol/2017. Our above order shall henceforth read in last part of the first line in first para to be involving assessment year **2011-12** instead of assessment year

2010-11. This is a typographical mistake. The assessment year 2010-11 instead be read as “**2011-12**”.

2. The order dated 15.06.2018 is modified to this extent only.

Sd/-
(लेखा सदस्य)
(J.Sudhakar Reddy)
Accountant Member

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
Judicial Member

*Dkp-Sr.PS

दिनांक:- 16/07/2018 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक/Assessee-Sasha Association for Craft Producers,1C,Chatu BabuLane,Kol-14
2. राजस्व/Respondent-ITO(E) Ward-1(3), 6th Fl, 10B, Middleton Row, Kolkata-71
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/True Copy/

By order/आदेश से,

Sr. Private Secretary,
Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता