

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'B', CHANDIGARH**

BEFORE MS.DIVA SINGH, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA Nos.465 to 467/Chd/2018

(Assessment Years : 2013-14 to 2015-16)

The J.C.I.T., Ciricle-1(Exemptions), Chandigarh. (Appellant)	Vs.	M/s Semi Conductor Laboratory SCL Phase-8, Industrial Area, Sector 72, Mohali. PAN: AAGTS0959N (Respondent)
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Appellant by : Mrs.Mona Mohanty, CIT DR
Respondent by : Shri A.K.Sood, CA

Date of hearing : 19.07.2018
Date of Pronouncement : 27.08.2018

ORDER

PER BENCH:

All the above appeals have been preferred by the Revenue against separate orders of Ld. Commissioner of Income Tax (Appeals)-2, Chandigarh, all relating to the same assessee and all dated 19.1.2018, but pertaining to different assessment years i.e. assessment years 2013-14, 2014-15 and 2015-16 .

It was common ground that the issue involved in all the appeals was identical, being denial of exemption u/s 11 of the Income Tax Act,1961, (hereinafter referred to as Act).Therefore all the impugned appeals were heard together and are being disposed off by this consolidated order for the sake of convenience.

2. Brief facts of the case, as emanating from the orders of the authorities below, are that the assessee trust, a society, is a body working under Department of Space, Government of India. The main objective of the assessee society, as per its Memorandum of Association and rules & regulations was to undertake, aid, promote, guide and coordinate research and development in the field of semiconductor technology, micro-electro mechanical systems and process technologies, relating to semiconductor processing. The assessee had developed CMOS technologies as well as specialised technologies through in-house R&D efforts. The assessee society had been granted registration as a charitable society u/s 12A of the Act . For the impugned assessment years the assessee society had filed returns declaring 'Nil' income. During assessment proceedings the assessing officer observed that the assessee was doing manufacturing of LSI/VLSI devices for private parties and then selling it for profit and that it was not doing any work related to charitable activities. Accordingly, after seeking due explanation from the assessee on the issue, with which he was not satisfied, he held that the objective of the assessee did not fall within the purview of "General Public Utility" and that the assessee was carrying out business/commercial activities. He further noted that the assessee had not maintained separate books of accounts for grants/receipts from properties of trust. The Assessing Officer, therefore, held that the assessee was not eligible for exemption u/s 11 of the Act.

3. The matter was carried in appeal before the Ld.CIT(Appeals), who noted that identical issue had been decided by the I.T.A.T. in assessee's own case for assessment years 2010-11 and 2011-12 vide their order in ITA No.151/Chd/2014 & ITA No.858/Chd/2014 dated 12.5.2016, holding that the assessee's case is not hit by the proviso to section 2(15) of the Act and, therefore, the assessee is eligible for exemption u/s 11 of the Act. Following the said orders the appeal was decided in favour of the assessee.

4. Aggrieved by the same, the Revenue has come up in appeal before us raising the following grounds:

- “1. That on the facts and circumstances of the case, the Ld.CIT(A) has erred in law in holding that the proviso to section 2(15) of the IT. act, 1961 was not applicable in the case of the assessee whereas the activities of the assessee were of commercial/business in nature.*
- 2. That on the facts and circumstances of the case, the Ld.CIT(A) has erred in law in interpreting the provisions of section 2(15) vis-a-vis the facts of assessee's case that the assessee's activities were not for profit motives even as the proviso entails preclusion of all activities, in the nature of trade, business or commerce, from the ambit of charitable purpose in cases professing to pursue advancement of any other object of general public utility.*
- 3. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law by relying on the fact that the society is a registered entity and ignoring that the statutory provisions entail first the examination of income that qualifies under section 11 & 12 and then the utilization of the same for charitable purposes.*
- 4. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law deleting the additions when the activities of the trust are non-charitable and the provisions of section 11(4A) of the IT. Act are squarely applicable to the case.*

5. *That the appellant craves to leave, add or amend the grounds of appeal on or before the appeal heard and disposed off."*

5. Before us, the Ld. DR fairly agreed that the issue was covered by the order of the I.T.A.T. in the preceding years as pointed out by the Ld.CIT(Appeals) in his order. The Ld. counsel for assessee placed copy of the order of the I.T.A.T. passed in the preceding years referred to by the Ld.CIT(Appeals) while deciding the appeal in favour of the assessee.

6. We have gone through the order of the I.T.A.T. in the preceding years and find that in the said years also the assessee society had been denied exemption u/s 11 of the Act, since it was found to be engaged in commercial activities of sale and purchase. The I.T.A.T. found that the said activity was carried out in consonance with its object on the basis of which it was granted registration u/s 12AA of the Act and was carried out without any profit motive which was evident from the fact on record that the assessee was making sales at less than the market price and its ultimate object was not to give benefit to some specific person as per its memorandum of association. The I.T.A.T. therefore held that the said activities were charitable in nature, not hit by the proviso to section 2(15) of the Act. The claim of the assessee to exemption u/s 11 of the Act was accordingly allowed.

7. Admittedly the facts in the present case are identical to that in the preceding year with the assessee having been

denied exemption u/s 11 of the Act for having been found to have indulged in commercial activities of sale and purchase. No distinguishing facts have been brought to our notice by the Ld. DR. The issue therefore is squarely covered by the order of the I.T.A.T. in the preceding years, which we hold has been rightly followed by the CIT(Appeals), allowing the assessee's appeal. We therefore see no reason to interfere in the order of the CIT(Appeals).

8. In the result, all the appeals filed by the Revenue are, therefore, dismissed.

Order pronounced in the Open Court.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Dated : 27th, 2018

Rati

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A)
4. The CIT
5. The DR

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Assistant Registrar,
ITAT, Chandigarh