

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में ।
**IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR**

**BEFORE SHRI ANIL CHATURVEDI, AM
AND
SHRI PARTHA SARATHI CHAUDHURY, JM**

**आयकर अपील सं. / ITA Nos.77 & 78/RPR/2018
निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14**

Raipur Development Authority,
2nd Floor, Bhakt Mata Karma
Commercial Complex,
New Rajendra Nagar,
Raipur - 492001, (C.G.)

PAN : AAALR0107R

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax (Exemption),
Raipur, (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri R.K. Chawda

Revenue by : Shri G.N. Singh

सुनवाई की तारीख / Date of Hearing : 16.01.2019

घोषणा की तारीख / Date of Pronouncement : 17.01.2019

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

These two appeals by the assessee are emanating out of the order of Commissioner of Income-Tax (A)-I, Raipur dated 27-02-2018 for the A.Ys. 2012-13 and 2013-14.

2. Before us, at the outset Ld. A.R. submitted that though the present appeals of the assessee are for two different assessment years but the issue involved both the appeals are identical except for the change in amounts and the assessment years. He therefore submitted that submissions made by him would be applicable to both the appeals and therefore both the appeals can be heard together. Ld. D.R. did not object to the aforesaid contentions of Ld. A.R. We therefore proceed to dispose of both the appeals by a consolidated order but however proceed to narrate with the facts for A.Y. 2012-13 in ITA No. 77/RPR/2018.

3. The relevant facts as culled out from the material on record are as under :-

Assessee has been constituted by Government of Chhattisgarh u/s. 38(1) of Chhattisgarh Nagar Tatha Gram Nivesh Adhinyam, 1973 by notification in the Gazette on 4th September, 2004 and is Town and

Country Development Authority. Assessee filed its return of income for A.Y. 2012-13 on 19-03-2013 in the status of charitable trust declaring Nil income. The case was selected for scrutiny and thereafter the assessment was framed u/s 143(3) vide order dated 27-03-2015 and the total income was determined at Rs.1,79,44,280/-. Aggrieved by the order of Assessing Officer, assessee carried the matter before Ld. CIT(A), who vide consolidated order dated 27-02-2018 (in Appeal No. 87/14-15 & 467/16-17) dismissed the appeals of assessee. Aggrieved by the order of Ld. CIT(A), assessee is now in appeal before us and has raised the following grounds :

- “1. *That the learned Commissioner (Appeals) has grossly erred misdirected himself, in law and on the facts of the case, to hold that the assessee trust is not involved in any charitable activity to qualify for exemption under section 11 of the Income Tax Act, 1961.*
2. *That the learned Commissioner (Appeals) was not justified in upholding the addition of Rs.1,79,41,277/-, as made by the learned assessing officer, by treating the surplus as profit on commercial lines.*
3. *That the authorities below have grossly erred in not appreciating that ‘profit earning’ was never the motive of the assessee trust, even when registration under section 12A was granted by the learned CIT, Raipur.*
4. *That the appellant craves leave to add, to alter, to withdraw, to amend any of the grounds of appeal either before or at the time of the hearing of appeal.”*

Identical grounds have been raised by the assessee in ITA No. 78/RPR/2018.

4. During the course of assessment proceedings, it was assessee's submissions that the activities which the assessee was carrying out was not for profit and it was neither trade nor commercial and business hence the assessee case was not hit by first proviso of Section 2(15) of the Act and thus, assessee was entitled to claim exemption u/s. 11 of the Act. The submissions of the assessee were not found acceptable to Assessing Officer. Assessing Officer was of the view that since assessee derives income from buying, developing and giving plot of land on lease rent as also earns interest on its deposits, hence the activities of the assessee were hit by the proviso of section 2(15) and therefore it cannot be considered as a charitable institution. He further noted that since the gross receipts of the assessee has exceeded Rs.25,00,000/-, the second proviso of section 2(15) was not applicable in the present case. He accordingly considered the income of the assessee as income from business and made addition of surplus amount of Rs.1,79,44,277/- that was shown by the assessee in its Income and Expenditure account. Aggrieved by the order of Assessing Officer, the assessee carried the matter before the CIT(A) who upheld the order of Assessing Officer. Aggrieved by the order of Ld. CIT(A), assessee is now in appeal before us.

5. Before us at the outset that the Ld. A.R. submitted that on identical facts in assessee's own case for A.Y. 2011-12, Revenue had carried the matter before Tribunal. The Tribunal vide order dated 16-04-2018 in ITA

No. 212/RPR/2014 has dismissed the appeal of Revenue. He placed on record the copy of aforesaid decision of Tribunal and pointed to the relevant findings of the Tribunal. He therefore submitted that when there are no change in the facts as compared to earlier year, then following the decision of Tribunal in assessee's own case, the issue be decided in assessee's favour.

6. The Ld. D.R. on the other hand did not controvert the submissions made by Ld. A.R. but however supported the order of lower authorities.

7. We have heard the rival submissions and perused the material on record. The issue in the present ground is the applicability of proviso to section 2(15) of the Act to the case of assessee. We find that the Co-ordinate Bench of Tribunal in assessee's own case for A.Y. 2011-12 vide order dated 16-04-2018 and after relying on various decisions cited therein has decided the issue in favour of the assessee and dismissed the appeal of Revenue by observing as under :

"17. After considering the entire facts in totality, in the light of the decisions discussed hereinabove and also drawing support from the speech of the Hon'ble Finance Minister and subsequent clarifications issued by the CBDT within the frame work of the amended provisions of Sec. 2(15) of the Act, in our considered view, there was no material which may suggest that the assessee was conducting its affairs solely on commercial lines with a motive to earn profit. There is also no material brought on record which could suggest that the appellant company deviated from its objects for which it has

been constituted. In our humble opinion and understanding of law, the proviso to Sec. 2(15) of the Act is not applicable on the facts of the case.

18. Accordingly, we uphold the order of the First Appellate Authority. Appeal dismissed.

19. Before parting, the revenue relied upon another amendment in the Act by way of introduction of section 13(8) which came through Finance Act of 2012 with retrospective effect from 01.04.2009 which provided that the benefit of Section 11 or Section 12 would not be available if the receipts from the activity in the nature of trade or business exceeded the threshold provided for in the proviso to Section 2(15) of the Act. Section 13 (8) of the Act reads as under:-

[(8)“Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to clause (15) of section 2 become applicable in the case of such person in the said previous.”]

20. A perusal of the aforementioned section shows that it would be applicable if the provisions of the first proviso to clause (15) of Section 2 become applicable. However, we have held that the first proviso to Section 2(15) is not applicable in the case of the assessee on the facts of the case.”

8. Before us, Revenue has not pointed any distinguishing features in the facts of the present case nor has placed on record any material to demonstrate that the aforesaid decision of Tribunal in assessee's own case for A.Y. 2011-12 has been set aside/overturned by higher judicial authorities. In view of the foregoing facts and following the decision of Co-ordinate Bench of Tribunal and for similar reasons, we hold that the assessee has not conducted its affairs solely on commercial lines with a motive to earn profit and that proviso to section 2(15) is not applicable in the present case. Thus, the grounds of appeal of appeal are allowed.

ITA No. 78/RPR/2018 (A.Y. 2013-14)

9. Before us both the sides are unanimous in stating that the solitary issue raised in assessment year 2013-14 is identical to assessment year 2012-13. Since, the facts in the assessment year 2013-14 are similar to assessment year 2012-13, the findings given by us while deciding the appeal of assessee in A.Y. 2012-13 would mutatis mutandis apply to assessment year 2013-14. Accordingly, the appeal of assessee is allowed for the similar reasons.

10. In the result, both the appeals of assessee are allowed.

Order pronounced on 17th day of January, 2019.

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 17th January, 2019.
RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, I.T.A.T., Raipur
//True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलिय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	16.01.2019	Sr.PS/PS
2	Draft placed before author	17.01.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		