

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: "A", NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.4788/Del/2016
Assessment Year: 2010-11

Income Tax Officer(E), Trust Ward-1(1), Delhi	Vs.	M/s. Association of Corporation & Apex Societies of Handlooms, Near Gate No.2, Pragati Maidan, Bhairon Marg, New Delhi
PAN :AAATA0822C		
(Appellant)		(Respondent)

Appellant by	Shri C.P. Singh, Sr.DR
Respondent by	Shri K.V.S.R. Krishnan, CA

Date of hearing	26.02.2019
Date of pronouncement	27.03.2019

ORDER

PER O.P. KANT, A.M.:

This appeal by the Revenue is directed against order dated 10/06/2016 passed by the Ld. Commissioner of Income-tax (Appeals)-36, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2010-11, raising following grounds:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring that commercial activities of the assessee which are squarely covered under the last limb of proviso to section 2(15) of the Act, as the assessee is rendering services and charging fees for it*

and generating surplus. Thus, the benefit of section 11 & 12 are not allowable to the assessee.

2. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.

2. Briefly stated facts of the case are that the assessee society has been constituted by the Ministry of Textile for promoting the handloom sector by procuring the orders from all government departments and further giving it to the member societies. The assessee society is registered under section 12A of the Income-tax Act, 1961 (in short 'the Act') since 28/06/1984. For the year under consideration, the assessee filed return of income on 15/10/2010, declaring total income at nil. The case was selected for scrutiny and notice under section 143(2) of the Act was issued and complied with. In the assessment completed under section 143(3) of the Act on 13/03/2013, the Assessing Officer held that the assessee society is hit by the provision of section 2(15) of the Act as activity of the assessee was not of charitable nature and it was in the nature of trade, commerce and business or rendering any service in relation to trade, commerce and business. Accordingly, he denied the benefit under section 11 and 12 of the Income Tax Act and assessed the surplus of income over the expenditure. The Assessing Officer also restricted the depreciation as per the provisions of the Act on the assets purchase during the year under consideration. Aggrieved, the assessee filed appeal before the Ld. CIT(A), who allowed the benefit of section 11 alongwith consequential benefit. Aggrieved with the finding of the Ld. CIT(A), the Revenue is in appeal before the Tribunal.

3. The Ld. DR relied on the order of the Assessing Officer and submitted that the activities of the assessee of procuring order

from various government agencies and then supplying them after purchasing goods from the members of the Society, is in the nature of the trade, commerce the business and that the Assessing Officer has rightly denied benefit of section 11 and 12 of the Act.

4. On the other hand, the Ld. counsel of the assessee relied on the order of the Ld. CIT(A) and submitted that in earlier as well as in subsequent assessment years, the Ld. CIT(A) has allowed the benefit of section 11 and 12 of the Act and no appeal has been filed by the Department to the Tribunal against those orders of the Ld. CIT(A) and thus, following the rule of consistency, the Revenue should not have filed appeal in the year under consideration also.

5. We have heard the rival submission and perused the relevant material on record. The assessee has filed note on the activity of the society before the Ld. CIT(A), which is reproduced as under for ready reference:

“.....
Association of Corporation and Apex Society of Handlooms (ACASH) is a society constituted by the Development Commissioner (Handloom), Ministry of Textiles, Government of India. The main objects are to coordinate and defuse useful knowledge to the member units towards marketing of handloom products. The society is registered under the Society Registration Act 1860 and is also registered u/s. 12A of the Act and qualifies for exemption u/s. 11 & 12 of the Act. It is a non-profit organization managed and controlled by the Govt. Of India and its objectives are charitable within the meaning of Section 2(15) of the Income Tax Act, 1961. The main objective of ACASH is to promote the handloom sector by providing marketing platform to the handloom primary societies, Apex Societies as well as handloom corporation. It has procured the orders from various department of Govt. of India for supply of handloom items and distributed the orders to various members societies for supply. It worked as implementing agency of the Development Commissioner Handlooms, Government of India for organizing the exhibitions in different parts of the country for display and sale of handloom fabrics/cloth manufactured by the handloom weavers and handloom society.”

5.1 The Ld. CIT(A) has further summarized the activities of the assessee. Before the Ld. CIT(A), the assessee submitted that it procures orders on the various Department of government of India for supply of handloom items, which is distributed for production and supply to various member societies . The assessee also organized exhibitions in different parts of the country for display and sale of handloom fabrics/clothes manufactured by the handloom weaver and member societies. The assessee submitted that all the incomes, earnings and movable immovable properties of the Association are solely utilized and applied toward the promotion of its aims and objective of promoting handlooms in India .

5.2 On the issue of benefit under section 11 of the Act, the Ld. CIT(A) after considering the activity in detail allowed the benefit observing as under:

“8. I have considered the assessment order and the submissions of the assessee. The only ground of appeal is whether the assessee is engaged in the activities of trade, commerce or business so as to be hit by the proviso to Section 2(15) of the Act. The first contention of the assessee is that in all earlier years the objects of the assessee remaining same and held to be charitable, the benefit of Section 11 should be allowed based on principle of consistency. In this case, this contention is not acceptable as the amendment to the sec 2(15) of the I.T Act was applicable only from A.Y. 2009-10 and therefore what happens previously cannot be seen with the same eyes. With this argument, no amendment can ever be applicable. Ground No. 4 is therefore dismissed.

9. Whether the benefit of Section 11 is to be given is to be decided by the objects and the activities from year to year. In this case the assessee is an organisation constituted by the Ministry of Textiles and clearly is not for profit as it can be seen that the Executive Committee is wholly constituted by the Government officers mainly consisting of the MDs of textiles related department in different states and headed by the DC Handloom, Ministry of Textiles. It is promoting the handloom sector by procuring the orders from all

Government departments which have the demand and giving it to the member society. Thus it is a nodal and implementing agency of the Government and not a society for the purpose of making any profit or doing business. Further, it organises exhibitions to provide a platform to weavers across the country. The AO has apparently not considered the nature of the activities and the objectives of the society and merely disallowed the benefit of Section 11 by stating that the activities do not fall under the first five limbs of Sec 2(15) & that principle of mutuality does not apply.

The case of ITPO (2015) 371 ITR 333 of Delhi High Court applies to this case also, where it was adjudicated that where institution is not driven by motive to earn profit but to do charity through the advancement of objectives of general public utility, it will be regarded as established for charitable purposes. Further in the case of ICAI (2013) 358 ITR 91, it was observed by the High Court that even though fees are charged for such activities (coaching in that case) activities cannot be stated to be rendering of services in relation to any trade, commerce or business, as such activities are undertaken in furtherance of its main objects which is not trade, commerce or business. Thus, the purpose and the dominant objective for which an institution carries on its activities is material to decide if the same is business or not for which existence of profit motive is a vital indicator. In the present case the motive is to provide a platform for handloom weavers of the country for marketing and displaying their products through exhibitions. The activities are not for any private gain or profit as can be seen by the executive committee which consists of all Govt. officers having no profit sharing or personal interest. The receipts are used for activities of the society and the activities are monitored by the Ministry of Textiles, Government of India. In my opinion therefore, the assessee cannot be said to be involved in carrying on any business, trade or commerce even though it has objects of general public utility. The benefit of Section 11 may therefore be provided to the assessee alongwith consequential benefits.”

5.3 Evidently, the activity of the assessee are of advancement of any other object of the general public unity, which falls under the definition of the charitable purpose as defined under section 2(15) of the act. But the contention of the Assessing Officer is that said object of general public utility shall not be charitable because the assessee is engaged in the activity in the nature of trade, commerce or business or rendering any service in relation to any trade, commerce and business for cess or fee. We find that

activity of the assessee are primarily motivated with the objective of promoting handloom sector in India and said activity are not for gain or profit of an individual. The executive committee of the Society also consist of all government officials with no motive of profit sharing or personal interest. The member subscription is received by the assessee in proportion of the supply by the agency and the rate decided. The said subscription fee received cannot be equated with the cess or fee against services rendered. We are of the view that the Assessing Officer has not appreciated the activities and objective of the society properly and therefore he is not justified in holding that provision to section 2(15) will be attracted in the case of the assessee. In our opinion, the finding of the Ld. CIT(A) on the issue in dispute is well reasoned, and we do not find any error in the same. Accordingly we uphold the same. The ground of the appeal of the Revenue is accordingly dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 27th March, 2019.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 27th March, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi