

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 59/Del/2016
Asstt. Year: 2011-12

ITO (E) Ward 2 (4) New Delhi.	Vs.	National Foundation Trust G-36, Jangpura Extn. New Delhi – 110 014 PAN AAATN8356J
(Appellant)		(Respondent)

Department by:	Smt. Sugandha Sharma, Sr. DR
Assessee by :	Shri Rajan Bhatia, Adv.
Date of Hearing	07/03/2019
Date of pronouncement	20/05/2019

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the revenue against impugned order dated 26.10.2015, passed by Ld. CIT (Appeals)-40, New Delhi for the quantum of assessment passed u/s 143(3) for the assessment year 2011-12. In grounds of appeal, revenue has raised following grounds: -

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the appeal of the assessee ignoring the fact that the assessee has rendered services by way of conducting coaching/learning classes to the individuals in the*

field of sports and other related activities and charging fees thereupon which is purely in the nature of business/commerce/trade.”

2. The facts in brief are that the assessee is a trust which was formed the main object of promoting education in sports and other allied activities. Looking to its charitable activities, the trust was granted registration u/s 12AA ((1) on 29.11.2006. The assessee has filed its return of income declaring NIL income claiming exemption u/s 11 accompanied with audit report in form No. 10B on 27.9.2011. The Ld. AO noted that assessee has shown following receipts in the income and expenditure account :-

S.No.	Particulars of Income	Amount (Rs.
1.	Sports Receipts	67,45,512/-
2.	Activities Receipts	1,82,47,487/-
3.	Work Experience Receipts	14,66,000/-

3. In response to the show cause notice as to why above receipts may not be taxed as business income, assessee supplied 2 lists of students from whom fee have been charged, one containing list of participants who attended the value education workshop; and second containing 214 candidates who were given coaching for sports. Ld. AO inferred that aforesaid receipts were in the nature of business / commerce/trade receipts and accordingly, he invoked *proviso* to section 2(15) and after detailed discussion he held that assessee is not doing any charitable activities and therefore, benefit of section 11 cannot be granted and accordingly, he has treated entire excess of

income of expenditure amounting to Rs. 1,72,52,676/- as business income of the assessee. In sums and substance, he has held that the activities undertaken by the assessee include rendering of services in lieu of which it is charging fees and, therefore, the functions of the assessee trust indicate that it is engaged in advancement of any other objects of general utility and hence, benefit cannot be given to the assessee in view of the proviso to section 2 (15).

4. Before the Ld. CIT(A), assessee strongly relied upon the following judgements of the Hon'ble Delhi High Court in the case of **ICAI vs. DGIT (E), 347 ITR 99 (Delhi); and India Trade Promotion Organisation vs. DGIT, 371 ITR 333, (Delhi High Court)**; and submitted that in view of the principles laid down by the Hon'ble Jurisdictional High Court, any receipt on account of charging of fees does not tantamount that the assessee is involved in promotion of sport, education and other allied activities and therefore such activities is leviabale for exemption u/s 11(1). The fact that assessee charges fees from students for the education and sports activity, it that does not mean it is involved in any trade, commerce or business activity. Ld. CIT (A) held that principles laid down by the Hon'ble Jurisdictional High Court in the aforesaid two cases are squarely applicable as receipts from the activity carried out falls within ambit of carrying out charitable activities and hence assessee is eligible for benefit u/s 11.

5. After considering the rival submissions and on perusal of the relevant facts and material on record, we find that it is an undisputed fact that assessee was granted registration u/s 12AA. The aims and objects of the assessee society are as under: -

- a) *"Promote Educational research and studies for qualitative growth of the Institution and the child.*

- b) *Educational trends in the nature of Academic, Cultural, Arts and Sports, strategic environments through National academic institutions and school for cohesive growth of the child.*
- c) *Work and organize academic conferences, workshops, projects and youth camps with training courses for qualitative growth of the faculty with the child at the centre.”*

6. The nature of receipts as shown in the income and expenditure account and has also been noted by the Ld. AO is flowing from the activities carried out in pursuance of the objects for which it was granted registration u/s 12AA. Assessee trust has basically has received fees from the students for value education workshop and giving coaching for the sports. Such an activity ostensibly falls within the ambit of category of “education” and giving coaching in sports is also one of the related activities for the overall development of the youth and the sports activities. Therefore, any fees received from such activities cannot be held to be in the nature of any trade, commerce, business activities. In this case, *proviso* to section 2(15) may not attract in this case, because said *proviso* is applicable only where a trust is carrying out ‘advancement of any other object of general public utility’ and here the activities of the assessee trust falls in the realm of activities of educational and sports. Accordingly, we hold that assessee is eligible for benefit u/s 11 and 12 and we do not find any reason to deviate from the finding of the Ld. CIT(A) and the same is affirmed.

7. In the result appeal of the revenue is dismissed.

Order pronounced in the Open Court on 20th May, 2019.

sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER
Dated: 20/05/2019

sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi