IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A" HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMEBR

ITA No. 2355/Hyd/2018
Assessment Year: 2015-16

ACIT (Exemptions), Hyderabad.	vs.	Institute for Development and Research in Banking Technology (IDRBT) Hyderabad. PAN – AAAAI0204K
(Applicant)		(Respondent)

Revenue by : Shri Y.V.S.T Sai,
Assessee by : Shri Laxmi Niwas Sharma

Date of hearing : 13-05-2019
Date of pronouncement : 22-05-2019

ORDER

PER P. MADHAVI DEVI, J.M.:

This is Revenue's appeal for the A.Y 2015-16, against the order of the Ld. CIT(A)-9, Hyderabad dated 14.09.2018. The Revenue has raised the following grounds of appeal:

"1. The Ld. CIT(A) erred in allowing the appeal of the assessee.

2. The Ld. CIT(A) erred in allowing exemption u/s 11 to the assessee without considering the facts of the case where the various receipts shown by the assessee in its income and expenditure account are towards charges received for various services provided by it with a profit motive.

3. The Ld. CIT(A) erred in holding that the assessee is eligible for exemption u/s 11 of the Act without considering the fact that the proviso to Sec. 2(15) clarifying the circumstances under which carrying on the activity falling under advancement of any other object of general utility

would not be for charitable purpose which is squarely applicable to the facts of the case of the assessee.

4. The Ld. CIT(A) erred in holding that the assessee is eligible for exemption u/s 11 of the Act, without considering the provisions of Sec. 13(8) of the Act which is squarely applicable to the facts of the case of the assessee.

5. The appellant craves leave to add delete substitute and amend any ground of appeal before and or at the time of hearing.

2. At the time of hearing, the Ld. Counsel for the assessee submitted that this issue is covered in favour of the assessee by the decision of the Hon'ble ITAT in the earlier years which has also been confirmed by the Hon'ble High Court for the state of Telangana and the state of Andhra Pradesh at Hyderabad in Income Tax Tribunal appeal Nos. 71 and 391 of 2017 dated 09.10.2017.

3. On the other hand, the Ld. DR, supported the orders of the authorities below.

4. After hearing both the parties and after considering the material available on record, we find that the issue is covered in favour of the assessee from the earlier years. For the sake of ready reference, the relevant paragraphs of the Hon'ble High Court judgement in the assessee's own case for the A.Y 2010-11 are reproduced hereunder:

4. Admittedly the assessee is an autonomous institution established by the Reserve Bank of India, way back in the year 1996. The assessee was granted registration under Section 12AA with effect from 01.04.2004. But the registration was cancelled subsequently by the Director of Income Tax (Exemptions), by an order dated 30.11.2011. The Tribunal set aside the said order by a judgment dated 20.06.2012 passed in I.T.A.No.147/HYD/2012. The said order of the Tribunal became the subject matter of an

appeal before this Court in I.T.T.A.No.168 of 2015. By a judgment dated 04.11.2015 this Court answered the question of law in favour of the assessee and dismissed the appeal I.T.T.A.No.168 of 2015 filed by the Revenue questioning the order of the Tribunal setting aside the cancellation of registration.

5. For the purpose of completion of narration, it should also be brought on record that for the assessment years 2003-04 up to the year 2009-10, the assessing officer denied exemption, but the assessee succeeded before this Court.

6. But insofar as assessment years 2010-11 and 2011-12 are concerned, the assessing officer took umbrage under the proviso to Section 2(15) inserted under the Finance Act 2/2009, dated 01.04.2009, to distinguish the decisions in favaour of the assessee with regard to the assessment years 2003-04 to 2009-10. This is how the questions of law that we have framed above have arisen for our consideration. As a consequence the whole dispute now revolves around the interpretation to the proviso to Section 2(15). Incidentally, one more issue with regard to depreciation with reference to Section 11 has also been raised.

7. As we have pointed out earlier, the assessee is a society registered at the instance of the Reserve Bank of India for the purpose of assisting the banks and financial institutions, for the improvement of their performance. The assessee is also offering an M.Tech course and Ph.D degrees in banking.

8. Though the assessee claimed that the object for which it was established would come within the purview of education, the Tribunal did not accept it. However, the Tribunal held that the assessee would come within the purview of the definition of the expression charitable purpose, as an institution established for the advancement of an object of general public utility. Though Mr. K. Vasanth Kumar, learned counsel for the assessee attempted to argue on the basis of the finding recorded by this Curt in I.T.T.A.No.168 of 2015 that the assessee should be

considered as an institution established for the purpose of education, we do not think that we can now go into the question in view of the fact that the Revenue alone is on appeal against the finding recorded by the Tribunal.

9. Before proceeding further, we should point out one fundamental difference between the institutions, which would automatically fall within the purview of the expression charitable purpose under Section 2(15) and institutions which are established for the advancement of any other object of general public utility. Section 2(15) as it stands today after the last amendment under Finance Act, 2015, w.e.f., 01.04.2016 reads as follows:

Section 2 (15): charitable purpose includes relief of the poor, education, yoga medical relief, preservation of environment including water-sheds, forests and wildlife and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or 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, unless

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;

10. While institutions that are engaged in the relief to the poor, education, yoga, medical relief, preservation of environment and preservation of monuments or places or objects of artistic or historic interest are categorized under

one type under Section 2(15); the institutions established for the advancement of any other object of general public utility, are treated under Section 2 (15) as a separate category. This is very clear from the proviso to Section 2(15). There were two provisos inserted under Finance Act, 2010, w.e.f., 01.04.2009. The said provisos read as follows:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or 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:

Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is twenty-five lakh rupees or less in the previous year;

11. Without going into the intricacies, it can be pointed out in general that the inclusion of an institution for the advancement of any other object of general public utility within the definition of the expression charitable purpose was actually conditional. The condition was that such an institution should not be involved in the carrying on of any activity in the nature of trade, commerce or business. In other words, if an institution, established for the advancement of any other object of general public utility, which would otherwise come within the purview of Section 2(15), is involved in the carrying on of any activity in the nature of trade, commerce or business, such an institution will come within Section 2(15) only if two conditions laid down in the clauses are satisfied.

12. Now that the Tribunal has categorized the assessee not as an institution advancing the cause of education, but as an institution established for the advancement of any other object of general public utility, the first question that was required to be addressed by the Tribunal was as to

whether the assessee was involved in the carrying on of any activity in the nature of trade, commerce or business. Now let us see how this question was addressed to by the Tribunal.

13. In paragraph 11 of its order, the Tribunal analyzed the two provisos that were originally incorporated under Section 2(15) under the Finance Act, 2008. After doing so, the Tribunal referred to (1) a Circular of the CBDT bearing No.11/2008, dated 19.12.2008; and (2) the speech of the Minister of Finance on 29.02.2008, made during the debate in the Lok Sabha on the Finance Bill, 2008.

14. Thus after referring to the plain language of the statutory provisions and after referring to the manner in which the provision was sought to be incorporated by the executive, the Tribunal came to the conclusion in paragraph 15 of its order that the assessee was not engaged in carrying on any activity in the nature of trade, commerce or business. As a matter of fact, the Tribunal referred to the decision of the Delhi High Court in Institute of Chartered Accountants of India v. Director General of Income Tax (Exemptions) , before coming to the conclusion that the assessee was not carrying on an activity in the nature of any trade, commerce or business. The Tribunal also pointed out that the charging of a fee by the assessee was not with profit motive and that therefore, merely because the assessee derived income they cannot be held to be carrying on an activity in the nature of trade, commerce or business.

15. The relevant findings of the Income Tax Appellate Tribunal in this regard can be usefully extracted as follows: The circumstances under which the services rendered by the appellant society to the Banks make clear that there is no profit motive in such activities because these activities were entrusted to the appellant society by the Reserve Bank of India as a part of its supervisory role over the Banks in India. In our considered opinion, viewed from any angle, the objects, either main or ancillary, are not in the nature of business or trade or commerce. The banks merely used the expertise of appellant society in the banking operations. The question of the profit motive in

undertaking such activities can not be imagined keeping in view the circumstances under which the appellant society is operated. The objects of the appellant society are totally charitable in nature and do not carry on any activity in the nature of trade, commerce or business. Therefore, the proviso to Section 2(15) of the Act cannot be applied to the Appellant society as clarified by the Circular No.11 of 2008 issued by the CBDT. It is worthwhile to mention here that the Honble Finance Minister had also clarified, during the course of the debate in the Parliament, that the proviso to Section 2(15) of the Act is not intended to apply to genuine charitable organizations. It was further clarified by the Honble Finance Minister that the Chambers of Commerce and similar organizations rendering services to their members would not be affected by introduction of this proviso. It is fairly settled law now that reference can be made to the speech made by the Honble Finance Minister at the time fo piloting the bill in the Parliament in order to ascertain the true meaning of the words and the language employed in the Statute.

16. In the light of the categorical finding recorded by the Tribunal, we are of the considered view that though the assessee has been found by the Tribunal to be an institution established for the advancement of any other object of general public utility, the assessee does not fall under the category of such an institution, which is carrying on an activity in the nature of trade, commerce or business so as to attract the proviso to Section 2 (15) at all. Hence, the first question of law arising in both cases has to be answered against the appellant/Revenue.

17. Strong reliance is placed by the learned Senior Standing Counsel upon the decision of this Court in Andhra Pradesh State Seed Certification Agency v. Chief Commissioner of Income Tax . In the said case, the certification of seeds by the assessee was held to be in the nature of trade, Commerce or business as the assessee facilitated trade, commerce or business in the certified seeds.

18. But the distinction between the assessee in the said case and the assessee in the present case is that in the former the certification was done for the benefit of the private individuals and the private institutions. But in this case, the assessee was created by the Reserve Bank of India for the improvement of the performance of the banks and financial sector of the country, ultimately to have a bearing upon the economy of the country. Therefore, the said decision does not go to the rescue of the revenue.

19. Once the first question of law is answered against the appellant/Revenue, the second question of law revolving around Section 13(8) may not arise at all. Section 13(8) revolves around the quantum as stipulated in clause (i) and (ii) of the Proviso to Section 2 (15). If the proviso has no application, the invocation of those two clauses would not apply. Hence, the second question of law does not arise for consideration in the light of our answer to the first question of law.

4.1 Respectfully following the same in the assessee's own case, we are of the opinion that the order of the CIT(A) needs no interference, Revenue's appeal is accordingly dismissed.

5. In the result, the appeal filed by the Revenue is dismissed.

Pronounced in the open court on 22nd May, 2019

Sd/-	Sd/-
(S. RIFAUR RAHMAN)	**(P. MADHAVI DEVI)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad, Dated: 22nd May, 2019

KRK

1) IDRBT, 10-03-311, Castle Hills, Masb Tank, Hyderabad.
2) ACIT (Exemptions), Hyderabad.
3) CIT(A)-9, Hyderabad.
4) Addl. CIT (Exemptions), Hyderabad.
5) The Departmental Representative, I.T.A.T., Hyderabad.
6) Guard File.