

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 90/DEL/2017 (A.Y 2012-13)**

DCIT(E) Circle-2(I), Room No. 2408, 24 <sup>th</sup> Floor, Block E-2 Dr. S.P.Mukherjee Civic Centre New Delhi - 110002 <b>(APPELLANT)</b>	Vs	Oil Industry Safety Directorate 7 <sup>th</sup> Floor, New Delhi House, 27, Barakhamba Road New Delhi PAN : AAALO0048G  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>None</b>
<b>Respondent by</b>	<b>Ms. Rinku Singh, Sr. DR</b>

<b>Date of Hearing</b>	<b>04.07.2019</b>
<b>Date of Pronouncement</b>	<b>10 .07.2019</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the revenue against the order dated 07/10/2016 passed by CIT(A)-40, Delhi for Assessment Year 2012-13.

2. The grounds of appeal are as under:-

*“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the additions made on the basis of assessment completed as AOP. The assessee has nowhere proved that it falls under the category of Artificial Juridical Person. Further, Ld. CIT(A) has also erred in holding that proviso to section 2(15) is not applicable in case of assessee.*

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

3. The return of income declaring nil income was filed on 26.09.2012 by the assessee. The return was processed u/s 143(1) and the case was selected for scrutiny. Oil Industries Safety Directorate (hereinafter referred to as 'OISD') has been created by the Ministry of Petroleum and Natural Gas, Government of India vide its Resolution No. 13013/4/84-OR-I dated 10.01.1986. OISD is registered u/s 12A vide order dated 26.03.2007. During the course of assessment proceedings, the assessing officer noted various receipts in the income and expenditure account which included grants from OIIB and miscellaneous income. Miscellaneous income consisted of sale of printed OISD standards, sale of OISD standard CDs, pre-commissioning safety audit, workshop fees, miscellaneous income and bank interest. The Assessing Officer observed that all the activities under taken by OISD include an element of rendering services in relation to trade, business or commercial manner with a view to earn profit and earn profits and by conducting safety audit for different refineries, gas processing plants, marketing installation and cross country pipelines, the assessee is actually rendering the services to these companies by guiding them with various safety aspects with regard to design, operations, maintenance etc. The Assessing Officer also noted that the other activities of OISD is to conduct workshops, receipts on account of which amount to Rs. 11,20,000/- and OISD charges fees from participants who attend the workshops. The assessing officer held that OISD falls under the 6<sup>th</sup> limb of charitable activities, i.e. advancement of any other object of general public utility and following the amendment to section 2(15), denied exemption u/s 11. The assessing officer also assessed OISD in the status of Association of Persons (hereinafter referred to as 'AOP') rather than as Artificial Judicial Person (hereinafter referred to as 'AJP'), the status under which the return of income had been filed.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A) and the CIT(A) allowed the appeal of the assessee.

5. The Ld. DR submitted that on the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the additions made on the basis of assessment completed as AOP. The assessee has nowhere proved that it falls under the category of Artificial Juridical Person. Further, Ld. CIT(A) has also erred in holding that proviso to section 2(15) is not applicable in case of assessee.

6. At the time of hearing none appeared for the assessee, therefore, we are taking the submissions of the assessee before the CIT(A) cognizance.

7. We have heard the Ld. DR and perused all the relevant material available on record. The CIT(A) held as under :-

*“4. I have considered the assessment order, grounds of appeal, submissions of the appellant and decisions of the CIT(A)-36 and CIT(A)-40 and Hon’ble ITAT for other assessment years. The appellant has been filing return of income showing nil income in. In the assessment year 2004-05, the Assessing Officer assessed OISD as an AOP. The appeal of the appellant was allowed by the CIT(A)-XXI, vide order dated 19.03.2012. The Hon’ble ITAT vide order dated 28.10.2015 decided that the status of assessee cannot be changed without giving opportunity to the assessee. During the assessment year 2009-10, the Assessing Officer had again assessed it as an AOP. The CIT(A)-XXI, in order dated 16.05.2012 had allowed the appeal following the decision in the earlier assessment year 2004-05. Similarly, the Assessing Officer, in the assessment for the assessment year 2010-11 again treated the assessee as an AOP and had invoked the mischief of the proviso of section 2(15) mainly on the ground that the assessee is involved in the trade, commerce or business. The appeal was allowed vide order dated 25.03.2015 by the then CIT(A)-40.*

*4.1 The Hon’ble ITAT vide order dated 11.03.2015 has allowed the appellant's contention for assessment year 2009-10. The grounds of the Department were that on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the additions made on the basis of*

*assessment completed as AOP and that the assessee has nowhere proved that it falls under the category of AJP. The Hon'ble ITAT noted from order of CIT(A) for assessment year 2009-10 (ITA No. 3646/Del/2012) as follows:*

*"The Assessing Officer had on his own changed the status of the appellant from AJP to AOP. This legally he cannot do and the entire assessment is wrong and bad in law. It is liable to be annulled. On the similar ground, the Hon'ble CIT(A) in appeal No. 333/2007-08 vide order dated 19.03.2012 for assessment year 2004-05 had allowed the contention of the appellant and this issue is squarely covered by the order of the CIT(A). Assuming while denying the fact that the appellant is subject to tax, the appellant had received during the year under appeal, grant from OIDB to the extent of Rs. 6,95,00,000/-. This is basically a capital grant as per the directions of the Government and accordingly not liable to be taxed."*

*4.2 The Hon'ble ITAT in final Para of the order in ITA No. 3646/Del/2012 have noted as follows:*

*"6. After going through the aforesaid order passed by the Ld. CIT(A) on the issue in dispute, we are of the considered view that the Ld. First Appellate Authority has passed a well reasoned order by following his own order 19.03.2012 for asstt. year 2004-05 in Appeal No. 333/07-08, wherein the similar issue was dealt with. Therefore, we find no infirmity in the order of the Ld. CIT(A) and therefore, no interfere is required on our part, hence, we uphold the impugned order passed by the Ld. CIT(A) on this issue and decide the issue against the Revenue."*

*4.3 The facts and circumstances of the case for assessment year 2012-13 are same and identical as assessment year 2009-10, 2010-11 and assessment year 2011-12. Respectfully following the decision of Hon'ble ITAT and earlier orders of the CIT(A), it is held that mischief of proviso of section 2(15) is not applicable as the appellant is not involved in any trade, commerce or*

*business and the appellant is a part of the Ministry of Petroleum and Natural Gas having being created through a resolution of the Ministry and notified in the Gazette as referred earlier. The assessee is an AJP and the status cannot be changed to AOP without giving an opportunity of being heard to the assessee. On the principle of consistency, the appeal is allowed and the Assessing Officer is directed to allow exemption under section 11(1) with all the consequential benefits.*

5. *In the result, the appeal is allowed.”*

It is pertinent to note that the assessee is an AJP and the status cannot be changed to AOP simply the Assessing Officer changed the mind for this particular year. In fact in the past years the same has been accepted. Thus the CIT(A) rightly allowed the appeal of the assessee on the principle of consistency, and directed the Assessing Officer to allow exemption under section 11(1) with all the consequential benefits. There is no need to interfere with the findings of the CIT(A). Hence appeal of the Revenue is dismissed.

8. In result appeal of the revenue is dismissed.

**Order pronounced in the Open Court on 10<sup>th</sup> JULY, 2019.**

Sd/-

**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 10/07/2019

*\*Binita\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	05.07.2019
Date on which the typed draft is placed before the dictating Member	05.07.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	