

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

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.1422/Del/2014
Assessment Year: 2009-10

ITO(Exemption), Trust Ward-III, New Delhi	Vs.	Centre for the Study of Developing Societies, 29, Rajpur Road, New Delhi
PAN :AAATC5038N		
(Appellant)		(Respondent)

And

C.O. No.45/Del/2016
[In ITA No.1422/Del/2014]
Assessment Year: 2009-10

Centre for the Study of Developing Societies, 29, Rajpur Road, New Delhi	Vs.	ITO(Exemption), Trust Ward-III, New Delhi
PAN :AAATC5038N		
(Appellant)		(Respondent)

And

ITA No.6617/Del/2015
Assessment Year:2011-12

DCIT(Exemption), Circle-1(1), New Delhi	Vs.	Centre for the Study of Developing Societies, 29, Rajpur Road, New Delhi
PAN :AAATC5038N		
(Appellant)		(Respondent)

And

C.O. No.47/Del/2016
[In ITA No. 6617/Del/2015]
Assessment Year: 2011-12

Centre for the Study of Developing Societies, 29, Rajpur Road, New Delhi	Vs.	DCIT(Exemption), Circle-1(1), New Delhi
PAN :AAATC5038N		
(Appellant)		(Respondent)

Department by	Shri G. Johnson, Sr.DR
Assessee by	Shri R. Venkataraman & Shri D. Srikanthan, CAs

Date of hearing	31.07.2019
Date of pronouncement	03.09.2019

ORDER

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

These appeals by the Revenue and cross objections by the assessee are directed against two separate orders dated 24/12/2013 and 18/09/2015 passed by the Ld. Commissioner of Income-tax (Appeals), New Delhi [in short 'the Ld. CIT(A)'] for assessment years 2009-10 and 2011-12 respectively. Common grounds are involved in these appeals and cross objections, in identical set of circumstances, and thus these were heard together and disposed off by way of this consolidated order for sake of convenience and to avoid repetition of factual information. The grounds of appeal raised in ITA No. 1422/12/2014 for assessment year 2009-10 are reproduced as under:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the activities of the assessee are charitable in nature and not in the nature of trade, business or commerce as the assessee is providing consultancy in the form of exhibition of project or carrying out any research or any survey or carrying out any consultancy work for the fee to be charged.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has wrongly applied the ratio of judgment of Hon'ble Delhi High Court delivered in the case of ICAI Vs. DGIT(E), 347 ITR 99 (Delhi)-2012 and allowing the relief to the assessee, ignoring that the facts of the case are entirely different.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in accepting the argument of the assessee that the advanced or unspent amount received for ongoing research and project work is not chargeable to tax within the provisions of the Act.*

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

2. The cross objections raised by the assessee are reproduced as under:

1. *Centre For the Study of Developing Societies (CSDS) is registered under the provisions of the Societies Registration Act 1860 with Reg NoS.3369 of 1967-68.*
2. *CSDS is a social science research institution founded in the year 1963 for Research in social and political processes and their implication for human choices. It is the leading research organization in Asia for the study of Politics, nature of the State and Democracy, Education, Urban Development etc.*
3. *The Institution has been duly registered as a Trust under section 12 A(a) of the Income tax Act 1961 vide no 29198 dated 16.03.1979.*
4. *The Institution was exempted under section 10(23) © during the years 1997- 78 to 1983-84 and was declared as a Notified Institution in Gazette of India. The application for exemption under section 10(23)(C) has been moved which is still pending with the Department.*
5. *CSDS has been accorded recognition as social science research organization by the Central Government for the purpose of clause (iii) of subsection (1) of section 35 of the Income Tax Act 1961 from assessment year 2010-11 onwards in the category of 'Other institution' partly engaged in research activities.*
6. *It is also submitted by the assessee that carrying out specialized research projects does not amount to carrying on trade, commerce or business. Research activities are not trade ,commerce or business activities but simply research activities and are being carried out in tune with the objects of the Institution. (Case law ICAI Research foundation 226 CTR 27 Delhi High Court).*
7. *A profit motive is the essence of trade, commerce or business and therefore in a situation in which services are rendered without a profit motive, such rendering of service will not have anything in common with trade, commerce or business. (case law State of Andhra Pradesh Vs H. Abdul Bakshi & Bros, SC,(1964) 15 STC 644 referred in ICAI Research Foundation 226 CTR 27 Delhi High Court).*
8. *To submit, in a nutshell CSDS is a Research Institution of National Importance and has been carrying out Election Surveys since 1967.*

It also maintains a well endowed library with precious data that attracts National and International Scholars including the Late Kennedy Junior. The Institution is supported by the Financial Grants from the ICSSR and Ministry of External Affairs. The Institution is duly registered under Foreign Contributions Regulations Act 1973 and is duly supported by Endowment Grant from Ford Foundation. The Institution conducts research surveys, projects and specialized assignments in the field of Elections, Politics and Democracy which are life line of any Democracy.

9. *It is also submitted by the assessee that carrying out specialized research projects does not amount to carrying on trade, commerce or business. Research activities are not trade ,commerce or business activities but simply research activities. And all these Research activities are being carried out as per the objects of the Institution.*
10. *The expertise of the Assessee institution in carrying out research was utilized and therefore it cannot constitute trade, commerce or business activity. The aforesaid projects undertaken is not a regular activity of the assessee institution. Primary activity remains research in matters relating to social and political modernization.*

Merely because of these project receipts the essential character of the assessee institution does not change and cannot be treated or converted into activity which carries on trade, commerce or business or activity of rendering any service in relation to trade, commerce or business.

11. *A profit motive is the essence of trade, commerce or business and therefore in a situation in which services are rendered without a profit motive, such rendering of service will not have anything in common with trade, commerce or business.*
12. *In order to invoke second limb of proviso to sec.2(15) "rendering of services to trade, commerce or business must be such that it has a profit motive essentially.*
13. *On perusal of the order it will be observed that the learned CIT (A) in para no 3.4 has clearly mentioned that " the activities of the assessee apparently comes under the definition of charitable purpose u/s 2(15) under the sixth limb which reads as "advancement of any other object of general public utility". It is also seen that merely because the assessee receives some fees for the research and project work it does not mean that the assessee is involved in any commercial or business activities as the activities of the assessee remains the same starting from 1963 and there is no change in the activities of the society and the society was granted exemption u/s 11 upto A.Y. 2008-09 and the Board has also granted approval for exemption vide notification no 82/2010 dated 28/10/2010." Thus after considering all the facts of the case the*

learned CIT (A) as concluded that the assessee society is a charitable society and is not involved in any commercial or business activity and as such the assessee is eligible for exemption under section 11 of the Income tax Act 1961.

14. *The Ld CIT (A) has gone in detail of the nature of organization and the conclusion arrived by the Hon'ble Delhi High court in the case of ICAI Vs DGIT(E), 347 ITR 99 and as such the facts of the case are very much applicable to the assessee.*

3. Briefly stated facts of the case are that the assessee society was registered under section 12A(a) of the Income-tax Act, 1961 (in short 'the Act') vide order dated 16/03/1979 as a charitable institution. For the year under consideration, the assessee filed return of income on 30/09/2009, declaring Nil income. The case of the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued and complied with. The assessee furnished details of grant received from different organization including foreign grants. The Assessing Officer noted the objects and activities of the assessee society and observed that the assessee is a research-based organization carrying on research on various issues and providing consultancy on the issues as desired by their clients. The Assessing Officer held that the assessee was engaged in activities being "advancement of any other object of general public utility" in the nature of commercial and consultancy. According to the Assessing Officer in view of the proviso 2(15) of the Act introduced w.e.f. assessment year 2009-10, the advancement of any other object of general public utility shall not be charitable, if it involves the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering service in relation to trade, commerce or business, for a cess or fee or any other consideration. Accordingly, the Assessing Officer disallowed exemption for application of the income in

terms of section 11 of the Act and assessed the total income at Rs.2,23,70,460/-.

3.1 On further appeal, the Ld. CIT(A) held that the activities of the assessee were falling under “advancement of any other object of general public utility” but the assessee was not engaged in the activity of trade or commerce or the business. Accordingly, he held the assessee as eligible for exemption under section 11 of the act. The Ld. CIT(A) also accepted the objection of the assessee for treating advance received as part of the gross receipt during the year under consideration.

3.2 Aggrieved, the Revenue is in appeal raising the grounds as reproduced above and the assessee is before us by way of cross objections on the appeal.

4. In grounds No. 1 and 2 of the appeal, the Revenue challenged the finding of the Ld. CIT(A) of holding the activities of the assessee as charitable in nature .

4.1 Before us, the Ld. DR submitted that the assessee is engaged mainly in providing research information to its client against amount of fee charged, which is activity in the nature of commerce, trade or business and therefore, the assessee is not entitled for benefit of section 11 of the Act.

4.2 On the contrary, the Ld. counsel of the assessee filed a paper book containing pages 1 to 28 and submitted that in subsequent assessment years the assessee has been allowed benefit of section 11 of the Act by the Ld. CIT(A) and no appeal has been preferred by the Department against the order of the Ld. CIT(A) for 2014-15 and 2015-16. According to Ld. counsel, there was no profit motive involved in research activities carried out in tune with the objects of the institution. The Ld. counsel

submitted that proviso to section 2(15) of the Act is not applicable being the activity of the assessee not commercial in nature.

4.3 We have heard the rival submission of the parties and perused the relevant material on record. The advancement of any other objects of general public utility has been included under the charitable purpose in section 2(15) of the Act. The Assessing Officer and Ld. CIT(A) both have held that the assessee was engaged in activities of advancement of any other object of general public utility. The dispute in the instant case is with respect to the proviso to section 2(15) of the Act inserted w.e.f. assessment year 2009-10. The said proviso reads as under:

“Definitions.

2. *In this Act, unless the context otherwise requires,—*

(15) "charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, 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;*

4.4 According to the Assessing Officer, the activities of research and consultancy etc. provided by the assessee are in the nature of the trade, commerce or business, whereas according to the Ld. CIT(A) the activities of the assessee are not in the nature of the trade, commerce and business. According to the Ld. CIT(A),

merely because assessee receive some fees for research and project work, it does not mean that the assessee is involved in the commercial business activity. The activity of the assessee remains same starting from 1963 and there is no change in the activity of the society. The society was granted exemption under section 11 of the Act for assessment year 2008-09 and the CBDT has also granted approval for exemption wide notification No. 82/2010 dated 20/10/2010. The Ld. CIT(A) has relied on the decision of the Hon'ble Delhi High Court in the case of ICAI Vs. DGIT, 347 ITR 99(Delhi), wherein the assessee was receiving coaching fees from the student. In our opinion to decide whether any activity is in the nature of the trade, commerce of the business, what is to be seen is the profit motive involved in the activities. In the instant case, the Assessing Officer has not able to substantiate that activity of the assessee were carried out with any profit motive. The assessee is a social science research institution founded in the year 1963. The institution apart from handling individual and group projects operates programs of research and training, namely, 'The Institute of Chinese Studies', 'The Institute for Comparative Democracy', 'Sarai Program on Media and Urbanism', 'Program on Social and Political Theory'. The assessee derives its faculties from Indian Council of social science and receives Grant from government organization, including Ministry of external affairs. The research data of the assessee are used by the Election Commission of India and media for dissemination on the subjects of politics and democracy and is meant for research purposes and for non-profit and non-commercial use. The Ld. counsel submitted that more than 90% of activities are for research purposes and only small amount of activities i.e. less

than 10% are for media uses. The Assessing Officer has not demonstrated anywhere that fee received by the assessee are exorbitant and excessive then the cost incurred by the assessee. The coordinate bench of Tribunal in the case of Himachal Pradesh Environment Protection & Pollution Control Board vs. CIT (2009) 125 TTJ (Chd) 98 in para 3 in relation to the applicability of the proviso to section 2(15) has held as under:

“3. The assessee submitted before the learned CIT (Appeals) that the I.T.A.T., Chandigarh Bench has already decided the appeal of the assessee in ITA No.74/Chd/2009 wherein registration has been restored. Therefore, the assessee is entitled for deduction under sections 11 and 12 of the Act. The submissions on merits were also made. The learned CIT (Appeals) following the order of the Tribunal in ITA No.74/Chd/2009 decided the issue in favour of the assessee and held that the assessee would be treated as registered under section 12AA of the Act.

4. After hearing the rival submissions we do not find any merit in the appeal of the Revenue. The Revenue has raised only ground that the learned CIT (Appeals) has allowed registration under section 12AA of the Act. This issue has already been considered in detail by I.T.A.T., Chandigarh Bench in the case of the assessee in ITA No.74/Chd/2009, against which the appeal of the Revenue is pending before the Hon'ble High Court. Similarly, the I.T.A.T., Chandigarh Bench in ITA No.835/Chd/2012 for assessment year 2009-10 vide order dated 16.4.2013 dismissed the departmental appeal by following the same order of the Tribunal in ITA No.74/Chd/2009. Therefore, there is no infirmity in the order of the learned CIT (Appeals) in following the order of the Tribunal through which the assessee was conferred the registration under section 12AA of the Act and consequentially the assessee would be entitled for deduction under sections 11 and 12 of the Act. Merely because the departmental appeal is pending in Hon'ble High Court against the order of the Tribunal, is no ground to take different view at the stage. We do not find any infirmity in the order of the learned CIT (Appeals). The departmental appeal has no merit and is dismissed.”

4.5 In view of the above facts and circumstances, we do not find any error in the order of the Ld. CIT(A) in following the finding of

the Hon'ble Delhi High Court while holding the assessee as engaged in the charitable activity. The rule of the consistency also demand that the Revenue should not agitate this appeal, if the appeal in subsequent years on the same issue in dispute have not been agitated by the Revenue.

4.6 Accordingly the ground No. 1 and 2 of the appeal of the revenue are dismissed.

5. In ground No. 3, the Revenue has challenged the direction of the Ld. CIT(A) of advance or unspent amount received for ongoing research and project work as not chargeable to tax.

5.1 Before the Assessing Officer, the assessee submitted that its research and project work continues for more than one year and the assessee receives various fees from the party in advance. It was submitted that since the assessee received advance or the whole of the amount for the entire project, which continues for more than one year, the assessee allocates a part of the receipt in proportion to each year and balance advance amount is shown as an unspent amount as a liability in the balance sheet. The Assessing Officer treated the whole advance amount, which included the unspent amount or the advance amount as income. Before the Ld. CIT(A), the assessee submitted that its actual receipt were of Rs.4,29,14,484/-, whereas the Assessing Officer has taken the gross receipt at Rs.6,48,06,844/-as income of the assessee. The assessee submitted that in subsequent assessment year 2010-11, no such advance fee received or an unspent expenditure has been added as income of the assessee by the Assessing Officer.

5.2 The Ld. CIT(A) deleted the addition to income observing as under:

“4.2 I have considered the order of the AO and the submissions of the assessee and I find considerable merit in the submissions of the assessee that the AO is not justified to treat the whole advance amount as income of the assessee as the whole advance amount is received for the entire research and project work which continues for more than one year and as such action of the AO is not justified and the AO has accepted the claim of the assessee in the A.Y. 2010-11 and accordingly the addition made by the AO is deleted.”

5.3 We have heard rival submission of the parties on the issue in dispute. The assessee has treated the amount received against the project as and when it has accrued to the assessee, according to the project work carried out by the assessee, which in our opinion is in accordance with law. We do not find any error in the finding of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same. The ground No. 3 of the appeal of the revenue is accordingly dismissed.

6. The ground No. 4 of the appeal, being general in nature, we are not required to adjudicate upon and the same is dismissed as infructuous.

7. The grounds raised in cross objection are in support of the order of the Ld. CIT(A), which we have already upheld, and thus the ground of cross objection are allowed.

8. The ground No. 1 and 2 of the ITA No. 6617/Del/2015 are identical to grounds No.1 and 2 of ITA No. 1422/12/2014 for assessment year 2009-10, thus to have consistency in our decision, following the same the ground No. 1 and 2 of ITA No. 6617/Del/2015 are also dismissed.

9. The cross objection raised by the assessee against ITA No. 6617/del/2015 are allowed following the finding in ITA No. 1422/Del/2014.

10. In the result, both the appeals of the Revenue are dismissed, whereas both the cross objections of the assessee are allowed.

Order is pronounced in the open court on 3rd September, 2019.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

Sd/
[O.P. KANT]
ACCOUNTANT MEMBER

Dated: 3rd September, 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