

**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.3662/Del/2015
Assessment Year: 2011-12

DCIT (E), Circle -2(1), New Delhi	Vs.	M/s. Professional Assistance for Development Action (PRADAN), E-1A, Kailash Colony, New Delhi
PAN :AAATP0345D		
(Appellant)		(Respondent)

Appellant by	Shri K.V.S.R. Krishna, CA
Respondent by	Ms. Nidhi Srivastava, CIT(DR)

Date of hearing	30.07.2019
Date of pronouncement	03.09.2019

ORDER

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

This appeal by the Revenue is directed against order dated 19/03/2015 passed by the Ld. Commissioner of Income-tax (Appeals)-40, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2011-12 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 the fact that the activities of the assessee involved rendering of services in relation to carrying on of a commerce or business and*

hence, proviso to Section 2(15) is clearly applicable in case of the assessee.

- 2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing the AO to allow the exemption u/s 11 of the Act without appreciating the fact that assessee cannot be treated to be engaged in a charitable activities and hence, the AO has rightly denied the exemption.*
- 3. 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 as culled out from the order of the lower authorities are that the assessee is registered under the Societies Registration Act, 1860 and also registered under section 12AA(1) of the Income-tax Act, 1961 (in short 'the Act') as a charitable society vide order dated 27/10/1984 of the competent authority. The assessee is engaged in activities for upliftment of the poor, providing training and skill development of the poor in the rural area in the backward districts of the states like, Bihar, Jharkhand, Orissa, Madhya Pradesh, Chhattisgarh and West Bengal etc. The assessee gets grant from Central and State Government and also donation from the various organization like, 'Gate foundation' etc. The assessee has been allowed benefit of exemption under section 11(1) of the Act continuously up to assessment year 2010-11, however, in the instant assessment year the assessee has been denied said exemption by the Assessing Officer invoking the mischief of the proviso to section 2(15) of the Act. On further appeal, the Ld. CIT(A) allowed the exemption under section 11(1) of the Act with all consequential benefits. Aggrieved, the Revenue is in appeal before the Tribunal, raising the grounds as reproduced above.

3. Before us, the Ld. DR relied on the order of the Assessing Officer and referred to main objects of the assessee listed on page 2 of the assessment order. He Submitted that the assessee is engaged in providing training/technical assistance, capacity building, provide know-how and technical guidance, develop and promote technologies and their application in the field, assist development agencies, to do planning and information of development projects, to assist development agencies and funding various organization and in view of the services rendered, the assessee receives fees from its clients. He invited our attention to the fact that tax was also deducted at source on grants received by the assessee. He submitted that the assessee falls under the sixth limb of 'advancement of object of general public utility' and is engaged in rendering services in relation to carrying on trade or commerce or business against a sum of fee received and thus the proviso to section 2(15) get attracted in the case of assessee. Further, he referred to para 4.6 of the order of the Ld. CIT(A) wherein he has concluded that apparently the assessee was not involved in any trade, commerce or business. The Ld. DR submitted that the Ld. CIT(A) has not applied his mind to the facts of the case as he himself was not confirmed that the assessee was not engaged in trade, commerce or business. The Ld. DR referred to page 46 of the paper-book filed by the assessee and submitted that the assessee was not having any independence of working and its projects were being completely monitored by the donors. Accordingly, he submitted that the Assessing Officer has rightly denied exemption under section 11(1) of the Act invoking proviso to section 2(15) of the Act.

4. On the contrary, the Ld. counsel of the assessee filed a paper-book containing pages 1 to 231 and relied on the order of the Ld. CIT(A). The Ld. counsel referred to various pages of the paper-book to substantiate that the assessee was engaged in projects related to providing relief to the poor. He specifically referred to page 53 of the paper-book wherein the grant was sanctioned by 'Sir Dorabji Tata Trust' to enable the assessee for strengthening rural livelihoods in the economically poor regions of India. He also drawn our attention to page 26, 29, 30 & 34 of the paper-book highlighting the project done in backward areas particularly 'Scheduled Castes' and 'Scheduled Tribes' communities of various states for taking up issues affecting their lives, including accessing basic services, rights and entitlements and their participation in local governance structure. The Ld. counsel referred to CBDT Circular No. 11/2008, dated 19/12/2008 and highlighted that the relief to the poor include welfare of the economically and socially disadvantaged or needy. According to him, the activities of the assessee being in furtherance to the cause of disadvantaged women or children or a small and marginal farmers etc. same falls under the charitable activity of 'relief to poor'.

5. The Ld. counsel submitted that even the proviso to section 2(15) is not applicable as no extra fee has been charged for implementing the project work of various agencies. He further submitted that even in case of entities engaged in advancement of object of general public utility, merely receiving fee or charge, cannot make the assessee as involved in trade, commerce or business as held in the case of India Trade Promotion Organization Vs. DGIT(E) 53, Taxman.com 404 (Delhi). He further

submitted that in the case of ICAI Vs DGIT(E) 347 ITR 99(Del) Hon'ble Court has held that profit motive test should be satisfied for holding whether the entity is engaged in trade or commerce or business and there should be facts and other circumstances which justify that the activity undertaken is in the nature of the business. According to the Ld. counsel the Assessing Officer has failed to justify with cogent evidences that activity of the assessee is in the nature of the trade, commerce or business.

6. He further submitted that the assessee has been allowed the benefit of section 11 of the Act consistently from its registration. He submitted that even after the newly amended provision of section 2(15) of the Act by the Finance Act, 2008 the assessee has been allowed benefit of section 11 in assessment year 2009-10 and 2010-11, which have been completed under section 143(3) of the Act by the Assessing Officer. He referred to assessment order for assessment year 2010-11 and submitted that the Assessing Officer have taken due note of the activities of the assessee and held the same as to be charitable in nature within the meaning of section 2(15) of the Act. He submitted that in view of the rule of consistency, the assessee is entitled to exemption under section 11(1) of the Act as there is no change in the facts in the year under consideration as compared to assessment year 2009-10 and 2010-11. In support of the contention of the rule of consistency, the Ld. counsel relied on the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang versus CIT (1992) 193 ITR 321 (SC).

7. We have heard rival submission of the parties and perused relevant material on record, including paper-book filed by the assessee. According to the Assessing Officer, the activity of the

assessee falls under “advancement of general public utility” , and the assessee being engaged in business of providing services against fee, the activity is out of domain of charitable purpose in view of the proviso to section 2(15) of the Act. The contention of the assessee before us is that the activity of the assessee falls under the main limb of definition of the charitable purpose of relief to poor. The alternative contention of the assessee is that even if the activities of the assessee are considered under the limb of advancement of general public utility, same is not in the nature of trade, commerce or business as no profit motive is involved in providing the services and no extra fee is charged from the clients except cost of the projects.

7.1 As far as the activity of the assessee under the limb of advancement of general public utility is concerned, we find that learned Assessing Officer has not brought on record any evidences which could suggest that the activities of the assessee have been carried out with profit motive. The Ld. DR also even could not controvert the fact that the assessee has not charged any fee from the clients except the cost of project actually incurred. In the sanction letter of grant to the assessee, there is mention of supervision or monitoring of the activities by the donor, but that in itself is not sufficient to hold that any profit motive is involved. It is quite normal that the donor want to verify whether the grants have been incurred for the intended purpose, which in our opinion, is in any manner does not establish that the activities of the assessee is business activity. The Ld. CIT(A) following the decision of the Hon’ble Delhi High Court has decided the issue in favour of the assessee observing as under:

“4.4 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 mischief of Proviso of section 2(15) is not apparently applicable as the assessee is not involved in any trade, commerce or business. The assessee is very much a charitable society and is working for the welfare of the poor and rural people and is very much eligible for exemption u/s 11(1) and the AO has not made out any specific case to show that the assessee is involved in any trade, commerce or business.

4.5 Recently the Hon'ble Delhi High Court in the case of India Trade Promotion Organization vs. DGIT(E), 53 Taxmann.com 404 (Delhi) 2015 (order dated 22/01/2015) has upheld the constitution validity of the proviso of section 2(15) which was under challenge being discriminatory in view of the Article 14 (Equality before law) of the Constitution of India but the Hon'ble High Court has read down the strict and literal interpretation of the Proviso of section 2(15) and has held that mere receipt of fee or charge cannot be said that the assessee is involved in any trade, commerce or business and has accordingly allowed the relief to the ITPO case vide Para 58 and 59 of the order.

4.6 After considering all the facts and circumstances of the case, I am of the view that apparently the assessee is not apparently involved in any trade, commerce or business and as such the mischief of Proviso of section 2(15) is not applicable and the assessee can be allowed the relief or exemption u/s 11(1) as a charitable society and accordingly the AO is directed to allow the exemption u/s 11(1) with all the consequential benefits.”

7.2 In our considered opinion, the assessee is not engaged in any trade, commerce or business and thus mischief of proviso of section 2(15) is not attracted in the case of the assessee. Accordingly, we uphold the finding of the Ld. CIT(A) on the issue in dispute.

7.3 Further, we note that in the assessment years 2009-10 and 2010-11, the Assessing Officer has held the assessee as engaged in providing relief to poor within the meaning of section 2(15) of the Act. The assessee has claimed that its activity during the year under consideration has remained same and there is no change as compared to assessment years 2009-10 and 2010-11. In such

circumstances, in view of the rule of consistency also the exemption granted under section 11 of the Act should not have been denied to the assessee.

7.4 The grounds of the appeal of the Revenue are accordingly dismissed.

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

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