

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "E" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. & SHRI O.P. KANT, A.M.

ITA.No.5738/Del./2016  
Assessment Year 2012-2013

The DCIT (E), Circle-2(1) Room No.2408, 24 <sup>th</sup> Floor, Block E-2, Pratyaksh Kar Bhawan, Dr. S.P. Mukharjee Civic Center, New Delhi PIN - 110 002.	vs	National Association of Software and Service Companies, 2 <sup>nd</sup> Floor, Pt. Uma Shankar Dixit Marg, Chanakyapuri, New Delhi. PIN - 110 066 PAN AAATN2595F
(Appellant)		(Respondent)

For Revenue :	Ms. Pramita M. Biswas, CIT-DR
For Assessee :	Shri Gaurav Jain, Advocate And Shri Deepesh Jain, C.A.

Date of Hearing :	04.11.2019
Date of Pronouncement :	05.11.2019

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-36, New Delhi, Dated 12.08.2016, for the A.Y. 2012-2013, on the following grounds :

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law in allowing the appeal of the assessee ignoring the fact that the activities of the assessee is in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activities. The assessee falls in the last category of general public utility as per the definition of Sec. 2(15) of I.T. Act 1961 and not entitled to carry on any business or commercial activity.*

2. *On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in law in allowing the appeal of the assessee ignoring the fact that assessee charges subscription fee on the basis of turnover and voting right is as per subscription of fees, hence on the basis of*

*differentiated treatment to members ,the assessee  
has violated the essence of principle of mutuality.”*

2. It is noted in the appellate order that assessee challenged the Order of the A.O. in denying exemption claimed by the assessee, for an amount of Rs.10.86 crores in respect of receipts from members on account of membership subscription, on the principle of mutuality and in holding that the principle of mutuality shall not be applicable to membership subscription, since (a) the assessee was charging varying membership fees from different members which carried differential voting rights; (b) the assessee had dealings with both members and non-members. The A.O. however, did not accept the contention of assessee and denied the exemption under section 11 and 12 of the I.T. Act to the assessee and observed that the assessee society will be assessed as normal AOP.

3. The assessee challenged the addition before the Ld. CIT(A) and it was submitted that that as a consequence of amendment, the assessee ceased to be charitable society

in terms of section 2(15) and consequently did not claim exemption under Section 11 of the Act from the AY 2009-10 and onwards. Accordingly, the assessee offered to tax income earned from various activities as business income. Being so, the question of denial of exemption, under section 11/12 of the Act, as raised by the AO does not come into the picture. The differential membership subscription is only fixed to recover higher subscription from those having larger turnover, while seeking to support fledglings/new entrants. The membership based on the turnover, carry differential voting rights. However, uniform service is provided by the assessee to all categories of members, irrespective of the membership fee paid. No specific services are being provided to members in lieu of payment of higher membership subscription charges. During the relevant previous year, the assessee received gross amount of Rs.20.84 crores on account of annual membership subscription from members. In the return of income, the assessee, claimed exemption in respect of an amount of Rs.10.86 crores on the principle of mutuality, arrived at, after reducing/allocating expenses

incurred during the year out of gross membership subscription receipts. It was submitted that on the issue of exemption claimed by the assessee on the basis of principles of mutuality have been decided by the CIT(A) in favour of the assessee for the A.Y 2009-10. The Ld. CIT(A) reproduced the submissions of the assessee and order of Ld. CIT(A) dated 13.09.2013 for AY. 2009-10 in the order and following the same, deleted the entire addition. His findings in paras 8 and 9 are reproduced as under :

“8. *It is observed that after amendment in proviso to section 2(15), the assessee has itself not claimed exemption u/s. 11 & offered its income for tax from A.Y. 2009-10 onwards. The reference by the AO to the assessee not being covered by proviso to Section 2(15) is therefore not relevant or correct. Further, the assessee has also shown the amount received from non-members as income. The exemption has been claimed on income of ? 10.86 crores which is received from the*

*members of the association on the principle of mutuality. It is also seen that the indirect expense has been duly apportioned and the services provided to members are same irrespective of the membership fees & voting rights being different. The assessee has also relied on various case laws on the principle of mutuality. After considering all the facts and circumstances of the case which are same as that of A.Y. 2009-10 and keeping in view the order of my predecessor for A.Y. 2009-10 dated 13.09.2013 & my order for A.Y. 2010-11 dated 14.03.2016, I am of the view that the benefit on principle of mutuality be granted to the assessee on membership fees from members only Further due credit to TDS & Advance Tax may be given after verification.”*

9. *In the result, the appeal of the assessee is allowed.”*

4. Learned Counsel for the Assessee, at the outset submitted that the issue is covered by Order of ITAT, Delhi Bench in the case of same assessee for A.Y. 2009-2010 vide Order Dated 20.09.2019 in the Departmental Appeal in ITA.No.6521/Del./2013 on identical issue have been dismissed. The Order of the Tribunal in paras 12 to 14 are reproduced as under :

*“12. During the course of arguments, the question as to the way of disposal of the funds, if any, had arisen. By placing reliance on the decision in the case of Bankipur Club Ltd. (supra), Id. AR submitted that in that case also vide clause 7 of the Memorandum of Association, it was provided that upon winding up and dissolution of the association, the remaining property after the satisfaction of its debts and liabilities, shall not be paid or distributed amongst the members but shall be given or transferred to such other institution or institutions having similar objects to be*

*determined by the members at or before the time on dissolution. On this aspect, the Hon'ble Apex court referred to the decision of the Hon'ble P & H High Court in the case of CIT vs Northern India Motion Pictures Association (1989) 180 ITR 160 to the effect that it is for the contributors to deprive themselves of the control on the disposal of the surplus and they could agree to divide the surplus amongst themselves and contribute the amount to a similar association or to a charitable trust, still the assessee will be a mutual benefit association and its income is not taxable. This aspect also, therefore, stands covered by the judicial precedent and does not admit of any fresh discussion.*

13. *For the above reasons, we concur with the findings of the Ld. CIT(A) that the case law relied upon by the Id. AR supports the view taken by the Ld. CIT(A) on the aspect of*

*principle of mutuality and the entitlement of the assessee to claim the benefit of Section 11 of the Act. We, therefore, uphold the same and find the grounds of appeal as devoid of merits.*

14. *In the result, appeal of the revenue is dismissed.”*

5. The Ld. D.R. also stated that the issue is covered by the aforesaid Order of the Tribunal in the case of same assessee.

6. Following the Order of the Coordinate Bench of the Tribunal Dated 20.09.2019 (supra), on identical issue, we dismiss the departmental appeal.

7. In the result, appeal of the Department dismissed.

Order pronounced in the open Court.

Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER  
Delhi, Dated 05<sup>th</sup> November, 2019  
VBP/-

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :  
Delhi.