

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'C' : NEW DELHI)
BEFORE SHRI N.K.B ILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
ITA No.1353/Del./2017, A.Y. 2011-12
ITA No. 1354/Del/2017, A.Y. 2012-13

DCIT(E)
Circle-1(1), E-2 Block,
Pratyaksh Kar Bhawan,
Dr. SPM Centre,
New Delhi

(APPELLANT)

Vs. Indo French Centre for
the Promotion of
Advanced Research
5B, Ground Floor,
India Habitat Centre
Lodhi Road
New Delhi
PAN : AAATI0155Q
(RESPONDENT)

ASSESSEE BY : Sh. Praveen Gupta, CA
REVENUE BY : Ms. Sushma Singh, CIT-DR

Date of Hearing : 09.12.2019
Date of Order : 31.12.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since the identical issues has been raised in all the aforesaid
appeals on the basis of identical set of facts and circumstances, the

same are being disposed of by way of composite order to avoid repetition of discussion.

2. The appellant Dy. Commissioner of Income Tax (E), Circle 1(1), New Delhi (hereinafter referred to as 'the revenue') by filing the aforesaid appeals sought to set aside the impugned order dated 09/12/2016 passed by Ld. Commissioner of Income Tax(Appeals)-40, New Delhi qua the Assessment Year 2011-12 and 2012-13 respectively on identical grounds inter alia that :

“1. On the facts and circumstances of the case, Ld. CIT(A) has erred in ignoring the fact that in this case, transaction of ‘foreign contribution’ was not transacted between the Government of India and Government of France. Instead, the transaction of ‘foreign contribution’ was transacted directly between Government of France and the assessee society. Moreover, in the case of the assessee, compulsory auditing by C&AG is not required.

2. On the facts and circumstances of the case, Ld. CIT(A) has erred in ignoring the fact that the computation of taxable income of the assessee had been done as per the provisions of the Act, 1961.

3. On the facts and in the circumstances of the case, Ld. CIT(A) has erred in ignoring the fact that income of the assessee was computed as per provisions of Section 11 to 13 of the Act, 1961.

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

3. Briefly stated the facts necessary for adjudication of the controversy at hand are: Assessee society came into existence in the year 1986-87 and was registered under Societies Registration Act, 1860 as a Joint Venture of Government of India and

Government of France with object to promote Scientific Research in both the countries. Earlier assessee society was granted exemption u/s 35(1)(ii) of the Income Tax Act as a Scientific Research Association but subsequently it was registered u/s 12AA of the Act vide order dated 13.05.2004. Assessee society claimed its income as exempt u/s 11(1)(c) for the year under assessment for income applied outside India.

4. The Assessing Officer made an addition of Rs. 9,90,14,418/- and 6,08,87,282/- u/s 11(1)(c) of the Act for AY 2011-12 & 2012-13 respectively incurred by the assessee in foreign currency outside India being in contravention of provisions contained u/s 11(1)(c) of the Act. The Assessing Officer also made a disallowance of Rs. 9,96,35,250/- and 9,16,98,000/- for AY 2011-12 and 2012-13 respectively on account of receipt of the same in violation of Foreign Contribution Regulation Act (FCRA) and made addition thereof to the total income of the assessee. The Assessing Officer assessed the total income of the assessee at 16,46,74,150/- and 8,98,45,430/- for AY 2011-12 and 2012-13 respectively.

5. Assessee carried the matter before Ld. CIT(A) who has deleted the addition by allowing the appeals. Feeling aggrieved the

revenue has come up before the Tribunal by way of filing the present appeal.

6. We have heard the ld. DR, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

**GROUND NO. 1 of ITA No. 1353/Del/2017,
A.Y. 2011-12 & ITA NO. 1354/Del/2017, A.Y. 2012-13**

7. AO made addition of Rs. 9,90,14,418/- and 6,08,87,282/- for AY 2011-12 and 2012-13 on the sole ground that the assessee has failed to get approval of the Central Board of Direct Taxes (CBDT) for exemption u/s 11(1)(c) of the Act. However, from the impugned order passed by Ld. CIT(A) it is proved that the said approval has been accorded by CBDT vide letter no. E. No. 180/04/2011-ITA-1 dated 08.02.2016 which is effective for AY 2011-12 and 2012-13, the years under assessment to incur the expenses to the tune of Rs. 9,90,14,418/- and 6,08,87,282/- for AY 2011-12 and 2012-13 respectively by the assessee outside India for the purpose of International Welfare and the same has been ordered to be included in the total income of the assessee society. Since aforesaid factual position has not been controverted by Ld. DR, We

find no illegality or perversity in the findings written by Ld. CIT(A) in deleting the aforesaid additions. Consequently Ground no. 1 of ITA No. 1353/Del/2017, A.Y. 2011-12 and ITA No. 1354/Del/2017, A.Y. 2012-13 are decided against the revenue.

**GROUND NO. 2 AND 3 of ITA No. 1353/Del/2017,
A.Y. 2011-12 & ITA NO. 1354/Del/2017, A.Y. 2012-13**

8. AO made disallowance of Rs.9,96,35,250/- and Rs. 9,16,98,000/- for AY 2011-12 and 2012-13 respectively on the ground that assessee society has received foreign contribution from the Government of France within meaning of Section 2(1)(j) of FCRA without filing return qua these contributions in FC-3 to the Ministry of Home Affairs as per FCRA Guidelines.

9. Undisputedly, the assessee society is registered under Societies Registration Act, 1860 as a joint venture of Government of India and Government of France with an object to promote scientific research in both the countries. The ld. DR for the Revenue vehemently contended that since the assessee society is not a Government society, the ld. CIT (A) has grossly erred in deleting this addition by treating the assessee society as a Government society. However, we are of the considered view that when the assessee society is a registered society under the Societies

Registration Act established as a joint venture with an object to promote scientific research of both the countries and the entire funds are contributed by Government of India and Government of France, the same is an instrumentality of the Government of India.

10. The Id. AR for the assessee drew our attention towards a letter, available at page 44 of the paper book, addressed to the assessee's society by the Ministry of Home Affairs explaining the transactions not attracting provisions of FCRA. For facility of reference, letter (supra) is reproduced as under :-

"NO.....
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
1st Floor, NDCC-II Building, Jai Singh Road, Off.
Parliament Street, Near Jantar Mandir, New Delhi - 110
001, Date : 2.01.2014

To,

Dr. Debapriya Dutta,
Director,,
5B, Ground Floor,
India Habitat Centre, Lodhi Road,
New Delhi - 110003.

Subject : Permission under [Foreign \(Regulation\) Act](#), 2010

Sir,

I am directed to refer to your letter dated 18 Sept 2013 on the subject mentioned above and to state that [Foreign Contribution \(Regulation\) Act](#), 2010 does not attract in respect of the following transactions :

a) Transaction between the Govt. of India and the Govt. of any foreign country or territory - Clause 51 of FCRA 2010.

b) Bodies constituted or established by or under a [Central Act](#) or a [State Act](#) requiring compulsory auditing by C&AG Notification No.S.O.1492(E) dated 1 July, 2011.

In view of above, it is required to examine the subject proposal. If the foreign contribution receiving body comes within the purview of above provision. If not, then apply online in FC-4 through this Ministry's website i.e. www.mha.nic.in.

Yours faithfully,

Sd/-

(Gopal Jha)

Under Secretary to the Govt. of India"

11. Bare perusal of the letter (supra) goes to prove that when a transaction is between Government of India and Government of any foreign country or territory, FCRA is not attracted. When undisputedly, the transaction of Rs.9,96,35,250 /- and Rs. 9,16,98,000/- for AY 2011-12 & 2012-13 respectively is a grant given by French Government to the assessee society which is a joint venture of French Government and Government of India, the transaction of transferring the grants is a transaction between both the countries as specified in the letter (supra). Furthermore, vide letter dated 02.01.2014, available at page 21 of the paper book, addressed to Secretary General, Ministry of External Relations, Government of France by Shri Ramesh Bhandari, the then Foreign Secretary, it is categorically made clear that, "the assessee society is established for promotion of scientific research etc. will be exempt from payment of income-tax." So, in these circumstances,

we find no illegality or perversity in the findings returned by ld. CIT (A). Consequently, Ground No. 2 & 3 of ITA No. 1353/Del/2017 , A.Y. 2011-12 and ITA No. 1354/Del/2017, A.Y. 2012-13 are determined against the Revenue.

12. Furthermore, it is brought on record by the Ld. AR of the Assessee that identical issues have already been decided by the Co-ordinate Bench of Tribunal in favour of the assessee in AY 2011-12 in its own case vide order dated 29.08.2017 passed in ITA No. 2802/Del/2014 which is squarely applicable to the facts and circumstances of the case.

13. In view of what has been discussed above both the aforesaid appeals filed by the revenue for AY 2011-12 and 2012-13 are hereby dismissed being without merits.

Order pronounced in open court on this 31st December, 2019.

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Dated : 31/12/ 2019

BR

Sd/-
(KULDIP SINGH)
JUDICIALMEMBER

Copy forwarded to:

1. Appellant
2. Respondent

3. CIT
4. CIT(A)-19, New Delhi.
5. CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI

Date of dictation	4/12/2019
Date on which the typed draft is placed before the dictating Member	06/12/2019
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	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	