

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI Dr. B.R.R. KUMAR, ACCOUNTANT MEMBER**

I.T.A. No.4003/DEL/2015  
Assessment Year 2010-11

Software Technology Parks of India, Director General, Software Technology Park of India, 9 <sup>th</sup> Floor, NDCC-II Building, Opposite Jantar Mantar, New Delhi.	v.	DCIT, Circle-31(1), New Delhi.
TAN/PAN: AAATS 2468J		
(Appellant)		(Respondent)

Appellant by:	Shri Atul Ninawat, Adv.		
Respondent by:	Shri Sanjay Gupta, CIT-D.R.		
Date of hearing:	10	02	2020
Date of pronouncement:	17	02	2020

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the Assessee against the impugned order dated 31.03.2015 passed by Commissioner of Income Tax (Appeals)-XVIII, New Delhi for the quantum of assessment passed u/s.143(3) for the Assessment Year 2010-11. In the grounds of appeal, the assessee has raised following grounds:-

- “1. The Assessment Order is bad in law and erroneous and should therefore be set aside.
2. The CIT(A) is unjust in denying the exemption and benefit of Section 11 to 13 of the Income Tax Act, 1961 and treating the

*assessee as the charitable trust.*

*3. The CIT(A) has erred in upholding the assessing officer's calculation and taxing the gains from sale of property by the assessee as business income instead of capital gains.*

*4. The CIT(A) has erred in upholding the addition of Rs. 74106972/- made by the assessing officer on account of profit from STPI Bangalore.*

*5. The CIT(A) has erred in upholding the disallowance on account of the deduction under section 35ABB of Rs. 2245000/-.*

*6. The CIT(A) has erred in upholding the addition on account of the capital expenditure under section 37 of Rs. 13590804/-.*

*7. The CIT(A) has erred in upholding the disallowance under section 14A of Rs. 188532/-.*

*8. The CIT(A) has erred in upholding the disallowance on account of the prior period expenses twice under section 37(1) the Income Tax Act, 1961 of Rs. 4382454/-.*

*9. The CIT(A) has erred in upholding the disallowance of the expenditure twice under section 40(1)(ia) of the Income Tax Act, 1961 of Rs. 584181/-.*

*10. The appellant prays for leave to add, alter or amend the grounds of appeals."*

2. At the outset, it was submitted by the ld. counsel that in assessee's own case for Assessment Year 2009-10 matter has been remanded back by the Tribunal to decide all these issue afresh and on merits.

3. Ld. DR has also admitted that matter can be restored back to the file of the Assessing Officer to be decided in line of the direction of the Tribunal.

4. The facts in brief are that the assessee-society is carrying out activities on the mandate of Government of India, for the development of the Information Technology Environment, Trade and Infrastructure in India. Looking to its charitable activities, it was registered u/s.12A. The Id. Assessing Officer held that assessee is not entitled to seek relief or claim exemption u/s.11 to 13 as it was not produced any Certificate u/s.12AA; and further, assessee cannot be entitled for relief, simply because it is indulged in carrying out the scheme of Government in promotion of business and export, etc. He observed that the assessee society has not been formed by an Act of Parliament and there is no provision in the Act under which the income of the assessee is exempted. After detailed discussion, he has made various disallowances and additions and the income of the assessee was assessed at Rs.125,06,25,920/- as against revised return of income of Rs.94,77,92,579/-.

5. The Ld. CIT (A) has confirmed all the additions including the claim of benefit u/s.11 to 13.

6. On perusal of the order of the Tribunal for Assessment Year 2009-10, we find that similar issues were involved in that year also including the claim of exemption u/s.11 to 13. The Tribunal has remanded back these issues to the file of the Assessing Officer after observing and holding as under:

*“14. We have carefully considered the orders of the authorities below and have also gone through the decision of the coordinate bench and that of the Hon’ble High Court. It is an undisputed fact that the proviso to section 2 (15) has been made applicable from A.Y. 2009-10. It is also not in dispute that the Assessing*

*Officer has not examined this issue for the year under consideration while framing the assessment order. It is equally true that this issue was raised for the first time before the CIT(A) and in the order CIT(A) has simply drawn support from the findings given in A.Y. 2007-08 without examining the facts of the assessee in the light of the proviso to section 2 (15) of the Act.*

15. *We are of the considered view that since the facts are not clearly coming out from the orders of the authorities below, therefore, the assessment has to be restored to the files of the Assessing Officer for fresh adjudication. We accordingly set aside the assessment to the files of the Assessing Officer. The Assessing Officer is directed to examine the issue afresh in the light of the proviso to section 2 (15) of the Act after giving a reasonable and sufficient opportunity of being heard to the assessee. Ground No.1 of assessee's appeal is allowed for statistical purpose.*

16. *In so far as the ground No.2 is concerned the counsel stated that no exempt income has been earned by the assessee, therefore, there cannot be any disallowance u/s. 14A of the Act.*

17. *We find that whether or not the assessee has derived any exempt income is not clear from the assessment as well as the order of the CIT(A), therefore, in the interest of justice this issue is also set aside to the files of the Assessing Officer. The Assessing Officer is directed to examine the issue afresh after giving a reasonable opportunity of being heard to the assessee.*

18. *Coming to the appeal by the revenue we find that the issues need fresh adjudication as details were neither furnished by the assessee nor examined by the Assessing Officer, we accordingly set aside the issues involved in revenue's appeal to the files of the Assessing Officer. The assessee is directed to*

*furnish all the details of expenses and the Assessing Officer is directed to examine the same and decide the issues afresh.”*

7. Accordingly, we are also remanding the issue raised before us including the claim of benefit u/s.11 to 13, and all the issues are kept open and assessee may substantiate its case before the Assessing Officer and file any details, evidences etc. Ld. Assessing Officer shall decide the issue afresh and in accordance with law after giving due and effective opportunity of hearing to the assessee.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open Court on 17<sup>th</sup> February, 2020.**

Sd/-

**[Dr. B.R.R. KUMAR]**  
**ACCOUNTANT MEMBER**

DATED: 17<sup>th</sup> February, 2020

PKK:

Sd/-

**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**