

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI FRIDAY BENCH 'D' : NEW DELHI

(Through Video Conferencing)

BEFORE SHRI G.S. PANNU, VICE PRESIDENT AND

SHRI K.N. CHARY, JUDICIAL MEMBER

ITA No. 3521/Del/2015
Assessment Year : 2010-11

**SHRI CHATRAPATI
SHIVAJI MAHARAJ
MEMORIAL NATIONAL
COMMITTEE,
B-14/A, QUTAB
INSTITUTIONAL AREA,
NEW DELHI – 110 016
(PAN: AAFTS3397H)
(Appellant)**

**Vs. ITO(E),
WARD 2(1),
24TH FLOOR, BLOCK E-2,
PRATYAKSH KAR BHAWAN,
CIVIC CENTRE,
NEW DELHI – 110 002

(Respondent)**

Appellant by : Sh. Rohit Jain, Adv. & Ms. Meenal
Goyal, CA

Respondent by : Ms. Rakhi Vimal, Sr. DR.

Date of hearing : 28.07.2020

Date of pronouncement : 28.07.2020

ORDER**PER K.N. CHARY, JM :**

Aggrieved by the Order dated 12/3/2015 in Appeal No. 91/13-14 passed by the Ld. Commissioner of Income Tax (Appeals)-21, New Delhi (Ld. CIT(A)) for the assessment year 2010-11 in the case of Shri Chatrapati Shivaji Maharaj Memorial National Committee, New Delhi (the 'Assessee'), this Appeal is preferred by the Assessee.

2. The brief facts of the case are that the assessee is a charitable society, registered under the Societies Registration Act, 1860 vide Registration No. S-1205 dated 03.10.1981 and Section 12A of the Income Tax Act, 1961 vide order No. DIT(E)/2010-2011/S-4765/2349 dated 28.03.2011 with the aims and objectives as defined in its Memorandum of Association, particularly to promote concepts and philosophy of Shri Chatrapati Shivaji Maharaj. The Assessee-Society is also approved u/s. 80G of the Income Tax Act, 1961 vide Order No. DIT(E)/2008-09/S-4765/1881 dated 08.10.2008. The assessee filed its return of income for the assessment year 2010-11 on 05.10.2020 showing the income as NIL. Ld. Assessing Officer noticed that the Assessee has received certain sums towards 'Amenities and Maintenance Charges' with respect to a part of the property held by the Assessee-Society and had been given on lease. He therefore, treated it as fee/consideration for carrying the activity of rendering any service in relation to any trade, commerce or

business, not incidental to the object of the Trust. On this premise, the Ld. AO invoked the proviso to Section 2(15) of the I.T. Act, 1961 (the 'Act') and made the addition to the tune of Rs. 1,74,49,124/-.

3. When the Assessee preferred an Appeal, Ld. CIT(A) held that the assessee-trust did not fulfill its aims and objects and therefore, its activity especially during the period under consideration, can hardly come under the ambit of charity and therefore, such activities belie its claim as a trust for "charitable purposes" as defined in Section 2(15) of the Act. On this premise, Ld. CIT(A) declined to consider the case of the assessee for the purpose of section 2(15) of the Act holding that the question of applicability or otherwise of the proviso to Section 2(15) of the Income Tax Act, 1961 does not arise. Consequently, the Ld. CIT(A) recorded that the Ld. AO has rightly denied the benefit u/s. 11 & 12 of the Act to the Assessee-Trust, albeit on a different reasoning.

4. Assessee is, therefore, aggrieved by such findings of the Ld. CIT(A) and preferred this Appeal before us contending that Ld. CIT(A) ignored the findings of the Ld. AO while reaching to the conclusion that the Assessee-Trust did not fulfill its aims and objects and its activities and declaration to exist as a trust for "charitable purposes" within the meaning of Section 2(15) of the Act. According to the Ld. AR the reasoning adopted by the Ld. CIT(A) runs contrary to the findings of the Ld. AO, he submitted that when the Ld. AO based his finding for

denying the benefit of Section 11 & 12 of the Act on the ground that the receipt of amounts in respect of a part of the property amounts to fee/consideration for carrying the activity of rendering services in the nature of trade, commerce or business which is not incidental to the objects of the trust whereas Ld. CIT(A) has given a go-bye to the observations of the AO and reached to the conclusion that the findings of the AO are justifiable on a different reasons i.e. the activities of the assessee does not justify the declaration to exist of the assessee as trust for charitable purpose and on that score Ld. CIT(A) declined to consider the contentions of the Assessee as to the nature of the activities conducted by the Assessee and to seek or look into the material in support thereof. He, therefore, submits that the assessee is now ready with the additional evidence in support of their contentions for their claim as a 'charitable trust' within the meaning of Section 2(15) of the Act.

5. Ld. DR disputed the contentions raised by the assessee and submitted that the Ld. CIT(A) did not draw a different view from the AO, but on the other hand he had examined the case of the Assessee to a different level and supported the findings of the AO with some other reasons also. She, therefore, submits that the assessee has no case to argue. In respect of the additional evidences, it is her submissions that in view of the decisions of the ITAT, 'E' Bench, New Delhi dated 12.10.2015 in the case of Mahalaxmi Bullons Pvt. Ltd. vs. DCIT in ITA

No. 6036 & 6036/Del/2014 (AY 2011-12 & 2012-13) and in the case of North Delhi Bullion Trades Pvt. Ltd. vs. DCIT, CC-22, New Delhi passed in ITA Nos. 6033, 6034 & 6035/Del/2014 (AY 2011-12 & 2012-13) and ITAT, 'B' Bench Hyderabad decision dated 22.2.2012 passed in the case of M/s SRS & Sri Sai Ganesh Productions vs. ACIT in IT(SS)A No. 19/Hyd/2000 Block Period AYs. 1997-98 to 2003-04 (till 21.2.2003) and Revenue's Appeal NO. 20/Hyd/2000, at this stage such evidences cannot be received because the assessee failed to justify its conduct in not producing them at appropriate stage.

6. We have gone through the rival submissions and we are unable to accept the contention of the Ld. DR that ld. CIT(A) considered the case of the assessee on a further scrutiny in as much as the Ld. CIT(A) himself recorded in para no. 6.3 that the AO was justified in the denial of exemption u/s. 11 & 12 of the Act, assessee albeit on a different reasoning mentioned in the assessment order. It is not a case of the Revenue that while declining to consider the case of the activities thereof for the purpose of section 2(15) of the Act, Ld. CIT(A) had sought any material from the Assessee and on not being satisfied with such material or evidences, the Ld. CIT(A) came to the conclusion that the activities of the assessee show that the assessee has not been fulfilling its aims and objects and therefore, it cannot claim to come under the ambit of charity and consequently u/s. 2(15) of the Act. Non-

consideration of this aspect by the Ld. CIT(A) left a grey area which the assessee could not tread by producing the relevant material. We are, therefore, satisfied that there was no opportunity for the assessee to put forth their contentions on the aspect of the activities vis-à-vis the production of additional evidences by the assessee and we are of the considered opinion that in the interest of justice, the same has to be received. The decisions relied upon by the Ld. DR are not applicable to the present case.

6.1 As we have stated earlier that the Ld. CIT(A) did not consider the case of the assessee in light of AO's perspective, to either accept or discard the eligibility of the assessee for the benefit u/s. 11 & 12 of the Act, with reference to Section 2(15) of the Act, we do not have any assistance from the Ld. First Appellate Authority's order on this aspect. Further to reach a just conclusion on this aspect consideration of the additional evidences by the Ld. CIT(A) is necessary. We, therefore hold that it is a fit case to set aside the impugned order and to remand the issue to the file of the Ld. CIT(A) to take a fresh view on the aspect of the applicability of Section 2(15) of the Act and proviso thereof in light of the contentions put-forth and additional evidences furnished by the assessee. Needless to say that reasonable opportunity should be given to the Assessee. We order accordingly.

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

Above decision was pronounced on 28th July, 2020.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(K.N. CHARY)
JUDICIAL MEMBER

SRB

Copy forwarded to: -

1. Appellant
2. Respondent :
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar