

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.7325/Del./2017
Assessment Year 2014-2015

The ACIT (Exemption), Circle-2(1), Room No.2408, 24 th Floor, E-2 Block, Pratyaksh Kar Bhawan, Dr. S.P. Mukherjee Civic Centre, New Delhi-110 002.	vs.,	PHD Chamber of Commerce and Industry, 4/2, PHD House, August Kranti Marg, Siri Institutional Area, New Delhi – 110 016. PAN AAACP1438L
(Appellant)		(Respondent)

For Revenue :	Shri Saras Kumar, Sr.DR
For Assessee :	Shri Mukul Bagla, C.A.

Date of Hearing :	25.08.2020
Date of Pronouncement :	25.08.2020

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-40, Delhi, Dated 14.09.2017, for the A.Y. 2014-2015, on the following grounds :

1. *On the basis of facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the assessee is not eligible for exemption u/s 11 of the I.T.Act,1961.*
2. *On the basis of facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the assessee is rendering specific services to its member as well as nonmembers and charging fee from them which is liable to be taxed under the head “ Profit & Gains of Business and Profession” and as such, its activities are not in charitable nature.*
3. *On the basis of facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the additions of Rs. 5,21,54,651/- by directing the AO to allow the exemption u/s 11 with all consequential benefits and also allowing the amount of Rs. 67,90,978/- accumulated under section 11(2).*
4. *On the basis of facts and circumstances of the case and in law, the Ld. CIT (A) has erred in holding that the activities*

of the assessee are charitable in nature and that assessee is eligible for exemption u/s. 11 of the I.T. Act, 1961 by ignoring the fact that principle of mutuality is not applicable in case of the assessee as the contributions by members over & above Rs. 50,000/- become beneficiaries as per Section 13(3)(b) of the Act, 1961.

5. On the basis of facts and circumstances of the case and in law, the Ld. CIT (A) has erred in considering the assessee's ground that Ld. AO wrongly referred to the provisions of section 13(1) & 13(2) of the Income Tax Act."

2. Briefly the facts of the case are that return of income declaring NIL income was filed. The assessee is a society registered under section 12A of the I.T. Act, 1961. The objectives of the society are to promote and protect the general mercantile and industrial interest of India acting as arbitrator in the settlement of disputes, organizing periodicals, seminars, meetings and symposia with Government. The income and expenditure account of the assessee showed receipts amounting to Rs.29,50,18,599/-

from membership fee, specialized services, services and facilities, meeting, seminars and training programmes, sale of publication and miscellaneous income. The assessee has furnished details for specialized services i.e., certificate fees and secretarial affiliates and committee room services and facilities. It has been observed by the A.O. that assessee has included all the incomes i.e., income from both members and non-members. It was further observed by the A.O. that on expenditure side, only establishment, administration, meeting, seminar and some other expenses were included and the surplus amount generated through all these activities were amounting to Rs.5,21,54,651/-. The A.O. issued a show cause notice to the assessee to explain as to why the receipts and charges received by the chamber be not considered as commercial in nature and why the receipts should not be hit by the proviso to section 2(15). In reply, the assessee placed reliance upon the Judgment of Hon'ble Delhi High Court in assessee's own case for the A.Ys. 2006-07 and 2007-08 in I.T.A.Nos.368 & 369 of 2012. The A.O, however, did not accept the contention of assessee

as the proviso to section 2(15) was inserted with effect from assessment year 2009-10 onwards and the said judgment pertained to a period prior to that. Therefore, the A.O. observed that all the activities of the assessee were in the nature of trade, commerce and business and exemption under sections 11 and 12 was denied by invoking the amended provisions of section 2(15) of the I.T. Act, 1961. It was also held by the A.O. that since many members had given amounts more than Rs.50,000/- and they would become beneficiaries as per Section 13(3)(b), exemption also stands withdrawn by applying provisions of Sections 13(1) and 13(2) of the I.T. Act, 1961.

3. Aggrieved, assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) threadbare examined the issue and allowed the claim of assessee under section 11 and deleted the addition of Rs.5,21,54,651/-. The relevant observations of the Ld. CIT(A) at pages 37 and 38 of the Order is reproduced as under :

“4.1.4. *The case of the assessee is covered in the favour of the assessee by the orders of my Id. predecessors for the assessment years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011- 12 and 2012-13 by my own orders for assessment year 2013-14 and also by the orders of Hon'ble Delhi High Court in the assessee's own case for the assessment years 2006-07 & 2007-08 in ITA No.321/2016 an 355/2016. The departmental appeal for the assessment years 2008-09 & 2009-10 has been also dismissed by the Hon'ble Tribunal (supra) as also by the Hon'ble Delhi High Court in ITA.No.321/2016 and 355/2016 vide order dated 22.07.2016.*

4.1.5. *Since the facts and circumstances of the case are same as in earlier years, respectively following the decisions of the Hon'ble ITAT Delhi in appellant's own case for assessment years 2008-09 and 2009-10 and the Hon'ble Delhi High Court for assessment years 2006-07 and 2007-08. The Assessing Officer is directed to allow exemption under*

section 11 with all consequential benefits. As regards the issue of denial of exemption under section 13(1) and 13(2), I have considered the reply of the assessee. Since the assessee is working for promotion and protection of industries and trade and commerce in the country as a whole, as has been brought out by the Assessing Officer himself in the assessment order, and not only for members there is no merit in this conclusion. Also, the Assessing Officer has not brought on record any material on record to show what benefits have been transferred as a result of which these provisions have been invoked. Grounds of appeal number 1 to 5 are allowed.”

4. We have heard the Learned Representatives of both the parties through video conferencing.

5. Learned Counsel for the Assessee, at the outset submitted that the issue is covered in favour of the assessee by the Orders of the Tribunal and Judgment of Hon'ble Delhi High Court in various Orders and recently the

Departmental Appeal on identical ground in the case of same assessee for the A.Y. 2013-2014 have been decided by ITAT, Delhi F-Bench, Delhi in ITA.No.5806/Del./2017 Dated 21.07.2020 and the Departmental Appeal has been dismissed. The Order of the Tribunal is reproduced as under :

“This appeal filed by the Revenue is directed against the order dated 21st June, 2017 of the CIT(A)-40, Delhi, relating to assessment year 2013-14.

2. *Facts of the case, in brief, are that the assessee is a society registered u/s 12A of the IT Act, vide order No. DIT(E)/94-95/P-324/89/67 dated 23rd May, 1994. It filed its return of income on 30th September, 2013 declaring nil income. The AO, during the course of assessment proceedings noted that the activities of the society are to promote the general mercantile and industrial interest of India acting as arbitrator in settlement of disputes, organizing periodical seminars, meetings and symposia with government. As per Income & Expenditure account the*

assessee had shown total receipts of Rs.21,67,04,511. From the details furnished by the assessee, he noted that the income includes income from members and non-members as well.

3. During the course of assessment proceedings, the AO asked the assessee to explain as to why the receipts from charges received by the Chamber should not be considered as commercial in nature and why the receipts should not be hit by the provisions of section 2(15) of the IT Act, 1961. The AO noted that amendment has been made in section 2(15) of the Act w.e.f. A.Y. 2009-10 in case of general public utilities and they will no longer be enjoying charitable status if they are involved in carrying on of activities in the nature of trade, commerce or business or any activity rendering any service in addition to any trade, commerce or business for cess or fee or any other consideration in respect of nature of use or application or retention of income from such activity. He noted that the assessee society falls in the last category of general public utility as per the definition of section 2(15) and, in view of the above amendment, the society falls under the

last category i.e., 'advancement of any other object of general public utility' and, therefore, is not entitled to carry on any business or commercial activities even if it is incidental to charitable purposes. He further noted that many members have been contributing more than Rs.50,000/- as membership fee and they all become beneficiary as per section 13(3)(b) of the IT Act and since the assessee is working for the interest of its members and a substantial number consists of members who have contributed more than Rs.50,000/-, he held that they all are beneficiaries and the chamber is working for the interest of its members and, therefore, covered u/s 13(1) and 13(2) of the IT Act. He, therefore, held that the assessee is not entitled to exemption u/s 11 and 12 of the Act. The AO accordingly determined the total income of the assessee at Rs.3,32,38,822/- after deducting the expenditure as per Income & Expenditure Account from the total income.

4. *In appeal, the ld.CIT(A) held that the activities of the assessee are charitable and the assessee is eligible for deduction u/ss 11, 13(1) and 13(2) of the Act.*

5. *Aggrieved with such order of the CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds:-*

“1. On the basis of facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the assessee is not eligible for exemption u/s 11 of the I.T.Act,1961.

2. On the basis of facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the assessee is rendering specific services to its member as well as non-members and charging fee from them which is liable to be taxed under the head “ Profit & Gains of Business and Profession” and as such, its activities are not in charitable nature.

3. On the basis of facts and circumstances of the case and in law, the Ld. CIT (A) has erred in holding that the activities of the assessee are charitable in nature and that assessee is eligible for exemption

u/s. 11 of the I.T. Act, 1961 by ignoring the fact that principle of mutuality is not applicable in case of the assessee as the contributions by members over & above Rs. 50,000/- become beneficiaries as per Section 13(3)(b) of the Act, 1961.

4. *On the basis of facts and circumstances of the case and in law, the Ld. CIT (A) has erred in considering the assessee's ground that Ld. AO wrongly referred to the provisions of section 13(1) & 13(2) of the Income Tax Act.*

5. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing."*

6. *We have heard the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the assessee. We find, identical issue had come up before the Tribunal in assessee's own case for A.Y. 2010-11. We find, the Tribunal, vide ITA*

No.1388/Del/2015, order dated 23rd May, 2018 at para 7 of the order upheld the order of the CIT(A) in allowing claim of exemption u/s 11 of the IT Act and dismissed the appeal filed by the Revenue by observing as under:-

“7. The only issue for denying the exemption u/s.11 by the learned Assessing Officer is that in terms of proviso to [Section 2\(15\)](#) the assessee's activities are in the nature of trade and commerce or business. We find that first of all in the Assessment Years 2006-07 & 2007-08, the Hon'ble High Court after detailed discussion had held that assessee is eligible for claim of exemption u/s.11, vide judgment and order dated 19th October, 2012 in ITA No.368 & 369/2012. Again for the Assessment Years 2008-09 and 2009-10, the Revenue's appeal has been dismissed vide judgment and order dated 22nd July, 2016 passed in ITA no. 321 and 355/2016. In the Assessment Years 2008-09 and 2009-10, the Tribunal has taken into note the scope of proviso to [Section 2\(15\)](#) and following the judgment of Hon'ble Jurisdictional High Court in the case of India Trade Promotion Organization

vs. DGIT (E), held that none of the activities of the assessee falls in the category as envisaged in the proviso. Thus, respectfully following the binding judicial precedent of Hon'ble Delhi High Court in the case of the assessee, we hold that assessee is entitled for claim of exemption u/s.11. Accordingly, the order of the ld. CIT (A) is affirmed.”

7. *We find, the Tribunal in assessee's own case, vide ITA no.2598/Del/2015, order dated 4th June, 2018 for A.Y. 2011-12, upheld the order of the CIT(A) and dismissed the appeal filed by the Revenue by observing as under:-*

“4. We have heard the parties and gone through the relevant orders which are available on record. The issue with regard to the rendering specific services to member as well as non-members by charging fees and applicability of exemption u/s 11 of the Act has already been decided by the Hon'ble Delhi High Court, vide its order dated 19.10.2012 passed in the assessee's own case relevant to the AY 2006-07 & 2007-08 by holding

that the assessee society is entitled to get benefit u/s 11 of the Act. The said order passed by the Hon'ble High Court was further followed by the Hon'ble High Court itself, vide order dated 27.07.2016 pertains to the AY 2008-09 & 2009-10. Even otherwise, in the instant case, the Ld. CIT (A) has categorically held in para no. 4.5 of the impugned order that the case of the assessee is covered in favour of the assessee by the orders of his predecessor for the AY 2006-07, 2007-08, 2008-09, 2009-10 & 2010-11 and also by the Hon'ble Delhi High Court in the assessee's own case for the AY 2006-07 and 2007-08 which required to be followed. As the Ld. DR also raised an issue that post amendment to the proviso to [Section 2\(15\)](#) of the Act , the situation has become altogether different from the AY 2009-10 onwards and the activities of the Assessee are liable to be treated as business activities, however, we realized that co-ordinate bench of ITAT at Delhi, vide its order dated 16-02- 2015 in the assessee's own case for the AYs 2008-09 & 2009-10 duly considered and adjudicated the said issue and another

co- ordinate bench at Delhi vide its order dated 23-05-2018 while deciding the appeal pertaining to A.Y. 2010-11, respectfully followed the said judgment and nothing is brought on record by Ld. DR, contrary to the said judgments and/or filing of any appeal against the same .

On the aforesaid consideration and observations, we do not find any infirmity, perversity or illegality in the order passed by the Ld. CIT (A), hence, the appeal of the Revenue-Department stands dismissed.”

8. *We find, the Tribunal, vide ITA No.5408/Del/2015, order dated 6th September, 2017, has upheld the order of the CIT(A) in allowing exemption u/s 11 and dismissed the appeal of the Revenue by observing as under:-*

“6. We have heard both the parties and perused the records, especially the impugned order. We find that Ld. CIT(A) has observed that the assessee is an association of professional and businessman to protect and promote the interest of its members. The income of the assessee is

from membership fees from its members, specialized services, services and facilities, meetings, seminars and training programmes, sale of publication etc. It is also noted that the income of the assessee from other non-members of the institution are more and as such the principle of mutuality is apparently not applicable in the case of the assessee. We further note that the case of the assessee is covered in its favour by the orders of the Ld. CIT(A)'s predecessors for the Assessment years 2006-07 to 2011-12 and also by the order of the Hon'ble Delhi High Court in assessee's own case for the AY 2006-07 & 2007-08. The Departmental Appeal for the AY 2008-09 & 2009-10 has also been dismissed by the Tribunal. Therefore, the Ld. CIT(A) has rightly observed that there is no sufficient reason to deviate from the appellate orders of the Ld. CIT(A) of the earlier years allowing the exemption u/s. 11(1) and accordingly, the AO was directed to allow the exemption u/s. 11(1) with all consequential benefits, which does not need any interference on our part, hence, we uphold the action of

the Ld. CIT(A) on the issue in dispute and reject the grounds raised by the Revenue and accordingly, we dismiss the Appeal filed by the Revenue.”

9. *Respectfully following the consistent decisions of the Tribunal in assessee’s own case for the preceding assessment years, we do not find any infirmity in the order of the CIT(A) in holding that the activities of the assessee are charitable in nature and the assessee is entitled to the claim of exemption u/s 11 of the IT Act. The grounds raised by the Revenue are accordingly dismissed.*

10. *In the result, the appeal filed by the Revenue is dismissed.”*

6. The Ld. D.R. submitted that the issue is covered in favour of the assessee by the Order of the Tribunal and several other orders in the case of the assessee and the Order of Hon’ble Delhi High Court.

7. In view of the above, we find that the issue is covered in favour of the assessee by the aforesaid Order of

the Tribunal and other decisions in the case of assessee as referred to above by the Ld. CIT(A) in his order. In view of the above, the Departmental Appeal stands dismissed.

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

Order pronounced in the open Court.

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 25th August, 2019

VBP/-

Copy to

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

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.