

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A', NEW DELHI**

**BEFORE MS SUSHMA CHOWLA, VICE PRESIDENT  
AND  
SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.4740/Del/2017 for A.Y. 2013-14

ITA No.4741/Del/2017 for A.Y. 2014-15

DCIT Circle-1(1) New Delhi	Vs.	Association of State Road Transport Undertaking, ASRTU Bhawan, Plot No.4A, PSP Block, Pocket 14, Sector – 8, Dwarka, New Delhi – 110 077  PAN No. AAAAA 0233 A
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Shri Sanjay Goyal, CIT-D.R
Revenue by	Shri Tarundeep Singh, C.A.

Date of hearing:	10/09/2020
Date of Pronouncement:	21/09/2020

**ORDER**

**PER ANIL CHATURVEDI, AM:**

These two appeals filed by the Revenue are directed against the consolidated order dated 24.05.2017 of the Commissioner of Income Tax (Appeals) - 40, Delhi [CIT(A)] relating to Assessment Years 2013-14 & 2014-15.

2. The relevant facts as culled from the material on records are as under:

3. The assessee is an apex coordinating body of all Nationalized State Road Transport Corporation working under the Ministry of Road Transport and Highways and it was established with the main object of improving Public transport system in the country and to assist its members STUs by providing automobile parts at the most economical and competitive rates so that the members STUs could run its passenger buses at economical cost.

4. Assessee filed its return of income for A.Y. 2013-14 on 31.03.2014 declaring Nil income. The case was selected for scrutiny and thereafter assessment was framed under section 143(3) vide order dated 14.03.2016 and the total income was determined at Rs.5,11,38,830/-.

5. As far as A.Y. 2014-15 is concerned, assessee filed Nil return of income on 24.03.2015 and the assessment was framed u/s 143(3) vide order dated 01.12.2016 wherein the total income was determined at Rs.2,39,32,330/-.

6. Aggrieved by the orders of AO, assessee carried the matter before the CIT(A) who vide consolidated order dated 24.05.2017 for A.Y 2013-14 and 2014-15, allowed the appeals of the assessee.

7. Aggrieved by the order of CIT(A), Revenue is now in appeal before us and has raised the following grounds:

*“(a) On the facts & in the circumstances of the case and in law, Ld CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that the activity of the assessee does not fall under relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments of places or objects of artistic or historic interest and that the assessee had receipts under the heads ‘Revenue from Test Laboratory’ and ‘Consultancy Receipts’ which were commercial in nature and their aggregate value exceeded Rs.10 Lac.*

*(b) On the facts & in the circumstances of the case and in law, Ld CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that the facts of the cases relied upon by CIT(A) are distinguishable from the facts of the instant case and that in the case of ITPO vs DGIT, department has filed SLP before Hon’ble Supreme Court against the decision of Hon’ble Delhi High Court.”*

8. Similar grounds have been raised by the Revenue in ITA No.4741/Del/2017 for A.Y. 2014-15.

9. Before us, at the outset, both the parties submitted that though the appeals are for two different years but the facts and issue involved in both the appeals are identical except for the assessment years and the income determined. It was further submitted that the arguments made by them for one year would

be applicable to the other year and therefore, both the appeals can be heard together. Considering the aforesaid submissions of the counsels, we, for the sake of convenience, proceed to dispose of both the appeals by way of a consolidated order but however, proceed with narrating the facts in ITA No.4740/DEL/2017 for A.Y. 2013-14.

10. AO on pursuing the Income Expenditure account noticed that assessee has incurred expenditure of Rs.1,96,28,414/- out of the total income of Rs.24,74,22,943/- and had shown a surplus of Rs.5,11,38,828/-. He also noticed that Income of the assessee includes revenue from test laboratory and consultancy receipts etc. AO was of the view that assessee had carried out its activities in the nature of trade, commerce or business and therefore, the assessee was asked to explain as to how its activities were charitable in view of the amended proviso to Section 2(15) applicable from 01.04.2009 onwards. The assessee made the detailed submissions which were not found acceptable to AO. AO was of the view that the activities of the assessee cannot be considered to be education activity as it does not come under the category of systematic regular mythological imparting of lessons for the overall development of the students and further assessee's case also could not considered under the concept of mutuality. He, therefore, concluded that assessee failed to classify as an organization for charitable purpose and as also mutual association. He, thereafter, completed the assessment by invoking

the proviso to section 2(15) and the total income of the assessee was determined at Rs.5,11,38,830/-.

11. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who noted that the Hon'ble Tribunal in assessee's own case on identical facts for A.Y. 2009-10 had held that the activities of the laboratory testing and consultancy to be in furtherance of main and charitable object of the assessee association and it was also held that the activities undertaken by the assessee cannot be termed as activities with the main object of profit earning motive. He also noted that his predecessor for A.Y. 2009-10 & 2010-11 and his own orders for A.Y. 2011-12 & 2012-13 on identical facts had allowed the appeal of the assessee and had directed the AO to allow exemption u/s 11 & 12 with consequent benefits. He accordingly following the orders for earlier years allowed the appeals of the assessee. Aggrieved by the order of CIT(A), Revenue is now before us.

12. Before us, at the outset, the Learned DR fairly submitted that identical issue arose in assessee's own case in A.Y. 2012-13 before the Tribunal and the Co-ordinate Bench of Tribunal has decided the issue in favour of the assessee. He, therefore, submitted that considering the aforesaid facts, the appeals be decided accordingly. Learned AR on the other hand submitted that identical issue arose in assessee's own case in earlier years and the issue has been decided by the Tribunal in assessee's

favour and the order of Tribunal has attained finality. He, thus supported the order of CIT(A).

13. We have heard the rival submissions and perused the material available on record. The issue in the present case is with respect to allowing exemption u/s 11 & 12 to the assessee. The AO had denied the benefit of exemption u/s 11 & 12 of the Act by concluding that the Assessee failed to qualify as an organization for charitable purposes. We find that identical issue arose before the Co-ordinate bench of Tribunal in assessee's own case for A.Y 2012-13. The Co-ordinate Bench of Tribunal by following the order in assessee's own case for A.Y. 2009-10 had allowed the appeal of the assessee by observing as under:

*"6. From the perusal of the impugned orders and material placed on record, we find that the objects of the assessee was found to be charitable in nature, for which it was granted registration u/s.12A and also recognized u/s. 10(23C)(vi) vide notification no. 1348 dated 31.10.2007. Ld. Assessing Officer without even pin pointing as to which of the activities and the receipt are in the nature of trade and commerce has blindly invoked the amended proviso to Section 2(15) to deny the benefit of Section 11. Nowhere he has pointed out that the motive of the assessee-society was to earn profit and even ignored the fact that assessee society was undertaking of Government of India and all the Trustees are Government Officials and it was constituted to discharge legal obligation set forth for the purpose set out in the memorandum. The Tribunal in assessee's own case for the Assessment Year 2009-10, wherein the ld. Assessing Officer has passed similar order and has invoked proviso to Section 2(15) to deny the benefit has allowed the assessee's appeal after observing and holding as under:-*

*"25. A careful consideration on above submissions at the very outset, we respectfully take guidance from the recent judgment of Hon'ble Jurisdictional High Court Delhi in the case of ICAI vs. DGIT (E) 358 ITR 91 (Delhi) wherein their lordship provided a landmark interpretation to section 2(15) of the Act as well as newly inserted proviso to this section after considering the ratio and prepositions laid*

*down by various judgments and orders of Hon'ble Supreme Court and High Court the relevant operative part of this order at page 122 para 67 reads as under :-*

*"67. The expressions "trade", "commerce" and "business", as occurring in the first proviso to section 2(15) of the Act, must be read in the context of the intent and purport of section 2(15) of the Act and cannot be interpreted to mean any activity which is carried on in an organized manner. The purpose and the dominant object for which an institution carries on its activities is material to determine whether the same is business or not. The purport of the first proviso to section 2(15) of the Act is not to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee. The object of introducing the first proviso is to exclude organizations which are carrying on regular business from the scope of "charitable purpose". The purpose of introducing the proviso to section 2(15) of the Act can be understood from the Budget Speech of the Finance Minister while introducing the Finance Bill, 2008. The relevant extract to the Speech is as under (see [2008] 298 ITR (St.) 33, 65) :*

*... 'Charitable purpose' includes relief of the poor, education, medical relief and any other object of general public utility. These activities are tax exempt, as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purposes would also fall under 'charitable purpose' obviously, this was not the intention of Parliament and, hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected." The expressions "business", "trade" or "commerce" as used in the first proviso must, thus, be interpreted restrictively and where the dominant object of an organization is charitable any incidental activity for furtherance of the object would not fall within the expressions "business", "trade" or "commerce".*

*26. It would be also appropriate to consider the ratio of the decision of Hon'ble Punjab and Haryana Court in the case of CIT Vs. Truck Operator Association (Supra), as relied by the Ld. DR, wherein facts of that case and observations of Hon'ble High Court reads as under:-*

*"On examination of the objects and the purpose of the association in the present case, it emerges that the respondent- association is union of truck operators constituted for facilitating its members to carry on the trade of transportation and not to allow the outsider or non-member to*

*undertake any business activity within the precincts of Hansi town/village. The association charges fees from its members before the transportation on the basis of the distance involved. The membership and payment of fees are mandatory and the element of voluntary contribution is missing. The association is vigorously pursuing transportation business by receiving freight charges on behalf of its members. The welfare activities adopted for the truck drivers, cleaners and mechanics of the truck owners are in the nature of staff welfare activities, as are common in other business organization which cannot be termed for general public utility."*

*27. In view of above, we have not hesitation of hold that the facts of the present case clearly distinguishable. We are in agreement with the contention of the Ld. AR that the facts of the present case are clearly distinguishable from this case of Truck Operators Association (Supra) as in that case the assessee association was vigorously pursuing transportation with this by receiving freight charges on behalf of its member and the so called welfare activities adopted for the Truck Drivers, cleaners, mechanics of the truck owners were in the nature of staff welfare activities which were similar and common in the other transport business organizations which could not be termed for general public utility. In the present case, the CIT(A) have not conclusively held that the assessee association was carrying on laboratory test and consultancy services with the main object of earning profit in the line of "business", "trade" or "commerce". Accordingly we respectfully held that the benefit of the ratio of the decision of Hon'ble Punjab & Haryana High Court (Supra) is not available for the revenue as the facts of the present case are clearly distinguishable from that case.*

*28. Turning to the facts of the present case, we note that the assessee association is an association of Apex Governing Body of State Road Transport Undertakings (STU) registered as a society under the Society's [Registration Act](#) which is wholly patronized by the Central Government for working under the Ministry of Road Transport and Highways and the Secretary to the Government of India, Ministry of Road Transport and Highways is the ex-officio president of the assessee association and the governing body of the assessee association includes representatives from all the State Road Transport Undertakings.*

*29. We also note that the assessee association was established with the main object of improving public transport system in the country and its objects as per memorandum of association as reproduced hereinabove in para 9 of this order clearly reveals that the objects of the assessee association are dedicated towards improving road safety standards and*

*to promote facilities for advancing the skill of employees of State Transport Undertakings through regular training and research which cannot be held as business activities. It is also pertinent to note that the Ld. DR has not disputed this fact that the assessee association was provided exemption u/s 11 of the act in the earlier assessment orders on the revenue receipts from test laboratory charges and consultancy charges.*

*30. Now we consider the effect of insertion of proviso to section 2(15) of the Act. As per recent judgment of Hon'ble High Court of Delhi in the case of ICAI Vs. DGIT (Supra). We respectfully note that their lordship has explicitly held that the first proviso to section 2(15) of the Act carves out an exception which excludes advancement of any object of general public utility from the scope of charitable purpose to the extent that it involves carrying on any activity in the nature of "Trade", "Commerce" or "business" or any activity of rendering certain services in relation to any "trade", "commerce" or "business" for a cess or fee or any other consideration, irrespective of the nature of the use or obligation or retention of income from such activity. Their lordship also held that the expression "trade", "commerce" or "business", as occurring in the first proviso of section 2(15) of the Act, must be read in the context of the intent in purported of Section 2(15) of the Act and cannot be interpreted to mean any activity which is carried on in an organized manner.*

*31. Explaining the dominant object of newly inserted proviso to section 2(15) of the Act, speaking for Jurisdictional High Court of Delhi, their lordship also held that the first proviso to section 2(15) of the act does not purported to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee and the object of introducing first proviso is to exclude organizations which are carrying on regular business from the scope of charitable purpose. It was also held that expression "business" "trade" or "commerce" as used in first proviso must, thus, be interpreted restrictively and where the dominant object and organization is charitable any incidental activity for furtherance of the object would not fall within the expression "business", "trade" or "commerce".*

*32. In view of the ratio of the judgment of Hon'ble High Court of Delhi if we analyze the facts and circumstances of the present case at the outset we note that the activity laboratory testing and consultancy is certainly bringing revenue for the assessee association but the CIT has not controverted or demolished this fact that the main object for which assessee association was created by Government of India is to impart services to the State Road Transport Undertakings and from careful*

*reading of the objects of the assessee association as reproduced hereinabove clearly mandates its charitable objects and purpose. The contention of the assessee association also support from this fact that the assessee association have not revised its laboratory test charges since 2001 and the services are provided on the similar line by charging reasonable fees without any profit earning object.*

*33. After going through the objects and activities of the assessee association it is clear that the assessee association did not carry on any "business", "trade" or "commerce" with the main object of earning profit. The activity of imparting support services to State Road Transport Undertakings without any profit motive are being conducted in furtherance of the object for which assessee association had not constituted by the Government of India. The activities of providing laboratory test services and consultancy to the State Road Transport Undertakings of all over India cannot be held to be "trade", "business" or "commerce" merely because some fee or charges are being received by the assessee association. Accordingly, even if some fees or charges are being charged by the assessee association for providing laboratory test services and consultancy services in accordance with its charitable objects, the activities cannot be held to be rendered in relation to any "trade" , "commerce" or "business" as such activities are undertaken by the assessee association in furtherance of its main objects which are undisputedly of charitable nature and which is not an activity of "trade", "commerce" or "business" with main object of earning profit.*

*34. We are unable to agree with the reasoning of DGIE that there is evidence and material to show that the activity were carried out on sound and recognized business principles and persuaded with reasonable continuity then it would constitute business even if there is no profit motive as we have already noted that in assessee's own case for A.Y. 1989-90, 1990-91 and 1993-94, ASRTU vs. DDIT(E) (Supra) it was held that the aims and objects of the assessee were to render common services to members and assist them in such matters as standardization of equipment, purchase of materials for thereon use at economical prices, promotional efficiency of Road Transport Services and deduction is operational cost of member State Road Transport Undertakings are the activities of charitable purpose towards promotion of main objects set out in the Memorandum of Association of the assessee association, thus, in absence of any substantial allegation or incriminating material. We are unable to accept view of the CIT that the assessee association is conducting these activities with the main object of earning profits. In the present case, the activities of the assessee's association cannot be termed either "trade" , "commerce" or "business" simply because the assessee*

*association is receiving some charges or fees for rendering services on non- commercial principles to State Road Transport Undertakings and other concern members for a fee or charges.*

*35. At this juncture, we also respectfully follow the ratio laid down by the Hon'ble Delhi High Court in the case of Indian Trade Promotion Organisation vs. DGIT (Supra) wherein it was held that thus, first proviso to section 2(15) of the Act would have been to be read down and interpreted in the context of section 10 (23C) (iv) of the Act as the context requires such interpretation where assessee is not driving primarily by desired or motive to earn profit but to pursue activities in furtherance of its objects of general public utility then it must be recognized as an institution established for charitable purposes. The Hon'ble Delhi High Court in the case of Institute of Chartered Accountant of India vs. DGI 347 ITR 99 (Delhi) held that the object of the first proviso to section 2(15) of the Act is to include any transaction for a fee or money and the activity would be business if it is undertaken with the profit motive but in some cases this fact must be determinative and the profit motive test should be specified and viewed in the context of section 10 (23C) (iv) of the Act."*

*7. Thus, respectfully following the earlier year precedent which is applicable mutatis mutandis for this year also, the appeal of the Revenue is dismissed."*

14. Before us, Revenue has not pointed to any distinguishing features in the fact of the case for the year under consideration and that of earlier years nor has placed any material on record to demonstrate that the order of Tribunal in assessee's own case for A.Y. 2013-14 has been set aside/ stayed or overruled by higher judicial forum. We, therefore, following the order of the Co-ordinate Bench in assessee's own case for earlier years and for similar reasons, find no reason to interfere with the order of CIT(A) and **thus the grounds of Revenue are dismissed.**

15. Since the facts of the year AY 2014-15 are identical to that of AY 2013-14, as admitted by both the parties, we for the

reasons stated herein above while deciding the appeal for AY 2013-14 and for similar reasons, find no reason to interfere with order of CIT(A). **Thus, the grounds of Revenue are dismissed.**

**16. In the result, both the appeals filed by the Revenue are dismissed.**

**Order pronounced in the open court on 21.09.2020**

**Sd/-  
(SUSHMA CHOWLA)  
VICE PRESIDENT**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

\*Priti Yadav, Sr.PS\*

*Date:-21.09.2020*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI