

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.Nos.2827, 2828, 2829 & 2830/CHNY/2019
(निर्धारण वर्ष / Assessment Years: 2011-12 to 2014-15)

The ITO (Exemptions),
Ward 1,
Chennai – 600 034.

Vs **M/s. The Handloom Export
Promotion Council,**
No.34, Cathedral Garden Road,
Nungambakkam, Chennai – 600
034.

PAN: AAATH1714L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Ms. R. Anitha, JCIT

प्रत्यर्थी की ओर से/Respondent by

: Shri Vikram Vijayaraghavan,
Advocate

सुनवाई की तारीख/Date of hearing

: 29.10.2020

घोषणा की तारीख/Date of Pronouncement

: 27.11.2020

आदेश / ORDER

Per BENCH:

The Revenue filed these appeals against the common order of the learned Commissioner of Income Tax (Appeals)-10, Chennai, in ITA Nos.119(Tr.)/2014-15,130(Tr.)/2015-16, 257(Tr.)/2016-17 & 256 (Tr.)/2016-17/CIT(A)-1/Chennai dated 26.07.2019 for the assessment years 2011-12 to 2014-15.

2. The Handloom Export Promotion Council, the assessee, a company incorporated on 07.05.1967, u/s.25 of the Company's Act, 1956, mainly to promote the export of Indian handloom fabrics. While making the assessments for the assessment years 2011-12, 2012-13, 2013-14 & 2014-15, the AO found, inter alia, that the assessee received participation fee and membership fee and organizing exhibitions, workshops and seminars both within India and abroad on regular basis and its activities clearly come in the residual category of general public utility. Invoking the amended provisions of Section 2(15) 1st and 2nd provision of the Income Tax Act, 1961 (hereinafter 'the Act'), he held that the assessee can no longer claim that it is carrying out charitable activities and accordingly the AO assessed the excess income over expenditure and denied depreciation. Further, since the CIT(A) enhanced the assessments in the appeals related to the assessment years 2009-10 & 2010-11 by holding that the expenditure incurred by the assessee outside India is strictly prohibited as per Section 11(1)(a) and accordingly directed the AO to assess the income by disallowing the expenditure incurred outside India. Applying it, the AO disallowed the expenditure incurred in abroad towards space rent, construction of halls, advertisement, travelling etc and completed the assessments. Aggrieved, the assessee filed appeals against all the assessment orders viz.,

assessment years 2011-12 to 2014-15. The Id.CIT(A) allowed the appeals in the consolidated order, supra. Aggrieved against the orders of the Id.CIT(A), the Revenue filed these appeals with common grounds and hence the grounds related to the assessment year 2011-12 is extracted as under:-

1. The order of the learned CIT(A) is contrary to law and facts of the case. 2.The Learned CIT(A) erred in allowing the benefit u/s.11 of the Income Tax Act,1961,without actually examining whether the funds involved are tied up grants, though, the decision of Honble ITAT in the assessee's own case in ITA Nos.2130 & 2131/Mds/2013 dated 28.8.2015 for the A.Ys. 2009-10 & 2010-11 was followed.

2.2 The CIT(A) erred in giving a finding that since the activity is carried on for the benefit of assessee's own members, benefit u/s.11 cannot be denied, without realizing that as per CBDT's Circular No.11/2008 dt. 19.12.2008, mutual organizations are not entitled for exemption u/s.11 as per the principle that mutual organizations and charity do not go together.

2.3 The CIT(A) erred in holding that the income is applied for its own members thereby indicating that the assessee is a "mutual organization" without giving any finding whether there is complete identity between the contributors and the participants.

3. For these and other grounds that may be adduced of hearing, it is prayed that the order of the learned CIT(A) aside and that of the Assessing Officer restored.

3. These cases were heard through video conferencing. The Id.DR submitted that the Id.CIT(A) erred in deciding that the nature of assessee's activity with its own members to promote export of textiles

and hence it cannot be considered to be engaged in trade or commerce. Therefore the exemption can't be denied u/s.11, there by holding that the assessee is a mutual concern, without due basis. The Id.CIT(A) without considering relevant facts and figures and without due analysis of relevant material, etc., erred in directing the AO to give the benefit of Section 11 of the Act and then presented the cases on the lines of grounds of appeal, supra.

4. Per contra, the Id.AR inviting our attention to this Tribunal decision in the assessee's cases in ITA Nos.2130 & 2131/Mds/2013 for the assessment year 2009-10 & 2010-11 dated 28.08.2015, submitted that the Id.CIT(A) on due consideration of the observations of this Tribunal has allowed the impugned appeals and hence pleaded to allow these appeals.

5. We heard the rival submissions and gone through relevant material. The AO in all these cases, invoking the amended section 2(15), 1st & 2nd proviso of the Act held that the assessee is not entitled to claim exemption u/s.11 of the Act. Applying the directions given by the Id.CIT(A) in the assessee's cases in earlier years viz., assessment year 2009-10 & 2010-11, the AO disallowed the expenditure incurred by the assessee outside India u/s.11(1)(a) of the Act. It is seen that

assessee pleaded for the first time before the Id.CIT(A) that it is dealing with its members only and hence the surplus arising, if any, out of such transactions are not chargeable to tax, that it received tied up grants from Government of India, which was credited in a separate bank for that purpose and the participation fees received from the members are not income, which could be utilized only for the purpose for which it was granted etc. Although, the Id.CIT(A) has taken cognizance of this Tribunal's direction in the assessee's case in the earlier years, supra, viz., to reconsider the issue afresh in the light of Tribunal decision in the case of Nirmal Agricultural Society vs. ITO, 71 ITD 153(Hyd), in our considered view, the Id.CIT(A) has not properly examined the issues with relevant material. Thus, in this case the issues are (1) whether the assessee's case is covered by the principle of mutuality. If it is so, which are the transactions (2) Whether the grants received from Govt. of India which was claimed to have been credited separately in a bank account for that purpose (i.e., tied up purpose) and (3) whether the participation fees received from the assessee's members are not assessee's income as it could be utilized for the purpose for which it was granted etc., require a detailed examination and due application in the light of the directions issued by this Tribunal in the assessee's own case in the earlier assessment years viz., 2009-10 & 2010-11, supra. Therefore, we deem it fit to

remit these issues back to AO for a fresh examination and due decision. The assessee shall lay all material / evidences in support of its contentions before the AO and comply with his requirements in accordance with law. The AO is also at liberty to conduct appropriate enquiry, as deemed fit, however, he would give due opportunity to the assessee on the material etc., to be used against it and then pass due orders on merits.

6. In the result, the Revenue's appeals in ITA Nos.2827, 2828, 2829 & 2830/Chny/2019 are treated as partly allowed for statistical purposes.

Order pronounced on 27th November, 2020 at Chennai.

Sd/-	Sd/-
(धुव्वुरु आर एल रेड्डी)	(एस जयरामन)
(Duvvuru R.L Reddy)	(S. Jayaraman)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 27th November, 2020

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |