

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

**Before Sh. Kuldip Singh, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**SA No. 318 & 326/Del/2020**

**(in ITA No. 1927/Del/2018 : Asstt. Year : 2011-12)**

**&**

**ITA No. 1927/Del/2018 : Asstt. Year : 2011-12**

National Association of Software and Service Companies (NASSCOM), Office cum Shop No. 30-31, Ashoka Hotel, 50B, Chanakyapuri, New Delhi-110021	Vs	DDIT(E), New Delhi-110002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAATN2595F</b>		

**Assessee by : Sh. Kamal Sawhney, Adv.**

**Revenue by : Ms. Pramita M. Biswas, CIT DR**

**Date of Hearing: 25.11.2020**

**Date of Pronouncement: 26.11.2020**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

**ITA No. 1927/Del/2018**

This appeal has been filed by the assessee against the order of Id. CIT(A)-36, New Delhi dated 23.01.2018.

2. Following grounds have been raised by the assessee:

*"1. That the Commissioner of Income Tax (Appeals) ['CIT(A)'] erred on facts and in law not deleting the disallowance of Global Trade Development expenses (GTD expenses), to the extent of Rs.2,08,08,291/- made in the assessment order on the ground that*

*the said expenses were not incurred in accordance with the aims and objectives of the appellant society, failing to appreciate the contemporaneous evidences filed on record substantiating the business nexus of said expenditure."*

3. The assessee is a society registered under the Societies Registration Act, 1860, a not for profit organization, engaged in activities that are aimed at advancement, promotion of the information technology and software industry. The assessee is registered under section 12A of the Income-tax Act, 1961 as a charitable institution carrying on object of general public utility, in terms of section 2(15) of the Act. The Assessee had been claiming exemption under section 11 of the Act in respect of income earned upto AY 2008-09. From AY 2009-10 and onwards, the Assessee had not claimed exemption under section 11 read with section 2(15) of the Act. Accordingly, the Assessee offered to tax, the income earned from various activities as business income. During the relevant AY 2011-12, Assessee had incurred gross expenditure of Rs. 4,13,45,917 including travel and incidental expenses on account of Global Trade Development ('GTD') activities in consortium with Ministry of Communication and Information Technology, Government of India ('MCIT'). Part of the aforesaid expenditure, to the extent of Rs. 2,05,37,626 was funded by Government of India by way of grant.

4. The GTD expenses have been disallowed by the AO, vide order dated 30.03.2014, holding that the expenses have not been incurred in accordance to the aims and objects for which it has been established. The relevant finding of the AO is reproduced below:

*"The reply of the assessee has been duly considered. On going through the expenditure incurred by the assessee in respect of Global Trade Development Activities (GTD) it is explicitly clear that these expenses have not been incurred by the assessee in accordance to the aims and objects for which it has been established. The assessee has failed to demonstrate that GTD expenses were necessitated for pursuing its aims and objects. In view of this expenses of Rs.4,13,45,917/- incurred on account of GTD activities (inclusive of grant of Rs.2,05,37,626/- received from Ministry of Communication & Information Technology) are disallowed for the reason not being incurred for the purposes objects of the assessee."*

5. The Id. CIT(A) upheld the partial disallowance reducing the disallowance from Rs.4,13,45,917/- to Rs.2,08,08,291/- on the grounds that the donations given by the Government of India for GTD expenses ought not be disallowed. The relevant part of the order of the Id. CIT (A) is as under:

*"4.4.3. The appellant had submitted that the GTD expenses of similar nature has been consistently incurred by the appellant over past many years. Since assessment year 2009-10, appellant has been offering its income as business income under the provisions of the Act and has been claiming such GTD expenses incurred as business deduction. The said claim of the appellant has consistently been allowed by the AO in earlier years viz., AYs 2009-10, 2010-11 and in the immediately succeeding year 2012-13. The appellant has further submitted without prejudice, that the disallowance of GTD expenses may be restricted to Rs.2,08,08,291 after netting of Rs.2,05,37,626 being amount of grant given by MCIT as per government's*

*share of expenditure incurred in GTD expenses [refer CIT Vs. Shriram Honda Power Equipment Ltd.: 289 ITR 475(Del.)]. The submission filed by the appellant have been considered and the disallowance of GTD expenses is restricted to Rs.2,08,08,291/-. This ground of appeal is partly allowed."*

6. The only ground raised in the present appeal is against the said order of the CIT(A) upholding the disallowance of GTD expenses to the tune of Rs. 2,08,08,291.

7. Before us during the arguments, the Id. AR argued that the claim of GTD expenses have been allowed in the assessment year 2009-10, 2010-11 and 2012-13 also. It is only for the assessment year 2011-12, the similar expenses have been disallowed. He further argued that as per the objective of the assessee, such expenses have primarily crucial in nature to fulfill the objective of the society. He argued that the Ld.CIT(A) has has not given any reason for the reduction of the partial expenses nor for sustaining the remaining amount.

8. On the other hand, the Id. DR argued that the principles of *res judicata* are not applicable to the Income Tax proceedings and every assessment has to be examined independently. She argued that the expenses are not for the purpose of business.

9. Heard the arguments of both the parties and perused the material available on record.

10. We have gone through the objectives of the assessee company with regard to GTD expenses. Global Trade Development Activity is an ongoing program primarily for

strengthening the "India" brand, to put and maintain the status of the India IT-BPO industry on the map of the world, by strengthening its credentials in the specific international market, as a preferred outsourcing destination for the advancement of Information technology (I.T.) business solely for India. The program has been commenced to harness the power of existing partnerships, collaborations and MoU's with Governments, industry associations and customer organizations abroad, the world over to ensure that the country leadership position in the outsourcing domain remains intact for the sole benefits of Indian I.T. Industry. The assessee has aimed through GTD, issues such as immigration policies, visa regimes, software quality standards. WTO and free trade in services data security and next generation best practices and the importance of collaboration and trade cooperation, especially during these times of economic recession. The assessee is working closely with the Indian Government to represent the true potential of Indian IT Industry for increasing the Indian market share in Information and Communication Technology (ICT) and helping to ensure that the Governments of other nations do not create impediments to free trade or barrier-free business exchanges.

11. The GTD expenditure incurred for the above purpose primarily consisted of:

(i) Consulting fees paid to various international firms in respect of their strategic and tactical planning for positioning IT industry of India vis-a-vis the foreign country's economic outlook.

- (ii) Expenditure on global protectionism sentiments and campaign;
- (iii) Expenditure in public relations/ public awareness and
- (iv) Travelling expenses.

12. Further, we also find that the similar expenses has been allowed by the Co-ordinate Bench of ITAT for the assessment year 2010-11 in ITA No. 3187/Del/2015, order dated 17.05.2019 wherein it was held that the disallowance of GTD expenses are not sustainable on the grounds that the purpose of such expenditure and the benefits derivable there from is aimed at benefitting L.C.T & Business Process Management (BPM) industry as a whole, which not denotes the member fraternity of the assessee, but also the industry at large in India. The monetary and in principal support to GTD activity by Government of India clearly establish the utility of such expenses for the India I.T. Industry as a whole.

13. We also find that the similar expenses have been accepted upon by the revenue for the assessment year 2009-10, by the Tribunal for the assessment year 2011-12 and further by the revenue for the assessment years 2012-13, 2013-14, 2014-15, 2015-16, 2017-18 in the assessment completed u/s 143(3) of the Act which give rise to a strong contention that these expenses are duly allowable.

14. Ergo, keeping in view the activities of the assessee and its relevance to the expenses incurred, the continuous stand of the revenue to allow such expenses in all the previous and

subsequent years, we hereby hold that the disallowance confirmed by the Id. CIT (A) is liable to be quashed.

15. In the result, the appeal of the assessee is allowed.

**Stay Application No. 318 & 326/Del/2020**

16. Since, the appeal of the assessee has been disposed off, therefore, the Stay Applications of the assessee become infructuous and hence dismissed.

17. In the result, the Stay Applications are dismissed.  
Order Pronounced in the Open Court on 26/11/2020.

Sd/-

**(Kuldip Singh)**  
**Judicial Member**

**Dated: 26/11/2020**

\*Subodh\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**