

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.1504/Bang/2018 : Asst.Year 2013-2014

M/s.Karnataka Udyog Mitra No.49, 3 rd Floor, Khanija Bhavan East Queen, Race Course Road Bangalore – 560 001. PAN : AAATK8878L.	v.	The Dy.Commissioner of Income-tax (Exemption) Circle – 1, Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.N.Suresh, CA
Respondent by : Ms.Neera Malhotra, CIT-DR

Date of Hearing : 17.03.2021	Date of Pronouncement : 18.03.2021
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 06.02.2018. The relevant assessment year is 2013-2014.

2. The grounds raised read as follows:-

"1. The order of the Commissioner of Income-tax is contrary to the law and facts of the case.

2. The learned Commissioner of Income Tax ought not to have applied first proviso to section 2(15) of the Income Tax Act, 1961 in case of the appellant.

3. The learned Commissioner of Income Tax erred in considering the interest received from bank deposit as 'Commercial or Business Income' and not allowing exemption under section 11 of the Income Tax Act, 1961."

3. The brief facts of the case are as follow:

The assessee is a charitable society having registration under 12AA of the I.T.Act. For the assessment year 2013-2014,

the return of income was filed on 28.03.2014 declaring 'Nil' income, after claiming exemption u/s 11 of the I.T.Act. The assessment was taken up for scrutiny by issuance of notice u/s 143(2) of the I.T.Act. The Assessing Officer concluded the assessment u/s 143(3) of the I.T.Act vide order dated 29.01.2016 wherein the assessee's claim of exemption u/s 11 of the I.T.Act was denied, in view of proviso to section 2(15) of the I.T.Act. The Assessing Officer's reasoning for denying the benefit of exemption u/s 11 are as follows:-

- (a) The assessee acts as a single window facilitation for the purpose of setting up industries in the State of Karnataka. For this service the assessee is charging a fee from the prospective investors.
- (b) Proviso to section 2(15) of the Act applies in the case of the assessee which does not allow to treat the assessee being engaged in charitable activities if it is involved in the carrying of any activity in the nature of trade, commerce or business.
- (c) Second proviso to section 2(15) which exempts an entity whose receipts from the activities mentioned in the 1st proviso is Rs.25 lakhs or less does not apply to the assessee's case because its gross receipt for the financial years 2011-12 and 2012-13 are Rs.4,61,85,545/- and Rs.11,45,42,500/- respectively.

4. Aggrieved by the denial of exemption u/s 11 of the I.T.Act, the assessee preferred an appeal to the first appellate authority. Before the first appellate authority it was submitted that the assessee is a charitable society having registration u/s12AA of the I.T.Act. It was stated that the assessee was not carrying on any commercial activities with any profit motive. Therefore, it was contended that in absence of intention of profit the first proviso to section 2(15) of the I.T.Act does not apply. In this context, the assessee relied on various case laws, which are extracted at para 4 of the impugned order of the CIT(A). The CIT(A) rejected the contention of the assessee by referring to section 2(15) of the I.T.Act and the Board Circular No.11 of 2008 dated 19.12.2008. The CIT(A) concluded that from the clarification issued by the CBDT Circular, it is clear that the assessee is not entitled to the claim of exemption of its income on the ground that it does not fall under the proviso to section 2(15) of the I.T.Act.

5. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned AR has filed two sets of paper book. In the first set of paper book, the annual report of the assessee along with relevant annexures, audit report and balance sheet of the assessee, the memorandum of association, certificate of registration under 12AA of the I.T.Act, submissions made before the CIT(A) etc. are enclosed. In the second set of paper book, the case laws relied on are enclosed. The learned AR reiterated the submissions that the assessee is a charitable institution and there is no profit motive involved.

It was stated that in absence of intention of any profit motive, the first proviso to section 2(15) of the I.T.Act does not apply. In this context the learned AR has relied on the order of the Tribunal in the case of Bangalore Development Authority v. Addl.CIT in ITA No.1104 & 1087/Bang/2017 reported in 176 ITD 833 (Bang.).

6. The learned Departmental Representative supported the orders of the Assessing Officer and the CIT(A).

7. We have heard rival submission and perused the material on record. The assessee had been established by Government of Karnataka vide GO No.CI-69-SPC-92 dated 22.05.1992 as a society registered under the Karnataka Societies (Registration) Act, 1960. The assessee has been established for charitable purposes and is registered u/s 12AA of the I.T.Act. The assessee acts as a single window facilitation for the purpose of establishing industries in the State of Karnataka. The income received during the assessment year 2013-2014 consisted of single window facilitation and interest on fixed deposit. The Assessing Officer had treated the entire income as commercial / business, falling under the first proviso to section 2(15) of the I.T.Act and denied exemption u/s 11 of the I.T.Act. The learned AR had relied on various case laws for the proposition that when the dormant object of the assessee is not to make profit, proviso to section 2(15) of the I.T.Act does not have application. This specific plea of the assessee has not been adjudicated by the A.O. nor by the CIT(A). Therefore, we are of the view that the matter needs to be examined *de novo* by the A.O.

Accordingly, the issues raised in this appeal are restored to the files of the A.O. The A.O. shall afford a reasonable opportunity of hearing to the assessee and take a decision in accordance with law. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 18th day of March, 2021.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 18th March, 2021.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-10, Bangalore.
4. The CIT -1 (Exemption), Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore