

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI

[THROUGH VIDEO CONFERENCING]

BEFORE N.K. BILLAIYA, ACCOUNTANT MEMBER

AND

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER,

ITA No.7449 /DEL/2017  
[Assessment Year: 2013-14]  
ITA No.7450/DEL/2017  
[Assessment Year: 2014-15]

Asstt. Commissioner of Income Tax (E), Circle-1(1), E-2 Block, Pratyaksh Kar Bhawan, Dr. Shyama Prasad Mukherjee Civic Centre, New Delhi-110002	India HIV / AIDA Alliance Promotion 6, Community Centre, Zamrudpur, Kailash Extension, New Delhi
	<b>PAN-AABC12577E</b>
Appellant	Respondent

Department by	Sh. S.N.A. Najani, Sr. DR
Respondent by	Sh. V.K. Tulsian, Adv

<b>Date of Hearing</b>	<b>22.03.2021</b>
<b>Date of Pronouncement</b>	<b>22.03.2021</b>

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

These two separate appeals by the Revenue preferred against the two separate orders of the CIT(A)-40, Delhi dated 29.09.2017 pertaining to assessment years 2013-14 and 2014-15.

2. Since identical issues are involved in both these appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity. The common grievance in both the appeals read as under:-

*i. Ld. CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that even though the objects of the society may have been charitable but the activities carried out by the society which yielded income to the society were commercial in nature.*

*ii. On the facts and in circumstances of the case and in law, Ld CIT(A) has erred in allowing the benefit of exemption u/s 11 & 12 of the Income Tax Act, to the assessee.”*

3. At the very outset, the counsel for the assessee pointed out that the issues are now well settled in favour of the assessee and against the Revenue by the decision of this Tribunal in ITA No. 7210/Del/2017 and ITA No. 716/Del/2017 for assessment year 2010-11. The counsel further pointed out this order of the Tribunal has not been interfered by the Hon'ble High Court of Delhi. Per contra, the learned DR could not bring any decision in favour of the Revenue.

4. We have carefully considered the orders of the authorities below. We find force in the contention of the counsel and identical issues have been decided by the Tribunal in assessment year 2010-11 (supra). The relevant finding reads as under:-

*“We have carefully considered the rival contention and perused the orders of the lower authorities. Undisputed fact shows that the assessee is a registered charitable institution under section 25 of the companies act 1956 holding registration u/s 12 A of the income tax act vide order dated 17/7/2000 and also enjoys the benefit under section 80 D of the income tax act vide order dated 11/9/2006. The main object of the appellant for which it has been formed are to provide relief to the persons who are suffering from HIV/AIDS by providing financial, technical and managerial assistance to foster the care and community support of those suffering from that disease. It further advances the education of the public concerning the symptoms, prevention and consequences of that disease through improved HIV prevention efforts by creating awareness to gender, sexual health and sexuality. It is also collaborating with local non-government organization to carry out operations, research, policy and advocacy initiatives and also*

*developing and improving methods of prevention of HIV AIDS. During the course of assessment proceedings the learned AO held that the assessee is carrying on the business activity as the assessee's proposal for getting grant comprising management free from the donors. On appeal before the learned CIT - A he allowed the assessee the benefit of section 11 and 12 of the income tax act holding that assessee is existing for charitable purposes as prescribed u/s 2 (15) of the act and proviso to that section does not apply to the assessee. Meanwhile on the proposal sent by the learned assessing officer to the learned CIT exemption, he withdrew the recognition granted to the assessee for registration u/s 12 AA of the income tax act holding that the assessee is carrying on the activity for the purposes of the profit and is not a charitable organisation not carrying on the charitable activities as specified under section 2 (15) of the income tax act. The learned CIT exemption was mainly guided by the finding of the learned assessing officer that assessee is separately charging the donors for salary to its staff in components of human resources expenses , training and infrastructure and equipments and along with the management fee over and above the running cost . Therefore assessee is carrying on the business activity and falling into the last limb of provisions of section 2 (15) of the income tax act. According to the provisions of section 2 (15) which defines the „ charitable purpose“ which includes relief to the poor, education, yoga, medical relief along with many other objectives and also the advancement of any other object of general public utility. On looking at the object of the assessee as well as the activities of the assessee, it is apparent that assessee is carrying on the activities for the purpose of eradication of HIV AIDS disease. Therefore the purpose of the assessee is charitable falling into category of medical relief. The proviso of section 2 (15) of the act only applies to the objects of general public utility and not to the medical relief. In view of this we are of the opinion that assessee is carrying on the charitable activities of medical relief falling u/s 2 (15 ) of the act. Further merely because the assessee receives the grant and also implement the project on behalf of the various organization for eradication of HIV/AIDS, its activities does not become a business activity or non charitable. Further for the purpose of implementation of each of the project, it charges the management fees to defray all other expenditure and administrative cost of the assessee. Merely charging the management fees does not make the activity of the medical relief of the assessee as business activity. The learned CIT - A has also given the similar finding in para number 4.4 of his order for assessment year 2010 - 11 wherein he has followed his order for assessment year 2009 - 10 dated 2/1/2014. Further in para number 4.2 of his order where he has recorded the fact that the foreign global fund the donor to the assessee gives 85% of the donation to the government of India for the HIV AIDS which runs the AIDS program in the name of National AIDS control Organisation and it is only about 15% of the total donations which are given to other societies for awareness and treatment to the poor HIV AIDS patients. It is also the fact he has recorded that the assessee spends the whole amount through various societies and trust and the assessee is also running its own project for the welfare of the HIV and AIDS patients. Further it is also the fact that assessee is a section 25 company under the companies act 1956 which cannot carry on any business activities. In view of the above facts it is apparent that assessee assessee is existing for and is carrying on the charitable activities in the form of medical relief for HIV and AIDS patient and the awareness about the disease. In view of the above facts*

*we confirm the order of the learned CIT - A for assessment year 2010 - 11 and dismiss the appeal of the revenue in ITA number 716/del/2015.*

*14. As we have already held that assessee is carrying on the activities of medical relief for eradication and education of HIV AIDS patients the assessee is entitled to the registration u/s 12 AA of the income tax act as there is no finding by the learned CIT - exemption that the activities of the assessee are not genuine. Same is not the case of the learned departmental representative also. In view of this we cancel the order passed by the learned CIT-exemption dated 3/10/2017 cancelling the registration already granted to the assessee by passing an order u/s 12 AA (3) of the income tax act 1961 on 3/10/2017 and direct the ld. CIT (E) to restore the registration of the trust u/s 12AA of the act , we also direct learned assessing officer to grant benefit of section 11 and 12 of the income tax act to the assessee. In the result appeal of the assessee in ITA number 7210/del/2017 is allowed.*

*15. In view of this the appeal of the revenue is dismissed and appeal of the assessee is allowed.”*

5. When the matter travelled up to High Court, the Hon'ble High Court of Delhi vide order dated 23.07.2019 held as under:-

*“1. The Revenue has filed the present appeal against the order dated 23<sup>rd</sup> January, 2019 in ITA No. 716/Del/2017 for the Assessment Year (AY) 2010-11.*

*2. The short point that is sought to be urged by the Revenue is whether the Income Tax Appellate Tribunal (ITAT) was right in holding that the activity of the Assessee did not cease to be a 'charitable activity' for the purposes of Section 2(15) of the Income Tax, 1961 (Act) because the Assessee charged a 'management fee' for defraying its administrative expenses.*

*3. In the impugned order the ITAT has noticed that the Assessee is a company registered under Section 25 of the Companies Act. It gives 85% of the donation received by it to the Government of India for HIV Aids and only 15% of its total donation is given to other societies for awareness and treatment of poor HIV Patients. The entire amount spent by the Assessee is through societies and trusts. It also runs its own project for the welfare of HIV and AIDS patients. In the above circumstances it has been held that merely because the Assessee charges management fees to defray the administrative costs it would not make its essential activity a business activity.*

*4. The Court is unable to find any legal infirmity in the impugned order of the ITAT. No substantial question of law arises.”*

6. In the light of the aforestated decision both the appeals of the Revenue are dismissed.

The order is pronounced in the open court on 22/03/2021.

**Sd/-**

**[SUCHITRA KAMBLE]  
JUDICIAL MEMBER**

**Delhi; Dated: 22/03/2021.**

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Asst. Registrar,  
ITAT, New Delhi