

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

**Before Shri George George K, JM & Shri B.R.Baskaran, AM**

ITA No.1615/Bang/2018 :Asst.Year 2011-2012  
ITA No.1616/Bang/2018 :Asst.Year 2012-2013  
ITA No.1617/Bang/2018 :Asst.Year 2013-2014  
ITA No.1618/Bang/2018 :Asst.Year 2014-2015

The Dy.Commissioner of Income-tax (Exemption) Circle - 1, Bangalore.	v.	M/s.BangalorteMeteropolitan Transport Corporation BMTC Central Office, KH Road Shantinagar, Bangalore - 560 027. <b>PAN : AAACB9672Q.</b>
(Appellant)		(Respondent)

ITA No.1600/Bang/2018 :Asst.Year 2011-2012  
ITA No.1601/Bang/2018 :Asst.Year 2012-2013  
ITA No.1602/Bang/2018 :Asst.Year 2013-2014  
ITA No.1603/Bang/2018 :Asst.Year 2014-2015

M/s.BangaloreMeteropolitan Transport Corporation BMTC Central Office, KH Road Shantinagar, Bangalore - 560 027.	v.	The Addl.Director of Income-tax, Range - 17 Bangalore.
(Appellant)		(Respondent)

Revenue by :Ms.Neera Malhotra, CIT-DR  
Assessee by :Sri.Annamalai, Advocate

<b>Date of Hearing :22.04.2021</b>	<b>Date of Pronouncement : 22.04.2021</b>
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**ORDER**

**Per Bench :**

These cross appeals are directed against four orders of the CIT(A), all dated 24.03.2018. The relevant assessment years are 2011-2012 to 2014-2015.

2. Common issues are raised in these appeals, hence, they were heard together and are being disposed of by this consolidate order.

First we shall adjudicate the Revenue's appeal.

**ITA Nos.1615 to 1618/Bang/2018 (Revenue's appeal)**

3. Identical grounds are raised in the above Revenue's appeals, except for variance in figures. The solitary issue that is raised in the Revenue's appeals is whether the CIT(A) was correct in law in holding that the assessee is eligible for exemption u/s 11 and 12 of the I.T.Act and not hit by the proviso to section 2(15) of the I.T.Act as amended with effect from 01.04.2009.

4. The brief facts of the case are as follow:-

The assessee was formed by the Government of Karnataka with a specific purpose for providing the general public, a secure, economical and progressive transport services as specified u/s 18 of the Road Transport Corporation Act, 1950 (RTC Act for short). The entire equity of the assessee is held by the Central Government and State Government of Karnataka. The assessee was granted the benefit of exemption u/s 12A of the I.T.Act on 22.12.2002.

5. The assessee for assessment years 2011-2012 to 2014-2015, had claimed the benefit of exemption u/s 11 and 12 of the I.T.Act on the ground that it is existing for charitable purposes as defined u/s 2(15) of the I.T.Act. The assessments were taken up for scrutiny by issuance of notice u/s 143(2) of

the I.T.Act. The A.O. held that the activities of the assessee fall under the last limb of section 2(15) of the I.T.Act, namely, “*advancement of any object of general public utility*”. He further analysed the activities of the assessee in the light of proviso to section 2(15) of the I.T.Act, which was amended with effect from 01.04.2009 and held that the transport services provided by the assessee to general public at large for a fee / consideration, providing chartered services, sale of advertisement space, etc. are in the nature of trade, commerce and business. Further, it was held by the Assessing Officer that the activities of the assessee is squarely hit by the amended proviso to section 2(15) of the I.T.Act and accordingly he concluded that the assessee was not eligible for exemption u/s 11 and 12 of the I.T.Act.

6. Aggrieved by the assessments completed for assessment years 2011-2012 to 2014-2015, the assessee preferred appeals to the first appellate authority. The CIT(A) after elaborately considering the submissions, the judicial pronouncements, the relevant provisions, concluded that the assessee’s activities are not in the nature of trade, commerce or business and proviso to section 2(15) of the I.T.Act will not hit the assessee. The CIT(A) held that the predominant object of the assessee is not to make profit and the surplus arising out of the activities of the assessee is only incidental and therefore, was entitled to the benefit of exemption u/s 11 of the I.T.Act. The relevant finding of the CIT(A) reads as follow:-

*“8.4 In background of the above detailed discussion, facts & circumstances of the case and binding judicial precedent of the jurisdictional courts, I am in agreement with the appellant*

*that the object of organization is not to make profit. It is therefore covered by section 2(15) and is not hit by the proviso to section 2(15) of the I.T.Act. Further, examination of assessee's income and expenditure account also shows that activities from which the assessee derives income are an inherent part of the main object of the assessee. The main source of Revenue is also stated to be that of Traffic Revenue and not the Non traffic revenue.*

*In view of the above discussion, the decision of the AO to invoke the provisions of 13(8) cannot be accepted. Since the issue of applicability or otherwise of proviso to section 2(15) has already been decided in favour of the appellant, the other grounds are not separately being adjudicated as they are rendered only in academic in nature. Consequently the AO is directed to give all the benefits of section 11 of the Act while giving effect to this order."*

7. The Revenue being aggrieved by the orders of the CIT(A), has filed these appeals before the Tribunal. The learned Departmental Representative relied on the grounds raised.

8. The learned AR, on the other hand, submitted that the issue in question is squarely covered by the order of the Tribunal in assessee's own case for assessment years 2009-2010 and 2010-2011 in ITA No.779/Bang/2013 (order dated 21.08.2019).

9. We have heard rival submissions and perused the material on record. The Tribunal has considered an identical issue for A.Y.s 2009-2010 and 2010-2011 (supra) and held that the assessee is a charitable institution, was entitled to the benefit of exemption u/s 11 and 12 of the I.T.Act. The Tribunal held that the assessee is not drawn by motive to earn profits but to do charity through advancement of an object of general public utility and therefore, the proviso to section 2(15) of the I.T.Act is not applicable to the case of

assessee. The relevant finding of the Tribunal, reads as follow:-

*7. We have given careful consideration to the rival submissions. As we have already seen, the assessee is formed under the RTC Act, 1950 to provide economic and efficient transport system to the public. It cannot be denied that this purpose is charitable in nature i.e., "advancement of any other object of public utility". The only ground on which the revenue authorities came to the conclusion that the assessee was not existing for charitable purpose is on the basis of source of revenue derived from renting of space and advertisements. It is not the case of the revenue that there has been any private profit earned from the activities carried out by the assessee. The Bengaluru Bench of Tribunal in the case of Bangalore Industrial Area Devl.Corpn.(supra), has taken the view that the predominant object of charitable organization has to be examined before coming to a conclusion regarding application of the proviso to section 2(15) of the Act. This aspect has been highlighted by the Hon'ble Delhi High Court in the case of India Trade Promotion Organization vs. DGIT(Exemption) (371 ITR 333)(Del). The facts of the case before the Hon'ble Delhi High Court in the case of India Trade Promotion Organization (supra) were that the Assessee in that case enjoyed the benefit of exemption u/s.10(23C)(iv) of the Act. Sec.10(23C)(iv) provides any income received by any person on behalf of any other fund or institution established for charitable purposes which may be approved by the prescribed authority, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States, shall not form part of the total income under the Act. The prescribed authority withdrew the approval granted to the Assessee consequent to the insertion of the proviso to Sec.2(15) of the Act, on the ground that the Assessee was deriving rental income from letting out space for rent during trade fairs and exhibitions, was deriving income from sale of tickets and income from food and beverage outlets. The said withdrawal was challenged by the Assessee before the Hon'ble Delhi High Court. The Hon'ble Delhi High Court had to go into the question as to the scope of the proviso to Sec.2(15) of the Act. The Hon'ble Delhi High Court has laid down the following very important principles as to how the proviso to Sec.2(15) of the Act has to be interpreted:*

- (i) The proviso to Sec.2(15) of the Act introduced by virtue of the Finance Act, 2008 with effect from 01.04.2009 has two parts. The first part has reference to the carrying on of any activity in the nature of trade, commerce or business. The second part has reference to any activity of rendering any service —in relation to any trade, commerce or business. Both these parts are further subject to the condition that the activities so carried out are for a cess or fee or any other consideration, irrespective of the nature or use or application or retention of the income from such activities. In other words, if, by virtue of a cess or ‘fee’ or any other consideration, income is generated by any of the two sets of activities referred to above, the nature of use of such income or application or retention of such income is irrelevant for the purposes of construing the activities as charitable or not.
- (ii) If an activity in the nature of trade, commerce or business is carried on and it generates income, the fact that such income is applied for charitable purposes, would not make any difference and the activity would nonetheless not be regarded as being carried on for a charitable purpose. If a literal interpretation is to be given to the proviso, then it may be concluded that this fact would have no bearing on determining the nature of the activity carried on by the petitioner. But, in deciding whether any activity is in the nature of trade, commerce or business, it has to be examined whether there is an element of profit making or not. Similarly, while considering whether any activity is one of rendering any service in relation to any trade, commerce or business, the element of profit making is also very important.
- (iii) The meaning of the expression "charitable purposes" has to be examined in the context of “income”, because, it is only when there is income the question of not including that income in the total income would arise. Therefore, merely because an institution, which otherwise is established for a charitable purpose, receives income would not make it any less a charitable institution. Whether that institution, which is established for charitable purposes, will get the exemption would have to be determined having regard to the objects of the institution and its importance throughout India or throughout any State or States.
- (iv) Merely, because an institution derives income out of activities which may be commercial, that does, in any way, affect the nature of the Institution as a charitable institution if it otherwise qualifies for such a character.
- (v) Merely because a fee or some other consideration is collected or received by an institution, it would not lose its character of having been established for a charitable purpose. If the dominant activity of the institution was not business, trade or commerce, then any such incidental or ancillary activity would also not fall within the categories of trade, commerce or business. If the driving force is not the desire to earn profits but to do charity, the exception carved

out in the first proviso to Section 2(15) of the said Act would not apply.

- (vi) If a literal interpretation were to be given to the said proviso, then it would risk being hit by Article 14 (the equality clause enshrined in Article 14 of the Constitution). Courts should always endeavour to uphold the Constitutional validity of a provision and, in doing so, the provision in question may have to be read down, as pointed out above.
- (vii) Section 2(15) is only a definition clause. Section 2 begins with the words, —in this Act, unless the context otherwise requires. The expression "charitable purpose" appearing in Section 2(15) of the said Act has to be seen in the context of Section 10(23C)(iv). When the expression "charitable purpose", as defined in Section 2(15) of the said Act, is read in the context of Section 10(23C)(iv) of the said Act, we would have to give up the strict and literal interpretation sought to be given to the expression "charitable purpose" by the revenue. (viii) The expression "charitable purpose", as defined in Section 2(15) cannot be construed literally and in absolute terms. The correct interpretation of the proviso to Section 2(15) of the said Act would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration. In both the activities, in the nature of trade, commerce or business or the activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. If the dominant and prime objective of the institution, which claims to have been established for charitable purposes, is profit making, whether its activities are directly in the nature of trade, commerce or business or indirectly in the rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a 'charitable purpose'. On the flip side, where an institution is not driven primarily by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an institution established for charitable purposes. (emphasis supplied).

*8. Keeping in mind the principles laid down as above, let us examine the case of the Assessee. The Assessee is a statutory corporation established under the RTC Act, 1950. It is not driven by profit motive but is for providing transportation facilities to members of the public. The State Government fixes fares for travel by public. Buses ply in areas even where it is not economically viable. Sec.18 of the RTC Act, 1950 lays down duties of the corporation which is to provide, secure and promote efficient, adequate, economical and properly*

*coordinated system of road transport services in the State of Karnataka. Sec.22 of the RTC Act, 1950 lays down that the corporation should act on business principles in the sense it has to recover the cost of services rendered to the public which means that it cannot provide service free of cost. Sec.30 of the RTC Act, 1950 provides how profits of the corporation shall be disposed and it lays down that the same shall be used only for road development. The non traffic revenue of the corporation is Rs.234,65,02,000/- in AY 2010-11 and a sum of Rs.2,58,76,489/- alone is advertisement revenue.*

*9. It can be seen from the various provisions of the RTC Act, 1950 which we have set out in the earlier part of the order that the dominant and prime objective of the Assessee is not profit making. Prior to the introduction of the proviso to Section 2(15) of the Act, there was no dispute that the Assessee was established for charitable purposes. The stream of traffic revenue and non traffic revenue by itself would demonstrate that the Assessee does not exist for profit.*

*10. Keeping in mind the above factual aspects and the provisions of the KIDA Act, and principle laid down in the aforesaid decision of the Hon'ble Delhi High Court in the case of India Promotion Organization (supra), in our view, will clearly show that the Assessee does not driven primarily by desire or motive to earn profits but to do charity through advancement of an object of general public utility. The proviso to Sec.2(15) of the Act is therefore not applicable to the case of the Assessee. We therefore hold that the Assessee is entitled to the benefits of Sec.11 of the Act. The AO has not disputed the conditions necessary for allowing exemption u/s.11 of the Act, except the applicability of proviso to Sec.2(15) of the Act. In view of our conclusions that the said proviso is not applicable to the case of the Assessee, we hold that the Assessee's income is entitled to the benefits of Sec.11 of the Act. In view of the above conclusion on the preliminary issue, the other grounds of appeal become academic and require no consideration.*

9.1 In view of the co-ordinate Bench order of the Tribunal in assessee's own case (supra), which is identical to the facts of the instant case, we hold that the CIT(A) is justified in directing the A.O. to grant exemption u/s 11 and 12 of the

I.T.Act for assessment years 2011-2012 to 2014-2015. It is ordered accordingly.

10. In the result, the appeals filed by the Revenue are dismissed.

**ITA Nos.1600 to 1603/Bang/2018 (Assessee's appeal)**

11. The learned AR has submitted that if the assessee is entitled to the benefit of exemption u/s 11 and 12 of the I.T.Act, the issues raised in the assessee's appeals would become academic and requires no adjudication. In view of the submissions of the learned AR, we dismiss the grounds raised by the assessee, as infructuous.

12. In the result, the appeals filed by the Revenue and the assessee are dismissed.

Order pronounced on this 22<sup>nd</sup> day of April, 2021.

**Sd/-**  
**(B.R.Baskaran)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 22<sup>nd</sup> April, 2021.  
Devadas G\*

Copy to :

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

Asst.Registrar/ITAT, Bangalore