

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. AMIT SHUKLA, JUDICIAL MEMBER  
(THROUGH VIDEO CONFERENCING)**

ITA No.4233/Del/2018  
Assessment Year: 2015-16

<b>DCIT (E) Circle – 1 (1) New Delhi</b>	<b>Vs</b>	<b>ERNET India 5<sup>th</sup> Floor, Block-I, A-Wing, DMRC, IT Park, Shastri Park, Delhi-110053 PAN No. AAATE0202A  (RESPONDENT)</b>
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Appellant by	Sh. Mahesh Thakur, Sr. DR
Respondent by	Ms. Deepashree Rao, CA Sh. Karan Jain, CA

Date of hearing:	08/07/2021
Date of Pronouncement:	08/07/2021

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the CIT(A)-40, Delhi dated 22.03.2018 pertaining to A.Y. 2015-16.

2. The only grievance of the revenue read as under :-

*(i) On the facts and in the circumstances of the case and in law, the 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 the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that assessee was earning huge profits by providing data connectivity to its subscribers in lieu of consideration as per its objects and nowhere charity can be seen in the whole process.*

3. At the very outset the counsel for the assessee stated that the issues raised by the revenue have been decided by this Tribunal in assessee's own case for A.Y.2009-10 and 2010-11 in ITA No.2873 and 2874/Del/2014 which has been upheld by the Hon'ble Delhi High Court in ITA No.637 of 2018 and 642 of 2018. The Ld. DR fairly conceded to this.

4. We have carefully considered the orders of the authorities below and have also considered the decision of the coordinate

bench and of the Hon'ble High Court which are placed in the form of paper book before us. The relevant findings of the coordinate Bench read as under :-

21. All the questions raised in the order of the Id. AO has been answered by the Hon Delhi high court. With respect to the fees charged by the assessee naturally, it should be commensurating with the efforts put in by the organization and to defray its cost as well as further capital cost. It is also required to be noted that assessee is engaged in research based activity which is highly cost intensive and requires continuous spending on the innovation and new developments as it is concerning with the education of the society. The Assessee has categorically stated before the Id AO as well as before Ld CIT (A) that it is charging subscription as well as consultancy fees on actual, which fact is not denied. Therefore merely earning the surplus does not result in to the conclusion, that assessee is carrying on its activities, which can be termed as business, trade, or commerce.
22. Furthermore on perusal of the order of the Id CIT (A), we do not concur with the arguments of the Id CIT DR that order is perfunctory and devoid of reasons for the reasons that he has decided the issues relying on the decision of Honorable Delhi high court. According to us, the Id CIT (A) has also given his finding on all the aspects of the issues raised by Id AO.
23. In view of the above facts and respectfully relying on the decision of Hon Delhi high court in 360 ITR 138 , we find no infirmity in the order of the Id CIT (A), hence we dismiss all the grounds of appeal of revenue in ITA no 2873/del/2011 for AY 2009-10.
24. Further, the appeal of the revenue for AY 2010-11 in ITA No 2874/Del/2011, also involves the same issues. Therefore, for the reasons given by us in appeal of revenue for AY 2009-10, we also dismiss all the grounds of appeal of revenue in ITA No 2874/Del/2011 for AY 2010-11.
25. In the result, both the appeals of the revenue are dismissed.

5. And the relevant findings of the Hon'ble High Court in ITA No.637/2018 read as under :-

Learned counsel for the appellant/Revenue states that the appeal preferred by the Revenue against the same impugned order vide ITA No.642/2018 for the assessment year 2010-11, has been dismissed by this Court vide order dated 28.5.2018, following the judgment of this Court in *M/s GS1 India v. Director General of Income Tax (Exemption) and Anr.*, (2014) 360 ITR 138.

In view of the aforesaid accepted position and decision in the respondent-assessee's case, no substantial question of law arises for consideration. The appeal is dismissed.

6. The relevant findings of the Hon'ble High Court in ITA No.642/2018 read as under :-

The Revenue felt that the assessee is engaged in non-charitable and business activities because of certain services it provided for consideration; these were video conferencing facilities, provision for conferencing in workshops etc. The ITAT relied upon the ruling of this Court in '*GSI India vs. Director General of Income Tax*', 360 ITR 138 where it was held that the similar activities of promoting technology or technology related activities could not be considered commercial or business activities, *per se*. Having regard to the facts of this case, the Court is of the opinion that the ratio of *GSI India* (supra) applies in this case as well.

No question of law arises. The appeal is therefore dismissed along with the pending application.

7. As the issue is well settled in favour of the assessee and against the revenue no interference is called for. The Appeal filed by the revenue is accordingly dismissed.

8. In the result, the appeal filed by the revenue is dismissed.

9. Decision announced in the open court in the presence of both the representatives on 08.07.2021.

Sd/-  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Sd/-  
**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

\*NEHA\*

Date:-08.07.2021

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	08.07.2021
Date on which the typed draft is placed before the dictating Member	08.07.2021
Date on which the typed draft is placed before the Other member	08.07.2021
Date on which the approved draft comes to the Sr.PS/PS	08.07.2021
Date on which the fair order is placed before the Dictating Member for Pronouncement	08.07.2021
Date on which the fair order comes back to the Sr. PS/ PS	08.07.2021
Date on which the final order is uploaded on the website of ITAT	08.07.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	