

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH: 'F': NEW DELHI)  
(THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 3313/Del/2018  
(Assessment Year: 2014-15)**

Asstt. Commissioner of Income-tax (E), Circle-2(1), New Delhi.	Vs.	Professional Assistance for Development Action, 3, Community Shopping Centre, Niti Bagh, New Delhi-110049.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>PAN No: AAATP0345D</b>		

**Revenue By** : Shri Avikal Manu, Sr. DR  
**Assessee By** : Shri KVSR Krishna, Adv.

**Per Anadee Nath Misshra, AM**

**(A)** This appeal by Revenue is filed against the order of Commissioner of Income Tax (Appeal)-40, Delhi, dated 13.02.2018 for Assessment Year 2014-15. Grounds taken in this appeal of Revenue are as under:

*"1. On the basis of facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the assessee is not eligible for exemption u/s 11 of the I.T. Act, 1961.*

*2. On the basis of facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the assessee's activities falls within the sixth limb of charitable activity i.e. advancement of general public utility and*

*in lieu of the services of consultancy and technical support assessee is receiving consultancy fee which is in nature of business income.*

*3. On the basis of facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the exemption u/s 11 with all consequential benefits even when the assessee society is hit by proviso to section 2(15) of the Act.*

*4. On the basis of facts and circumstances of the case and in law, the Ld. CIT(A) has erred in treating the assessee not involved in any trade, commerce or business and mischief of proviso of section 2(15) of the Act is not applicable to the assessee.*

*5. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing."*

(B) The only issue involved in the grounds of appeal is whether the assessee is eligible for exemption under Section 11 of Income Tax Act, 1961 ("I.T. Act", for short), with all the consequential benefits. Vide Assessment Order dated 18-11-16 passed by the Assessing Officer under Section 143(3) of I.T. Act; the Assessing Officer denied exemption to the assessee under Section 11 of the I.T. Act. Aggrieved, the assessee filed appeal before the Ld. CIT(A). Vide impugned appellate order dated 13.02.2018, the Ld. CIT(A) directed the Assessing Officer to allowed exemption under Section 11 of I.T. Act with all the consequential benefits. The relevant portions of the impugned appellate order dated 13.02.2018 of Ld. CIT(A) is reproduced as under:

*"4. Determination*

*4.1 The appellant has raised as many as 10 grounds of appeal in which ground Nos. 1 to 7 challenge the denial of exemption under section 11. Since these grounds are interlinked, these have been taken together.*

*4.1.1 The Assessing Officer has denied the exemption under section 11 since as per the Assessing Officer the assessee is only providing services for training, technical knowhow to various NGOs, it is building and conducting surveys which is not at all covered under medical relief, education and relief of poor. The activity of consultancy and training falls under the category of general public utility. The Assessing Officer further held that the activities of the assessee involve the rendering of services in relation to carrying on of commerce and business and hence the case is covered by*

*the proviso to section 2(15). Accordingly, benefit of exemption under sections 11/12 was denied and the assessee was assessed as normal AOP.*

*4.1.2 The appellant has submitted that the Assessing Officer is not justified to deny the exemption under section 11(1) as the assessee is not involved in any trade, commerce or business and the mischief of the proviso to section 2(15) is also not applicable as the assessee is actually a charitable society and is working for providing relief and livelihood to the poor and rural people. It is submitted that the assessee gets the grants from the Central and State Governments and works in coordination with the State Governments. It has also been submitted that the assessee is also receiving the donation from the various corporate entities and reputed trusts like TATA trusts and the donors keep a watch and monitor the working and the implementation of the projects funded by the donors. It is submitted that the mere receipt of fees or receipts does not mean that the assessee is involved in any trade, commerce or business to attract the mischief of the proviso to section 2(15) and the assessee also relied on the various case laws being-*

- i) GS1 India vs. DGIT (Exemption), 360 ITR 138 (Delhi) (2014).*
- ii) Bureau of India Standards vs. DGIT (E), 358 ITR 78 (Delhi) (2013).*
- iii) Director of Income Tax (E) vs. ICAI, 347 ITR 86 (Delhi)(2012).*
- iv) ICAI vs. DGIT(E) 347 ITR 99 (Delhi) (2012).*

*4.1.3 As per the contention of the appellant its activities fall under the category of relief of poor and, in support, the appellant has relied on the objects of the society as per the Memorandum of Association, details of which are at para5 of the appellant's submissions reproduced above. It is seen from the objects that the society has been established to provide professional, technical and management assistance to various agencies engaged in rural development and related action programmes. It is also providing technical guidance in the field of animal husbandry, water resources, rural industries etc. One of its objects is also assist development agencies at the grass root to effectively utilized physical assets required for the purpose of rural development and evolve systems to ensure equity and justice in their utilization. Copies of MoUs and the financial reports of some of the funding agencies which have been submitted have also been perused.*

*4.1.4 I have considered the assessment order and thee submissions of the appellant. I have also perused the assessment order for assessment year 2011-12 and the appeal order of my Id. predecessor for the assessment year 2011-12 in appeal No. 546/2013-14 and my own order for assessment year 2012-13 in Appeal No. 40/2015-16 and 2013-14 in Appeal No.62/2016-17 wherein exemption had been allowed with all consequential benefits following the order of my Id. predecessor on similar facts. My learned predecessor for the assessment year 2011-12 had held has under:*

***"4.41 have considered the order of the AO and the submissions of the***

***assessee and I find considerable merit in the submissions of the assessee that the mischief of Proviso of section 2(15) is not apparently applicable as the assessee is not involved in any trade, commerce or business. The assessee is very much a charitable society and is working for the welfare of the poor and rural people and is very much eligible for exemption u/s 11(1) and the AO has not made out any specific case to show that the assessee is involved in any trade, commerce or business.***

***4.5 Recently the Hon'ble Delhi High Court in the case of India Trade Promotion Organisation vs. DGIT(E), 53 Taxmann.com 404 (Delhi) 2015 (order dated 22/01/2015) has upheld the constitution validity of the proviso of section 2(15) which was under challenge being discriminatory in view of the Article 14 (Equality before law) of the Constitution of India but the Hon'ble High Court has read down the strict and literal interpretation of the Proviso of section 2(15) and has held that mere receipt of fee or charge cannot be said that the assessee is involved in any trade, commerce or business and has accordingly allowed the relief to the ITPO case vide Para 58 and 59 of the order.***

***4.6 After considering all the facts and circumstances of the case, I am of the view that apparently the assessee is not apparently involved in any trade, commerce or business and as such the mischief of Proviso of section 2(15) is not applicable and the assessee can be allowed the relief or exemption u/s 11(1) as a charitable society and accordingly the AO is directed to allow the exemption u/s 11(1) with all the consequential benefits."***

*4.1.6 It is seen from the assessment orders for the assessment years 2011-12, 2012-13 and 2013-14 that the facts of the case are same as that for the assessment year under consideration, i.e., 2014-15, and that no new facts have been brought out in the assessment order for the year under consideration. Accordingly, the Assessing Officer is directed to allow exemption under section 11 with all the consequential benefits. Grounds of appeal nos. 1 to 7 of the appeal are allowed."*

(B.1) This present appeal has been filed by Revenue against the aforesaid impugned appellate order dated 13.02.2018 of the Ld. CIT(A). In the course of appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short), copies of the

following orders in assessee's own case passed by Co-ordinate Benches of ITAT, Delhi were filed from the assessee's side:

- (i) Copy of the ITAT order dated 3<sup>rd</sup> Sept. 2019 in ITA No.- 3662/Del/2015 for Assessment Year 2011-12 in the case of DCIT vs. M/s Professional Assistance for Development Action (PRADAN),
- (ii) Copy of ITAT order dated 8.12.2020 in ITA No. 2826/Del/2017 for Assessment Year 2012-13 in the case of DCIT vs. Professional Assistance for Development Action (PRADAN)
- (iii) Copy of ITAT order dated 23.02.2021 in ITA No. 5805/Del/2017 for Assessment Year 2013-14 in the case of ACIT vs. Professional Assistance for Development Action.

(B.1.1) At the time of hearing before us, Ld. Counsel for the assessee submitted at the outset that issues in dispute in the present appeal are squarely covered in favour of the assessee by aforesaid orders dated 3.09.2019, 8.12.2020 and 23.02.2021 passed in assessee's own case by Co-ordinate Benches of ITAT, Delhi. He further drew attention to paragraphs 4.1.6 of impugned appellate order dated 13.02.2018 of Ld. CIT(A), in which she has observed "*...It is seen from the assessment orders for the assessment years 2011-12, 2012-13 and 2013-14 that the facts of the case are same as that for the assessment year under consideration i.e 2014-15, and that no new facts have been brought out in the assessment order for*

*the year under consideration.*” The learned Senior Departmental Representative (“Ld. Sr. DR”, for short) for Revenue relied on the order of the Assessing Officer.

(C) We have heard both sides and perused the materials available on record. Both sides are in agreement that facts and circumstances for Assessment Year 2014-15 (to which the present appeal pertains) are identical to facts and circumstances of Assessment Years 2011-12, 2012-13 and 2013-14. The Ld. CIT(A) has also made his observation in paragraph 4.1.6 of her aforesaid impugned appellate order dated 13.02.2018, the relevant portion of which has already been reproduced in foregoing paragraph No. (B) of this order. Neither side has brought any materials for our consideration to persuade us to take a view different from the view already taken by Co-ordinate Benches of ITAT, Delhi in assessee’s own case by aforesaid orders dated 3.09.2019, 8.12.2020 and 23.02.2021 of Co-ordinate Benches of ITAT, Delhi, wherein issues have been decided in favour of the assessee in identical facts. Neither side has brought to our attention any distinguishing facts and circumstances for Assessment Year 2014-15 (to which the present appeal pertains) from facts and circumstances of the aforesaid orders dated 3.09.2019, 8.12.2020 and 23.02.2021 of Coordinate Benches of ITAT, Delhi. The Co-ordinate Benches of ITAT, Delhi have already decided the issues in dispute in favour of the assessee vide aforesaid orders dated 3.09.2019, 8.12.2020 and 23.02.2021 listed in foregoing paragraph no. (B.1) of this order. For ease of reference, the relevant portion of the aforesaid order dated

3.09.2019 passed by Co-ordinate Bench of ITAT, Delhi in assessee's own case, for Assessment Year 2011-12 in ITA No.3662/Del/2015, are reproduced as under:

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**2.** Briefly stated facts of the case as culled out from the order of the lower authorities are that the assessee is registered under the Societies Registration Act, 1860 and also registered under section 12AA(1) of the Income-tax Act, 1961 (in short 'the Act') as a charitable society vide order dated 27/10/1984 of the competent authority. The assessee is engaged in activities for upliftment of the poor, providing training and skill development of the poor in the rural area in the backward districts of the states like, Bihar, Jharkhand, Orissa, Madhya Pradesh, Chhattisgarh and West Bengal etc. The assessee gets grant from Central and State Government and also donation from the various organization like, 'Gate foundation' etc. The assessee has been allowed benefit of exemption under section 11(1) of the Act continuously up to assessment year 2010-11, however, in the instant assessment year the assessee has been denied said exemption by the Assessing Officer invoking the mischief of the proviso to section 2(15) of the Act. On further appeal, the Ld. CIT(A) allowed the exemption under section 11(1) of the Act with all consequential benefits. Aggrieved, the Revenue is in appeal before the Tribunal, raising the grounds as reproduced above.

**3.** Before us, the Ld. DR relied on the order of the Assessing Officer and referred to main objects of the assessee listed on page 2 of the assessment order. He Submitted that the assessee is engaged in providing training/technical assistance, capacity building, provide know-how and technical guidance, develop and promote technologies and their application in the field, assist development agencies, to do planning and information of development projects, to assist development agencies and funding various organization and in view of the services rendered, the assessee receives fees from its clients. He invited our attention to the fact that tax was also deducted at source on grants received by the assessee. He submitted that the assessee falls under the sixth limb of 'advancement of object of general public utility' and is engaged in rendering services in relation to carrying on trade or commerce or business against a sum of fee received and thus the proviso to section 2(15) get attracted in the case of assessee. Further, he referred to para 4.6 of the order of the Ld. CIT(A) wherein he has concluded that apparently the assessee was not involved in any trade, commerce or business. The Ld. DR submitted that the Ld. CIT(A) has not applied his mind to the facts of the case as he himself was not confirmed that the assessee was not engaged in trade, commerce or business. The Ld. DR referred to page 46 of the paper-book filed by the assessee and submitted that the assessee was not having any independence of working and its projects were being completely monitored by the donors. Accordingly, he submitted that the Assessing Officer has rightly denied exemption under section 11(1) of the Act invoking proviso to section 2(15) of the Act.

**4.** On the contrary, the Ld. counsel of the assessee filed a paper-book containing pages 1 to 231 and relied on the order of the Ld. CIT(A). The Ld. counsel referred to various pages of the paper-book to substantiate that the assessee was engaged in projects related to providing relief to the poor. He specifically referred to page 53 of the paper-book wherein the grant was sanctioned by 'Sir Dorabji Tata Trust' to enable the assessee for strengthening rural livelihoods in the economically poor regions of India. He also drawn our attention to page 26, 29, 30 & 34 of the paper-book highlighting the project done in backward areas particularly 'Scheduled Castes' and 'Scheduled Tribes' communities of various states for taking up issues affecting their lives, including accessing basic services, rights and entitlements and their participation in local governance structure. The Ld. counsel referred to CBDT Circular No. 11/2008, dated 19/12/2008 and highlighted that the relief to the poor include welfare of the economically and socially disadvantaged or needy. According to him, the activities of the assessee being in furtherance to the cause of disadvantaged women or children or a small and marginal farmers etc. same falls under the charitable activity of 'relief to poor'.

**5.** The Ld. counsel submitted that even the proviso to section 2(15) is not applicable as no extra fee has been charged for implementing the project work of various agencies. He further submitted that even in case of entities engaged in advancement of object of general public utility, merely receiving fee or charge, cannot make the assessee as involved in trade, commerce or business as held in the case of India Trade Promotion Organization Vs. DGIT(E) 53, Taxman.com 404 (Delhi). He further

submitted that in the case of ICAI Vs DGIT(E) 347 ITR 99(Del) Hon'ble Court has held that profit motive test should be satisfied for holding whether the entity is engaged in trade or commerce or business and there should be facts and other circumstances which justify that the activity undertaken is in the nature of the business. According to the Ld. counsel the Assessing Officer has failed to justify with cogent evidences that activity of the assessee is in the nature of the trade, commerce or business.

**6.** He further submitted that the assessee has been allowed the benefit of section 11 of the Act consistently from its registration. He submitted that even after the newly amended provision of section 2(15) of the Act by the Finance Act, 2008 the assessee has been allowed benefit of section 11 in assessment year 2009-10 and 2010-11, which have been completed under section 143(3) of the Act by the Assessing Officer. He referred to assessment order for assessment year 2010-11 and submitted that the Assessing Officer have taken due note of the activities of the assessee and held the same as to be charitable in nature within the meaning of section 2(15) of the Act. He submitted that in view of the rule of consistency, the assessee is entitled to exemption under section 11(1) of the Act as there is no change in the facts in the year under consideration as compared to assessment year 2009-10 and 2010-11. In support of the contention of the rule of consistency, the Ld. counsel relied on the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang versus CIT (1992) 193 ITR 321 (SC).

**7.** We have heard rival submission of the parties and perused relevant material on record, including paper-book filed by the assessee. According to the Assessing Officer, the activity of the

assessee falls under “advancement of general public utility” , and the assessee being engaged in business of providing services against fee, the activity is out of domain of charitable purpose in view of the proviso to section 2(15) of the Act. The contention of the assessee before us is that the activity of the assessee falls under the main limb of definition of the charitable purpose of relief to poor. The alternative contention of the assessee is that even if the activities of the assessee are considered under the limb of advancement of general public utility, same is not in the nature of trade, commerce or business as no profit motive is involved in providing the services and no extra fee is charged from the clients except cost of the projects.

**7.1** As far as the activity of the assessee under the limb of advancement of general public utility is concerned, we find that learned Assessing Officer has not brought on record any evidences which could suggest that the activities of the assessee have been carried out with profit motive. The Ld. DR also even could not controvert the fact that the assessee has not charged any fee from the clients except the cost of project actually incurred. In the sanction letter of grant to the assessee, there is mention of supervision or monitoring of the activities by the donor, but that in itself is not sufficient to hold that any profit motive is involved. It is quite normal that the donor want to verify whether the grants have been incurred for the intended purpose, which in our opinion, is in any manner does not establish that the activities of the assessee is business activity. The Ld. CIT(A) following the decision of the Hon’ble Delhi High Court has decided the issue in favour of the assessee observing as under:

- “4.4 I have considered the order of the AO and the submissions of the assessee and I find considerable merit in the submissions of the assessee that the mischief of Proviso of section 2(15) is not apparently applicable as, the assessee is not involved in any trade, commerce or business. The assessee is very much a charitable society and is working for the welfare of the poor and rural people and is very much eligible for exemption u/s 11(1) and the AO has not made out any specific case to show that the assessee is involved in any trade, commerce or business.*
- 4.5 Recently the Hon'ble Delhi High Court in the case of India Trade Promotion Organization vs. DGIT(E), 53 Taxmann.com 404 (Delhi) 2015 (order dated 22/01/2015) has upheld the constitution validity of the proviso of section 2(15) which was under challenge being discriminatory in view of the Article 14 (Equality before law) of the Constitution of India but the Hon'ble High Court has read down the strict and literal interpretation of the Proviso of section 2(15) and has held that mere receipt of fee or charge cannot be said that the assessee is involved in any trade, commerce or business and has accordingly allowed the relief to the ITPO case vide Para 58 and 59 of the order.*
- 4.6 After considering all the facts and circumstances of the case, I am of the view that apparently the assessee is not apparently involved in any trade, commerce or business and as such the mischief of Proviso of section 2(15) is not applicable and the assessee can be allowed the relief or exemption u/s 11(1) as a charitable society and accordingly the AO is directed to allow the exemption u/s 11(1) with all the consequential benefits.”*

**7.2** In our considered opinion, the assessee is not engaged in any trade, commerce or business and thus mischief of proviso of section 2(15) is not attracted in the case of the assessee. Accordingly, we uphold the finding of the Ld. CIT(A) on the issue in dispute. ”

(C.2) The aforesaid order dated 3.09.2019 of Co-ordinate Bench of ITAT, Delhi was followed by Co-ordinate Bench of ITAT, Delhi for Assessment Years 2012-13 and

2013-14 in aforesaid orders dated 8.12.2020 and 23.02.2021 respectively. In identical facts and circumstances the issues in dispute were already been decided in favour of the assessee by aforesaid orders dated 03.09.2019, 8.12.2020 and 23.02.2021 of Co-ordinate Benches of ITAT, Delhi, for Assessment Years 2011-12, 2012-13 and 2013-14 respectively. In view of the foregoing, and respectfully following the aforesaid orders dated 03.09.2019, 8.12.2020 and 23.02.2021 of Co-ordinate Benches of ITAT, Delhi in assessee's own case, in identical facts and circumstances, for Assessment Years 2011-12, 2012-13 and 2013-14 respectively, we decide the issues in dispute in the present appeal before us, too, in favour of the assessee. Accordingly, we decline to interfere with the impugned appellate order dated 13.02.2018 of the Ld. CIT(A) and dismiss this appeal filed by Revenue.

This order was orally pronounced on 21<sup>st</sup> September, 2021 in Open Court, in the presence of representatives of both sides, after conclusion of the hearing. Now this order in writing is signed today on 23/09/2021.

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

*Sd/-*  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated : 23/09/2021

(Pooja)

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

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