

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'E' : NEW DELHI)**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
and  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**(THROUGH VIDEO CONFERENCE)**

**ITA No.6288/Del./2017  
(Assessment Year : 2013-14)**

**ITA No.6289/Del./2017  
(Assessment Year : 2014-15)**

ACIT (E), Circle 2 (1), vs. National Accreditation Board for Testing  
New Delhi. and Calibration,  
3<sup>rd</sup> Floor, NISCAIR,  
14, Satsang Vihar Marg,  
New Mehrauli Road,  
New Delhi – 110 067.

**(PAN : AAATN3528Q)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : None

REVENUE BY : Ms. Paramita M. Biswas, CIT DR

Date of Hearing : 20.09.2021

Date of Order : 24.09.2021

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Since common questions of facts and law have been raised in both the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. Appellant, ACIT (E), Circle 2 (1), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeals sought to set aside the impugned orders both dated 04.07.2017 passed by the Commissioner of Income - tax (Appeals)-40, Delhi qua the Assessment Years 2013-14 & 2014-15 on the identical grounds inter alia that :-

**“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 is rendering services to the laboratories and by monitoring such labs carrying out activities in a commercial manner with a view to earn profit and charging fee from them which is liable to be taxed under the head 'Profit & Gains of Business and Profession' and as such, its activities are not in charitable nature.”**

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee being a society registered under Societies Registration Act is also granted registration under section 12A of the Income-tax Act, 1961 (for short 'the Act'). The main aims and objects of the assessee society are to promote, coordinates, guide, implement and maintain accreditation system for laboratories suitable in the country in accordance with the relevant national and international standards and guides; to encourage proficiency tests inter-laboratory comparisons in order to ensure accuracy, reliability and reproducibility of test results, to

ensure that the accredited laboratories adhere to all the conditions of accreditation by periodic surveillance, etc.

4. Assessing Officer (AO) during scrutiny proceedings noticed that the assessee society falls under the 6<sup>th</sup> limb of charitable activities i.e. advancement of any other objects of general public utility and proceeded to hold that as per amended provisions, contained u/s 2(15) of the Act, the activities of the assessee society do not fall under the charitable purpose and *“thereby denied the exemption u/s 11 & 12 of the Act by assessing the total income at Rs.6,67,97,692/- & Rs.7,48,30,568/- for AYs 2013-14 & 2014-15 respectively.”*

5. Assessee carried the matter before the Id. CIT (A) by way of filing appeals who has partly allowed the same. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeals.

6. Assessee has not preferred to put in appearance despite issuance of the notice and consequently, we proceeded to decide the present appeals with the assistance of the Id. DR as well as on the basis of documents available on the file.

7. We have heard the Id. Departmental Representative for the revenue to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

8. Bare perusal of the impugned order passed by the Id. CIT(A) goes to prove that the issue as to the eligibility of assessee society to avail off the benefit under sections 11 & 12 of the Act, raised and decided by AO against the assessee society, has already been settled at rest by the Tribunal and subsequently by Hon'ble Delhi High Court. Impugned order passed by the Id. CIT (A) by following the decisions rendered by **coordinate Bench of the Tribunal in assessee's own case for Assessment Year 2009-10 in ITA No.1115/Del/2013, further confirmed by Hon'ble Delhi High Court in ITA 284/2016.** Operative part of the order passed by the Id. CIT (A) is extracted for the sake of brevity as under :-

*“5.1.2 I have considered the assessment order and also the submissions of the appellant. I've also considered the decision of the Hon'ble ITAT, Delhi Bench "E" in ITA No. 1115/Del/2013 for assessment year 2009 - 10 in appellant's own case and also the decision of the Hon'ble Delhi High Court in the appellant's own case in ITA 284/2016. Hon'ble IT AT in the appellant's own case for assessment year 2009 - 10 (supra) have held that the assessee is eligible for exemption under sections 11 and 12 as the assessee is not engaged in any trade, commerce business and its dominant and prime objective is charitable in nature in accordance with section 2(15). The operative part of the judgement is reproduced below:*

*"05. We have carefully considered the submission of parties and also the orders of lower authorities. We have perused the objects of the trust for which it is created and also the governing council of the trust . The main object of the formation of this society is to give the laboratories accreditation by which the quality standards in the products available to consumers and public at large can*

*be improved. It has not been alleged by AO or CIT (A) anywhere that the assessee is charging exorbitant or excessive fees. We find that in view of the decision of Honourable jurisdictional high court in India Trade promotion Organizations' V DGIT 371 ITR 333 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 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 the prime objective of the institution, which claims to have been established/or 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. Honourable High court has held that :-*

*55. It would be appropriate to also examine the observations of another Division Bench of this court in GSI (supra). While considering Circular No. 11 of 2008 issued by the Central Board of Direct Taxes, to which a reference has been made earlier in this judgment, the Division Bench held that it was evident from the said circular that the new proviso to section 2(15) of the said Act was" applicable to assesseees, who are engaged in commercial activities, i.e., carrying on business, trade or commerce, in the garb of "public utilities" to avoid tax liability as it was noticed that the object "general public utility" was sometimes used as a mask or device to hide the true purpose, which was "trade, commerce or business". From this, it is evident that the introduction of the proviso to section 2(15) by virtue of the Finance Act, 2008, was directed to prevent the unholy practice of pure trade, commerce and business entities from masking their activities and portraying them in the garb of an activity with the object of a general public utility. It was not designed to hit at those institutions, which had the*

*advancement of the objects of general public utility at their hearts and were charity institutions. The attempt was to remove the masks from the entities, which were purely trade, commerce or business entities, and to expose their true identities. The object was not to hurt genuine charitable organisations. And, this was also the assurance given by the Finance Minister while introducing the Finance Bill 2008.*

56. *In GSI (supra) it was contended by the Revenue that GSI (India) had acquired intellectual property rights from GSI (Belgium) and thereafter received registration fees from third parties in India. This was sought to be equated to royalty payments. It was also contended that GSI (India) had huge surpluses of receipts over expenditure and that payments were made to GSI (Belgium). According to the Revenue, all this entailed that GSI (India) was engaged in "business, trade or commerce". The petitioner herein refuted this. In this backdrop, this court asked the question- can it be said that the petitioner is engaged in activities which constitute business, commerce or trade ? While answering the said question, the court held as under (page 153 of 360 ITR) :*

*"As observed above, the legal terms, 'trade', 'commerce' or 'business' in section 2(15), mean activity undertaken with a view to make or earn profit. Profit motive is determinative and a critical factor to discern whether an activity is business, trade or commerce."*

*The court further held (page 153 of 360 ITR) :*

*"Business activity has an important pervading element of self-interest, though fair dealing should and can be present, whilst charity or charitable activity is antithesis of activity undertaken with profit motive or activity undertaken on sound or recognised business principles. Charity is driven by altruism and desire to serve others, though element of self-preservation may be present. For charity, benevolence should be omnipresent and demonstrable but it is not equivalent to self-sacrifice and abnegation. The antiquated definition of charity, which entails giving and receiving nothing in return is outdated. A mandatory feature would be charitable activity should be devoid of selfishness or illiberal spirit. Enrichment of oneself or self-gain should be*

*missing and the predominant purpose of the activity should be to serve and benefit others. A small contribution by way of fee that the beneficiary pays would not convert charitable activity into business, commerce or trade in the absence of contrary evidence. The quantum of fee charged, economic status of the beneficiaries who pay, commercial value of benefits in comparison to the fee, purpose and object behind the fee, etc. are several factors which will decide the seminal question, is it business?"*

57. *Ultimately, in the context of the factual matrix of that case, this court held that (page 155 of 360 ITR): "charging a nominal fee to use the coding system and to avail of the advantages and benefits therein is neither reflective of the business aptitude nor indicative of the profit oriented intent". The court further observed (page 155 of 360 ITR) :*

*"Thus, the contention of the Revenue that the petitioner charges fee and, therefore, is carrying on business, has to be rejected. The intention behind the entire activity is philanthropic and not to recoup or reimburse in monetary terms what is given to the beneficiaries. The element of give and take is missing, but decisive element of bequeathing is present. In the absence of 'profit motive' and charity being the primary and sole purpose behind the activities of the petitioner is perspicuously discernible and perceptible. "*

*The court also held (page 155 of 360 ITR) :*

*"As observed above, fee charged and quantum of income earned can be indicative of the fact that the person is carrying on business or commerce and not charity, but we must keep in mind that charitable activities require operational/running expenses as well as capital expenses to be able to sustain and continue in long run. The petitioner has to be substantially self-sustaining in long-term and should not depend upon Government, in other words, taxpayers should not subsidize the said activities, which nevertheless are charitable and fall under the residuary clause 'general public utility'. The impugned order does not refer to any statutory mandate that a charitable institution falling under the last clause should be wholly, substantially or in part must be funded by voluntary contributions. No such requirement has been pointed out or argued. A practical and pragmatic view is*

*required when we examine the data, which should be analysed objectively and a narrow and coloured view will be counter-productive and contrary to the language of section 2(15) of the Act."*

*58. In conclusion, we may say that the expression "charitable purpose", as defined in section 2(15) cannot be construed literally and in absolute terms. It has to take colour and be considered in the context of section 10(23C)(iv) of the said Act. It is also clear that if the literal interpretation is given to the proviso to section 2(15) of the said Act then the proviso would be at risk of running foul of the principle of equality enshrined in article 14 of the Constitution of India. In order to save the Constitutional validity of the proviso, the same would have to be read down and interpreted in the context of section 10(23C)(iv) because, in our view, the context requires such an interpretation. 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 the 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."*

*06. We are also of the view that amendment made in section 2(15) of the act with effect from 1.4.2016 by substituting the first proviso and second proviso by a single proviso, which would now exempt the business income, where the activity "is undertaken in the course of actual carrying out of such advancement of any other object of general public utility" so that it recognizes all the activities consistent with the objects, where the objects*

*are not prompted by profit motive, from the purview of liability bringing the law to conform The Constitution which was challenged before Honourable Delhi High court in above decision. The effect of this provision would bring those trusts and institutions, like assessee, with the object of general public utility on par with those with the other three objects in respect of the treatment for income from business, if it is incidental to the objects as provided under section 11 (4A) of the Act, subject to certain limitation.*

*07. In view of above we reverse the order of CIT (A) and hold that assessee is eligible for exemption u/s 11 & 12 of the Income Tax Act as assessee is not engaged in any trade, commerce or business and its dominant and prime objective is charitable in nature in accordance with section 2 (15) of The Income Tax Act.”*

*5.1.3 Further, the Hon'ble Delhi High Court in appellant's own case in ITA 284/2016 by the order dated 02.05.2016 have held as under:*

*“3. The short question is whether the Respondent National Accreditation Board For Testing and Calibration Laboratories is entitled to exemption under Section 11 and 12 of the Income Tax Act, 1961.*

*4. The positive findings of the ITAT on facts is that the Assessee is not engaged in trade, commerce and business and its dominant and prime objective is charitable in nature in accordance with Section 2(15) of the I. T. Act, 1961. The Court also notes that the Respondent is part of the central government. The Court is unable to be persuaded to hold that the findings of the [TAT are perverse. No substantial question of law arises. The appeal is dismissed.*

*5. We also further observe that the Respondent Assessee is a charitable institution.”*

*5.1.4 Since the facts of the case and the same as those for assessment year 2009-10, respectfully following the decision of the Hon'ble ITAT, Delhi Bench "E" in IT A No.1115/Del/2013 in appellant's own case and also the decision of the Hon'ble Delhi High Court in appellant's own case in ITA 284/2016, it is held that the assessee is not engaged in trade, commerce and business and its dominant and prime objective is charitable in nature in accordance with section 2(15). The Assessing Officer is directed to allow exemption under section 11 with all*

*consequential benefits. Grounds of appeal Nos. 1 and 2 are allowed.”*

9. Ld. DR for the Revenue in order to challenge the impugned order passed by the Id. CIT (A) has failed to bring on record any material if the facts qua the cases under consideration vis-à-vis earlier year are distinguishable nor has brought on record any other case law having divergent view. Since assessee society has been held to be a charitable institution by the Hon'ble Delhi High Court in AY 2009-10 and since then there is no change in the aims and objects of the assessee society, finding no illegality or infirmity in the impugned orders, both the aforesaid appeals filed by the Revenue are hereby dismissed.

**Order pronounced in open court on this 24<sup>th</sup> day of September, 2021.**

**Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 24<sup>th</sup> day of September, 2021  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-40, Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**