

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH "B": NEW DELHI ]**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER  
A N D  
SHRI AMIT SHUKLA, JUDICIAL MEMBER  
(Through Video Conferencing)**

ITA. Nos. 2460 & 2461/Del/2018  
(Assessment Years: 2014-15 & 2013-14)

DCIT (E), Circle : 1 (1), New Delhi.	Vs.	ERNET India, 5 <sup>th</sup> Floor, Block – I, A-Wing, DMRC, IT Park, Shastri Park, Delhi – 110 053 <b>PAN: AAATE0202A</b>
(Appellant)		(Respondent)

Assessee by :	Ms. Deepashree Rao, C. A.;
Department by:	Ms. Yagyasaini Kakkar, [CIT] – D. R.;
Date of Hearing :	23/11/2021
Date of pronouncement :	27/01/2022

**ORDER**

**PER AMIT SHUKLA, J. M.**

The aforesaid appeals have been filed by the Revenue against the impugned order dated 15.01.2018 passed by the Commissioner of Income Tax (Appeals)-40, New Delhi, for the quantum of assessment passed under Section 143(3) of the Income Tax Act, 1961 (the Act) for assessment year 2014-15.

2. The common grounds of appeal, raised by the Revenue are as under:-

*“1. 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 it were commercial in nature.*

*2. 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 charity can nowhere be seen in the whole process. “*

3. At the outset, the Id. Counsel for the assessee submitted that these issues are squarely covered by the decision of the Tribunal in assessee's own case pertaining to the assessment years 2009-10 to assessment year 2015-16 and the appeal for the assessment year 2009-10 and 2010-11 passed by the Tribunal has also been confirmed by the Hon'ble Delhi High Court. Therefore, these cases are squarely covered.

4. The Id. DR also admitted that the issues are squarely covered by the decision of the Hon'ble Delhi High Court.

5. The facts in brief are that assessee is an Autonomous Society under the Department of Information & Technology, Ministry of Communication & Information Technology, Government of India, which was established as a non-profitable organization. It was registered under Section 12A of the Act vide certificate / order dated 26.03.2004. The main object of the assessee was to run a nation-wide academic and research network, to undertake and promote R & D in the area of communication, develop policy options in the country for

development of network infrastructure and to act as a research centre for technological and managerial resources in the area of computer network. The case was taken up for scrutiny and relying on the assessments made in earlier years, it was held that the appellant's transactions are in the nature of business or commerce similar to private players in the market on the following grounds:

(i) the appellant has entered into memoranda of understanding with various subscribers for providing services in lieu of specified consideration;

(ii) the appellant charges professional fee for services rendered to government institutions, in relation to execution of their Network Research Projects, which has led to huge surplus;

(iii) the appellant is earning exceptionally high net profit from the 'business' of providing connectivity and research project services;

It was held that the appellant is covered by the proviso to amended definition contained in section 2(15) and its activities are not charitable and exemption under section 11 was denied.

6. Since exemption under section 11 was denied, voluntary contributions received were treated as income. Hence, addition made to earmarked funds amounting to Rs.28,72,65,874/- was added to the income of the assessee. Entire surplus as per Income & Expenditure account was held to be taxable. Only depreciation on assets purchased during the financial year 2013-14 was allowed since capital expenditure for earlier years had been allowed as application of income. Income was computed at Rs.35,44,66,022/-.

7. The Id. CIT (Appeals) after incorporating the entire submissions of the assessee held that the Tribunal in assessee's own case for assessment years 2009-10 and 2010-11 have held that assessee is not involved in any trade or business and, therefore, proviso to Section 2(15) of the Act is not attracted.

8. We find that this issue was discussed thread-bare by the Tribunal in the case for assessment years 2009-10 and 2010-11 in ITA. Nos. 2873 and 2874/Del/2014 vide order dated 27.12.2017 and held that no part of the function carried out by the assessee is in the nature of trade / business. The said order of the Tribunal has also been affirmed by the Hon'ble Delhi High Court in ITA. Nos. 642 / 637 of 2018 vide separate order dated 25.09.2018 and 28.05.2018 respectively. Respectfully following the order of the Hon'ble High Court, who has upheld the order of the Tribunal holding that the same has to be laid down by the Hon'ble Delhi High Court in the case of M/s. GSI India Vs. Director General of Income Tax (Exemption) reported in (2014) 360 ITR 138. Not only that again in the appeal for the assessment year 2011-12 passed by the Tribunal vide their order dated 8.11.2018 for assessment year 2011-12 the Hon'ble High court has again confirmed the said order. It has been brought on record that for the assessment year 2012-13 also and again for the assessment year 2015-16 same orders have been followed. Accordingly, we hold that the issues raised by the Revenue are squarely covered by the decision of the Hon'ble Delhi High Court in the case of the assessee as well as by the Tribunal and, therefore, the appeals filed by the Revenue are dismissed.

9. In the result, both the appeals are dismissed.

Order pronounced in the open court on : 27/01/2022.

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

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

Dated : 27/01/2022.

\*MEHTA\*

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

ASSISTANT REGISTRAR  
ITAT, New Delhi.

Date of dictation	20.1.2022
Date on which the typed draft is placed before the dictating member	21.1.2022
Date on which the typed draft is placed before the other member	27.1.2022
Date on which the approved draft comes to the Sr. PS/ PS	27.1.2022
Date on which the fair order is placed before the dictating member for pronouncement	27.1.2022
Date on which the fair order comes back to the Sr. PS/ PS	27.1.2022
Date on which the final order is uploaded on the website of ITAT	27.1.2022
date on which the file goes to the Bench Clerk	27.1.2022

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	