

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. KUL BHARAT, JUDICIAL MEMBER**

ITA No.2553/Del/2018
Assessment Year: 2011-12

ACIT(E) Circle-2 (1) New Delhi	Vs	National Association of Software and Service Companies Office Cum Shop No. 30-31, Ashok Hotel, 50B, Chanakyapuri, New Delhi
(APPELLANT)		(RESPONDENT)

Appellant	Ms. Rakhi Vimal, CIT DR
Respondent	Sh. Salil Kapoor, Advocate Ms. Ananya Kapoor, Advocate Sh. Amarbir Singh Walia, CA

Date of hearing:	06/09/2022
Date of Pronouncement:	06/09/2022

ORDER

PER N.K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-36, New Delhi dated 23.01.2018 for A.Y.2011-12.

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

1. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in law in allowing the appeal of the assessee ignoring the fact that the activities of the assessee is in nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activities. The assessee falls in the last category of general public utility as per the definition of Sec. 2(15) of I.T. Act, 1961 and not entitled to carry on any business or commercial activity.
2. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in in law in allowing the appeal of the assessee ignoring the fact that assessee charges subscription fee on the basis of turnover and voting right is given to member as per subscription of fees. Hence by giving differentiated treatment to members the assessee has violated the essence of principal of mutuality.
3. On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in law in allowing the additions made on grounds of expenditure incurred on Global Trade Development Programmer which is not in consonance with objectives of the society.
4. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.

3. At the very outset the Counsel for the assessee stated that the impugned issues have been decided by this Tribunal in favour of the assessee and against the revenue in earlier assessment years. The Counsel supplied the copies of the judgment of the Tribunal in A.Y.2009-10, 2010-11 and 2012-13. The DR could not bring any distinguishing decision in favour of the revenue.

4. We have given a thoughtful consideration to the orders of the authorities below. Briefly stated the facts of the case are that the assessee is a premier trade body and the chamber of commerce of the IT-BPO industries in India. It was set up in 1988 and is registered under the Indian Societies Act 1860. It aims to drive the overall growth of the technology and service market and maintain India's leadership position, by taking up the

role of a strategic advisor to the industry.

5. While scrutinising the return of income the AO noticed that the assessee has following source of income :-

Membership Subscription	-	19,50,03,460
Sponsorship receipts	-	16,50,68,512
Delegate Fee	-	5,40,22,957
Receipts from Sale of Publication	-	62,00,449
Advertisement Income	-	34,63,191
Interest Income	-	4,75,28,376
Other Income	-	12,23,154

6. The AO further found that the surplus generated through all these activities amounts to Rs.134681039/- which is invested in FDR and Savings Bank account.

7. The AO asked the assessee to show cause why the society should not be considered as general public utility body u/s. 2(15) of the Act. Assessee filed a detailed reply claiming that the said section alongwith amended provision do not apply on the facts of the case. The contention of the assessee did not find any favour with the AO who was of the firm belief that as per the amended provision of section 2 (15) of the Act. The assessee society is a case of general public utilities and, therefore, no longer enjoys charitable status. The AO denied the claim of exemption u/s. 11 and 12 of the Act and assessed the assessee as normal AOP.

8. Proceeding further the AO noticed that the assessee has claimed expenditure on account of global trade development

activities. The assessee was asked to explain the nature of payment and necessity of expenditure in terms of its aims and objectives. The assessee filed a detailed reply in support of its claim which was rejected by the AO who observed as under :-

7.2 The reply of the assessee has been duly considered. On going through the expenditure incurred by the assessee in respect of Global Trade Development Activities (GTD) it is explicitly clear that these expenses have not been incurred by the assessee in accordance to the aims and objects for which it has been established. The assessee has failed to demonstrate that GTD expenses were necessitated for pursuing its aims and objects. In view of this expenses of Rs.4,13,45,917/- incurred on account of GTD activities (inclusive of grant of Rs.2,05,37,626/- received from Ministry of Communication & Information Technology) are disallowed for the reason not being incurred for the purposes/objects of the assessee.

9. As mentioned elsewhere the impugned additions/disallowances have been decided by this Tribunal in favour of the assessee in earlier assessment years.

10. In so far as the applicability of section 2(15) of the Act is concerned this Tribunal in ITA No.6521/Del/2013 for A.Y.2009-10 has decided this issue as under :-

“13. For the above reasons, we concur with the findings of the Ld. CIT(A) that the case law relied upon by the Ld. AR supports the view taken by the Ld. CIT(A) on the aspect of principle of mutuality and the entitlement of the assessee to claim the benefit of Section 11 of the Act. We, therefore, uphold the same and find the grounds of appeal as devoid of merits.”

11. In A.Y.2010-11 in ITA No.3237/Del/2016 this Tribunal has

followed the decision of the coordinate Bench given in ITA No.6521/Del/2013 (supra). Similarly in A.Y.2012-13 the decision was followed in ITA No.5738/Del/2016.

12. In so far as the quarrel relating to the decision of Global Development Activities expenses is concerned we find that the CIT(A) upheld the partial disallowance reducing the disallowance from 41345917/-to 20808291/- on the grounds that donations given by Government of India ought not to be disallowed. The assessee also preferred an appeal before this Tribunal and this Tribunal in ITA No.1927/Del/2018 held as under :-

6. The only ground raised in the present appeal is against the said order of the CIT(A) upholding the disallowance of GTD expenses to the tune of Rs. 2,08,08,291.

7. Before us during the arguments, the Id. AR argued that the claim of GTD expenses have been allowed in the assessment year 2009-10, 2010-11 and 2012-13 also. It is only for the assessment year 2011-12, the similar expenses have been disallowed. He further argued that as per the objective of the assessee, such expenses have primarily crucial in nature to fulfill the objective of the society. He argued that the Ld.CIT(A) has not given any reason for the reduction of the partial expenses nor for sustaining the remaining amount.

8. On the other hand, the Id. DR argued that the principles of *res judicata* are not applicable to the Income Tax proceedings and every assessment has to be examined independently. She argued that the expenses are not for the purpose of business.

9. Heard the arguments of both the parties and perused the material available on record.

10. We have gone through the objectives of the assessee company with regard to GTD expenses. Global Trade Development Activity is an ongoing program primarily for

strengthening the "India" brand, to put and maintain the status of the India IT-BPO industry on the map of the world, by strengthening its credentials in the specific international market, as a preferred outsourcing destination for the advancement of Information technology (I.T.) business solely for India. The program has been commenced to harness the power of existing partnerships, collaborations and MoU's with Governments, industry associations and customer organizations abroad, the world over to ensure that the country leadership position in the outsourcing domain remains intact for the sole benefits of Indian I.T. Industry. The assessee has aimed through GTD, issues such as immigration policies, visa regimes, software quality standards. WTO and free trade in services data security and next generation best practices and the importance of collaboration and trade cooperation, especially during these times of economic recession. The assessee is working closely with the Indian Government to represent the true potential of Indian IT Industry for increasing the Indian market share in Information and Communication Technology (ICT) and helping to ensure that the Governments of other nations do not create impediments to free trade or barrier-free business exchanges.

11. The GTD expenditure incurred for the above purpose primarily consisted of:

(i) Consulting fees paid to various international firms in respect of their strategic and tactical planning for positioning IT industry of India vis-a-vis the foreign country's economic outlook.

- (ii) Expenditure on global protectionism sentiments and campaign;
- (iii) Expenditure in public relations/ public awareness and
- (iv) Travelling expenses.

12. Further, we also find that the similar expenses has been allowed by the Co-ordinate Bench of ITAT for the assessment year 2010-11 in ITA No. 3187/Del/2015, order dated 17.05.2019 wherein it was held that the disallowance of GTD expenses are not sustainable on the grounds that the purpose of such expenditure and the benefits derivable there from is aimed at benefitting L.C.T & Business Process Management (BPM) industry as a whole, which not denotes the member fraternity of the assessee, but also the industry at large in India. The monetary and in principal support to GTD activity by Government of India clearly establish the utility of such expenses for the India I.T. Industry as a whole.

13. We also find that the similar expenses have been accepted upon by the revenue for the assessment year 2009-10, by the Tribunal for the assessment year 2011-12 and further by the revenue for the assessment years 2012-13, 2013-14, 2014-15, 2015-16, 2017-18 in the assessment completed u/s 143(3) of the Act which give rise to a strong contention that these expenses are duly allowable.

14. Ergo, keeping in view the activities of the assessee and its relevance to the expenses incurred, the continuous stand of the revenue to allow such expenses in all the previous and

subsequent years, we hereby hold that the disallowance confirmed by the Id. CIT (A) is liable to be quashed.

15. In the result, the appeal of the assessee is allowed. ✓

13. Respectfully following the decision of the coordinate Bench

(supra) we decline to interfere with the findings of the CIT(A) the appeal filed by the revenue is accordingly dismissed.

14. Decision announced in the open court on 06.09.2022.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Date:- .09.2022

Copy forwarded to:

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

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	06.09.2022
Date on which the typed draft is placed before the dictating Member	07.09.2022
Date on which the typed draft is placed before the Other member	07.09.2022
Date on which the approved draft comes to the Sr.PS/PS	07.09.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	07.09.2022
Date on which the fair order comes back to the Sr. PS/ PS	07.09.2022
Date on which the final order is uploaded on the website of ITAT	07.09.2022
Date on which the file goes to the Bench Clerk	07.09.2022
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	