

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 268 to 271 & 275/JP/2022
निर्धारण वर्ष / Assessment Years : 2013-14, 2015-16, 2017-18, 2018-19 & 2016-17)

ACIT (Exemption), Circle, Jaipur.	बनाम Vs.	Rajasthan State Road Transport Corporation, Head Office, Parivahan Marg, C-Scheme, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCR7187B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Suhani Meharwal (C.A.)
राजस्व की ओर से / Revenue by : Shri Sanjay Dhariwal (CIT)

सुनवाई की तारीख / Date of Hearing 07/09/2022
उदघोषणा की तारीख / Date of Pronouncement :26/09/2022

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

These are four appeals filed by the Department arising out of the order of the National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)], Id. CIT(A) passed on dates as mentioned here in below for the assessment year mentioned as tabulated here in below which in turn arises from the order passed by the DCIT(Exemption), Circle, Jaipur under the provisions of Income Tax Act, 1961 (in short 'the Act') and dated referred here in below:

Asstt.	Department	Reference to the	Reference to the order of the Id.
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Year	Appeal No.	dated of order of the Id. CIT(A)	AO date and section under which the order is passed	
2013-14	268/JP/2022	09.05.2022	15.03.2016	u/s143(3)
2015-16	269/JP//2022	09.05.2022	22.11.2016	u/s143(3)
2017-18	270/JP//2022	09.05.2022	10.12.2019	u/s143(3)
2018-19	271/JP//2022	10.05.2022	07.04.2021	u/s143(3) r.w.s. 143(3A) & 143(3B)
2016-17	275/JP//2022	22.04.2022	06.12.2018	u/s143(3)

2. At the outset of hearing, the Bench observed that there is delay of 21 days in filing the appeal by the Revenue for which the Id. DR of the Department filed an application for condonation of delay with following prayers.

“2. The appeal in the above case was filed late by 21 days. The reason for delay in filing of appeal are explained as under:-

a. The appeal order in this case was received from the office of CIT on 24.05.2022. As per the direction of the Ld. CIT(A), an opportunity to file certain details was provided to the assessee vide DIN & Letter No.ITBA/COM/F/17/2022-23/1043224369(1) dated 27.05.2022. The time allowed to the assessee was seven days. In the meantime, undersigned went on earned leave from 06.06.2022 to 19.06.2022 and joined back on 20.06.2022. On return from leave, the Central Scrutiny Report was immediately forwarded to the higher offices.

- b. *As there is no regular CIT(E) posted at Jaipur, the charge is being held by CIT(E), New Delhi which has also resulted in certain delay in approval of filing of appeal and issue of authorization.*
- c. *Apart from this due to general AGT & non joining of staff also, the work of this office has suffered adversely.*

3. *Therefore, due to above reasons, the appeal in this case for A.Y. 2016-17 could not be filed in time and has resulted in delay in filing of appeal before the Hon'ble ITAT.*

4. *Considering the above reasonable cause for delay in filing of appeal before the Hon'ble ITAT, it is humbly prayed that the delay in filing of appeal may kindly be condoned.*

The inconvenience cause is highly regretted and due care will be taken in future to avoid such delay.”

3. We have heard the rival contentions and perused the materials available on record. The prayer as mentioned above by the Revenue for condonation of delay of 21 days has merit and we concur with the submission of the Revenue. Thus the delay of 21 days in filing the appeal by the Revenue is condoned.

4. Since common issues involved, in all the appeals were heard together and disposed off by this common order. First, we take up Department's appeal in ITA No. 275/JP/2022 for the A.Y. 2016-17. The Department has taken following grounds of appeal:-

“(a) Whether the CIT(A) is justified in law and facts of the case in holding that the assessee corporation is not hit by proviso to section 2(15) of the IT Act even it is engaged in the activities in the nature of trade, commerce or business and receipts are more than limit prescribed under the proviso to section 2(15).

(b) Whether the CIT(A) is justified in law and facts of the case allowing benefit of section 11 ignoring the fact that general principle of Corporation’s Finance itself states that “it shall be the general principle of a corporation that in carrying on its undertaking it shall act on business principles” thereby describing its objective as well as activities in the nature of Business.

(c) Whether the CIT(A) is justified in law and facts of the case in holding that proviso to section 2(15) of the IT Act cannot be invoked in the case of corporation as the pre-dominant objects of the corporation do not have motive of earning profits thereby ignoring the fact that the section 2(15) does not stipulate any such condition.”

5. Brief facts of the case are that the return of income declaring total income of Rs. Nil was e-filed on 08.10.2016. The case was selected for complete scrutiny through CASS and e-notice u/s 143(2) of the IT Act, 1961 was issued on 08.07.2017 which was duly served upon the assessee in time. The assessee is registered under section 12AA of the Act. The objection of the assessee corporation is to provide road transportation in the State of Rajasthan and in other states as well. During the year its total revenue receipts were Rs. 17,07,56,24,135/-. After claiming various expenditure of Rs. 21,99,97,55,976/-

and adjustment of disallowable expenditure it has shown net loss of Rs. 4,92,41,31,841/-. The corporation is registered as a charitable institution u/s 12A(a) of the IT Act dated 08.03.1989. The objects fall in the last limb of the definition of section 2(15) i.e. advancement of any other object of general public utility.

6. Aggrieved by the order of the AO, the assessee preferred in appeal before the NFAC who has deleted the addition made by the AO.

7. The AO assessed the finding that the objects of the corporation are definitely charitable as they are of general public utility and there may not be any profit motive. However, the activities being carried out are not charitable. The corporation runs buses. Person using its services has to pay fare as fixed by it. It is not the case that it is providing free services to the public. Thus, its activities are definitely commercial in nature. Therefore, in view of amended provisions of section 2(15) which defines the Charitable purpose, that if the receipts from activities which are commercial in nature are exceeding Rs. 25 lacs the advancement of any other object of general public utility will not be called charitable. The argument that its income will not be taxable on the principle of mutuality is also not acceptable. The logic given for calling the organization as mutual association is overstretched. The basic principle for exemption of the income of mutual association is that there is common identity of contributors and participants. Here, the corporation cannot be equated with

the passengers. In view of above discussion, it is held that the assessee is not entitled for exemption u/s 11 in view of amended provisions of section 2(15). Accordingly for this year its income is computed on the principle of commercial expediency and taxed accordingly. Here, net result is loss of Rs. 4,92,41,31,841/- in P & L A/c of the assessee. After adjustment of disallowable expenditure the assessee has shown net loss of Rs. 4,92,41,31,841/- in the revised Return of Income filed on 31.03.2017. In the computation of income the assessee has claimed Capital Expenditure of Rs. 15,32,76,466/- under the head application of income. As the assessee is not entitled for exemption u/s 11 as discussed above in length and the assessee's income is computed on the principal of commercial expediency and taxed accordingly, thus, Capital Expenditure of Rs.(-) 15,32,76,466/- claimed by the assessee under the head application of income during the year under consideration is not allowed as expenditure and added to the total income of the assessee.

8. During the course of hearing, it was also noticed that the assessee has claimed carried forward losses of preceding assessment years in its return of income. Hence, the AR was asked to justify as to why the corporation should not be allowed to carry forward the losses. The AR in his reply, in continuation of the above submission, stated that-

“In compliance with above matter relating to carry forward of deficit, assessee Corporation submits that in case of non- profit organization which

are registered under section 12A of Income Tax Act, 1961 deficit would be brought forward & eligible for application. The proposition is based on jurisdictional High Court Ruling in case of Maharana of Mewar Charitable Foundation reported in 164 ITR 0439 (Raj). The deficit is eligible for carry forward and may please be allowed. Please further note assessee Corporation submits that it is recognized u/s 12A of Income Tax Act and the ruling of jurisdictional High Court is valid and binding. The other citation on above issue also favour assessee namely

CIT Vs. Maharana of Mewar Charitable Foundation 164 ITR
271 ITR 293 (Guj) CIT Vs. Shri Plot Swetambar Murti Pujak
CIT Vs. Matriseva Trust 242 ITR 20 (Mad)
Govindu Naidker Estate Vs. ADI 248 1TR 368 (Mad)

This carry forward of deficit is statutory requirement and cannot be denied. It is humbly prayed that the deficit claimed to be carried forward for set off in the next years may be allowed as claimed."

9. However, as discussed above, the assessee is not being allowed to take exemption u/s 12A of the Act and it is not considered as charitable institution and hence the above quoted decision cannot be applied to the assessee. Therefore, the assessee cannot be allowed to carry forward losses for umpteen number of years as per the decision of Maharana Mewar Charitable Foundation. However, as the assessee is assessed according to the principle of commercial expediency, it is allowed to carry forward the losses as per section 72 of the Income Tax Act, 1961.

10. Being aggrieved by the AO the assessee preferred an appeal before the Id. NFAC and the findings are reproduced as under:-

"6. Decision:

The appeal for assessment year 2010 — 11 and 2011 — 12 was decided, vide `ITBA/NFAC/S/250/2022-23/1042807601(1) dated 21/04/2022, where vide para-7 of the order, it was held as under:

"7.It is seen that Corp has provided transport services to the general public and it was rightly held by honourable ITAT that its services are not limited to any particular section like the weak sections of society or poorer people only, so activity of corporation comes under general public utility as clearly defined in section 2(15). It is also noticed that even though corporation provide certain express and deluxe buses also with the pre-reservation facility, majority of its services cater to providing efficient road transport services to the general public at a reasonable rate. As per details furnished, it is seen that Corp remained incurring losses in its operations as under:

Year Loss Rs. (Crores)

2007-08 23.57

2008 — 09 189.33

2009 — 10 78.95

2010 — 11 184.99

2011 — 12 130.60..

Even though there are losses, it cannot be said without any scrutiny on the aspect that the same are due to some management issues as stated by CIT(A) in earlier order. The corporation has been charging lower

fares as compared to private operators as shown by it for the Jaipur-Delhi ticket (226 vs 300). It also provides concessional fares to freedom fighters, various patients, students etc. in fact the assessing officer also noted that activities of the corporation are definitely charitable in nature (Para 3). As far as dominant object of the corporation is concerned, it can definitely be held that it does not carry on any business for profit except to provide transport service to the people as the details of assessee's profit statement shows that it has incurred consistent losses by charging reasonable fare and also by providing services to far-flung rural areas where running of transport services may not be commercially viable.

Thus even though running the transport services are of the nature of commerce or business, the primary object of the corporation itself cannot be treated as running a business activity and the dominant object of the corporation comes under the purview of advancement of general public utility and not under the purview of business since motive of earning profit is missing in the object of corporation. The activities of corporation are held to be covered under the charitable purpose and assessee is not caught by the newly inserted proviso in sec 2(15) in view of the decision of honourable Delhi High Court (supra) reading down the said proviso and holding to look into the dominant object to see whether activity is to the profit or it is for providing advancement of object of general public utility. Further, the theory of the pre-dominant object was also upheld by the Rajasthan High Court as discussed above.

Further, it is also seen that the surplus if any generated and available for distribution is to go to the State Government and even then it will not become part of the general revenues of State but rather it can only

be utilized for the stated purpose as per sec 30 of the Road Transport Corporation Act 1950, i.e. towards Road Development. Thus the decision of assessing officer to deny exemption under section 11 is not upheld.

8. In the result, the appeals of both years are treated as allowed and the direction of Hon'ble ITAT stands disposed."

5.2. In view of the above, ground number 1 is allowed.

Ground number 2 :Application of capital expenditure may be allowed subject to provisions contained in sec 11 (specifically sec 11(6)) and sec 13. The expenses/ depreciation eligible for application should be recomputed after verification as per law by the assessing officer as the same was not verified by the assessing officer while making the original assessment.

7. In respect of ground number 3, the same were allowed to be carried forward earlier as Business losses in the appeal order (earlier 11-12 order) referred by the appellant in the submissions made. The same will, however, not be applicable, as now the income is to be computed as per provisions contained in exemption provisions and carry forward of the deficit (excess application over income) will be governed by the provisions related to exemptions. The same may be allowed by the assessing officer as per law. However, explanation 4 to section 11(1) will have to be considered in future years for giving the benefit of such brought forward excess application."

11. Being aggrieved by the assessment order, the Department preferred an appeal before us. The Ld. AR for the assessee has reiterated its arguments in written submission for all the grounds which are as under:-

“Assessee is state government owned corporation providing transportation services and registered u/s 12AA of IT Act 1961. In the above 5 Assessment Years, Ld AO made assessments u/s 143(3) and withdrawn the exemption u/s 11 after holding that assessee is not entitled to be registered in view of amended provision u/s 2(15) of the It Act 1961.

On appeal, Ld CIT (A) allowed all the appeals and restored the registration u/s 12AA holding that the activities of corporation are not come under the purview of business. Activities and object of corporation is to provide low cost, efficient services to transportation for passengers. Amount charged as fare is with a view to survive and not for profit making. Further, A.Y. 2010-11 and A.Y. 2011-12 has already been considered by this co-ordinate bench of ITAT. After hearing long arguments, evidences and established law honorable ITAT remanded back the case in the file of Ld. CIT (A) to consider all the material and decide the issue of registration u/s 12AA. Both the years, the appeal was allowed by Ld. CIT (A) for which copies were filed during earlier hearing.

It is very much relevant to consider finding of honorable ITAT, which is placed in para 21 of ITAT order which, I want to read if allow me that The next question that arise for consideration is whether the activities of the assessee corporation involves carrying on of activities in the nature of trade, commerce or business or any activity of rendering of services in

relation to any trade, commerce or business for a cess, fee or any other consideration and the proviso to section 2(15) is applicable in the instant case. As per the Assessing officer, the activities of the assessee corporation are commercial in ITA Nos. 885 & 886/JP/2018 Rajasthan State Road Transport Corporation, Jaipur Vs. DCIT, Jaipur 17 nature for the reason that it is running buses and charging fare from the passengers and it is not providing free services to the public. The Id CIT(A) referred to the decision of the Hon'ble Delhi High Court in case of India Trade Promotion Corporation vs U01 wherein it was held that the dominant and prime objective of the Institution has to be seen. Where the dominant and prime objective is profit making, it would not be entitled to claim its objects to be charitable purposes and where the institution is not driven primarily by a desire or motive to earn profit but to do charity through the advancement of an object of general public utility, it can be regarded as an institution established for charitable purposes. The Id AR has further referred to the decision of the Hon'ble Rajasthan High Court in case of Jodhpur Development Authority and Urban improvement Trust, Bikaner wherein similar legal proposition has been laid down. However, when it comes to finding on facts in the instant case, the Id CIT(A) merely held that since its receipts from activities which are commercial in nature exceeds the prescribed threshold, the assessee corporation will be not a charitable corporation. We therefore find that there is no finding by the AO or the Id CIT(A) as to the dominant intent and purposes for which the assessee corporation was set up and whether the dominant purposes was to earn profit or provide public utility services to the public at large. The Id AR in her submissions has referred to various provision of Rajasthan State Road Transportation Corporation Act 1950 and has argued that the object was

to provide efficient transport services to the public and not to earn profits. We find that the provision of Rajasthan State Road Transportation Corporation Act 1950 need to be examined in detail to determine the dominant intent and purpose of setting up of the assessee corporation and in the absence of findings of the lower authorities, we are constrained to remand the matter back to the file of the Id CIT(A) to examine the same afresh taking into consideration the decisions of the Hon'ble Delhi and Rajasthan High Court referred supra. The assessee corporation is at liberty at raise its aforesaid ITA Nos. 885 & 886/JP/2018 Rajasthan State Road Transport Corporation, Jaipur Vs. DCIT, Jaipur 18 contentions before the Id CIT(A). In the result, the matter is set-aside to the file of the Id CIT(A) after providing reasonable opportunity to the assessee corporation.

Since the A.Y. 2010-11 and A.Y. 2011-12 were remanded back after hearing and considering all the documents, evidences, arguments by ITAT and Ld CIT (A) has allowed the same for which no appeal has been filed further, the case has been settled in favour of Corporation.

My Ld. Brother has said in earlier hearing that the appeal for A.Y. 2010-11 and A.Y. 2011-12 were not filed considering the tax effect is altogether wrong. Since it the question of law the CBST circular for restriction of appeals is not applicable. Further, if the argument of my LD. Brother is right than all the appeals for these 5 years should not have been filed, since the issue does not carry ant tax effect as per arguments of Id DR.

On the facts, your honour assessee corporation is state government owned organization providing transportation facilities to

passengers by running of vehicles in the state and outside state for a nominal fare. The Corporation provides various concessions and relief to the society specifically to poor, students, senior citizen, women etc. In brief, various types of relief and concessions are provided by Corporation, which I read few of from page no 1 and 2 of paper book.

And that's why your honour, assessee corporation is continue to be within the definition of charitable purpose u/s 2(15) of the I.T.Act, 1961 in 'Relief to poor' as main limb and first limb. Relief to poor encompasses a wide range of objects for welfare of the economically and socially disadvantaged or needy. It will therefore, include within its ambit purposes such as relief to destitute, orphans or handicapped, disadvantages women or children, or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity. After the insertion of proviso CBDT issued a circular where the relief to poor is explained in para 2.2 (page no 3-4 of paper book)

Even, the activities of corporation is deemed to be under advancement of any other object of general public utility than still the activities of Corporation does not qualify the test of running trade, commerce or business activity for fee being the:

- 1 Object of Corporation is to provide competitive services of passenger transportation to general public at large and poor and needy persons and to various poor part of society in specific against subsidized price. RSRTC also provide the ease

transportation service in those rural areas also, where private buses operators don't even bother to go. (page no 67-68)

- 2 The charges of fare are fixed only for the purpose of continuity of its operation and for the purpose of making corporation going concern. The assessee is incurring the loss As its recovery of operation cost is less than 100% from passenger fare.
- 3 Commercial activity for fee or cess means the business for money making. Corporation is the state government undertaking. It is a service organ of the state and it functions in public interest for relief to poor and to provide transportation facility in distant interior after providing all amenities even after bearing losses.
- 4 The assessee corporation filed return of income of the year under consideration by declaring loss of Rs. 80 crore +. It's accumulated losses are now more than Rs 2000 crores. I have also attached herewith the yearly chart for losses page no 5 of paper book. from this data it is clear that corporation is not running with the objective of profit making actually corporation loss is basically a relief to majority people of Rajasthan and also the other states by providing services in very low or free fare and this loss is increasing day by day
- 5 State Government principally decides the routes facilities, fare, concessions, amenities and all such decides after taking care interest specially to poor people, widows, ST, SC etc. Assessee corporation cannot increase or decrease the rates on its own order for fixing the price by state government is placed on page no 6 of paper book.

6 Assessee corporation is charging much low fare in comparison to the private tour operators, your honours I would like to briefly differentiate the fare charged by private tour operators and RSRTC may I allow to do, Private tour operators charge RS. 300/- for the same route while RSRTC charge 228/- please refer page no 7-8 of paper book where I have placed print out of ticket booking in both the cases.

7 New insertion in section 2(15) is made by Finance Minister in Finance Bill 2008 with the intension to limit the benefit of exemption to real charitable purposes and he targeted those who were doing commercial activities and earning tax free income in the garb of NGO as stated by FM in parliament.

In view of above, assessee corporation qualifies the both the limb of definition of charitable purpose i.e., relief to poor as well as advancement of any other object for general public utility. And its activity does not come under the purview of commercial activity for fee or cess.

On the law, I want to refer ITAT Hyderabad in case of DCIT vs A.P. State Civil Supplies Corporation It was held in the case that the aim of Finance Minister is to limit the commercial activities generating profit in the mask of charity. The proviso to section 2(15) is applicable only in relation to the last limb of the definition of charitable purpose i.e., advancement of any other object of general public utility which means the activities which promote the welfare of general public and not the individual interest of some person or private profit or private gain. Reading

of proviso to section 2(15) along with the speech of FM in parliament and the CBDT circular 11 of 2008 dated 19.12.2008 make it clear that only the institution carrying on commercial activities with the intention to earn profit are intended to be in the nature of trade, commerce and business. This view was again upheld by Gujarat High Court in case of Director of Income Tax vs Sabarmati Ashram Trust 362 ITR 539.

I want to refer State Of Andhra Pradesh vs Andhra Pradesh State Road ... on 17 August, 1988 it was held that APSRTC does not carry on any business except to provide transport service to the people Where the primary activity of the corporation itself cannot be treated as a business activity "From the foregoing, we have no hesitation to hold that the activities of the corporation do not constitute "business" within the meaning of section 2(1)(bbb) of the Andhra Pradesh General Sales Tax Act and, therefore, it cannot be said to be a "dealer" within the meaning of section 2(1)(e) of the Act" (copy enclosed on page no 9-17 paper book).

The issue has also been covered by Jurisdictional high court where high court where hon'ble high court stated in appeal filed by revenue in case of CIT Jodhpur vs. Jodhpur Development Authority and CIT Bikaner vs. Urban Improvement Trust Bikaner held that when the object of institution to provide facility which involves the advancement of any other object for general public utility and for that purpose the settled position of law emerged that if the primary or predominant object of an institution is charitable any other object which might not be charitable but which is ancillary or incidental to the dominant purpose may be involving element of profit would not

prevent the institution from being a valid charitable trust coz of judgment is placed on (page no 18-51 of paper book)

Alternatively your honours

The predominant object for which the corporation has been established by the state is to provide efficient transport services to the people in public interest and even after sufferance of losses.

As per section 3 of the Rajasthan State Road Transport Corporations Act,1950 (page n 52-66)

(a) the advantages offered to the public, trade and industry by the development of road transport; (b) the desirability of coordinating any form of road transport with any other form of transport; (c) the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of road transport service therein,

On account of its primary object being relief of the poor, such losses are being met/borne by the state of Rajasthan. RSRTC is not carrying any activity of trade, commerce or business with a motive to earn profit/income.

Section 18 of RSRTCA,1950 also provide that "It shall be the general duty of a Corporation so to exercise its powers as progressively to provide or secure or promote the provision of, an efficient, adequate, economical and properly coordinate system of road transport services in the state"

Though the Act empowered a corporation to issue shares and to pay dividends, no share capital was raised by the respondent and its entire share capital was provided by the government u/s 23(1) of RSRTCA, 1950.

Sec 30 of RSRTCA, 1950 "a Corporation may utilize its net annual profits for the provision of amenities to the passengers using the road transport services, welfare of labour employed by the Corporation any balance utilized for financing the expansion programmes of the Corporation and the remainder, if any, shall be made over to the State Government for the purpose of road development.

Your honours, the activity of corporation was not carried on with the object of making profit was made abundantly clear by provision of sec 30 of the Act. The amount left over after utilization for the purpose set out in section 30 was to be made over to the State Government for the purpose of road development. The amount handed over to the State Government did not become part of the general revenues of the state but was impressed with obligation that it should be utilized only for the purpose for which it was entrusted, viz., road development.

The predominant object for which the corporation has been established by the state is to provide efficient transport services to the people in public interest and even after sufferance of losses. On account of its primary object being relief of the poor, such losses are being met/borne by the state of Rajasthan. RSRTC is not carrying any activity of trade, commerce or business with a motive to earn profit/of income.

I also want to refer decision of ITAT Bangalore in case of M/s Karnataka State Road Transport Corporation vs. ACIT (Exemption) "Keeping in mind the above factual aspects and the provisions of the RTC, Act, 1950 and principle laid down in the aforesaid decision of the Hon'ble Delhi High Court in the case of India Promotion Organization (supra), in our view, will clearly show that the Assessee does not driven primarily by desire or motive to earn profits but to do charity through advancement of an object of general public utility. The proviso to Sec.2(15) of the Act is therefore not applicable to the case of the Assessee. We therefore concur with the view of the CIT(A) and hold that the Assessee is entitled to the benefits of Sec.11 of the Act. The AO has not disputed the conditions necessary for allowing exemption u/s.11 of the Act, except the applicability of proviso to Sec.2(15) of the Act. In view of our conclusions that the said proviso is not applicable to the case of the Assessee, we hold that the Assessee's income is entitled to the benefits of Sec.11 of the Act.

15. With regard to the arguments of the learned DR, we are of the view that the same are without any merit. The proviso to Sec.2(15) of the Act has been discussed by the Hon'ble Delhi High Court in the case of India Trade Promotion Organization vs. DGIT(Exemption) (supra) and the dominant motive is the criteria as laid down therein. Therefore the answer to the arguments put forth by the learned DR are found in the aforesaid decision. As we have already seen, the profit of the Assessee have to be used only for road development, as in the case of the decision in the case M/s.Karnataka State Road Transport Corporation.

of APSRTC (supra) where the revenues have to be utilized only for the purpose of road development."

5.1 In view of the above order of the Tribunal in assessee's own case, we hold that the assessee is not hit by proviso to section 2(15) of the I.T.Act. Accordingly, the A.O. is directed to grant benefit of exemption u/s 11 of the I.T.Act for the relevant assessment year."

Therefore, calling the activities of the assessee as normal business Activities is totally incorrect and without any evidentiary value.

The objects of assessee are charitable in nature and as such it had been claiming its income if any as exempt u/s 11 of IT Act 1961."

12. We have considered the rival contention and perused the orders of the authorities and the material available on record. The ld. Senior DR submitted that the assessee is a registered u/s 12AA of the IT Act where the return of income for the assessment year 2016-17 declaring total income of Rs. Nil was e-filed on 08.10.2016. The case was selected for complete scrutiny through CASS and e-notice u/s 143(2) of the IT Act, 1961 was issued on 08.07.2017. the ld. AR submitted that the object of the assessee corporation is to provide road transportation in the State of Rajasthan and in other states as well. During the year its total revenue receipts were Rs. 17,07,56,24,135/- and expenditure of Rs. 21,99,97,55,976/- and adjustment of disallowable expenditure it has shown net loss of Rs. 4,92,41,31,841/-. The ld. DR has relied upon the findings of the AO, where the ld. DR is in opinion of the AO that the assessee

corporation is registered u/s 12AA of the Act where their business income which is not allowable for exempt u/s 11 and 12. The ld. Dr relied upon the provisions of Section 2(15) of the Act where that in the last limb of the definition of section 2(15) that section 11 and 12 are not allowable for the assessee corporation. The assessee corporation activity are in the commercial in nature that the activity being carried which are not charitable and the objects of the Corporation are definitely charitable as their “ general public utility” and there may be profit motive. The ld. DR further submitted that in view of the amended provisions of Section 2(15) of the Act which defines the charitable purposes that if the receipts from the activities which are commercial in nature were exceeding of Rs. 25 lacs. The advancement of the general public utility will be called charitable. Further, he explained that the basic principles for exemption of the income are mutual association is that there is a common identity of contributors and participants. During the assessment proceedings the AO has considered the reply filed and is not found acceptable, the relevant paras 5 to 9 has been considered by the ld. DR that the assessee corporation does not come within the definition of section 2(15) of the Act which defines charitable purpose it comes under business income.

13. The ld. AR for the assessee submitted that it is squarely covered matter where this Bench has passed the order in favour of the assessee in ITA No. 885 & 886/JP/2018 for the assessment years 2011-11 and 2011-12 dated

14.10.2019. The ld. AR has pointed out that the relevant portion of the order in which the assessee's objects and facts of the case is clearly mentioned. The relevant para 21 & 22 which are reproduced as under:-

“ 21. The next question that arise for consideration is whether the activities of the assessee corporation involves carrying on of activities in the nature of trade, commerce or business or any activity of rendering of services in relation to any trade, commerce or business for a cess, fee or any other consideration and the proviso to section 2(15) is applicable in the instant case. As per the Assessing officer, the activities of the assessee corporation are commercial in nature for the reason that it is running buses and charging fare from the passengers and it is not providing free services to the public. The ld CIT(A) referred to the decision of the Hon'ble Delhi High Court in case of India Trade Promotion Corporation vs UOI wherein it was held that the dominant and prime objective of the Institution has to be seen. Where the dominant and prime objective is profit making, it would not be entitled to claim its objects to be charitable purposes and where the institution is not driven primarily by a desire or motive to earn profit but to do charity through the advancement of an object of general public utility, it can be regarded as an institution established for charitable purposes. The ld AR has further referred to the decision of the Hon'ble Rajasthan High Court in case of Jodhpur Development Authority and Urban improvement Trust, Bikaner wherein similar legal proposition has been laid down. However, when it comes to finding on facts in the instant case, the ld CIT(A) merely held that since its receipts from activities which are commercial in nature exceeds the prescribed threshold, the assessee corporation will be not a charitable corporation. We therefore find that there is no finding by the AO or the ld CIT(A) as to the dominant intent and purposes for which the assessee corporation was set up and whether the dominant purposes was to earn profit or provide public utility services to the public at large. The ld AR in her submissions has referred to various provision of Rajasthan State Road Transportation Corporation Act 1950 and has argued that the object was to provide efficient transport services to the public and not to earn profits. We find that the provision of Rajasthan State Road

Transportation Corporation Act 1950 need to be examined in detail to determine the dominant intent and purpose of setting up of the assessee corporation and in the absence of findings of the lower authorities, we are constrained to remand the matter back to the file of the ld CIT(A) to examine the same afresh taking into consideration the decisions of the Hon'ble Delhi and Rajasthan High Court referred supra. The assessee corporation is at liberty to raise its aforesaid contentions before the ld CIT(A). In the result, the matter is set-aside to the file of the ld CIT(A) after providing reasonable opportunity to the assessee corporation.

22. In ITA No. 886/JP/2018, since facts and circumstances of the case are exactly identical to facts and circumstances of the case in ITA No. 885/JP/2018, our findings and directions contained therein shall apply mutatis mutandis to this appeal.”

14. It was further submitted that thereafter the NFAC has passed the order in favour of the assessee. Further, the ld. AR for the assessee argue that the assessee corporation object is stood a charitable in nature and not profit earning to support this statement. The ld. AR for the assessee has filed documentary proof that the assessee is given various concessions and relief granted to various classes and societies at page No. 1 and 2 of the paper books which are reproduced as under:-

क्र.	पत्रक	देय सुविधा	सुविधा देय तिथि / वर्ष
2.	स्वतन्त्रता सैनानी*	निःशुल्क	वर्ष - 1974
3.	स्वतन्त्रता सैनानी का एक सहयोगी*	निःशुल्क	दिनांक 01.04.1987
4.	स्वतन्त्रता सैनानियों की विधवाएं*	निःशुल्क	दिनांक 07.05.1994
5.	स्वतन्त्रता सैनानी की विधवा का एक सहयोगी*	निःशुल्क	दिनांक 04.05.1989
	* स्वतन्त्रता सैनानी एवं स्वतन्त्रता सैनानियों की विधवाओं (आश्रित) को एक सहयोगी सहित वातानुकूलित बसों सहित सभी श्रेणी की बसों में यात्रा सुविधा	निःशुल्क	दिनांक 02.03.2007
6.	(i) युद्ध में शहीद सैनिकों की विधवाएं एवं उन पर आश्रित अवयस्क संताने	निःशुल्क	दिनांक 08.07.1999
	(ii) दिनांक 01-04-1999 एवं इसके बाद विभिन्न सैन्य ऑपरेशन में शहीद सैनिकों/अर्द्ध सैनिक बलों के शहीद सैनिकों की विधवाएं एवं उन पर आश्रित अवयस्क संताने	निःशुल्क	दिनांक 15.04.2013
	(iii) दिनांक 01-04-1999 एवं इसके बाद विभिन्न सैन्य ऑपरेशन में शहीद सैनिकों के माता-पिता	निःशुल्क	दिनांक 15.07.2013
7.	राज्य की अनुसूचित जाति एवं आदिवासी क्षेत्र की आदिवासी बालिकायें कक्षा 8 तक अध्ययन हेतु स्कूल जाने व आने के लिये	निःशुल्क	माह - जून, 1994
8.	पद्म पुरस्कार से सम्मानित व्यक्ति	निःशुल्क	दिनांक 24.05.2010
9.	पद्म पुरस्कार से सम्मानित व्यक्ति का एक सहयोगी	निःशुल्क	दिनांक 06.04.2011
10.	नेत्रहीन	निःशुल्क	वर्ष - 1974
	अंधता	निःशुल्क	दिनांक 03.08.2010
11.	नेत्रहीन का एक सहयोगी	निःशुल्क	दिनांक 09.03.2005
	अंधता से ग्रसित व्यक्ति का एक सहयोगी	निःशुल्क	दिनांक 03.08.2010
12.	श्रवण बाधित	निःशुल्क	दिनांक 03.08.2010
		यात्री किराया में 75% छूट	दिनांक 31.08.1998
13.	विकलांग (अस्थि विकलांग)	निःशुल्क	दिनांक 03.08.2010
		यात्री किराया में 75% छूट	वर्ष - 1978
	चलन निःशक्तता	निःशुल्क	दिनांक 07.04.2011
14.	मानसिक विमन्दिता / मंदता	निःशुल्क	दिनांक 03.08.2010
		निःशुल्क	दिनांक 31.08.1998
15.	मानसिक विमन्दिता / मंदता से ग्रसित व्यक्ति का एक सहयोगी	निःशुल्क	दिनांक 03.08.2010
		यात्री किराया में 50% छूट	दिनांक 31.08.1998
16.	कम दृष्टि निःशक्तता	निःशुल्क	दिनांक 03.08.2010
17.	मानसिक रुग्णता	निःशुल्क	दिनांक 03.08.2010
18.	मानसिक रुग्णता से ग्रसित व्यक्ति का एक सहयोगी	निःशुल्क	दिनांक 03.08.2010
19.	कुष्ठ रोग मुक्त	निःशुल्क	दिनांक 03.08.2010
20.	अन्तर्राष्ट्रीय स्तर की खेल स्पर्धाओं में राज्य के पदक विजेता	निःशुल्क	दिनांक 03.08.2010
21.	राष्ट्रपति पुलिस मेडल फॉर गैलन्ट्री (Gallantry) एवम् पुलिस मेडल फॉर गैलन्ट्री अवार्ड नोट-राज्य पुलिस के साथ BSF, CRPF, & RAC को भी इसमें सम्मिलित किया गया।	निःशुल्क	दिनांक 10.08.2010
		निःशुल्क	दिनांक 07.06.2011
22.	असंक्रामक कुष्ठ रोगी	-	दिनांक 08.01.2014
23.	थैलीसीमिया रोगी	यात्री किराया में 75% छूट	दिनांक 01.04.1987
24.	एड्स रोगी (IMMUNO COMPROMISED)	यात्री किराया में 75% छूट	वर्ष - 1992
25.	कैंसर रोगी	यात्री किराया में 75% छूट	दिनांक 25.08.2003
26.	थैलीसीमिया रोगी का एक सहयोगी	यात्री किराया में 75% छूट	दिनांक 01.05.1984
27.	विद्यार्थी	यात्री किराया में 50% छूट	दिनांक 25.08.2003
28.	कैंसर रोगी का एक सहयोगी	यात्री किराया में 50% छूट	वर्ष - 1974
		यात्री किराया में	दिनांक 25.08.2003

क्र.सं.	विवरण	छूट	दिनांक
	राजस्थान के लाइसेन्सधारी कूलियों को नगरीय सवाओं में निवास स्थान से बस स्टैण्ड आने जाने की यात्रा में रियायत से अधिक आयु के वरिष्ठ नागरिक	50% छूट	दिनांक 20.09.2004
	(i) वरिष्ठ नागरिक की आयु सीमा 65 वर्ष के स्थान पर 60 वर्ष निर्धारित	यात्री किराया में 30% छूट	दिनांक 20.04.2011
	(ii) राज्य की सीमा से बाहर यात्रा पर 30% छूट	-	दिनांक 16.10.2006
	(iii) सभी श्रेणी की बसों में रियायती यात्रा अधिकृत	-	दिनांक 21.6.2013
	(iv) केवल राजस्थान राज्य सीमा तक यात्री किराया में 30% छूट देय * महिलाओं द्वारा समूह में (न्यूनतम 5 महिलायें) यात्रा करने पर नोट- महिलाओं को दिनांक 21.6.2013 से यात्री किराया में 30% छूट स्वीकृत करने पर सुविधा स्वतः समाप्त	यात्री किराया में 25% छूट	दिनांक 14.05.2007
32	आदिवासी जनजाति क्षेत्रों में संचालित साधारण सेवा वाहनों में आदिवासियों को	यात्री किराया में 25% छूट	दिनांक 23.02.2008
33	राष्ट्रपति पुलिस मेडल फॉर गैलन्ट्री (Gallantry) एवम् पुलिस मेडल फॉर गैलन्ट्री अवार्ड से सम्मानित व्यक्ति (जो वर्तमान में सेवारत नहीं) का एक सहयोगी	निःशुल्क	दिनांक 30.08.2011
34	राजस्थान परिवहन निगम की सभी श्रेणी की बसों में यात्रा करने वाली "महिलायें"	यात्री किराया में 30% छूट	दिनांक 21.6.2013
35	केवल राजस्थान राज्य सीमा तक यात्री किराया में 30% छूट देय * निम्न धार्मिक पर्व/लक्ष्मी मेलों में निगम बसों में यात्रा करने पर यात्री किराया राशि में छूट:- 1. कैलादेवी (करौली) 2. झील का बाड़ा (भरतपुर) 3. रामदेवरा (जोधपुर) 4. पुष्कर (अजमेर)	यात्री किराया में 30% छूट	दिनांक 28.04.2014*
36	केवल राजस्थान राज्य सीमा तक यात्री किराया में 30% छूट * हीमोफिलिया (Hemophilia) रोगी	यात्री किराया में 75% छूट	दिनांक 04.10.2013
37	हीमोफिलिया (Hemophilia) रोगी का एक सहयोगी	यात्री किराया में 50% छूट	दिनांक 07.03.2014*
38	अधिस्वीकृत पत्रकारों को राजस्थान राज्य की सीमा व दिल्ली तक यात्रा हेतु सभी वातानुकूलित /वोल्वों	यात्री किराया में 50 प्रतिशत छूट	दिनांक 15.10.2014
39			दिनांक 15.10.2014
			दिनांक 10.9.2015

The Id. AR for the assessee has relied upon a circulars No. 11 of 2002 dated 19.12.2008 which is related to second definition of charitable Trust u/s 2(15) of the Income Tax Act, 1961. The relevant part of the Circular which are reproduced as under:-

“ EXEMPTION UNDER SECTION 11 IN CASE OF ASSESSEE CLAIMING BOTH TO BE CHARITABLE INSTITUTIONS AS WELL AS MUTUAL ORGANISATIONS

CIRCULAR NO. 11/2008, DATED 19-12-2008

Definition of 'Charitable purpose' under section 2(15) of the Income-tax Act, 1961

Section 2(15) of the Income Tax Act, 1961 ('Act') defines "charitable purpose" to include the following:-

(i) Relief of the poor

(ii) Education

(iii) Medical relief, and

(iv) the advancement of any other object of general public utility.

An entity with a charitable object of the above nature was eligible for exemption from tax under section 11 or alternatively under section 10(23C) of the Act. However, it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of 'charitable purpose'. Therefore, section 2(15) was amended vide Finance Act, 2008 by adding a proviso which states that the 'advancement of any other object of general public utility' shall not be a charitable purpose if it involves the carrying on of –

(a) any activity in the nature of trade, commerce or business; or

(b) any activity of rendering any service in relation to any trade, commerce or business;

for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity.

2. The following implications arise from this amendment –

2.1 The newly inserted proviso to section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e., relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute 'charitable purpose' even if it incidentally involves the carrying on of commercial activities.

2.2. 'Relief of the poor' encompasses a wide range of objects for the welfare of the economically and socially disadvantaged or needy. It will, therefore, include within its ambit purposes such as relief to destitute, orphans or the handicapped, disadvantaged women or children, small and marginal farmers, indigent artisans or senior citizens in need of aid. Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(4A) or the seventh proviso to section 10(23C) which are that

(i) the business should be incidental to the attainment of the objectives of the entity, and

(ii) separate books of account should be maintained in respect of such business.

Similarly, entities whose object is 'education' or 'medical relief' would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on a commercial activity subject to the conditions mentioned above.

3. The newly inserted proviso to section 2(15) will apply only to entities whose purpose is 'advancement of any other object of general public utility' i.e. the fourth limb of the definition of 'charitable purpose'

contained in section 2(15). Hence, such entities will not be eligible for exemption under section 11 or under section 10(23C) of the Act if they carry on commercial activities. Whether such an entity is carrying on an activity in the nature of trade, commerce or business is a question of fact which will be decided based on the nature, scope, extent and frequency of the activity.

3.1. There are industry and trade associations who claim exemption from tax u/s 11 on the ground that their objects are for charitable purpose as these are covered under 'any other object of general public utility'. Under the principle of mutuality, if trading takes place between persons who are associated together and contribute to a common fund for the financing of some venture or object and in this respect have no dealings or relations with any outside body, then any surplus returned to the persons forming such association is not chargeable to tax. In such cases, there must be complete identity between the contributors and the participants.

Therefore, where industry or trade associations claim both to be charitable institutions as well as mutual organizations and their activities are restricted to contributions from and participation of only their members, these would not fall under the purview of the proviso to section 2(15) owing to the principle of mutuality. However, if such organizations have dealings with non-members, their claim to be charitable organizations would now be governed by the additional conditions stipulated in the proviso to section 2 (15).

3.2. In the final analysis, however, whether the assessee has for its object 'the advancement of any other object of general public utility' is a question of fact. If such assessee is engaged in any activity in the nature

of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of 'general public utility' will be only a mask or a device to hide the true purpose which is trade, commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would, therefore, be decided on its own facts and no generalization is possible. Assessee, who claim that their object is 'charitable purpose' within the meaning of Section 2(15), would be well advised to eschew any activity which is in the nature of trade, commerce or business or the rendering of any service in relation to any trade, commerce or business."

The Id. AR for the assessee has further explained the purpose of nature and the activities of the Corporation is deemed to be under the advancement of any other object of general public utility than still the activities of the Corporation does not qualify the test of running trade, commerce or business activity for the fee. We are of the opinion that the assessee Corporation is continue to be within the definition of charitable u/s 2(15) of the Act in relief to poor as main limb and first limb. Relief to poor encompasses a wide range of objects for welfare of the economically and socially disadvantaged or needy. It will therefore, include within its ambit purposes such as relief to destitute, orphans or handicapped, disadvantages women or children, or senior citizens in need of aid. Going through the object of the RSRTC that Act where the Ld AR assessee has produced for our kind

perusal in paper books from 52 to 67. The objects of the RSRTC which is published in the Web site which reads as under:-

“About RSRTC

Rajasthan state Road Transport Corporation has entered it's 53 year if since its inception on 1st October, 1964. The corporation has been established under the Road Transport Act, 1960 with the objective of providing economic, adequate, punctual and efficient services to the travelling public in the state with 8 Depots and 421 Buses plying 45000 kilometers carrying 29000 passengers per day. Currently 4500 buses across 51 depots are plying more than 16 lace kilometres and carrying more than 9 lac passengers per day.

RSRTC is committed to providing high quality services. Consistently and constantly improving the services for the satisfaction of the passengers to fulfil the commitment RSRTC has incorporated ordinary Express, Deluxe, A.C., Gandhi Rath A.C., A.C. Sleeper, Volvo-Mercedes, Volvo-Pantry. Volvo LCD, Volvo LCD-Pantry, Scanla bus servie3s in fleet for all category of passengers.

Objective

- *Offers low fares for passenger's every day.*
- *Specious and convenient bus stands with all amenities for waiting and in transit passengers.*
- *Offers the only means of regularly scheduled intercity transportation to most cities, towns and small villages across the State and neighbouring States.*

- *Offers reservation facilities for all deluxe and express buses.*
- *Provides additional seats during peak travel periods to accommodate passengers.*
- *Offer concessional fare to the sick, freedom fighters, widows and families of soldiers who died in war.”*

Going through the records and submissions of the Id. AR we come to the conclusion that the assessee corporation is running in losses for the past 5 years where the accumulated losses or more than Rs. 2000 crores. Which clearly shows that the corporation is not a making of profit motive and not in commercial in nature for the assessment years 2007-8 to 2016-17 the losses incurred by the assessee corporation is more than 2000 crores considering the losses incurred by the RSRTC we come to the conclusion that there is not profit motive and the income is not from the business income the activities in purely in charitable in nature. Taking into consideration the fixing of the price also is done by the State Government. The assessee corporation does not have any roll in fixing the price. The Id. AR submitted that the documents where the State Government is fixing the price for the Corporation which is reproduced as under:-

राजस्थान राज्य पथ परिवहन निगम, जयपुर

क्रमांक एफ-4/मु/याता/लेखा(1)/2016/252

दिनांक: 14-06-2016

कार्यालय-आदेश

संयुक्त शासन सचिव (परि), परिवहन विभाग राजस्थान सरकार, जयपुर द्वारा जारी अधिसूचना क्रमांक एफ-7/(100)/(71)परि/नियम/मु/2013/49215 जयपुर दिनांक 27.05.2014 से अधिसूचित अधिकतम यात्री भाड़ा दरों को दृष्टिगत रखकर निगम द्वारा निम्न श्रेणी की बसों के यात्री किराया दरों में निम्नानुसार परिवर्तन किया जाता है :-

सेवा	वर्तमान प्रभावी दर (प्रति यात्री, प्रति कि.मी. पैसा)	नवीन यात्री किराया (प्रति यात्री, प्रति कि.मी. पैसा)
साधारण	75	85
दूतगामी	80	90
सेमीडीलक्स Non A.C.	90	98

उक्त नवीन यात्री किराया दरों के अतिरिक्त यात्रियों से पृथक से वसूल किये जाने वाले दुर्घटना क्षतिपूर्ति अधिभार तथा मानव संसाधन अधिभार की दरें पुर्वानुसार यथावत रहेंगी, जो निम्नानुसार है :-

(i) दुर्घटना क्षतिपूर्ति अधिभार			(ii) मानव संसाधन अधिभार	
क्र.सं.	विवरण	प्रति यात्री दुर्घटना क्षतिपूर्ति अधिभार राशि (रुपये)	विवरण	प्रति यात्री मानव संसाधन अधिभार राशि (रुपये)
1.	30 कि.मी. तक	1.00	20 कि.मी. तक	निल
2.	31 कि.मी. से 50 कि.मी. तक	2.00	21 कि.मी. से 50कि.मी. तक	1.00
3.	51 कि.मी. से 100 कि.मी. तक	3.00	51 कि.मी. से 100 कि.मी. तक	4.00
4.	101 कि.मी. या इससे अधिक	5.00	101 कि.मी. या इससे अधिक	6.00

(iii) टोल टैक्स

क्र.सं.	विवरण	प्रति यात्री वसूली योग्य टोल टैक्स राशि
1.	यात्री किराया राशि रूपये 20/- तक अथवा यात्रा दूरी 50 कि.मी. तक (जो भी पहले हो)	रुपये 1.00 प्रति टोल गेट
2.	यात्री किराया राशि रूपये 21/- या इससे अधिक परन्तु 40/- रूपये तक अथवा 50 कि.मी. से अधिक किन्तु 100 कि.मी. तक की यात्रा (जो भी पहले हो)	रुपये 2.00 प्रति टोल गेट
3.	यात्री किराया राशि 41/- रूपये या इससे अधिक अथवा 100 कि.मी. से अधिक की यात्रा (जो भी पहले हो)	रुपये 3.00 प्रति टोल गेट

(iv) आई.टी.शुल्क: आदेश क्रमांक एफ-3/आई.टी./35-बी/2011/105 दिनांक 19.12.2011 के अनुसार वसूली की जानी है :-

- यह शुल्क साधारण, उप नगरीय एवम् ग्रामीण सेवा वाहनों पर प्रभावी नहीं है।
- दूतगामी बसों में 50 कि.मी. तक यह शुल्क प्रभावी नहीं है।
- आदेश क्रमांक एफ-3/आई.टी./35-बी (I)/2012/877 दिनांक 11.12.2012 के अनुसार अन्तरराज्यीय क्षेत्र में आई.टी. शुल्क वसूली योग्य नहीं है। तत्पश्चात् शेष श्रेणी की वाहनों में प्रति टिकट आई.टी.शुल्क निम्नानुसार वसूली योग्य है :-

क्र.सं.	वाहन श्रेणी	आई.टी.शुल्क दर रु.
1.	समस्त लग्जरी एवं सुपर लग्जरी	5/-रु. प्रति टिकट
2.	वातानुकूलित	4/-रु. प्रति टिकट
3.	डीलक्स, सेमी डीलक्स, गॉधी रथ, स्लीपर (नोन ए.सी.)	3/-रु. प्रति टिकट
4.	दूतगामी	2/-रु. प्रति टिकट

वातानुकूलित सुपर लग्जरी जयपुर-दिल्ली मार्ग पर अखिल भारतीय अनुज्ञापत्रों पर संचालित सेवाओं के वर्तमान यात्री किराये रु. 815 प्रति यात्री प्रति सीट (सभी अधिभार एवं शुल्क सहित) को रु. 850 प्रति यात्री प्रति सीट (सभी अधिभार सहित) किया जाता है, इस पर नियमानुसार सर्विस टैक्स पृथक से वसूली योग्य होगा।

2.

उक्त नवीन यात्री किराया दरें दिनांक 16.06.2016 - 17.06.2016 की मध्य रात्रि से अर्थात् दिनांक 17.06.2016 से प्रभावी होगी, जिनका रेडीरेकनर स्टेटवाईज तैयार कर संलग्न प्रेषित किया जा रहा है, जिसके आधार पर अपने आगार के अधीनस्थ मार्गों की स्टेण्डवाईज क्रॉस किराया तालिका तैयार की जावें तथा E.T.I.M एवं कम्प्युटर आरक्षण/टिकिट विवरण तदानुसार ही किया जाना सुनिश्चित किया जावें।

मार्गवार किराया तालिका तैयार करते समय निम्न बिन्दुओं का ध्यान रखा जावे :-

- (i) यात्रियों से 5 कि.मी.की दूरी तक प्रभार्य न्यूनतम यात्री किराया 5/- रुपये प्रति यात्री होगा, लेकिन बालक यात्रियों के मामले में 2/- रुपये प्रति बालक होगा।
- (ii) साधारण, द्रुतगामी सेमी डीलक्स, डीलक्स सेवा एवं वातानुकूलित सेवा बहनों में यात्री किराया राशि 1/- रुपये के गुणनखण्ड में निर्धारित की जावेगी अर्थात् 49 रुपये या कम राशि छोड़ दी जावेगी तथा 49 रुपये से अधिक कोई भी राशि 49 रुपये तक पूर्णांकित की जावेगी। पूर्णांकित यात्री किराया राशि में प्रत्येक यात्री के दुर्घटना क्षतिपूर्ति अधिभार, मानव संसाधन अधिभार, टोल टेक्स एवं आई.टी. शुल्क राशि निर्धारित दरानुसार पृथक से वसूली योग्य होगी।
- (iii) कार्यालय आदेश क्रमांक एफ-4/मु./याता/लेखा/(1)/1102 दिनांक 12.06.2015 से प्रति यात्री किराया (समस्त अधिभार एवं शुल्को सहित) को राशि रु. 5 के गुणक में (राजस्थान सीमा में) निर्धारित करने का प्रावधान को यथावत रखा जाता है।
- (iv) यात्री किराया पूर्वानुसार 5 कि.मी. के प्रक्रमों (मंजिलों) में संगणित किया जावेगा।

संलग्न :- यात्री किराया रेडीरेकनर।

(राजेश यादव)
प्रबन्ध निदेशक
दिनांक 16.06.2016

क्रमांक : एफ-4/मु./याता/लेखा(1)/2016/ 252

प्रतिलिपि निम्न को सूचनार्थ आवश्यक कार्यवाही हेतु प्रेषित है:-

1. विशिष्ट सहायक, माननीय यातायात मंत्री, राजस्थान सरकार, जयपुर।
2. विशिष्ट सहायक, माननीय यातायात राज्य मंत्री, परिवहन, राजस्थान सरकार, जयपुर।
3. आयुक्त एवं प्रमुख शासन सचिव, परिवहन विभाग, राजस्थान सरकार, जयपुर।
4. निजी सचिव अध्यक्ष/प्रबन्ध निदेशक, राजस्थान परि. निगम, मुख्यालय जयपुर।
5. समस्त विभागाध्यक्ष () राजस्थान परिवहन निगम, मुख्यालय जयपुर।
6. समस्त महा प्रबन्धक/संयुक्त महा प्रबन्धक () राज. परिवहन निगम, मु0 जयपुर।
7. सचिव निगम, राजस्थान परिवहन निगम, मुख्यालय जयपुर।
8. उप महा प्रबन्धक (सांख्यिकी/बजट/टिकिट/अंकेक्षण) राज.परि.निगम, मु.जयपुर।
9. उप महा प्रबन्धक (आई.टी) राजस्थान परिवहन निगम, मुख्यालय जयपुर को प्रेषित कर निर्देशित किया जाता है कि वर्णित आदेश की पालना तथा कम्प्यूटर एवम ई.टी.आई.एम. में यात्री किराया दरों में परिवर्तन के अनुरूप आवश्यक संशोधन किया जाना सुनिश्चित किया जावें। साथ ही सभी सम्बन्धितों को ई.मेल भी प्रेषित करें।
10. समस्त राज्य परिवहन निगम
11. कार्यकारी प्रबन्धक (जनसम्पर्क)/संचालन/() रा.प.नि. मुख्यालय जयपुर।
12. सहा. लेखाधिकारी (टिकिट/अंकेक्षण) राजस्थान परिवहन निगम, मुख्यालय जयपुर।
13. समस्त मुख्य प्रबन्धक/प्रबन्धक (वित्त/यातायात) राज. परि. निगम आगार।
14. कन्ट्रोल रूम मुख्यालय, जयपुर को भेजकर लेख है कि समस्त मुख्य प्रबन्धक/प्रबन्धक दूरभाष पर सूचित करें।
15. आदेश पत्रावली।

(राकेश राजारिया)
कार्यकारी निदेशक (यातायात)

15. The Id. AR further pointed out the differences where the private tour operator charges high fares comparing to the corporation for the same route.

For an example the Id AR for the assessee has produced documentary proof ticket at paper books 7 and 8 which is reproduced as under:-

RRTS/BJ/BJZG
123456

Change Language : English

राजस्थान राज्य रेल परिवहन निगम

Rajasthan Road Transport Corporation

E-Ticket Booking Details

Service Start Place : JPR(Jaipur)
 Journey Date(Original) : 15/07/2019 04:05:00
 Reservation From : JPR(Jaipur)
 Boarding From : Jaipur
 Boarding Time(Approximate) : 15/07/2019 04:05:00
 Service End Place : DLH(DELHI)
 Bus Service Type : EXPRESS
 Reservation To : DLH(DELHI)
 Alighting To : DELHI
 Alighting Time(Approximate) : 15/07/2019 10:05:00

Ticket Booking Detail

Age : Jaipur to DELHI via KOPURTA
 Service Start Place : JPR(Jaipur)
 Journey Date(Original) : 15/07/2019 04:05:00
 Reservation From : JPR(Jaipur)
 Boarding From : Jaipur
 Boarding Time(Approximate) : 15/07/2019 04:05:00
 Service End Place : DLH(DELHI)
 Bus Service Type : EXPRESS
 Reservation To : DLH(DELHI)
 Alighting To : DELHI
 Alighting Time(Approximate) : 15/07/2019 10:05:00

Passenger Details

#	Name	Age	Gender	Quota	Seat No.	Conc	RFID No.
1	Putnam	25	Female	General	112	MAHILA CONCESSION	

Choose payment gateway:

Bill Desk

Fare 226.00
 IT Charge 2.00
 GST 0.00
 Total (after rounding off) 228.00

PAYMENT

atom

Agrees to the Terms & Conditions

Ganesh Travels-Kota		1 Traveller
2+1, SLEEPER/SEATER, NON-AC, NON-VIDEO		Seat 1
10:59 PM Tue, 15 Jan 5h 35m	●	Jaipur (Rajasthan) Near polo victory cinema Near Polo Victory Cinema
6:00 AM Wed, 16 Jan	●	Delhi Isbt kashmiri gate ISBT Kashmiri Gate
Have a promocode? Apply here		
Fare Breakup		Cancellation Policy
Fare		₹ 300
Total Amount		₹ 300

The Id. AR for the assessee further submitted that Section 3 of the Act explains that established of Road Transport Corporation where the facilities is in charitable in nature. The establishment of Road Transport Corporations in the States. The State Government having regard to the advantages offered to the public, trade and industry by the development of road transport, the desirability

of co-ordinating any form of road transport with any other form of transport, the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of road transport service therein, may, by notification in the Official Gazette, establish a Road Transport Corporation for 1 [the whole or any part of the Union territory of Delhi] under such name as may be specified in the notification.

16. Going through the section 18 of the RSRTC Act which is explains the general duties of the Corporation it shall be the general duty of a Corporation so to exercise its powers as progressively to provide or secure or promote the provision of, an efficient, adequate, economical and properly co-ordinated system of road transport services in the [Union territory of Delhi or part thereof] for which it is established and in any extended area. Provided that nothing in this section shall be construed as imposing on a Corporation, either directly or indirectly, any form of duty or liability enforceable by proceedings before any Court or Tribunal to which it would not otherwise be subject. The ld. AR also submitted that the section 30 of the RSRTC explain disposal of net profit from the above documentary evidence. After making provision for payment of interest and dividend under section 28 and for depreciation, reserve and other funds under section 29, a Corporation may utilise such percentage of its net annual profits as may be specified in this behalf by the State Government for the provision of amenities to the passengers using the road

transport services, welfare of labour employed by the Corporation and for such other purposes as may be prescribed with the previous approval of the Central Government, and out of the balance such amount as may, with the previous approval of the State Government be specified in this behalf by the Corporation, may be utilised for financing the expansion programmes of the Corporation and the remainder, if any, shall be made over to the State Government for the purpose of road development. The ld. AR further submitted that the assessee corporation is purely for charitable purposes. In support reliance was placed by Bangalore Bench of ITAT in case of M/s Karnataka State Road.... vs. ACIT in ITA No. 718/Bang/2013 for the A.Y. 2009-10 dated 14.10.2021 that the assessee has raised several grounds and an additional ground. However, during the course of hearing, the ld. AR for the assessee limited his submission only to the following two issues, namely- whether the CIT(A) is justified in law in holding that the assessee is hit by proviso to section 2(15) of the Act and consequently confirming the excess of income over expenditure of Rs. 47,70,52,000/-, as taxable income of the assessee. Keeping in mind the above factual aspects and the provisions of the RTC, Act, 1950 and principle laid down in the aforesaid decision of the Hon'ble Delhi High Court in the case of India Promotion Organization (supra), in our view, will clearly show that the assessee does not driven primarily by desire or motive to earn profits but to do charity through advancement of an

object of general public utility. The proviso to Sec.2(15) of the Act is therefore not applicable to the case of the assessee. We therefore concur with the view of the CIT(A) and hold that the Assessee is entitled to the benefits of Sec.11 of the Act. The AO has not disputed the conditions necessary for allowing exemption u/s.11 of the Act, except the applicability of proviso to Sec.2(15) of the Act. In view of our conclusions that the said proviso is not applicable to the case of the Assessee, we hold that the Assessee's income is entitled to the benefits of Sec.11 of the Act. With regard to the arguments of the learned DR, we are of the view that the same are without any merit. The proviso to Sec.2(15) of the Act has been discussed by the Hon'ble Delhi High Court in the case of India Trade Promotion Organization vs. DGIT(Exemption) (supra) and the dominant motive is the criteria as laid down therein. Therefore the answer to the arguments put forth by the learned DR are found in the aforesaid decision. As we have already seen, the profit of the Assessee have to be used only for road development, as in the case of the decision in the case of APSRTC (supra) where the revenues have to be utilized only for the purpose of road development. In view of the above order of the Tribunal in assessee's own case, we hold that the assessee is not hit by proviso to section 2(15) of the I.T. Act. Accordingly, the A.O. is directed to grant benefit of exemption u/s 11 of the I.T. Act for the relevant assessment year. Taking into facts and

circumstances of the case the Id. CIT(E) has rightly and fairly allowed of the assessee hence, ground nos. A to C is dismissed.

I.T.A No(s). 268 to 271/JP/ 2022
(Assessment Year: 2013-14, 2015-16, 2017-18 & 2018-19)

17. As the facts and the issues involved in the captioned appeals remain the same as were involved in the aforementioned appeal in ITA No. 275/JP/2022, therefore, our order therein passed shall apply mutatis mutandis for the purpose of disposal of the captioned appeals.

In the result, the appeals of the Revenue is dismissed.

Order pronounced in the open Court on 26/09/2022.

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 26/09/2022.

***Santosh**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- ACIT(exemption), Circle, Jaipur.
2. प्रत्यर्थी / The Respondent- Rajasthan State Road Transport Corporation, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 268 to 271 & 275/JP/2022 }
आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar