

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "C" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA.No.7678/Del./2018
Assessment Year 2015-2016

The Income Tax Officer (Exemptions), Ward-1(2), Room No.2417, E-2 Block, Civic Centre, New Delhi. PIN 110 002 PAN AAATI3010J	vs.	M/s. Indian Olympic Association, B-29, Qutab Institutional Area, South West Delhi, New Delhi. PIN 110 016.
(Appellant)		(Respondent)

For Revenue :	Shri Anuj Garg, Sr. D.R.
For Assessee :	Shri Hiren Mehta, C.A.

Date of Hearing :	02.11.2022
Date of Pronouncement :	10.11.2022

ORDER

PER ANIL CHATURVEDI, A.M. :

This appeal filed by the Revenue is directed against the order of the Ld. CIT(A)-40, Delhi, dated 20.09.2018 in Appeal No.CIT(A), Delhi-40/10114/2017-18 relating to the A.Y. 2015-2016.

2. Briefly stated facts of the case are that the assessee organisation is registered under the Societies Registration Act, 1860 and also registered under sections 12A and 80G of the I.T. Act, 1961. The assessee filed its return of income for the A.Y. 2015-16 declaring NIL income on 10.02.2016. The case of the assessee was selected for scrutiny under CASS and notice under section 143(2) of the I.T. Act, 1961 dated 26.07.2016 was issued. Thereafter, the assessment was framed under section 143(3) vide order dated 01.12.2007 wherein the total income of the assessee was determined at Rs.3,14,88,880/-.

2.1. Aggrieved by the order of A.O, the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 20.09.2018 in Appeal No.CIT(A), Delhi-40/10114/2017-18 granted substantial relief to the assessee.

3. Aggrieved by the order of Ld. CIT(A), the Revenue is now in appeal before the Tribunal and has raised the following effective ground :

“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 though the objects of the assessee seem to be charitable, the activities carried out by the assessee are commercial in nature and get covered by 1st proviso to section 2(15) of the I.T. Act, 1961.”

4. During the course of assessment proceedings, the A.O. noted that assessee had claimed benefit of exemption under sections 11/12 of the I.T. Act, 1961. The A.O. was of the view that the objects and activities of the assessee fall within the meaning of Section 2(15) of the I.T. Act, 1961. The A.O. noted that assessee had received various sponsorships from Samsung India Electronic Pvt. Ltd., Shiv Naresh Sports Pvt. Ltd., Amul etc. According to A.O. the sponsorship agreements entered by the assessee were of the business nature as the income from the two far exceeds the expenditure and the income exceeds Rs.25 lakhs. The assessee was, therefore, asked to furnish the explanation as to why the activities received from sponsorship agreements

with various sponsors be not treated as business venture in view of the proviso to Section 2(15) of the I.T. Act, 1961. The submissions made by the assessee were not found acceptable to A.O. The A.O. held that the income from sponsorship agreements with various sponsors were not exempt under section 11 of the I.T. Act, 1961 as they fall under the proviso to Section 2(15) of the I.T. Act, 1961 and accordingly, the income of the assessee is to be taxed in the status of AOP at maximum marginal rate.

4.1. The A.O. also noted that assessee has claimed depreciation as application of income. He was of the view that the depreciation on the cost of fixed assets which has been claimed as application and allowed in the year of acquisition, is to be disallowed as application of income. He, accordingly, disallowed the assessee's claim of depreciation on the fixed assets, cost of which have been allowed as application of income. He worked-out the net depreciation to be disallowed at Rs.8,63,286/- and made its addition.

5. Aggrieved by the order of the A.O. the assessee carried the matter in appeal before the Ld. CIT(A), who vide

order dated 20.09.2018 decided the issue in favour of assessee. For arriving at the conclusion of assessee being eligible for the claims made, he followed the order of his predecessor in assessee's own case for the A.Ys. 2009-10, 2011-12 and 2013-14. He also noted that the facts in the case in the year under consideration are identical to that of earlier years. He, therefore, following the order of his predecessor held that assessee is entitled to claim exemption under section 11 of the I.T. Act, 1961. The Ld. CIT(A) thereby directed the A.O. to allow exemption with consequential benefits.

6. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before the Tribunal.

7. Before us, the Ld. D.R. supported the order of A.O.

8. The Learned Counsel for the Assessee, on the other hand, relied on the order of the Ld. CIT(A) and further submitted that for the A.Y. 2011-12, in assessee's own case the Revenue had filed an appeal before the Tribunal and the

Tribunal vide order dated 19.07.2018 in ITA.No.1130/Del./2016, dismissed the appeal of Revenue. He further submitted that the order of ITAT has also been upheld by Hon' ble Delhi High Court. He placed on record the copy of the aforesaid orders. He, therefore, submitted that the grounds of Revenue needs to be dismissed.

9. We have heard the Learned Representative of both the parties and perused the material available on record. The issue in the present appeal of the Revenue is with respect to allowing the claim of the assessee by ignoring the fact that the activities of the assessee are commercial in nature and covered by 1st proviso to section 2(15) of the I.T. Act, 1961. We find that on identical facts for the A.Y. 2011-12, in assessee's own case, the Revenue had filed an appeal before the Tribunal and the Tribunal vide order dated 19.07.2018 in ITA.No.1130/Del./2016, dismissed the appeal of Revenue by observing as under :

“25. Coming back to the objects of the impugned association, the fundamental or dominant function of

the association is to represent the country in international forums. Associations of different disciplines in sports in India are members/affiliated to IOA. In furtherance of its activities, the association not only requires grants from the Government, but on many occasions sponsorships. This cannot be an activity by itself amounting to carrying on of any business, trade or commerce. The impugned association is engaged in multi level activities of diverse nature but the primary and dominant activity is promoting sports activities not only in India but also in international forum. The impugned association would not lose its character of charitable purpose merely because some sponsorship was accepted.

26. *In the case of [Sole Trustee, Loka Shikshana Trust v. Commissioner of Income-tax 101 ITR 234](#), the Hon'ble Justice J. Baig speaking for the Apex Court thus said that:*

"If the profits must necessarily feed a charitable purpose, under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity".

27. The test for carrying on of any activity in the nature of trade, commerce or business as mentioned in the first proviso to Sec. 2(15) would be satisfied if profit making is not the real object. The Hon'ble Delhi High Court in the case of ICAI Vs Director General of Income Tax (Exem) 347 ITR 99 had the occasion to consider the grievance of the ICAI which was denied exemption u/s. 10(23C)(iv) of the Act because in the opinion of the DGIT (Exem.) the institute was holding coaching classes and therefore was not an educational institution, consequently the institute was covered under the last limb of charitable purpose i.e. advance of any other

object of general public utility in the light of the amendment brought o Sec. 2(15) of the Act as the institute was charging fees for conducting coaching clauses and making huge money in a systematic and organized manner. Considering the facts in the light of the amended provisions of Sec. 2(15), the Hon'ble Delhi High Court held that the order denying the exemption was not valid.

28. Reliance by the ld. DR on various decisions to buttress his submissions are misplaced in as much as the dominant activity cannot be brushed aside lightly even after the amendment.

26. After considering the entire facts in totality in the light of discussion hereinabove and also drawing support from the speech of the Finance Minister and subsequent clarification issued by the CBDT within the framework of amended provisions of [section 2\(15\)](#) of the Act, in our considered opinion, there was no material which may suggest that the assessee association was

conducting its affairs solely on commercial lines with the motive to earn profit. There is also no material which could suggest that the assessee association has deviated from its objects which it has been pursuing since past many decades. In our humble opinion and understanding of law, proviso to [section 2\(15\)](#) of the Act is not applicable to the facts of the case and the assessee-association deserves benefit u/s 11/12 of the Act. We, therefore, do not find any reason to interfere with the findings of the first appellate authority. Ground No. 1 is accordingly dismissed.”

9.1. We further find that against the aforesaid order of ITAT, the Revenue preferred an appeal before the Hon'ble jurisdictional Delhi High Court in ITA.No.963/2019 and CM Appeal.No.50939-50940/2019 and the Hon'ble Delhi High Court vide order dated 26.11.2019 upheld the order of the Tribunal.

9.2. Before us, no distinguishable facts have been brought by the Ld. D.R. and we find that the facts of the

case in the assessment year under consideration are also similar to that of earlier assessment year as also noted by Ld. CIT(A) in his order. In absence of any contrary binding decision brought to our notice by the Ld. D.R. that the said decision of the Hon'ble Delhi High Court is stayed, overruled or set aside, we find no reason to interfere with the order of the Ld. CIT(A). We, therefore, confirm the order of the Ld. CIT(A) and **dismiss the grounds of appeal of Revenue.**

10. In the result, **appeal of the Revenue is dismissed.**

Order pronounced in the open Court on 10.11.2022.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Delhi, Dated 10th November, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'C' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.