

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.: 2582, 2583 & 2082/Chny/2019

निर्धारण वर्ष / Assessment Years: 2011-12, 2012-13 & 2013-14

Equitas Development Initiatives
Trust
601, 6th Floor, Phase-1, Spencer
Plaza, No. 769, Mount Road,
Anna Salai, Chennai 600 002.

[PAN: AAATE-2952-K]

(अपीलार्थी/Appellant)

Deputy Director of Income-tax
v. (Exemption) -III,
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. D. Anand, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 14.11.2022

घोषणा की तारीख/Date of Pronouncement

: 18.11.2022

आदेश /ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

These three appeals filed by the assessee are directed against separate, but identical orders of Commissioner of Income-tax (Appeals), dated 30.05.2019 & 01.04.2019 and pertains to assessment years 2011-12, 2012-13 & 2013-14. Since, the facts are identical and issues are common, for the

sake of convenience, these appeals were heard together and are being disposed of by this consolidated order.

2. The assessee has raised common grounds of appeal for all the assessment years. Therefore, for the sake of brevity grounds of appeal filed for assessment year 2011-12 are reproduced as under:

1. *"The order of the learned CIT (Appeals) - 10 is contrary to the facts of the case and is therefore unsustainable.*
2. *The learned CIT(Appeals) - 10 ought not to have held that the tuition centres run by the Trust are hit by the provisions of section 2(15) of the Income Tax Act 1961 and ought not to have rejected the appellant Trust's plea that they would come under the term education and would qualify for deduction as application of income.*
3. *The learned CIT(A)-10 ought to have further appreciated the fact that the term "education" would include tuition centres or coaching centres and ought not to have rejected the claim of the appellant Trust.*
4. *The Learned CIT(Appeals)-10 ought not to have rejected the claim of the appellant Trust as far as tuition centres were concerned only on the premise that the Trust did not demonstrate that the students who received the benefits were poor students and that the fee charged **was** nominal. The CIT(Appeals)-10 ought to have appreciated the fact that the fee charged from poor and weaker section of students was indeed very nominal and ought not to have rejected the genuine claim of the appellant Trust.*
5. *For the grounds stated above and the grounds which may be permitted to be adduced at the time of hearing the appeal, it is prayed that the rejection of tuition fees by CIT(Appeals)-10 be deleted and justice rendered."*

3. The brief facts of the case are that the appellant is public charitable trust registered u/s. 12AA of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The appellant trust had filed its return of income for the assessment year 2011-12 to 2013-14, declaring Nil total income after claiming exemption u/s. 11 & 12 of the Act. The appellant trust is created by a deed of trust dated 04.02.2008 and as per objects of the trust, the assessee is into mixed objects which consists of education, relief of the poor, medical and also some objects are in the nature of any other objects of general public utility. The assessee is running the tuition centres for all these assessment years. Before the Assessing Officer, the assessee claimed that its activities comes under the definition of education and relief to the poor as defined u/s. 2(15) of the Act, because it is providing tuition classes to poor students on concessional fees. The AO did not accept explanation furnished by the assessee and according to the AO, the objects of the assessee although is mixed in nature, but activities carried out by the assessee in the impugned assessment years are commercial in nature and thus, cannot be considered as charitable purpose as defined u/s. 2(15) of the Act. The AO further observed that, even assuming for a moment the activity carried out by the assessee comes

under charitable purpose, the said activities can be considered as any object of general public utility as defined under last limb of charitable trust u/s. 2(15) of the Act and thus, by considering proviso to section 2(15) of the Act, rejected exemption claimed u/s. 11 & 12 of the Act and assessed total income as AOP and determined income of Rs. 21,13,615/-. The relevant findings of the AO are as under:

Without prejudice to the above authorised representative of the assessee was asked to justify as to how the running of tuition centres is a charitable activity in the wake of amended proviso to section 2(15) in the definition of charitable purpose

"18. The tuition centres run by the Trust are meant for the children of the women belonging to low income groups. These children typically study in government schools where there is no individual attention. They also suffer from lack of facilities at their homes, studies and score better marks. The registration fees of Rs. 50/- and tuition fees of Rs. 100/- to Rs. 300/- a quite nominal compares to rates charges by tuition masters for higher income groups. The activity is charitable in nature aimed at benefitting children from lower income group families. It may also be seen from the Accounts that against the income of Rs. 49.84 lakhs from registration, tuition and training fees for the year, the expenditure on teachers salary and fees alone exceeded Rs. 1 crore. Thus this activity of the Trust was funded mainly from voluntary contributions."

The submission and justification of the AR was given a careful study. the assessee's contention on sec.2(15) is not tenable. The activity of running tuition centers had been held to be business in nature ride various judicial decisions.

If at all, running of tuition centers toward achievement of the object of the assessee trust is to be considered as

charitable ,it clearly fits only into the category of objects of general public utility. The activities of the trust are not covered under education, - relief to the poor ;medical relief, preservation of environment and preservation of mounument or places or objectives or artistic or historic interest. Therefore , the activities of the trust fall within the ambit of advancement of any other general public utility.

Assesse's claim to get income exempted lose relevance when the transaction undertaken by the trust existing for the purpose of charity being the object of general public utility are business in nature and hit by proviso to section 2(15). For easier comprehension the relevant portion of the statute is reproduced below:

"provided that the advancement of any other objective of general public utility shall not be a charitable purpose. if it involves the caring on of any activity in the nature fl trade .commerce or business ,or any activity in nature of trade, commerce o business, tor access or fee any other consideration, irrespective of the nature of use or application, or retention ,of the income from such activity "

The transaction carried on by the assessee squarely fall under the ambit of the proviso to section 2(15)

Since the proviso to section 2(15) is invoked. the provision of section 11&12 become incorporative. The entire receipt including voluntary contribution is the income of-the society, while the revenue expenditure corresponding to such income earning activity to alone allowed. Expenses of capital nature and expenditure not connected to the income earning activity like accumulations for future use by the trust are not eligible to be allowed as'ex-pend1ture, since sec.11- has become redundant in the case under: consideration.

During. the course of scrutiny proceedings many of the bills towards asset addition are in the name of Equitas Miro Finance Co Ltd. Assessee sought to explain the same as follows :

" 25. At the time of putting up some of the Shiksha Centres the Trust did not have funds in order to pay the contractors in such cases, the bills were paid by the company and in turn debited to the Trust. These are assets used by the Trust for its

Shiksha centres only and no benefit has accrued to the company, It is submitted that these are bonafide application of income of the Trust only.

26. Premises at Erode: the agreement is in the nature of Equitas Development Initiatives Trust."

With regard to depreciation, since the entire capital expenditure incurred had been allowed as application of income in the past, the same is added back however since the business profits of the society enforce an altered form of taxation and when sec.11&12 become inapplicable, the assessee is treated like a business enterprise in the status of AOP. therefore, the depreciation allowance of Rs.36,330/- relating to assets acquired during the year under consideration is provided to the assessee and allowed as expenditure.

The taxation of income is not confined to the income derived from sale of micro chips and service for issues of certificate. section 13(8) prohibits applicability of sec.11 &12 in respect of any income of the society and is not restricted to the business activity of trust. Therefore, the surplus derived by the trust is entire brought to taxation."

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee has challenged rejection of exemption claimed u/s. 11 of the Act along with certain judicial precedence. The sum and substance of arguments of the assessee before the Ld. CIT(A) are that running tuition centres comes under the definition of charitable purpose, because it is in the nature of imparting education. The assessee further contended that it is also in the nature of relief of the poor,

because the trust is providing tuition classes to poor students by charging nominal fee. The Id. CIT(A) rejected arguments of the assessee and upheld findings of the AO in rejecting exemption claimed u/s. 11 of the Act, and according to the Ld. CIT(A) the activities carried out by the assessee neither comes under definition of education nor in the nature of relief to the poor. The Id. CIT(A) has discussed the issue in light of decision of Hon'ble Supreme Court in the case of Sole Trustee, Loka Shikshana Trust vs CIT, 101 ITR 234 (SC), and held that in order to come under definition of education, a formal education given to the young in preparing for the work of life is only to be considered as education, but not providing or conducting a coaching classes. Therefore, rejected arguments of the assessee and sustained additions made by the AO towards rejection of exemption claimed u/s. 11 of the Act. The relevant findings of the Ld. CIT(A) are as under:

5.3.11 I have carefully considered the submissions of the appellant. With respect to the claim of the appellant that only a nominal fee is charged from the poor students and therefore its activities have to be classified under the clause "relief of the poor", it is to state that no material is brought on record evidencing that the appellant charges nominal rates in comparison to other tuition centres. Merely stating that it is charging a nominal fee will not suffice. The appellant is required to demonstrate that the students who received the benefit are poor

students and that the fee charged was indeed nominal. No details of the students claimed to be poor are furnished. Since the AR failed to establish that education was provided to poor students at nominal cost, the assessee trust cannot be categorized as one falling under the clause "relief of the poor".

5.3.12 The AR also argued that the appellant trust falls under the category of charitable purpose of education and relied upon two judgements as cited above. I have carefully considered the submissions of the appellant and am unable to agree with the contentions of the appellant since coaching of students does not amount to providing 'education' as is envisaged under the charitable purpose provided u/s. 2(15) of the Act. It is to further state \ that the Hon'ble Supreme Court in the case of Sole Trustee, Loka Shikshana Trust vs Commissioner Of Income Tax, 101 ITR 234 had held that every activity of obtaining knowledge cannot fall under the charitable purpose of education. It was held therein that the sense in which the word education has been used in section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life and further clarified that what education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling. The said position was also followed by the Hon'ble Patna High Court in the case of Bihar Institute of Mining and Mine Surveying vs Commissioner of Income Tax, 208 ITR 608 wherein it was held that coaching of students in an institute is not imparting of education.

5.3.13 As regards the case laws relied upon by the appellant, it is to state that in the case of Hyderabad Study Circle cited supra, though the Hon 'ble Tribunal considered the judgement of Sole Trustee, Loka Shikshana Trust vs Commissioner of Income Tax cited supra, it did not address the issue as to whether the assessee provided education by normal schooling and also whether the curriculum included building the character of the students as was envisaged by the Supreme Court in the case cited above.

5.3.14 Further, as regards the decision of Delhi Tribunal in the case of Science Olympiad Foundation relied upon by the appellant, it is to state that the said ruling did not take into consideration the decision of the Hon'ble Supreme Court in the case of Sole Trustee cited supra, while arriving at its conclusions. Moreover, the Delhi Tribunal had relied upon the Hon'ble Supreme Court judgement in the case of American Hotel & Lodging Association 301 ITR 86, which is rendered in the context of Section 10(23C) of the Act and the Tribunal did not interpret the word 'education' appearing

5.3.15 In view of the above mentioned facts and circumstances of the case, and respectfully following the Hon'ble Supreme Court's ruling in the case of Sole Trustee cited supra, I hereby hold that the activity of running tuition centres by the appellant would not fall under the charitable purpose of education as defined u/ s 2(15) of the Act. Since its total receipts exceeded the prescribed limits of Rs. 25 lakhs for the impugned AY i.e., AY 2011-12, the appellant is held to be not a charitable trust and the exemption claimed u/s 11 of the Act is hereby rejected and the stand of the AO upheld.”

5. The Ld. Counsel for the assessee submitted that, the Ld. CIT(A) has erred in upholding the order of the Id. AO in rejecting exemption claimed u/s. 11 of the Act by invoking provisions of section 2(15) of the Act. The Ld. Counsel for the assessee referring to financial statements of the assessee for three assessment years and also certain admission forms issued by the tuition centre at various branches submitted that, the assessee has conducted tuition classes for poor students who

are mainly son and daughter of daily wage workers and other unskilled workers. The assessee is charging a nominal tuition fee of Rs. 100/- to Rs. 150/- per month which is very nominal when compared to tuition fees charged by other coaching centers. Further, if you go through the income and expenditure account of the trust, the trust has incurred expenses which is over and above the amount of fees collected from tuition centers. Therefore, he submitted that the trust is conducting tuition classes mainly to provide relief to the poor and thus, the Ld. CIT(A) has erred in holding that the activities of the assessee trust which are in the nature of general public utility and provisions of section 2(15) of the Act is applicable.

6. The Ld. DR, supporting the order of the Id. CIT(A) submitted that the objects and activities of the assessee are neither in the nature of education nor comes under the definition of relief to the poor, but in the nature of any other objects of general public utility and thus, the case of the assessee squarely comes under the purview of proviso to section 2(15) of the Act. Since, the receipts of the trust for all three assessment years is above the prescribed limit as per said provisions, the AO has rightly rejected exemption u/s. 11 of the

Act and assessed surplus in the status of AOP. The Ld. CIT(A) after rightly considering relevant facts, upheld the orders of the AO, and their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Section 2(15) of the Act defines the word 'charitable purpose' which includes relief of the poor, education, medical relief, preservation of environment (including water sheds, forests and wild life) preservation of monuments or places or objectives or artistic or historic interest, yoga and the advancement of any other object of general public utility. In order to ascertain whether a particular trust/institution is coming under the purview of provisions of section 11 of the Act, one has to see their objects and activities carried out for the relevant assessment years. In this case, the appellant trust came into existence by way of trust deed dated 04.02.2008 and as per said trust deed, the main objects of the trust are mixed in nature which includes relief of the poor, medical relief, education and any other object of general public utility. Further, to ascertain whether the assessee falls in any of specific clauses of the term charitable purpose, one has to see

the activities conducted by the appellant trust for the relevant assessment years. In this case, the appellant trust is running a coaching/tuition centre under the name and style of 'Shiksha' in various places. The assessee claims that conducting coaching classes comes under the term education as defined u/s. 2(15) of the Act. We do not find merit in the argument of the Ld. Counsel for the assessee, because the term education has been defined by the Hon'ble Supreme Court in the case of Sole Trustee, Loka Shikshana Trust vs CIT, (supra), where it has been explained the term education as defined u/s. 2(15) of the Act and as per Hon'ble Supreme Court, it is the systematic instruction, schooling or training given to the young in preparation for the work of life and further, when education connotes in that clause is the process of training and developing the knowledge, skill, mind and character and students by normal schooling. This legal position has been affirmed by the Hon'ble Supreme Court in the case of New Noble Educational Society vs Chief Commissioner of Income-tax, (2002) CA No. 3795/2014 judgment dated 19.10.2022, where it has been affirmed the definition of education as held in Sole Trustee, Loka Shikshana Trust vs CIT, (supra). In other words, the term education only includes a formal school education which

provides education in the field of knowledge, skill and character of students to prepare for the work of life. Therefore, in our considered view, running tuition centres does not come under the definition of education as defined u/s. 2(15) of the Act, and this view is affirmed by the decision of Hon'ble Patna High Court in the case of Bihar Institute of Mining and Mine Surveying vs CIT, 208 ITR 608 .

8. Having said so, let us come back to the arguments of the counsel for the assessee that the objects and activities of the trust is in the nature of relief of the poor as defined u/s. 2(15) of the Act. '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, artisans or senior citizens in need of help. In other words, relief of the poor means providing essential needs to the poor, without charging any fees or by charging a nominal fee. Therefore, entities who have those objects will continue to be eligible for exemption in the category of relief of the poor. If at all, the activity of the assessee i.e., running tuition centres

can be considered under relief of the poor, then the assessee should prove with necessary evidence that it is giving admission to poor and eligible students of weaker section and also not charged fees in commercial lines. However, fact remains that lower authorities have categorically held that neither the assessee proved admission given to poor and weaker section nor charging nominal fee without any profit motive. Although, the assessee claims that it has given admission to poor and needy students by charging nominal fees, the said claim was not substantiated. The Ld. CIT(A) has recorded a categorical finding that no evidence have been placed on record to prove that the appellant had given admission to poor students and also charged nominal fee. Therefore, we are of the considered view that the issue needs to go back to the file of the Assessing Officer for further verification with regard to activities of the assessee to ascertain correct facts that it has provided admission to poor and weaker section students and also not charged any fee in commercial lines. In case, the assessee is able to prove the claim with necessary evidences, then the AO may consider the case of the assessee under the head relief of the poor.

9. In the result, the appeals filed for all three assessment years are allowed for statistical purposes.

Order pronounced in the court on 18th November, 2022 at Chennai.

Sd/-
(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /Vice President

Sd/-
(जी. मंजुनाथ)
(G. MANJUNATHA)
लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 18th November, 2022

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |