

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

**BEFORE DR. B. R. R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 8132/DEL/2019 (A.Y 2016-17)

ACIT (E), Circle : 2 (1) New Delhi. (APPELLANT)	Vs.	PHD Chamber of Commerce and Industry, 4/2, Siri Institutional Area, PHD House, August Kranti Marg, New Delhi – 110 016. PAN No. AAACP1438L (RESPONDENT)
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Assessee by	Shri Ved Jain, Advocate; & Shri Aman Garg, C. A.;
Department by	Shri T. Kipgen, [CIT] - D. R.;

Date of Hearing	06.12.2022
Date of Pronouncement	19.01.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-40 [hereinafter referred to CIT (Appeals) New Delhi, dated 09.07.2019 for assessment year 2016-17.

2. The Revenue has raised the following grounds of appeal:-

“1. On the basis of facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in holding the activities of assessee organization charitable in nature and eligible for exemption u/s 11 of the I. T. Act ignoring the fact that the assessee is rendering specific service to its members as well as non-members and charging fees from them which is liable to be taxed under head ‘Profit and gains of Business & Profession’ and as such its activities are not charitable in nature as envisaged u/s 2(15) of the Act.”

3. Brief facts of the case are that, the assessee filed return declaring ‘NIL’ income which was selected for scrutiny, notice u/s 143(2) and also Section 142(1) of the Income Tax Act were also issued, assessment proceedings were initiated. The assessment order came to be passed by assessing the taxable income of the assessee at Rs. 2,02,90,706/- holding that the assessee is taxable as an AOP and not entitled for benefit of provision of section 11 & 12 of the Act by virtue of Section 13(8) of the Income Tax Act.

4. Aggrieved by the order dated 28/12/2018 passed by the Deputy Commissioner of Income Tax Circle (Exemption) 2 (1) Delhi, the assessee has preferred an appeal before the Commissioner of Income Tax (Appeals). The Ld.CIT(A) vide order dated 09/07/2019 allowed the Exemption u/s 11 with all consequential benefits by allowing the Appeal filed by the assessee.

5. Aggrieved by the order dated 09/07/2019, the Department of Revenue has preferred the present appeal on the grounds mentioned above. The Ld. DR vehemently contended that the Ld.CIT(A) has committed an error in holding the activities of the assessee organization charitable in nature and

allowable for exemption u/s 11 of the Act ignoring the fact that the assessee is running specific service to its member as well as known members and charging fees from them which is liable to be taxed under the head of 'profit and gain of business and profession and such its activities are not charitable in nature as envisaged u/s 2(15) of the Act. Further, the Ld. DR has relied on the assessment order and prayed for the setting aside of order of Ld.CIT(A).

6. Per contra, the Ld. counsel for the assessee submitted that for the Assessment Year 2006-07, 2007-08, exemption were denied on the similar ground that the assessee was involved in trade, commerce or business since the assessee was receiving fees and other income from known members also, aggrieved by the same, the assessee filed an appeal before the CIT(A) which allowed the appeal of the assessee and the same has been confirmed by the Tribunal, but had directed the assessee to maintain separate books of accounts u/s 11 (4A) which has been challenged before the Hon'ble Delhi High Court and ultimately the Hon'ble Delhi High Court treated the assessee as charitable institution u/s 11(1) of the Act vide order dated 19/10/2011 in ITA No. 368 & 369/2012. The Ld. Counsel for the assessee further submitted that, even in the Assessment Year 2008-09 and 2009-10, the assessee has been treated as a charitable institution u/s 11(1) of the Act by virtue of the Tribunal vide order dated 11/05/2015 in ITA No. 248 and 1572/Del/2013. Further contended that even for the Assessment Year 2010-11, 2011-12 and 2012-13, the Ld.CIT(A) granted relief by treating the assessee as a charitable institution. Therefore, the Ld. Counsel for the assessee submitted that, for the year under consideration by following the assessee consistency the appeal of the assessee Revenue deserves to be dismissed.

7. We have heard the parties perused the material available on record and gave our thoughtful consideration. It is not in dispute that for the Assessment Year 2006-07 and 2007-08 exemption had been denied on the ground that the

assessee was involved in trade, commerce or business since the assessee was receiving fees and other income from known members also. The denial of the exemption has been set aside by the Ld.CIT(A) against which the Department of Revenue had approached this Tribunal and his Tribunal had allowed the exemption but directed the assessee to maintain separate books of accounts u/s 11(4A) of the Act. As against the order of the Tribunal, the assessee preferred an appeal before the Hon'ble Delhi High Court in ITA No. 368 & 369/Del/2012 of the Hon'ble Delhi High Court vide order dated 19/10/2011 treated the assessee as charitable institution u/s 11(1) of the Act. Further even for Assessment Year 2008-09, the exemption was denied, the Ld.CIT(A) allowed the appeal of the assessee by placing reliance on the order of the Delhi High Court for the Assessment Year 2006-07 and 2007-08 and further for the Assessment Year 2009-10 the exemption was denied and the appeal of the assessee was allowed before the CIT(A) and the Revenue's appeal for the Assessment Year 2008-09 and 2009-10 were dismissed by this Tribunal vide order dated 11/05/2015 in ITA No. 248 & 1572/Del/2013. Further for the Assessment Year 2010-11 to 2012-13, the exemption was denied on the ground that the assessee was involved in trade, commerce or business and the assessee is hit by mischief of proviso of Section 2(15) which has been set aside and the appeal of the assessee was allowed by the Ld.CIT(A) vide order dated 18/12/2014, 04/12/2014 an 15/06/2015.

8. Even in the year under consideration the exemption u/s 11(1) has been denied by invoking mischief of proviso to Section 2(15) mainly on the ground that the assessee involved in trade, commerce or business. The Ld.CIT(A) by following the principles of consistency and also orders made in assesses's own case right from the Assessment Year 2006-07 to 2014-15 and also by following orders of the Tribunal, the Hon'ble Delhi High Court which treated the assessee as charitable institution u/s 11(1) of the Act and allowed the appeal.

In our opinion, the order of the Ld.CIT (A) does not suffer from any error or legal infirmity and which requires no interference at our hands.

9. In view of the above discussion, we do not find merit in the appeal of the Revenue. Accordingly, Ground Nos. 1 & 2 of the Revenue's appeal are dismissed.

10. In the result, appeal of the revenue is dismissed.

Order pronounced in the Open Court on : 19th January, 2023

Sd/-
(B. R. R. KUMAR)
ACCOUNTANT MEMBER
Dated : 19/01/2023

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

R.N, Sr PS

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

