

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “B”: NEW DELHI**

**BEFORE
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA Nos. 1309 & 1310/Del/2022
Asstt. Years: 2016-17 & 2017-18

DCIT, Circle-1(1), Exemption New Delhi.	Vs.	Ernet India 5 th Floor, Block-1, A-Wing, DMRC IT Park, Shastri Park, Delhi – 110 053 PAN AAATE0202A
(Appellant)		(Respondent)

Assessee by:	Ms. Deepashree Rao, CA Ms. Shivangi Jain, CA
Department by :	Shri T. James Singson, CIT-DR
Date of Hearing	19.01.2023
Date of pronouncement	27.01.2023

ORDER

PER ASTHA CHANDRA, JM

1. The two appeals by the Revenue are directed against the order dated 25.11.2021 of the Ld. Commissioner of Income Tax Appeals, National Faceless Appeal Centre (“CIT(A)”) pertaining to Assessment Year (“AY”) 2016-17 and 2017-18. These were heard together and are being disposed of by this common order.

2. The Revenue has taken the following revised grounds of appeal in AY 2016-17:

“1. *Whether 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 even though the objects of the society may have been charitable but the activities carried out by the society which yielded income to the society were commercial in nature.*

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact the assessee was earning huge profits by providing data connectivity to its subscribers in lieu of consideration as per its objects and nowhere charity can be seen in the whole process.”*

2.1 The Revenue has taken the following grounds of appeal in AY 2017-18:

“1. *Whether on the facts and in the circumstances of the case Ld. CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that even though the objects of the society may have been charitable but the activities carried out by the society which yielded income to the society were commercial in nature.*

2. *Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact the assessee was earning huge profits by providing data connectivity to its subscribers in lieu of consideration as per its objects and nowhere charity can be seen in the whole process.*

3. *The order of NFAC in the above mentioned case has been passed on 25.11.2021. However in view of the ordinance and Hon’ble Supreme Court’s order the limitation date has been extended. The Limitation expires on 31.05.2022”*

3. Briefly stated the facts are that the assessee is an autonomous society formed on 27.01.1998 and registered under the Societies Registration Act, 1860. It was established under the Department of Information and Technology, Govt. of India and is registered under section 12A of the Income Tax Act, 1961 (**the “Act”**).

4. The assessee filed its return for AY 2016-17 on 15.10.2016 and for AY 2017-18 on 15.-09.2017 declaring NIL income. The case of both the AYs was selected for scrutiny under CASS. During assessment proceedings, the Ld. Assessing Officer (**“AO”**) observed that the assessee is in receipt of income from the following sources:-

AY	Income from subscribers Rs.	Network research project Rs.	Other income Rs.	Interest earned Rs.
2017-18	7,88,19,112	79,12,56,915	3,94,67,629	15,75,94,208
2016-17	8,92,68,319	45,79,69,511	15,30,856	17,06,54,515

4.1 The Ld. AO issued show cause notice to the assessee as to why proviso to section 2(15) of the Act be not invoked to deny exemption under section 11 and 12 of the Act for both the AYs. The assessee submitted its reply on 27.12.2018. Rejecting the explanation offered by the assessee, the Ld. AO held that the case of the assessee is covered by the proviso to amended definition contained in section 2(15) of the Act and its activities are not charitable. Accordingly, he computed the taxable income of the assessee at Rs. 50,79,21,789/- vide his order dated 28.12.2018 for AY 2016-17. Likewise, he determined the taxable income of the assessee at Rs. 31,70,69,770/- vide his order dated 27.12.2018 for AY 2017-18.

5. The assessee filed appeals for both the AYs before the Ld. CIT(A). During appellate proceedings, the assessee submitted that the issue is covered in favour of the assessee by the order of the Ld. CIT(A) in its own case for AY 2009-10 to 2015-16 wherein it is held that the activities undertaken by the assessee is not in the nature of any business or commercial activity and as such proviso to section 2(15) of the Act is not attracted. The charges collected by the assessee were only incidental to achieving the main object of the assessee which is to promote the communication technology/internet services for the general public. It was also submitted that the orders of the Ld. CIT(A) for AY 2009-10 and 2010-11 have been confirmed by the Tribunal in ITA Nos. 2873 and 2874/Del/2014 against which the Revenue preferred appeal before the Hon'ble Delhi High Court which vide its order dated 25.09.2018 and 28.05.2018 respectively in ITA No. 637 and 642 of 2018 dismissed the appeals of the Revenue. It was further submitted that the Hon'ble Delhi High Court has confirmed the Tribunal's order for AY 2011-12 vide its decision in ITA No. 440 of 2019.

6. The Ld. CIT(A) after observing that the assessee's appeal for the immediate preceding year 2015-16 has also been allowed by the Ld. CIT(A) as also the Tribunal, and the facts being identical in both the years under consideration, following the orders of the Tribunal and the decisions of the Hon'ble Delhi High Court (supra) held that the activities of the assessee are covered within the definition of charitable trust.

7. Aggrieved, the Revenue is in appeal before the Tribunal in both the AYs 2016-17 and 2017-18.

8. The Ld. DR supported the orders of the Ld. AO who has stated in his orders that the decision of the Hon'ble Delhi High Court rendered on 27.12.2017 in ITA Nos. 2873 and 2874/Del/2014 for AY 2009-10 and 2010-11 has not been accepted by the Department and SLP before the Hon'ble Supreme Court has been filed which is still sub-judice.

9. The Ld. AR submitted that the issue is covered in favour of the assessee by the judgment of the Hon'ble Supreme Court dated 19.10.2022 in Civil Appeal No. 21762 of 2017 with SLP(C) No. 15040/2019 in ACIT (Exemptions) vs. Ahmedabad Urban Development Authority, copy of which appears at pages 52 to 200 of the Paper Book. The Ld. AR further submitted that the Hon'ble High Court has sustained the orders dated 26.8.2020, 28.7.2021 and 27.1.2022 of the Tribunal for AY 2012-13, 2014-15 and 2015-16 respectively vide their decision rendered on 19.12.2022 in ITA No. 541, 539 and 538 of 2022 following the judgment of the Hon'ble Supreme Court in the case of Ahmedabad Urban Development Authority, copies of which are placed at page 201 to 203 of Paper Book. The Tribunal's order dated 27.01.2022 for AY 2013-14 has also been sustained by the Hon'ble Delhi High Court vide order dated 9.01.2023 in ITA No. 5 of 2023 copy of which appears at pages 204-205 of Paper Book. The Ld. AR thus contended that the appeals of the Revenue is without any substance and deserves to be rejected.

10. We have heard the rival submissions of the parties and perused the records. It is observed that in Ahmedabad Urban Development Authority's case (supra), the Hon'ble Supreme Court has discussed the case of the assessee before us in paras 206, 207 and 208 of their judgment. The Hon'ble Supreme Court observed in these paras as under:

"206. ERNET is a not-for profit society, set up under the aegis of the Union Government. At one time, government functionaries, including the late President, APJ Abdul Kalam, were members, on account of their ex officio capacity. The objects of this assessee are to

"3.1.1 To advance the cause of computer communication in the country in all its aspects and dimensions with a view to provide rapid nationwide development of the sector and technological and economic growth of the country.

3.1.2 To develop, design, setup and operate nationwide state of the art computer communication infrastructure with international connectivity directed towards research and development, advancement of high quality education create and host content, express creative and academic potential via intranet and intranet peer to peer connectivity among educational and research institutions in the country and the world and make available the communication infrastructure to users in academic, research and development institutions, Govt organizations in line with national priorities."

207. ERNET's networks are a mix of terrestrial and satellite-based wide area network. It provides services through its 15 Points of Presence (PoPs) located across the country. All those are equipped to provide access to Intranet, Internet and Digital Library through leased circuits and radio links to the user institutions. The PoP at STPI Bengaluru provides Intranet and Internet access through Satellite. ERNET provides, services, namely, Network Access Services, Network Applications Services, Hosting Services, Operations Support Services and Domain Registration Services under snet.tn, ac.tn, edu.tn & res.tn domains. Funded through government grants, its projects support educational networks and development of internet infrastructure in numerous other segments of society.

208. Having regard to the nature of ERNET's activities, it cannot be said that they are in the nature of trade, commerce or business, or service, towards trade, commerce or business. It has to receive fees, to reimburse its costs. The materials on record nowhere suggest that its receipts (in the nature of membership fee, connectivity charges, data transfer differential charges, and registration charges) are of such nature as to be called as fees or consideration business, trade or commerce, or service in relation to it. The functions ERNET performs are vital to the development of online educational

and research platforms. For these reasons, it is held that the impugned judgment, which upheld the ITAT's order, does not call for interference."

11. The judgement of the Hon'ble Supreme Court in Ahmedabad Urban Development Authority (supra) has been followed by the Hon'ble Delhi High Court while sustaining the order (supra) of the Tribunal in assessee's own case for AY 2012-13, 2013-14, 2014-15 and 2015-16. Since the facts remain the same in AY 2016-17 and 2017-18 under consideration, respectfully following the decisions (supra) we hold that the appeals of the Revenue are devoid of any merits deserving rejection.

12. In the result, appeals of the Revenue for both the AYs 2016-17 and 2017-18 are dismissed.

Order pronounced in the open court on 27th January, 2023.

sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

Dated: 27/01/2023

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
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Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	

Date on which the fair order is placed before the Dictating Member for pronouncement	
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Date on which the file goes to the Bench Clerk	
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