

ORDER

Per:Anikesh Banerjee, JM:

The instant appeals of the two assessee are directed against the order of the Id. Commissioner of Income Tax (Appeals)-2, Jalandhar, [in brevity the ‘CIT (A)’] order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity the Act] order for A.Y. 2016-17. The impugned orders are emanated from the order of the Id. ITO (Exemption) Ward Jalandhar, (in brevity the AO) order passed u/s 143(3) of the Act.

2. At the outset, both the appeals of the assesseees are identical in nature and have a common factual issue. With the consent of the Id. counsel for the assessee we have taken ITA No. 13/Asr/2020 is taken as a lead case.

ITA No.13/Asr/2020

3. The assessee has taken the following grounds:

“1. The First Appellate Authority has erred in holding that the proviso to section 2(15) of the Income Tax act is attracted to the assessee and exemption u/s 11 of the Income Tax act is not allowed without appreciating and acknowledging the facts of the case that the appellant is not doing any activity in nature of trade, commerce or businesses as appellant is just doing the function of Public welfare in

the form of community policing which is delegated to the appellant by the State Government.

2. *The First Appellate Authority has erred in holding that the appellant has not incurred any expenditure on any welfare services for the general public without considering the fact that the appellant society was formed to provide community policing services in effective and time bound manner to general public and expenses during the year were being incurred on the attainment of the same objects of the society.*

3. *The First appellate authority has erred in holding that the appellant is working on commercial purpose as fees is charged for providing the services without appreciating and acknowledging the facts that very minimal charges are collected by the society which are also notified and approved by the Punjab Government with the intention to meet the expenses of the society and not with the intention to earn profit.*

4. *It is Prayed that the order of Ld. CIT (Appeals) Jalandhar-2 be set aside and demand of Rs 23446/- (including the interest of Rs 5808/- u/s 234B of the Income Tax act) be dropped in the interest of justice .*

5. *The Appellant craves leave to add or amend any grounds of appeal in course of proceedings if need arises.”*

4. Brief fact of the case is that the assessee is a Society registered under the Society Registration Act, (XXI of 1860 and as amended by the Punjab Amendment

Act, 1957 vide No. KPT/ARS/1379 of 2010 dated 01.10.2010. The assessee society is registered under section 12AA(1)(b)(i) of the Act, and had claimed exemption under section 11 of the Act in respect of its income. The assessee Society was pursuing charitable activities by running Suvidha Centre for general public by organizing and participating in awareness campaigns against drug abuse and addiction, spreading traffic awareness in general public, rendering service related to passport and visa related services, police clearance certificate, issuance of copy of NOC, issuance of documents and arms license verification etc. and has declared total income/receipts of Rs. 12,62,631/- as against which amount applied on account of revenue expenditure stands at Rs. 12,05,551/- and thus, excess of income over expenditure at Rs. 57,080/- has been declared. The Id. AO considering the activities of assessee first determined the violation of section 2(15) and had rejected the claim of deduction U/s 11 r.w.s. 13(8) of the Act. The entire surplus amount to Rs. 57,080/- is added back with total income. Aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

5. The Id. Counsel for the assessee submitted the written submission which is kept in the record. The Id. counsel specifically mentioned that though the assessee

had taken the minimum charges from the civilians for community work, but entire issue is related to a charitable in nature. The Id. counsel invited our attention in the order of the Id. AO page 7 of the assessment order which is extracted as below:

“12(a) It will be pertinent to mention here that the jurisdictional ITAT i.e. Hon’ble ITAT, Amritsar Bench, Amritsar, in the case of M/s Sukhmani Society for Citizens Services, Mansa, (the Society which is carrying out activities like being carried out by assessee under consideration i.e. providing services and in lieu, charges are being collected) has held that the Society is not engaged in any type of Charitable Activity (2012) 27 taxman.com 199 (Asr) {(2013) 153 TTJ 235 (Amritsar)}

13. *In view of the above, it is held that the case of the assessee is covered by proviso to section 2(15) and hence, does not fall within the category of a charitable organization. Accordingly, for the year under assessment, benefits under section 11 of the income-tax Act, 1961 cannot be allowed to the assessee in accordance with provisions of section 13(8) of the Income-tax Act, 1961. In view of the above, it is seen that the assessee has receipts arising out of the activity in the nature of business or commerce and accordingly provision of section 2(15) are not applicable.*

14. *Since the assessee has receipts arising out of activities in the nature of business and commerce and accordingly, the activities of the society does not come under the definition of charitable purposes as*

defined in section 2(15), assessee is not entitled for claim of exemption under section 11 of the Income-tax Act, 1961 as provided under section 13(8) of the Income-tax Act, 1961 and therefore, the entire surplus of Rs. 57,080/- as declared in Income & Expenditure statement of the assessee is assessed as income of the assessee and accordingly, addition of Rs. 57,080/- is being made to the total income of the assessee. As the assessee has furnished inaccurate particulars of its income by claiming patently wrong claim of exemption in its return of income, penalty proceedings under section 271(1)(c) of the Income-tax Act, 1961 for furnishing inaccurate particulars of income of Rs. 57,080/-are being initiated separately.”

5.1 The ld. counsel for the assessee further argued that the entire assessment was made on basis of the order of **Sukhmani Society for Citizens Services , Mansa, (2012) 27 taxman.com 199 (Amritsar)** . The order of the ITAT, Amritsar bench is factually not relevant in the assessee’s case. The ld. counsel for the assessee in argument placed that the object of the assessee is charitable in nature, only one issue of the object is that the collection of fees from the civilians over the community services.

5.2. The ld. Counsel further relied on the Hon’ble Court of Gujrat in the matter of **DCIT, Exemption Vs. Sabarmati Ashram Gaushala Trust, Tax Appeal No.**

1162 of 2013, order dated 15/01/2014 where the Sec 2(15) is construing the term 'business' which is intended for the purpose of interpreting and applying the first proviso to section 2(15) of the Act.

6. The Id. Sr. DR vehemently argued and relied on the order of the revenue authorities. The Id. Sr. DR invited our attention in order of the Id. CIT(A) page 16 para 4.5 which is extracted as below:

and ITC Bhola.

4.5 During the year, the assessee has earned excess of income over expenditure of Rs. 57,080 after excluding depreciation and other expenses. It is observed that the assessee has earned income from Bank Interest of Rs. 32,331 and income from the facilitation on charges Rs.12,30,300/-.

SUB DIVISION SAANJH (COMMUNITY POLICING) SOCIETY BHOLATH
Office : Sub Division , Bhola Distt. Kapurthala
Income & Expenditure Account For the year ending 31.03.2016

EXPENDITURE	AMOUNT (Rs.)	INCOME	AMOUNT (Rs.)
To Professional Fees	29643.00	<u>By Facilitation Charges</u>	
To Audit Fees	10436.00	Issuance Of Copy Of Documents (Schedule 2)	6000.00
To Telephone & Internet Expenses	54912.00	Passport Services (Schedule 3)	90000.00
To Server Expenses	92444.00	Police Clearance Certificate (Schedule 4)	12000.00
To Sweeper Salary	45500.00	Arms License Verification (Schedule 5)	77000.00
To Diesel Expenses	8068.00	Issuance Of NOC (Schedule 6)	100000.00
To Electricity Expenses	108640.00		1230300.00
To Reimbursement of Expenses	450000.00	<u>By Other Income</u>	
To Repair & Maintaince	52912.00	Bank Interest	32331.00
To Office Expenses	32540.00		
To Printing & Stationary	65791.00		
To Newspaper & Periodicals	974.00		
To Bank Charges	1094.00		
To Meeting Expenses	3490.00		
To Seminar Expenses	18570.00		
To Advertisement Expenses	1880.00		
To Motorcycle Expenses	120565.00		
To Service Tax	40369.00		
To Depreciation	67522.31		
To Preliminary Expenses Written Off	200.00		
To Excess Of Income Over Expenditure	57080.69		
TOTAL	1262631.00	TOTAL	1262631.00

From the above chart it is apparent that the assessee has not incurred any expenditure on the object for which it has been formed.

All the expenses incurred by the society are in nature of office running expenses. An amount of Rs. 4,50,000 has been spent as reimbursement of expenses, whereas the society has already booked various expenses as above apart from this, salaries and rent of the building is chargeable to Govt. account. From the Income & Expenditure account of the society, it is apparent that the society is primarily engaged in providing the services to citizens which a govt. should be providing free of cost to the society. The services have been provided by the society by charging fees which has been prescribed by the Govt. , therefore, fourth limb of section 2(15) is attracted, where the services are being provided by the charging of fees or cess. The society has not incurred any expenditure on any welfare services for the general public. No details of any such activities having been done by the assessee have been brought on record. Except for providing the services against fees as enumerated above, the society has not done any activity to pursue its objects which could be aimed at general relief of poor or public such as victim assistance childhood line/ women line, drug de-addiction/ women counseling/ traffic management, to work for crime free society etc. to mention a few out of various stated objectives.

From the facts brought on record, it is apparent that the assessee society is being run with the commercial purpose by charging fees specified for services required by the public which is resulting in surplus. No other charitable activities for public welfare other than providing services against charging of fees have been conducted by the assessee. No expenditure is being incurred for taking measures of general public utility.

7. We heard the rival submission and considered the documents available in the record. The revenue authorities first pointed out that from the financial statement of the assessee it is not clear that the assessee is doing any charitable work. The eligibility for deduction u/s 11 for community work for collection of facilitation charges is not under the purview of the Act.

7.1 In appeal order, the appellate authority reproduced the income and expenditure account of the assessee. Whereas, no such charitable work is reflected in collection of facilitation charges. We respectfully considered the order of Hon'ble Court of Gujrat in the matter of DCIT, Exemption Vs. Sabarmati Ashram Gaushala Trust, *supra*. The same factual aspect is duly settled by the Hon'ble Apex Court in the case of the **Assistant Commissioner of Income-tax (Exemptions)v.Ahmedabad Urban Development Authority, [2022] 143 taxmann.com 278 (SC)**. The relevant paragraph is extracted as below.

“H. Application of interpretation

H. At the cost of repetition, it may be noted that the conclusions arrived at by way of this judgment, neither precludes any of the assesseees (whether statutory, or non-statutory) advancing objects of general public utility, from claiming exemption, nor the taxing authorities from denying exemption, in the future, if the receipts of the relevant year exceed the quantitative limit. The assessing authorities must on a yearly basis, scrutinize the record to discern whether the nature of the assessee's activities amount to "trade, commerce or business" based on its receipts and income (i.e., whether the amounts charged are on cost-basis, or significantly higher). If it is found that they are in the nature of "trade, commerce or business", then it must be examined whether the quantified limit (as amended from time to time) in proviso to section 2(15), has been breached, thus disentitling them to exemption.”

Accordingly, we remit back the ground of the assessee to Id. AO for adjudication, *de novo* in the light of the order of Hon'able Apex Court, as discussed in paragraph 8.1 of the order of ITAT. In ITA No.13/Asr/2020 is mutatis mutandis applicable for ITA 14/Asr/2020 and follows accordingly.

8. In the result, both the appeals of the assessee bearing **ITA No. 13/Asr/2020&14/Asr/2020** are allowed for statistical purpose.

Order pronounced in the open court on 22.03.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

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By Order