

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E': NEW DELHI**

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

**ITA No.9162/Del/2019  
(ASSESSMENT YEAR 2016-17)**

Asst. CIT (Exemption), Circle-2(1), New Delhi	Vs.	National Board of Accreditation NBCC Place, East Tower, 4 <sup>th</sup> Floor, Bhisham Pitamah Marg, Pragati Vihar, New Delhi- 110 003  PAN-AAAAN 8753G
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Ms. Sarita Kumari, CIT-DR
Respondent by	None

Date of Hearing	08/06/2023
Date of Pronouncement	21/06/2023

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-40, Delhi ["Ld. CIT(A)", for short], dated 24/09/2019 for Assessment Year 2016-17. The sole ground taken in this appeal which read as under:

*"On the basis of facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding the activities of assessee are charitable in*

*nature and that assessee is eligible for exemption u/s 11 of the Act by ignoring the fact that activities of the assessee is to facilitate accreditation and continuing supervision through inspection and charging inspection and accreditation fees from various organizations. The assessee's activities falls under last limb of section 2(15) and hit by the proviso to section 2(15)."*

2. The brief facts of the case as stated in the Assessment Order are that the assessee filed return declaring Nil income on 30/09/2016, which was selected for complete scrutiny. Notice under section 143(2) of the Act was issued on the assessee. The assessee society is registered under Societies Registration Act, 1860 and was also registered under section 12A vide order dated 25/11/2011. The objects of the assessee society include:-

- Assess the grade colleges and/or institutions of technical and professional education the courses and programs offered by them, their various units, facility, departments etc.
- Stimulate the academic environment and quality of teaching and research in these institutions;
- Contribution to the sphere or knowledge in its discipline.
- Encourage innovations, self evaluation and accountability in higher education.

3. It was noted by the A.O. that the assessee had disclosed receipts of Rs. 32.89.73,312.27/- on account of fees & subscription, interest earned and other income. Fees & Subscription included

accreditation fee, accreditation fee-appeal, processing fee, registration fee- E-NBA Registration fee-workshop and WOSA-2015.

4. It was held by the A.O. that the issue whether activities incidental to carrying out the main objects was excluded from the purview of section 2(15) had been settled to rest by the amendment in the law by Finance Act, 2015. Referring to the amended proviso, it was observed that even if the activity in the nature of trade, commerce or business or of rendering of any services in relation to any trade, etc. as mentioned in section 2(15) is undertaken in the course of actual carrying out of activities in the nature of general public utility, yet if receipts from such activity exceed 20% of the total receipts, the said activity of advancement of any object of general public utility shall not be considered a charitable activity and accordingly the exemption under sections 11 and 12 or 10(23C), as the case may be, shall not be available to the assessee.

It was held as under:

- a. The assessee is into advancement of general public utility as defined in section 2(15) of the Act.

- b. It is indulged in activity which is in the nature of trade, commerce or business or any rendering of service in relation to any trade commerce of business for a cess or fee or other consideration. From the details available record it is noticed that in lieu of receipts, the assessee is providing various services to the person paying such amount. Though these may be in accordance of its objects, yet as per the new prose, rendering of such service in lieu of fee or other consideration is hit by proviso to section 2115) of the Act. The ground of the assessee that it is not into carrying out of any activity in the nature of trade, commerce or business etc is therefore not acceptable.
- c. A perusal of details of income as given in paras above shows that the receipts are Rs.24,57,66,997/- out of total receipt of Rs. 32.89.73.312/- which is 74.7% Le more than 20% of the to total receipt. The proviso to section 2015) is clearly hit and accordingly the assessee is not eligible for claim o exemption under section 11 of the Act.

5. Hence, the assessee was held to be not entitled for benefit of exemption under sections 11 and 12 by virtue of section 13(8) of the Act by the A.O. and the assessee society was assessed to tax as a normal AOP. Income was computed as under:

Gross cripts as per Income & Expenditure account	328973312/-
Less: Expenditure as per Income & Expenditure	137492318/-

Less: Depreciation disallowed as already claimed as capital expenditure in earlier years	<u>9972905/-</u> 127519411/-
Application for purchase of fixed assets not allowed.	Nil
Accumulation to the extent it does not exceed 15% not allowed	Nil
Accumulation under section 11(2), not allowed	Nil
Net Taxable Income	20,14,53,901/-

6. Aggrieved by the assessment order dated 24/12/2018, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) allowed the appeal of the assessee vide order dated 24/09/2019 directed the Assessing Officer (“AO”, for short) to allow the exemption u/s 11 of the Act to the assessee. As against the order of the Ld. CIT(A), the Department filed the present appeal on the ground mentioned above.

7. None appeared for the assessee. The notices have been issued to the registered address to the assessee, but the assessee remained absent, considering the same, we deem it fit to hear the Ld. Departmental Representative (“Ld. DR”, for short) and decide the matter.

8. The Ld. DR submitted that the Ld. CIT(A) committed error in holding that the 'activities of assessee are charitable in nature and that assessee is eligible for exemption u/s 11 of the Act' by ignoring the fact that activities of the assessee is to facilitate accreditation and continuing supervision through inspection and charging inspection and accreditation fees from various organizations, thus the assessee's activities falls under last limb of section 2(15) of the Act and hit by the proviso to section 2(15) of the Act.

9. We have heard the Ld. DR and perused the material on record. The Ld. CIT(A) while allowing the appeal of the assessee, relied on the order of the Co-ordinate Bench of the Tribunal in assessee own case for the Asst. Year 2013-14 in ITA No.5262/Del/2016, wherein the Tribunal held that assessee was carrying out its activities of accreditation as per the All India Council for Technical Education Act, 1987 and that there was no element of profit and that the proviso to section 2(15) of the Act was not applicable. The said observation of the Tribunal in ITA No.5262/Del/2016 for AY 2013-14 in assessee's own case are as under:

*"8. When we examine the main objectives of assessee society for assessment and accreditation carried out by the assessee society, the*

*same are to assess and grade colleges and/or institutions of technical and professional education, the courses and programs offered by them, their various units, faculty, department etc: to stimulate the academic environment and quality of teaching and research in the institutions to make contribution to the sphere of knowledge in its discipline, to motivate colleges and/or institutions of technical and professional education for research, and adopt teaching practices that groom their students for the innovation and development of leadership qualities to encourage innovations, self evaluation and accountability in higher education, to promote necessary changes, innovations and reforms all aspects of the working of the colleges/ institutions of technical and professional education for the above purpose and to help institutions realize their academic objectives; it leads to the conclusion that the assessee society is into charitable activities, the objectives being incidental to the education.*

*9. Now, the question arises for determination in this case is:-*

*“as to whether receipts of the assessee from fees/ subscription are hit by Proviso to section 2(15) of the Act ?*

*10. When the assessee society is receiving receipt of fees/ per norms laid down by Government of India, profit motive is not visible rather all the activities are centered around disciplining, promoting, improving and contributing to similar academic environment and quality of teaching and to enhance the knowledge and discipline of the educational institutions which are incidental to the education and cannot be kept under the objects of general public utility.*

*11. When we further examine the activities being carried out by the assessee society in the light of the fact that in the immediately preceding year Le. AY 2012-13, assessee has been duly granted exemption under section 11 of the Act by framing assessment under section 143(3) of the Act. Undisputedly, there is no change in the aims and objectives of the assessee society which are being carried out in accordance with the Memorandum of Association and Certificate of Registration under Societies Registration Act dated 07.01.2010. There is not an iota of material brought on record by AO if the facts of the year under assessment are distinguishable from AY 2012-13.*

*12. In these circumstances, rule of consistency as laid down by Hon'ble Supreme Court in Radhasoami Satsang is CIT 193 ITR 321 (SC) is applicable in this case. So, the AO without proving on record that the activities of the assessee society are in the nature of trade, commerce or business proceeded to deny the benefit of section 11 of the Act which is not sustainable in the eyes of law. Rather assessee is carrying out its activities of accreditation as per All India Council for Technical Education*

*(AICTE) Act, 1987 and there is no element of profit and as such First Proviso to section 2(15) of the Act is not applicable.*

*13. In view of what has been discussed above, we are of the considered view that ld. CIT (A) has rightly allowed the exemption under section 11 of the Act to the assessee by allowing the appeal. So, finding no illegality or perversity in the impugned order passed by the ld. CIT(A), the appeal filed by the Revenue is hereby dismissed.”*

9.1 Considering the facts that the Ld. CIT(A) while allowing the appeal of the assessee followed observation and the ratio laid down by the Tribunal in assessee’s own case for A.Y. 2013-14, we find no error or infirmity in the approach of the Ld. CIT(A) in directing the A.O. to allow the exemption u/s 11 of the Act. Accordingly, we find no merit in the ground of the Revenue.

6. In the result, the appeal filed by the Revenue is dismissed.

Sd/-

**(DR. B.R.R. KUMAR)  
ACCOUNTANT MEMBER**

Dated: 21/06/2023

*Pk*

Copy forwarded to:

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

Sd/-

**(YOGESH KUMAR U.S.)  
JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

