

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA**

[Before Dr. Manish Borad, Accountant Member &  
Shri Sonjoy Sarma, Judicial Member]

**I.T.A. No. 147/Kol/2023**  
**Assessment Year : 2010-11**

Sasha Association For Craft Producers	Vs.	ITO, Ward-1(3), Kolkata
PAN: AABTS 5580 N		
Appellant		Respondent

Date of Hearing	04.07.2023
Date of Pronouncement	27.09.2023
For the Assessee	Shri S.M. Surana, AR
For the Revenue	Shri Amitava Sen, Addl. CIT

**ORDER**

**Per Sonjoy Sarma, JM:**

This appeal of the assessee for the assessment year 2010-11 is directed against the order dated 28.01.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

*"i. For that the Id. CIT(A) erred in confirming the disallowance of exemption u/s 11 only on the basis of judgment of Supreme Court dated 19.10.2022 when the same was applicable only to GPU categories of the charitable trusts.*

*ii. For that the reopening of assessment was bad in law when the case was originally assessed u/s 147 and there was no whisper of any failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment.*

*iii. For that the Id. CIT(A) erred in confirming the action of AO in treating the activities of the assessee as "Business" or "trade" when the assessee is engaged in charitable activities of giving relief to poor which was duly accepted by the department in earlier years as well as by the appellate authorities.*

*iv. For that even otherwise the benefit of exemption u/s 11 was not disallowable and the assessment order is bad in law.”*

3. Brief facts of the case are that the assessee filed its return of income A.Y. 2010-11 by declaring income as Nil. The assessment was completed u/s 143(3) of the Act. Subsequently, the case of the assessee was reopened u/s 148 of the Act by issuing notices under the provisions of Act and in compliance to the notice assessee filed its reply by stating that return was filed u/s 139 of the Act may be treated as return in response to notice u/s 148 of the Act. Subsequently, notices u/s 143(2) and 142(1) of the Act were also issued to the assessee. In response to notices issued by the AO, assessee filed various particulars and details before the ld. AO as asked for. The ld. AO after examining the records and submissions of the assessee, he viewed that assessee has providing “relief to the poor” without having any corresponding specific clause trust deed indicating that assessee has been advancing every object of general public utility only as per limb of section 2(15) of the Act and the ld. AO denied the claim of exemption made u/s 11, 12 and 13A of the Act by making addition of income of Rs. 84,09,577/- in the hands of assessee.

4. Dissatisfied with the above order, assessee went in appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

5. Aggrieved by the above order, assessee is in appeal before the Tribunal. At the time of hearing, ld. AR submitted before the bench that the sole grievance of the assessee is in respect of impugned order passed by the ld. CIT(A) by which he confirmed the order of AO by treating the activities of assessee as business or trade when the assessee is engaged in charitable activity of giving relief to the poor which was duly accepted by the department in the earlier years and

the Id. AR in order to substantiate his argument before us placed a copy of the judgement rendered by the Tribunal in assessee's own case in ITA No. 439-441/Kol/2017 A.Y. 2011-12 and 2012-13 where the identical issue involved in which the department went into appeal before the Tribunal against the order passed by Id. CIT(A) by which treating the assessee for providing relief to the poor by allowing assessee's claim made u/s 11 of the Act. The Id. AR brought to our notice by placing the relevant paragraph which are as under:

*"We advert to the relevant facts pertaining to the above sole issue. There is no dispute that the assessee-society is registered body with the Registrar of Societies, West Bengal since 18.03.1988. Its objects clauses read as under:-*

*"3. The objects for which the Society is established are:-  
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*(i) To assist Producers/Artisans working in or with welfare organizations, co-operative and Registered Societies, and others, engaged in cottage and small scale industries to marketing their products using any suitable marketing channel in the country or abroad.*

*(ii) To assist welfare organizations, co-operative societies, Registered Societies, people engaged in cottage and small scale industries in the form of advances, locating suitable raw material sources, design and technical inputs whenever required in order to meet market commitments or requirements;*

*(iii) To arrange exhibition and meals, organize showrooms/sales counter within the Country or abroad for sale, display of products of the producers associated with the society, with or without help of any other organization having similar aims and objectives that of the society or in collaboration with the Government Departments (Central or State) and Semi Government Organisations;*

*(iv) To take over the assets and liabilities of any society working or defunct with objects similar to that of the Society, subject to approval by the members at a special meeting called for the purpose;*

*(v) To take help/assistance of experts or of any organization for the betterment of the craft products viz design, quality, production and for the economic, social and cultural upliftment of the producers irrespective of caste, creed or sex;*

(vi) To cooperate and collaborate with national, international and other agencies working with similar and/or allied objectives as this society) preferably on specific projects;

(vii) To provide relief to the distressed people during natural calamities viz. famine, drought, flood, earthquake, fire etc.

(viii) To receive or accept donations, gifts, grant-in-aid, movable or immovable property from either Central or State Government, Municipalities, Corporation, District and Local Bodies or benevolent person or persons or societies, Trusts, Limited Companies Public or Private, Co-operative body, philanthropic organisations in India or abroad on such terms and conditions as the Managing Committee may consider fit and proper;

(ix) To hire, purchase, build, acquire or take on rental or lease any movable and immovable property or exchange any rights and privileges for the purposes of the society;

(x) To borrow money with or without security and/or with or without interest that may be required for the purposes of the society;

(xi) To invest fund of the society in such manner as the Managing Committee may think fit for the safety and benefit of the society and to convert or change such investments as per decision of the Managing Committee and according to the Acts & Rules of the Government;

(xii) To enter into any liability for the purpose of the society and to repay or discharge any debt or liability by mortgage, charge, pledge, hypothecation or assignment of any property of the society in such manner as the Managing Committee deems fit and proper;

(xiii) To incorporate and/or grant affiliation to social service societies with objects; similar to any or all of the society and to cooperate financially or otherwise with any person or persons in aid of and in furtherance of such objects;

(xiv) the society shall not distribute amongst its members any money in any form at all which the society may have earned as profit and such profits shall be applied solely for the purpose of carrying out the aims and objects of the society. This shall not, however, prevent payment of remunerations to any person or persons or to any member in return for any Services actually rendered to the society;

(xv) To do all other activities that are incidental or conducive to the attainment and furtherance of the aims and objects of the society;

(xvi) To make rules and regulations in connections with the management and control of the society;

4. The income and properties of the society whatsoever derived or obtained shall be applied solely towards the promotion of the objects of the society and no portion thereof shall be paid or divided amongst any of its members by way of profits."

4 The assessee applied for its section 12A registration read with 80G of the Act on 03.03.1989 in the prescribed Form 10A. The DIT(E) accepted its registration application vide order dated 27.11.1990 forming part of record before us. There is no dispute between the parties at all that assessee's main activities are to work with the poor, marginal artisans and woman craft producers as well as rendering necessary assistance to them in enterprise development, skills technical upgradation and providing market excess. The Assessing Office has admittedly treated the assessee to be eligible for exemption right up to AY 2007-08, His regular assessment order dated 30.11.2009 to that effect forms part of the papcr book at page 27.

5. We now come to the dispute between the parties. The Assessing Officer framed re-assessment/ assessments (supra) in the impugned three assessment years applying section 2(15) (1 proviso) of the Act inter alia on the grounds that its IEC, VAT and CST registration indicated that it is engaged in the business of retailer, exporter and wholesaler of the artisans products concerned having exorbitant profit margin of 35% on production cost (supra), there was no restriction on its membership, the relevant relief of the "poor" clause was nowhere incorporated in its objects and its dissolution clause did not prevent disbursement of profits to trustees and other parties etc. He therefore invoked sections 11, 12 & 13(8) of the Act to disallow assessee's exemption claim.

6. The CIT(A) reverses Assessing Officer's above stated action in his common lower appellate order under challenge. He has first of all considered visuals of the assessee providing all help to a variety of artisan of groups as well as individuals. The said detailed discussion is not reproduced in verbatim for the sake of brevity as it runs into seven pages in lower appellate findings. Learned Departmental Representative is fair enough in not disputing the same during the course of hearing before us. The CIT(A) therefore takes into account CBDT's Circular No.11/2008 making it clear that relief of the "poor" in section 2(15) indicates relief to indigent artisans as well. The assessee has therefore succeeded in lower appellate proceedings.

7. We have given our thoughtful consideration to rival contentions. Learned Departmental Representative reiterates Revenue's stand that the assessee has been wrongly held to be cover relief of the "poor" charitable purpose who rather advances objects general public utility leading to exclusives u/s. 2(15) 1<sup>st</sup> proviso squarely applicable in its case as it has been carrying out the activities concerned in the nature trade, commerce or business only. We find no merit in Revenue's instant sole substantive ground. The Board's circular (supra) hereinabove makes it sufficiently clear that the former category "relief of the poor" includes within its ambit any purpose such as relief to indigent artisans as under:-

"EXEMPTION UNDER SECTION 11 IN CASE OF ASSESSEE CLAIMING BOTH TO BE CHARITABLE INSTITUTIONS AS WELL AS MUTUAL ORGANISATIONS  
CIRCULAR NO. 11/2008, DATED 19-12-2008

*Definition of Charitable purpose under section 2(15) of the Income-tax Act, 1961*

*Section 2(15) of the Income Tax Act, 1961 (Act) defines "charitable purpose" to include the following.:-*

*(i) Relief of the poor*

*(ii) Education*

*(iii) Medical relief and*

*(iv) the advancement of any other object of general public utility.*

*An entry with a charitable object of the above nature was eligible for exemption from tax under section 11 or alternatively under section 10(23C) of the Act. However, it was seen that a number of entities who were engaged in commercial activities were also claiming exemption on the ground that such activities were for the advancement of objects of general public utility in terms of the fourth limb of the definition of charitable purpose'. Therefore, section 2(15) was amended vide Finance Act, 2008 by adding a proviso which states that the advancement of any other object of general public utility' shall not be a charitable purpose if it involves the carrying on of*

*(a) any activity in the nature of trade, commerce or business; or*

*(b) any activity of rendering any service in relation to business,;*

*for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity.*

*2. The following implications arise from this amendment-*

*2.1 The newly inserted proviso to section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e., relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief it will constitute 'charitable purpose' even if it incidentally involves the carrying on of commercial activities.*

*2.2 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, indigent artisans or senior citizens in need of aid, Entities who have these objects will continue to be eligible for exemption even if they incidentally carry on a commercial activity, subject, however, to the conditions stipulated under section 11(44) or the seventh proviso to section 10(23C) which are that*

*(i) the business should be incidental to the attainment of the objects of the entity, and*

*ii) separate books of account should be maintained in respect of such business.*

*Similar entities whose object is 'education ' or 'medical relief' would also continue to be eligible for exemption as charitable institutions even if they incidentally carry on account of commercial activity subject to the conditions mentioned above.*

*Learned Departmental Representative fails to rebut the fact that Assessing Officer has himself accepted the assessee to have been working with poor,*

*marginal artisans and women crafts producers assisting them in enterprise development, skills and technical upgradation as well as in providing them market access for their corresponding products. It is in this backdrop of facts that we observe the assessee to be covered under the specified category of relief of the poor" as per Board's beneficial circular issued us 119 of the Act. We therefore adopt judicial consistency to conclude that the Revenue's instant sole grievance deserves to be rejected. The CIT(A)'s common order under challenge in all these three appeals is affirmed.*

*8. These three Revenue's appeals are accordingly dismissed."*

6. On the other hand, ld. DR supports the decision rendered by the ld. CIT(A) while passing the impugned order stating that the appeal of the assessee shall be liable to be dismissed.

7. We after going through the facts of the case and perusing the material available on record and also considering the judgment rendered by the Tribunal in the case of assessee where the claim of assessee was allowed by the Tribunal by dismissing the revenue's appeal in ITA No. 439-414/Kol/2017 treating the assessee for providing relief to the poor by allowing assessee's claim made u/s 11 of the Act. Accordingly, applying the same ratio rendered by this Tribunal we allow the instant appeal of the assessee by setting aside the order passed by the authorities below and direct the AO to allow the claim of the assessee in terms of our above direction.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27.09.2023.

Sd/-

Sd/-

(Manish Borad)  
Accountant Member

(Sonjoy Sarma)  
Judicial Member

Dated: 27.09.2023

*Biswajit*

Copy of the order forwarded to:

1. Appellant- Sasha Association For Craft Producers.
2. Respondent – ITO, Ward-1(3), Exemption, Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata