

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C": NEW DELHI  
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1871 & 1872/Del/2020  
(Assessment Year: 2016-17 and 2017-18)

DCIT, Circle-1(1), Exemption, New Delhi (Appellant) <b>PAN: AAATI0660C</b>	Vs. India International Centre, 40, Max Muller Marg, Lodhi Marg, New Delhi  (Respondent)
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Assessee by :	Shri Pradeep Dinodia, CA Shri R. K. Kapoor, Adv Shri Harish, CA
Revenue by:	Ms. Meenakshi Dohare, Sr. DR
Date of Hearing	08/11/2023
Date of pronouncement	16/11/2023

O R D E R

**PER M. BALAGANESH, A. M.:**

1. These appeals in ITA No.1871 and 1872/Del/2020 for AY 2016-17 and 2017-18, arises out of the order of the Commissioner of Income Tax (Appeals)-40, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 40/10267/2018-19, dated 23.09.2020 and in appeal No. 40/10422/2019-20 dated 23.09.2020 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.12.2018 for AY 2016-17 and 26.12.2019 for AY 2017-18 by the Assessing Officer, DCIT, Circle-1(1), New Delhi (hereinafter referred to as 'ld. AO').

2. Identical issues are involved in both the appeals and they are taken up together and disposed of by this common order for the sake of convenience.

3. The revenue has raised the following grounds of appeal :-

*"1. Whether on the facts and 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 the activities of the assessee falls within the purview of commercial activities as it had provided benefits only to selected persons and not to public at large. These activities, cannot be called as charitable activity within the purview of section 2(15) of the I.T. Act, 1961.*

*2. The Ld. CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that merely being notified u/s 10(23C)(iv) does not make assessee entitled to claim 2 exemption till it is proved that the activities carried out by it are within the scope of activities enumerated in the said section. The assessee institution is also hit by 7h provision to Section 10(23C) as the activities of sale of food and beverages and license fee etc. are the activity of profit or gain of business which is not incidental to the attainment of its objective for which it has been maintaining accounts of the said activity."*

4. We have heard the rival submissions and perused the materials available on record. At the outset, the Id AR submitted that the issue is squarely covered in favour of the assessee by order of this Tribunal in assessee's own case in ITA No. 2940/Del/2022 for AY 2018-19 dated 22.08.2023. Though this tribunal by its order was decided in the context of revision proceedings u/s 263 of the Act, the Tribunal had also adjudicated the issue on merits and also given a categorical finding that issue on merits also stands covered in favour of the assessee by the order of the Tribunal in earlier years. For the sake of convenience, the relevant operative portion of the said order of the Tribunal dated 22.08.2023 referred is reproduced herein under:-

*"3. We have heard the rival submissions and perused the materials available on record. The assessee is a society registered under the Societies Registration Act of 1860 and is strictly governed by its Memorandum of Association and Rules & Regulations. The assessee filed revised return on 03.10.2018 for the Asst Year 2018-19 declaring total income of Rs Nil after claiming exemption u/s 10(23C)(iv) of the Act. The Id. AO in the assessment proceedings on perusal of the*

*charter documents of the assessee and various details furnished from time to time that were called for by the Id. AO, concluded that the objects of the Society are wholly charitable in nature since its inception and that there is no change in the objects or the activities of the Centre right from its inception. Accordingly, the Id. AO on perusal and examination of all the details placed on record accepted the returned income of the assessee and completed the assessment u/s 143(3) of the Act on 31.03.2021. This assessment was sought to be treated as erroneous in as much as it is prejudicial to the interests of the revenue by the Id. PCIT on the following grounds:-*

*a) The scrutiny assessment for the Asst Years 2016-17 and 2017-18 were completed by invoking the proviso to section 2(15) of the Act denying the benefit of exemption u/s 10(23C)(iv) of the Act and income computed under Chapter IV of the Act. The assessment for these two years are at various stages of appeal. There is no substantial change in the financials and activities of the assessee in the year under consideration when that compared for Asst Year 2017-18 and hence the Id. AO ought not to have departed from the earlier stand taken by his for Asst Year 2017-18.*

*predecessor From the detailed questionnaire issued by the Id. AO along with notice u/s 142(1) of the Act, no query was raised with regard to applicability of proviso to section 2(15) of the Act for the assessee in Asst Year 2018-19.*

*4. Accordingly a show cause notice was issued u/s 263 of the Act by the Id. PCIT on the aforesaid two grounds. The Id. PCIT also asked the assessee to explain the various details of receipts in Asst Year 2018-19 with specific reference to applicability of proviso to section 2(15) of the Act for the said receipts. The assessee filed its reply vide submissions dated 24.06.2022 by specifically stating that specific enquiries were made by the Id. AO on the same issue. It was also submitted that the assessment framed was by Faceless unit after review by more than one authority at various stages.*

*5. The Id. PCIT stated in tabular form in Para 4.1. of his order that though the assessee had succeeded on all the issues on merits in earlier years, the appeals of the revenue are pending at various stages in High Court and Supreme Court as the case may be. Since the matter is subjudice, the Id. PCIT held that the decision of the appellate authorities including the High Courts were not accepted by the revenue. In of applicability of proviso to section 2(15) of the Act, the Id. PCIT observed that even if it is presumed that a query is raised by the Id. AO regarding the same, the eventual finding given thereon is clearly in so far as it is prejudicial to the interest of the revenue since the underlying issue is still being contested before the judicial authorities. The Id. CIT(A) had deleted the additions made in the scrutiny assessments for the Asst Years 2016-17 and 2017-18 and since further appeals were preferred by the revenue before the*

*Tribunal against those orders, the orders of the Id. CIT(A) were not accepted by the revenue. With regard to the issue of assessee claiming refund and giving details regarding the accumulation of income and amount deemed to be income u/s 11(3) from Asst Years 2004-05 to 2018-19, the Id. PCIT simply brushed aside the same by stating that the same are not relevant to the present revision proceedings u/s 263 of the Act.*

*6. The Id. PCIT re-examined all the issues pertaining to assessment again by calling for the details of all the charter documents, objects, activities carried out, tariff chart for various venues, guidelines issued by the society for usage of the facilities offered by the assessee society, catering charges etc.*

*6.1. The Id. PCIT concluded running the catering services is an independent and substantial activity of the assessee for which it is receiving significant consideration. Therefore, bookings of IIC (assessee) venue and catering need not necessarily be aligned with the stated general public utility objects of the assessee and therefore are in the nature of trade, commerce or business or providing service in relation thereto for a consideration.*

*6.2. Similarly the assessee is charging fee in the form of subscription income from members for providing certain exclusive facilities which are not otherwise available to the general public. Therefore, the subscription income of the assessee is nothing but receipts from carrying out activities in the nature of trade, commerce or business or of rendering any service in relation to any trade, commerce and business for a cess or fee or any other consideration and therefore liable to be added to its business income.*

*6.3. The Id. PCIT noted that assessee's receipts from food and beverages are Rs 1968.98 lakhs and expenditure on the material cost is Rs 611.21 lakhs thereby resulting in 222% profit over the expenditure. The assessee replied that besides the material cost, there are other expenses which are incurred such as salaries, fuel, electricity and water charges, which when directly attributed to the food receipts, there is a net loss from the catering activities. The Id. PCIT observed that assessee failed to furnish any detail demonstrating its claim.*

*6.4. The Id. PCIT noted that assessee is providing residential accommodation for the members and non-members ( as guests) of the society and had shown receipt of Rs 752.39 lakhs under the head 'Hostel Rooms' and no corresponding expenses have been claimed. Therefore the corresponding expenses have also been intermingled with other expenses and the same calls for an in depth understanding and deeper investigation into assessee's accounts.*

*Further, the differential treatment in terms of services (like library, hostel booking, dining & bar facilities are exclusively available to members and / or their guests only) as well as tariffs for members and*

*non-members imply that the main activities of the assessee are not for the benefit of public at large; but in the nature of trade, commerce or business or providing service in relation thereto for a consideration.*

*6.6. The Id. PCIT asked the assessee to prove how expenditure of Rs 3007.98 lakhs under the head 'Establishment correlates with the objects and activities undertaken. In response, the assessee submitted that it is related to salary and benefits provided to IIC employees and that all employees work in the Centre for fulfilling the objectives and activities undertaken by the Centre. The Id. PCIT noted that the assessee has not correlated this expense with its objects and activities undertaken.*

*6.7. From the aforesaid analysis, the Id. PCIT concluded that the assessee's case squarely falls within the ambit of proviso to section 2(15) of the Act and that since the aforesaid aspects were not properly examined by the Id. AO while framing the assessment, the Id. PCIT passed a revision order u/s 263 of the Act treating the order passed by the Id. AO as erroneous and prejudicial to the interests of the revenue with a direction to frame denovo assessment after proper examination of the issues raised in the revision proceedings.*

*7. At the outset, we find that the Id. AR vehemently submitted that the entire contentions raised by the Id. PCIT are already subject matter of consideration by this tribunal and also by the Hon'ble Jurisdictional High Court in assessee's own case. We find that this tribunal for Asst Year 2010-11 in ITA No. 3110/Del/2015 dated 14.01.2019 had passed an order in assessee's own case in favour of the assessee where the revision order u/s 263 of the Act passed by the PCIT on identical grounds were quashed. Moreover, the Hon'ble Jurisdictional High Court in assessee's own case had decided the issue in favour of the assessee in ITA 300/2018 dated 14.03.2018 holding the activities of the assessee to be charitable in nature. Hence on merits, the issue is already decided in favour of the assessee by the order of this tribunal in earlier years after duly considering the proviso to 2(15) of the Act. There is absolutely no reason for the Id. AO to take a divergent stand when the matters on merits are already settled by this tribunal in assessee's own case. Infact the Id. AO had followed judicial discipline, which has been completely and conveniently ignored by the Id. PCIT in the Instant case. Apart from this, we also find that the Id. AO had indeed made specific enquiries on the very same issues that were raised by the Id. PCIT in his revision order. The notices issued u/s 142(1) of the Act by various officers under faceless regime are as under::*

*a) Notice u/s 142(1) of the Act dated 22.12.2020 by National e-Assessment Centre, Delhi*

*b) Notice u/s 142(1) of the Act dated 15.10.2020 by National e-Assessment Centre, Delhi*

c) Notice u/s 142(1) of the Act dated 04.03.2021 by National e-Assessment Centre, Delhi

8. This goes to prove that sufficient enquiries were indeed made by the various assessing officers in the course of assessment proceedings under faceless regime. It is not in dispute that the assessee had indeed filed complete details regarding the queries raised by the various assessing officers. Infact most of the queries raised were even repetitive in nature and details were filed by the assessee repeatedly. Moreover, we find that the Id. AO under the faceless regime had even asked for the scrutiny assessment orders for the Asst Years 2016-17 and 2017-18 which were also filed by the assessee before him. Since the on merits were duly settled in favour of the assessee, the Id. AO by duly respecting the judicial discipline had accepted the contentions of the assessee and completed the assessment accepting the returned income. While this is so, we hold that the order of the Id. AO cannot be treated as erroneous merely because the view taken by the Id. AO is not acceptable to the Id. PCIT. Merely for substitution of a view by the Id. PCIT on matters already on record, revision proceedings u/s 263 of the Act cannot be initiated by the Id. PCIT.. Further revision proceedings u/s 263 of the Act cannot be initiated for inadequate enquiry and the same could be done only for lack of enquiry. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of Max India Ltd reported in 295 ITR 282 (SC); Malabar Industrial Co. Ltd reported in 243 ITR 83 (SC) and Hon'ble Delhi High Court in the case of DG Housing Projects Ltd reported in 343 ITR 329 (Del); CIT vs Sunbeam Auto Ltd reported in 332 ITR 167 (Del), among other decisions.

9. In view of the aforesaid observations and respectfully following the judicial precedents relied upon hereinabove, we hold that the issues raised by the Id. PCIT is already decided in favour of the assessee on merits and further since adequate enquiries were already carried out by the Id. AO in the course of assessment proceedings, the order of the Id. AO cannot be termed as erroneous and hence the revision order passed by the Id. PCIT u/s 263 of the Act is hereby Accordingly, the grounds raised by the assessee are allowed.”

5. The Id AR before us also placed a comparative chart with regard findings recorded by the Id AO for AY 2016-17 and 2017-18 (i.e. years under appeal before us) and also findings of the Id PCIT in AY 2018-19 in the revision proceedings us 263 of the Act (i.e. the appeal decided by the Tribunal in ITA No. 2940/Del/2022 dated 22.08.2023 referred supra) to drive home the point that the contentions raised by the Id PCIT for AY 2018-19 are exactly identical to the contentions raised by the Id AO for AY 2016-17 and 2017-18. For the sake of convenience,

the relevant comparative chart filed by the Id AR is reproduced herein under:-

S. No.	AO's finding in Order of AY 2016-17 passed u/s 143(3) of the Act	AO's finding in Order of AY 2017-18 passed u/s 143(3) of the Act	CIT's finding in Order of AY 2018-19 passed u/s 263 of the Act
1	The newly inserted proviso to Section 2(15) of the Act will apply only to entities whose purpose is advancement of any other object of general public utility i.e. sixth limb of aforesaid section. (P. no. 5 of Ld. AO's Order of AY 2016- 17)	The proviso applies only if an institution is engaged in advancement of any other object of general public utility. (P. no. 5 of Ld. AO's Order of AY 2017-18)	The activities of the assessee qualifies under advancement of any other object of general public utility . (P. no. 40 of Ld. CIT's Order of AY 2018-19)
2	The assessee is in receipt of income from subscription, hostel room, food & beverages, receipt for use of centre's facilities, license fee, interest income and other income. (P. no. 5 of Ld. AO's Order of AY 2016- 17)	The assessee is in receipt of income from subscription, hostel room, food & beverages, receipt for use of centre's facilities, license fee, interest income and other income. (P. no. 4 of Ld. AO's Order of AY 2017-18)	The assessee is in receipt of income from subscription, hostel room, food & beverages, receipt for use of centre's facilities, license fee, interest income and other income. (P. no. 20 of Ld. CIT's Order of AY 2018-19)
3	The assessee was asked to explain as to how it is not covered by proviso to section 2(15) of the Act. (P. no. 5 of Ld. AO's Order of AY 2016-17)	The assessee was asked to justify that you are not engaged in any commercial activity. (P. no. 4 of Ld. AO's Order of AY 2017- 18)	The assessee was required to demonstrate how its activities are charitable in nature as per amended provisions of Section 2(15) of the Act. (P. no. 2 of Ld. CIT's Order of AY 2018- 19)
4	The assessee submitted that its activities are not driven by profit-making, which is an essential ingredient to hold the activity as being in pursuance of business or trade with a profit motive. (P. no. 5 of Ld. AO's Order of AY 2016- 17)	The assessee submitted that its activities are not driven by profit-making, which is an essential ingredient to hold the activity' as being in pursuance of business or trade with a profit motive. ( P. no. 4 of Ld. AO's Order of AY 2017-18)	The assessee submitted that assessee undertaking charitable activities and have not been engaged in any activity in the nature of trade, commerce. (P. no. 6 of Ld. CIT's Order of AY 2018-19)
5	The Ld. AO stated that receipts of the assessee from subscription income and income from hostel rooms, food & beverages exceeds 20% of total income received. (P. no. 5 of Ld. AO's Order of AY 2016- 17)	The Ld. AO stated that receipts of the assessee from subscription income and income from hostel rooms, food & beverages exceeds 20% of total income received. (P. no. 8 of Ld. AO's Order of AY 2017-18)	The Ld. AO held that assessee has also violated the limit of twenty' per cent of the total receipts. (P. no. 40 of Ld. CIT's Order of AY 2018-19)
6	The Ld. AO held that claim of assessee that its activities are not on commercial lines is not tenable and proviso to section 2(15) of the Act is being invoked. (P. no. 5 of Ld. AO's Order of AY 2016- 17)	The Ld. AO held that claim of assessee that its activities are not on commercial lines is not tenable and proviso to section 2(15) of the Act is being invoked. (P. no. 8 of Ld. AO's Order of AY 2017-18)	The Ld. AO held that the assessee is hit by the proviso to the section 2(15) of the Act. (P. no. 40 of Ld. CIT's Order of AY 2018-19)
Prayer: It is prayed before your honour that the issues / appeals raised by the department in both the AY's viz. 2016-17 & 2017-18 are fully covered by the order of the Hon'ble ITAT passed against the order of CIT u/s 263 of the Act in the assessee's own case for AY 2018-19 and the same may kindly be dismissed.			

6. When this was confronted to the Id DR, it was submitted that though the issue is covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court, the Special Leave Petition filed by the revenue before the Hon'ble Supreme Court is pending and accordingly the Id DR relied on the orders of the Id AO for both the years under consideration. We find that the order of the Hon'ble Jurisdictional High court and this Tribunal passed in assessee's case has not been stayed by the competent authority and hence they rule the field as on date. Since the issue stands covered on merits by the

order of this Tribunal in assessee's own case for AY 2018-19 referred (supra) and the facts are exactly identical in AY 2016-17 and 2017-18, we do not deem it fit to deviate from the findings recorded by this Tribunal for AY 2018-19 on merits. Accordingly, grounds raised by the revenue are dismissed.

7. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 16.11.2023.

Sd/-  
**(ANUBHAV SHARMA)**  
**JUDICIAL MEMBER**

Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 16/11/2023  
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR  
ITAT, New Delhi