

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 6780 and 6781/Del/2017
(Assessment Year: 2013-14 and 2014-15)

ACIT(E), Circle-2(1), New Delhi	Vs.	National Internet Exchange of India, Flat NO. 6C, 6D, 6E, 6 th Floor, Hansalya Building, 15, Barakhamba Road, New Delhi PAN: AABCN9308A
(Appellant)		(Respondent)

Revenue by :	Shri Bhopal Singh, Sr. DR
Assessee by:	Shri Ranjan Chopra, CA
Date of Hearing	11/01/2020
Date of pronouncement	11/01/2021

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. ITA No. 6780/Del/2017 is filed by the ACIT(E), Circle-2(1), New Delhi (Id AO) against the order of the Id CIT(A)-40, Delhi dated 28.08.2017 for the Assessment Year 2013-14, allowing the appeal of the assessee Now Id Ao raised following grounds :-

- "1. *On the basis of facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the activities of the assessee are not charitable in nature and the assessee is not eligible for exemption u/s 11 of the I.T. Act, 1961.*
2. *On the basis of facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the assessee is rendering specific services to its member and charging fee from them which is liable to be taxed under the head " Profit & Gains of Business and Profession" and as such, its activities are not in charitable nature."*

2. The second appeal in ITA No. 6781/Del/2017 is also filed by The Id AO against the order of the Id CIT(A)-40, Delhi for Assessment Year 2014-15 raising following grounds of appeal:-

"1. *On the basis of facts and circumstances of the case and ip law, the Ld. CIT(A) has erred in ignoring the fact that the activities of the assessee are not charitable in nature and the assessee is not eligible for exemption u/s 11 of the I.T.Act,1961.*

2. *On the basis of facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the assessee is rendering specific services to its member and charging fee from them which is liable to be taxed under the head " Profit & Gains of Business and Profession" and as such, its activities are not in charitable nature."*

3. In both the appeals, the issue is identical which has been challenged by the Id AO. The facts shows that the assessee is a section 25 company incorporated under the Companies Act, 1956. It is also registered u/s 12 A vide order dated 31.03.2009. The main object of the assessee company are as under:-

- i. To protect and promote the interest of internet Services providers of India in a manner that interest of the internet consumers at large is protected and they are benefited.
- ii. To set up national level, internet peering points for interconnecting Internet Services Provider all over India.
- iii. To enable routing and Exchange of domestic Internet traffic within the country.
- iv. To improve the quality of Internet Services and save foreign exchanges.
- v. To carry on Internet Domain Name Operations and Related Activities which includes-
 - a) Set up In Network Information Centre (INNOCENT) as an autonomous unit for In Domain registration.
 - b) Operate IN Registry as a Non-for-Profit organization.
 - c) IN Registry will function as an autonomous body, accountable to the Government on all policy matters and its satisfactory implementation.
 - d) Maintain IN domain name and ensure its popularity, operational stability, reliability and security.
 - e) Carry out the registration of the domain name through Registrars to be appointed by it.

f) Implement effective Dispute Resolution Policy.”

4. The assessee is engaged in carrying out running of internet exchange and registration of domain name. For running of internet exchange, the assessee is charging membership fees, connectivity charges, data transferred differential. For registration of domain name, the assessee the charges registration charges. The assessee also claimed mutuality on the ground that the assessee was providing internet services to various ISPs who are members and other income/charges are received members only. The Assessing Officer compared receipts of the assessee and found that the assessee has accumulated approximately Rs. 109 crores of surplus which was lying in the reserve fund. It was also noted that the objects of the assessee fall within category of “advancement of general public utility” which were pursued by the assessee through setting up of internet exchanges at four metro locations and setting up, operating and maintaining IN registry, involving registration of IN domain. The Assessing Officer discussed changes made in the Income Tax Act through various amendments in respect of charitable organizations and held that proviso to section 2(15) is applicable and that the assessee is hit by the proviso to section 2(15). It was also held that the assessee is not covered by the principle of mutuality also. It was also held that the assessee is doing activities on commercial lines and that such activities are in the nature of business and that such business cannot be incidental to the objects as provided section 2(15) since the assessee is hit by the proviso section 2(15). Accordingly, the surplus generated from business activities of the assessee was held to be liable to tax under section 164 of the act.
5. In Assessment Year 2013-14 the assessee filed return of income on 31.10.2013 and for Assessment Year 2014-15 it filed return of income on 30.09.2014. For Assessment Year 2013-14 the Id AO passed an order wherein, exemption to the assessee was denied stating that the assessee is carrying on the business and hit by the proviso in section 2(15) w.e.f. 01.04.2009. The Id AO was of the view that the assessee is carrying the general object of public utility and is receiving the fees more than Rs. 10

lakhs. Therefore, he held that the assessee is doing activities on commercial lines, which are in the nature of business. This business cannot be incidental to the object and therefore, it is hit by the proviso to section 2 (15) of the Act. He therefore, held that benefit of section 11(4A) would not be available to the assessee and the surplus generated from the business activities of the assessee amounting to Rs. 278986646/- is liable to be taxed u/s 164 of the Act. Accordingly, the total income of the assessee was assessed at Rs. 27,89,86,646/-.

6. The assessee-preferred appeal before the Id CIT (A) who decided the issue in favour of the assessee by following the decision of the coordinate bench in case of the assessee's itself for Assessment Year 2012-13. He held that the assessee is not involved in trade, commercial or business therefore, he directed the Id AO to allow the exemption u/s 11(1) of the Act. Thus, he allowed the appeal of the assessee and the Id AO is aggrieved in this appeal. The facts are also identical for Assessment Year 2014-15.
7. The Id DR vehemently supported the order of the Id AO.
8. The Id AR submitted that the issue is squarely covered by the decision of the Coordinate bench dated 26.12.2017 in ITA NO. 2468, 2469/Del/2016 in assessee's own case for Assessment Year 2010-11 and 2012-13. He further stated that for Assessment Year 2009-10 the order of the coordinate bench in ITA No. 277/Del/2014 dated 17.11.2016 for Assessment Year 2009-10 was also decided by the Honourable high court and the appeal of the revenue stands dismissed. He submitted that the order of ITAT for Assessment Year 2009-10 was also challenged before the Hon'ble Delhi High Court by the revenue wherein, Hon'ble High Court vide order dated 09.01.2018 in ITA No. 521/2017 dismissed the appeal of revenue. He further stated that for Assessment Year 2010-11 also, the Hon'ble High Court in ITA No. 133/2019 dated 30.04.2019 has taken the identical view and dismissed the appeal of the revenue. He therefore, submitted that the issue is squarely covered in favour of the assessee.
9. We have carefully considered the rival contentions and perused the orders of the lower authorities. We have also perused the orders of the

Hon'ble Delhi High Court dated 30.04.2019 in ITA No. 133/2019 for Assessment Year 2010-11 and order of the Hon'ble High Court dated 09.01.2018 in ITA NO. 521/2017 dated 09.01.2018 for AY 2009-10 where in Hon. High court has dismissed the appeal of the revenue. In view of this, it is clear that the issue in the case of the assessee is squarely covered in favour of the assessee by the order of the Hon'ble High Court in assessee's own case for Assessment Year 2009-10 and 2010-11. Therefore, respectfully following the orders for both the years appeals of the revenue are dismissed.

10. Accordingly, both the appeals are dismissed.

Order pronounced in the open court on 11/01/2021.

-Sd/-
(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 11/01/2021
A K Keot

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

ASSISTANT REGISTRAR
ITAT, New Delhi