

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, DELHI**

**BEFORE SH. SUDHIR KUMAR, JUDICIAL MEMBER
AND
SH. NAVEEN CHANDRA, ACCOUNTANT MEMBER**

ITA No.1841/DEL/2024
Assessment Year: 2020-21

DCIT(E) Circle – 1 (1) New Delhi	Vs.	Aroh Foundation, THAN Singh Nagar, Anand Prabat Delhi, New Delhi PAN No.AAATA7067P
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Javed Akhtar, CIT DR
Respondent by	None

Date of hearing:	06/02/2025
Date of Pronouncement:	19/02/2025

ORDER

PER SUDHIR KUMAR, JUDICIAL MEMBER:

This appeal by the revenue is directed against the order of the National Faceless Appeal Centre [hereinafter referred to as “NFAC”] vide order dated 21.02.2024 pertaining to A.Y. 2020-21 pertaining to arises out of the assessment order dated

22.09.2022 of the Income – tax Act, 1961 [hereinafter referred as ‘the Act’].

2. The grievance of the revenue reads as under :-

1. a) *"Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in allowing the benefit of section 11 and 12 of the Act on the receipt of Rs. 3,95,,67,783/- as the same is in the nature of Consultancy Receipts and Contractual Receipts which is more than twenty percent of the gross receipts as per the provision of section 2(15) of the Act as appearing from the records and the submission of the assessee?"*

2. b) *Whether on the facts and circumstances of the case the Ld. CIT(A) is right in justifying where the activities carried out by the appellant should fall under the mischief of proviso to section 2(15) of the Act or not, has be decided in view of the parameters specified in the judgment of Hon'ble Supreme Court in the case of Ahmedabad Urban Development authority.*

3. *c) The appellant crave leave to add, to alter or amend any grounds any grounds of appeal raise above at the time of hearing.*

3. The brief facts of the case are that the assessee is a registered society who filed its return of income on 12.01.2021 declaring nil income. The assessment was completed u/s. 143 (3) of the Act r.w.s. 144B of the Act vide order dated 22.09.2022 and AO re-computed the income of the assessee and assessed the income of Rs.13,15,55,954/- accordingly completed the assessment order.

4. Aggrieved by the order of the AO assessee has filed the appeal before the CIT(A) who vide order dated 21.02.2024 partly allowed the appeal of the assessee against which the department is in before the Tribunal.

5. The Ld. DR has relied upon the order of the AO submitted that the addition made by the AO was wrongly deleted by the Ld. CIT(A).

6. The Ld. CIT(A) relying the decision of the Hon'ble Delhi High Court of Delhi of assessee's own case for A.Y. 2017-18 in the case of **Aroh Foundation Vs. Commissioner of Income Tax Exemption** has deleted the addition made by the AO. The

department has admitted that the department has not filed any appeal against that order of the Ld. CIT(A), so that order becomes final. The ld. CIT(A) in his order has observed as under:

“5.2.4 The appellant has relied on the decision of hon'ble High Court of Delhi in it's own case of 2017-18 which is similar to this case and submitted that:

"3.8. It is to be noted that the Hon'ble High Court in its order dated 05th Feb 2024 in the case of 'Aroh Foundation vs Commissioner of Income Tax Exemption held that-

"We, prima facie, find no merit in the abovementioned rationale as firstly, that alone cannot be the basis to conclude the aforesaid receipt to be considered under the category of consultancy fees and contractual income. Secondly, there is no element of activity in the nature of trade, commerce or business, or any activity or rendering any service in relation to any trade, commerce or business. Thirdly, in absence of any cogent reason, receipts in question cannot be 'advancement of any other object of general public utility.

If the deductor in its Income Tax Return, under misconception, deducts TDS under Sections 1940 and 194J of the Act, the same would not disentitle the assessee to claim benefit under Sections 11 and 12 of the Act unless the case of assessee is specifically hit by the Proviso of Section 2(15) of the Act, which is not the case here. The Proviso to Section 2(15) of the Act would not get attracted merely on the basis of deduction of TDS by the donor under a particular head."

3.9. In view of the above-mentioned facts of the Foundation, we hereby clarify that the Foundation is not doing any kind of trade, commerce or business as it is totally implementing government-oriented projects for skill development for the benefit of general public at large.

3.10. It was further submitted that the mere fact that certain organisations who have provided the funds to the foundation have deducted tax cannot lead to the conclusion that the foundation is engaged in business activities for profits."

5.2.5 The submission of the appellant has been perused. The appellant has submitted the copy of the order of Hon'ble High Court of Delhi W.P.(C) 4365/2021 dated 05.02.2024. Hon'ble High Court has allowed in the appellant's case against the Commissioner of Income Tax Exemption for the year 2017-18 and permitted exemption for charitable purpose. The relevant para of the aforesaid order is as under:

"27. It is thus seen that deduction of TDS by donor would be the determinative factor for denial of benefits under section 11 and a2 of the Act. The respondent-Revenue, in the instant case, in the preceding years as well as in the succeeding years, under almost similar circumstances, has accepted the exemption claimed by the assessee under section 11 and 12 of the Act and, therefore, should not have deviated from its consistent approach in denying benefits to the assessee.

32. The writ petition is accordingly allowed and the impugned orders are hereby, set aside. The receipts of Rs. Rs.5,90,42,892/-shall not be treated as income and the

assessee is entitled for exemptions enshrined under section 11 and 12 of the Act."

5.2.6 From the perusal of the submissions of the appellant and the order appealed against it is observed that the case of the appellant is squarely covered by the judgment of the Hon'ble High Court of Delhi in the similar case of appellant of 2017-18. Accordingly respectfully following the aforesaid judgment of the hon'ble High Court of Delhi it is held that the appellant is entitled for exemption u/s. 11 and 12 of the Income Tax Act.

7. We have heard the arguments of ld. DR and perused the material available on record. On perusal of the order of the CIT(A), it reveals that the addition made by the AO was deleted by the CIT(A) relying on the judgment of Hon'ble Delhi High Court in assessee's own case for A.Y. 2017-18. The Ld. CIT(A) has rightly held that the instant case is squarely covered by the judgment of the Hon'ble High Court of the assessee's own case. The Ld. CIT(A) has rightly deleted the addition made by the AO. We do not find any reasons to interfere with the findings of the Ld. CIT(A). The appeal has no force and liable to be dismissed.

8. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 19.02.2025.

Sd/-
(NAVEEN CHANDRA)
ACCOUNTANT MEMBER

Neha, Sr. PS

Date: 19.02.2025

Copy forwarded to:

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

Sd/-
(SUDHIR KUMAR)
(JUDICIAL MEMBER)

ASSISTANT REGISTRAR
ITAT DELHI