

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No. 1130/DEL/2016
[A.Y 2011-12]

The D.C.I.T.
Circle - 1
Dehradun

Vs.

India Olympic Association
Olympic Bhavan, B -29
Qutub Institutional Area
New Delhi

PAN : AAATI 3010 J

[Appellant]

[Respondent]

Date of Hearing : 16.07.2018
Date of Pronouncement : 19.07.2018

Assessee by : Shri Hiren Mehta, CA
Revenue by : Shri Vijay Varma, CIT- DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue is preferred against the order of the
Commissioner of Income Tax [Appeals] - 40, New Delhi dated
31.12.2015 pertaining to A.Y 2011-12.

2. Grievances of the Revenue read as under:

- “1. On the facts and in the 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 though the objects of the assessee seem to be charitable, but the activities carried out by the assessee are commercial in nature.
2. On the facts and in the 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 when deduction is allowed in respect of capital expenditure, no depreciation is allowed on the same assets as this will lead to double deduction.
3. On the facts and in the 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 without prejudice to denial of exemption u/s 11 & 12 of the Act to the assessee by the AO for invoking first proviso to section 2(15) of the Act, provisions of section 11, 12 & 13 of the Act do not envisage set off of deficit /excess expenditure of earlier assessment years and the income of the current year”

3. The representatives of both the sides were heard at length. The case records carefully perused and with the assistance of the Id. Counsel, we have considered the documentary evidences brought on record in the form of Paper Book in light of Rule 18(6) of ITAT Rules. Judicial decisions relied upon were carefully perused.

4. Briefly stated, the facts of the case are that the assessee was registered under the Societies Act, 1860 on 12.06.1965. The assessee-society is also granted registration u/s 12A of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] vide order dated 20.08.2002 and also u/s 80G(vi) of the Act from 01.04.2008 to 31.3.2011. The assessee is an Apex sports body for selecting athletes to represent India at Olympic Games, Asian Games and other international athlete meets at these events. The activities of the assessee include organizing sports activities under the aegis of Ministry of Youth Affairs and Sports, Government of India and International Olympic Association. Utilisation certificates were regularly submitted by IOA in connection with such grants. While scrutinising the return of income for the year under consideration, the AO was of the firm belief that there has been significant amendment w.e.f. 1.4.2009 in the definition of 'charitable purposes' laid down in section 2(15) of the Act. The AO was also of the firm belief that promotion of sports per se did not find direct mention in the definition of 'charitable purposes' in section 2(15) of the Act.

5. The AO was of the opinion that the assessee has carried out the activities for the purposes of general public utility in the nature of trade, commerce or business. The basis for this belief is the receipt of

income from sponsorship amounting to Rs. 86 lakhs received from M/s Samsung India Electronics Pvt Ltd for 2010 Asian Games and 2010 Youth Olympic Games.

6. The AO further formed a belief that this transaction of the assessee is in the nature of rendering services in relation to business of Samsung in lieu of consideration from Samsung India Electronics Pvt. Ltd.

7. After considering the agreement with M/s Samsung India Electronics Pvt Ltd, the AO was convinced that proviso to section 2(15) of the Act squarely applies and hence does not fall within the category of 'charitable organization'. Accordingly, benefit u/s 11/12 of the Act was denied to the assessee.

8. On further probe, the AO noticed that the assessee has claimed depreciation on the assets which have already been claimed as an application of income. The AO was of the belief that this amounts to double deduction and accordingly denied claim of depreciation.

9. Aggrieved, the assessee carried the matter before the first appellate authority and reiterated that the proviso to section 2(15) of the Act does not apply in the case of the assessee and the AO has wrongly denied claim of exemption u/s 11/12 of the Act.

10. After considering the facts and submissions and after drawing support from various judicial decisions, the CIT(A) was convinced that the assessee is a 'charitable organization' and proviso to section 2(15) of the Act do not apply. The CIT(A), accordingly, directed the AO to allow benefit u/s 11/12 of the Act.

11. On the denial of depreciation, the CIT(A) was once again convinced with the contention of the assessee and directed the AO to allow depreciation.

12. Aggrieved by this, the Revenue is before us.

13. The ld. DR strongly supported the findings of the AO and through his written submissions, the ld. DR explained the history of section 2(15) of the Act since its inception i.e., from the Act of 1922. It is the say of the ld. DR that in the earlier years, the dominant and prime object was relevant but post amendment, the dominant object is no

more relevant and the first appellate authority has grossly erred in allowing relief to the assessee by considering dominant purpose, making the order erroneous and against the judicial decisions.

14. Per contra, the ld. AR supporting the findings of the CIT(A) reiterated what has been stated before the lower authorities.

15. We have given thoughtful consideration to the orders of the authorities below. The only reason for denying the claim of exemption is proviso to section 2(15) of the Act.

16. Section 2(15) as it stood in the statute after the repeal of the 1922 Act read as under:

“Section 2(15) - “Charitable purpose” includes relief of the poor, education, medical relief and the advancement of any other object of general public utility not involving the carrying on of any activity of profit. This provision remained unchanged till its amendment by the Finance Act, 1983 and with effect from 1.4.1984 “not involving the carrying on of any activity of profit” was omitted. The Section remained unchanged till it was amended by the Finance Act, 2008 w.e.f 1.4.2009. This means that till the amendment brought by the Finance Act, 2008 the

Revenue was convinced that the assessee-trust was not carrying out any commercial activity in the garb of charitable purpose. The activities of the trust were genuine and were for the charitable purpose.”

17. Now let us consider the provisions of Sec. 2(15) as they stand now.

“charitable purpose” includes relief of the poor, education, medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest]and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or 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:

[Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is (twenty five lakh rupees) or less in the previous year].

18. This proviso was added only in respect of the last limb of the provisions of Sec. 2(15) which relates to the advancement of any other object of general public utility shall not be a charitable purpose if it involves carrying on of an activity in the nature of trade, commerce or business for a cess or fee. The second limb is not relevant to the fact under consideration. A close perusal of the aforementioned proviso shows that the spirit of the section is same as per the section 2(15) as it stood prior to the amendment brought by Finance Act, 1983 as mentioned hereinabove.

19. All that has to be decided now is whether the sponsorship contract with Samsung India Electronics Pvt. Ltd constitutes carrying on of any activity in the nature of trade, commerce or business, which activities the trust is carrying on prior to the amendment brought by Finance Act, 1983.

“General” means pertaining to whole class,

“Public” means the body of people at large including any class of the public,

“Utility” means usefulness.

20. Therefore, the advancement of any object of benefit to the public or a section of the public as distinguished from individual and group of individuals would be a charitable purpose. An object of public utility need not be an object in which the whole of the public is interested. It is sufficient if well defined section of the public benefits by the objects which means that the expression “object of general public utility” is not restricted to objects beneficial to the whole mankind. An object beneficial to a section of the public is an object of general public utility. In the case of CIT Vs Swastik Trading Co. Ltd. 113 ITR 852, the Hon’ble Gujarat High Court has held that establishing and maintaining Gaushalas and Panjrapole constitutes charitable purpose.

21. The Hon’ble Finance Minister while presenting the Finance Act 2008 in his budget speech stated as follows:

“Charitable purpose includes relief of the poor, education, medical relief and any other objects of general public utility. These activities are tax exempt as they should be. However, some entities carrying on regular trade, commerce or business or providing services in relation to any trade, commerce or business and earning incomes have sought to claim that their purpose would also fall under “charitable purpose”. Obviously, this was

not the intention of the Parliament and hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected.”

22. Thus, the intention of the Hon’ble Finance Minister was only to exclude from exemption, entities carrying on business and earning incomes for which exemption was claimed on the basis that the purpose would fall under charitable purpose.

23. The CBDT Circular No. 11/2008 dated 19.12.2008 has explained the implications arising from the amendment brought to the provisions of Sec 2(15) of the Act. The CBDT clarifies that the newly inserted proviso to Sec. 2(15) will not apply in respect of the first three limbs of Sec. 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 is incidentally involves the carrying on of commercial activity. The Board further clarified that “the newly inserted proviso to Sec. 2(15) will apply only to entities whose purpose is advancement of any other object of general public utility i.e. 4th limb of the definition of the charitable purpose contained in Sec. 2(15). The Circular further clarified “in the final analysis, whether the assessee has for its objects

the advancement of any other object or general public utility is a question of fact. If such assessee is engaged in any activity in the nature of trade, commerce or business or renders any service in relation to trade, commerce or business, it would not be entitled to claim that its object is charitable purpose. In such a case, the object of general public utility will be only a mask or device to hide the true purpose which is trade commerce or business or the rendering of any service in relation to trade, commerce or business. Each case would therefore be decided on its own facts and no generalization is possible.

24. Thus, even the CBDT does not lay down any guidelines for determining whether the entity is carrying on any commercial activity. Each case would therefore to be decided on its own facts and as the CBDT has clarified generalization is not possible.

25. Coming back to the objects of the impugned association, the fundamental or dominant function of the association is to represent the country in international forums. Associations of different disciplines in sports in India are members/affiliated to IOA. In furtherance of its activities, the association not only requires grants from the Government, but on many occasions sponsorships. This

cannot be an activity by itself amounting to carrying on of any business, trade or commerce. The impugned association is engaged in multi level activities of diverse nature but the primary and dominant activity is promoting sports activities not only in India but also in international forum. The impugned association would not lose its character of charitable purpose merely because some sponsorship was accepted.

26. In the case of Sole Trustee, Loka Shikshana Trust v. Commissioner of Income-tax 101 ITR 234, the Hon'ble Justice J. Baig speaking for the Apex Court thus said that:

“If the profits must necessarily feed a charitable purpose, under the terms of the trust, the mere fact that the activities of the trust yield profit will not alter the charitable character of the trust. The test now is, more clearly than in the past, the genuineness of the purpose tested by the obligation created to spend the money exclusively or essentially on charity”.

27. The test for carrying on of any activity in the nature of trade, commerce or business as mentioned in the first proviso to Sec. 2(15) would be satisfied if profit making is not the real object. The Hon'ble Delhi High Court in the case of ICAI Vs Director General of Income Tax

(Exem) 347 ITR 99 had the occasion to consider the grievance of the ICAI which was denied exemption u/s. 10(23C)(iv) of the Act because in the opinion of the DGIT (Exem.) the institute was holding coaching classes and therefore was not an educational institution, consequently the institute was covered under the last limb of charitable purpose i.e. advance of any other object of general public utility in the light of the amendment brought o Sec. 2(15) of the Act as the institute was charging fees for conducting coaching clauses and making huge money in a systematic and organized manner. Considering the facts in the light of the amended provisions of Sec. 2(15), the Hon'ble Delhi High Court held that the order denying the exemption was not valid.

28. Reliance by the ld. DR on various decisions to buttress his submissions are misplaced in as much as the dominant activity cannot be brushed aside lightly even after the amendment.

26. After considering the entire facts in totality in the light of discussion hereinabove and also drawing support from the speech of the Finance Minister and subsequent clarification issued by the CBDT within the framework of amended provisions of section 2(15) of the Act, in our considered opinion, there was no material which may

suggest that the assessee association was conducting its affairs solely on commercial lines with the motive to earn profit. There is also no material which could suggest that the assessee association has deviated from its objects which it has been pursuing since past many decades. In our humble opinion and understanding of law, proviso to section 2(15) of the Act is not applicable to the facts of the case and the assessee-association deserves benefit u/s 11/12 of the Act. We, therefore, do not find any reason to interfere with the findings of the first appellate authority. Ground No. 1 is accordingly dismissed.

27. Next grievance relates to allowance of depreciation.

28. This issue is now well settled in favour of the assessee and against the Revenue by the judgment of the Hon'ble Supreme Court in the case of Rajasthan and Gujarat Charitable Foundation 402 ITR 441 wherein the Hon'ble Supreme Court has held that even though the expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes u/s 11A(1) of the Act, yet depreciation would be allowed on assets so purchased. Ground No. 2 is, accordingly, dismissed.

29. Grievance raised vide Ground No. 3 is related to and consequential to the grievance raised vide Ground No. 1.

30. Since vide Ground No. 1 we have directed the AO to allow benefit of exemption u/s 11/12 of the Act, the AO is directed accordingly.

31. In the result, the appeal of the Revenue in ITA No. 1130/DEL/2016 is dismissed.

The order is pronounced in the open court on 19.07.2018.

Sd/-

**[KULDIP SINGH]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 19th July, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	17-18/07/2018
Date on which the typed draft is placed before the dictating Member	18.07.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	