

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA Nos.-6771 & 6772/Del/2017
(Assessment Years: 2013-14 & 2014-15)**

ACIT(E),
Circle 1(1)
Room No. 2418, 24th Floor,
E-2, Pratyaksh Kar Bhawan,
Dr. Shyam Prasad Mukherjee
Civic Centre, J.L.N. Marg,
New Delhi.

Vs. India International Centre
40, Max Mueller Marg,
Lodhi Estate, New Delhi.

Appellant

**PAN No. AAAT10660C
Respondent**

Revenue by Ms. Sunita Singh, CIT DR
Assessee by Sh. R.K. Kapoor, Adv.

Date of hearing: 30.12.2020
Date of Pronouncement : 30.12.2020

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the orders of the Commissioner of Income Tax (Appeals) - 40, Delhi ("Ld. CIT(A)") in the case of India International Centre ("the assessee"), for the assessment years 2013-14 and 2014-15, Revenue preferred these appeals on identical grounds.

2. Brief facts of the case are that the assessee is an institution came into existence by way of creation of a trust vide Trust Deed dated 23.05.1961, and

has been engaged in cultural and intellectual activities, like conducting seminars, talks, discussions and cultural activities. Its objectives include, exchanging knowledge thereof, and by providing such other facilities as would lead to their universal appreciation; to undertake, organize and facilitate study courses, conferences, seminars, lectures and research in matters relating to different cultural patterns of the world; to undertake, facilitate and provide for the publication of news-letters, research papers and books and of a journal for the exposition of cultural patterns and values prevailing in different parts of the world; to establish and maintain libraries and information services to facilitate the study of world cultures and spreading information in regard thereto; to constitute or cause to be constituted regional centres at convenient places in India to promote the objectives of the Society; to co-operate with approved institutions and interested bodies for the purposes of helping the cause of understanding amongst peoples of different cultures; to organize and maintain as far as possible on no-profit no-loss basis, limited residential accommodation, with cultural and educational amenities, for the members of the society coming to participate in the activities of the Society and of other bodies with cognate objectives, as well as non-members specially invited to participate in the activities of the Society; to invite, as and when feasible, cultural leaders, scholars, scientists and creative artists, who may or may not be members of the Society, to take advantage of the facilities offered by the society.

3. During the scrutiny of returns of income for the assessment years 2013-14 and 2014-15, learned Assessing Officer found that though the taxable income as per Audit Report in Form No 10BB works out to Nil, and in its return filed in ITR-7, the assessee has shown only income from other sources and

claimed the same to be exempt u/s. 10(23C)(iv), but so far as the surplus/deficit in respect of Income/Expenditure other than that reported in Form No.10BB is concerned, both the return of income as well as the form No. 10BB are silent. Learned Assessing Officer further found that the activities of the assessee are hybrid, partly covered by provisions of section 10(23C)(iv) read with Section 2(15) and partly by principle of mutuality. According to the learned Assessing Officer, an assessee can have income from different heads or income from different sources, but it cannot have its income and expenditure from the same source apportioned on the basis of different principles, as claimed by the assessee, and, therefore, the assessee cannot be allowed to compartmentalize its activities and income arising there from, under charitable activities and mutual activities, since all the activities have to be seen in the totality. Learned Assessing Officer further observed that while the cultural and intellectual activities of the assessee are open to general public the accommodation and related activities are restricted only to its members as well as non-members specially invited to participate in the activities of the Society and, hence there is not complete identity between the contributors and participators and thus the assessee cannot be considered to be covered by the principle of mutuality.

3. By taking into consideration the entire activities of the assessee, learned Assessing Officer observed that these also include providing of services, such as accommodation, food & beverages etc for payment of charges, covered by proviso 1 & 2 to Section 2(15) read with 3rd proviso to section 143(3) of the Income Tax Act. 1961. On this premise, learned Assessing Officer held that the claim of the assessee that its activities are not on commercial lines is not tenable and provisions of proviso 1 & 2 to section 2(15)

read with 3rd proviso to Section 143(3) of the Act have to be invoked. Consequently learned Assessing Officer denied the exemption u/s 10(23C)(iv) and computed the income of the assessee under Chapter IV of the Act.

4. As against these orders, assessee preferred appeal. By way of impugned orders, learned CIT(A) has granted relief to the assessee because the reasons for not granting relief to the assessee u/s 10(23C)(iv) of the Income Tax Act by the learned Assessing Officer in the Assessment Orders for Assessment Years 2013-14 and 2014- 15 are identical as had been raised by the earlier Assessing Officers in the Assessment Orders of earlier years, and in respect of the earlier years basing on the orders for the assessment years 2011-12 and 2012-13 in assessee's own case by his predecessor and also by the Tribunal.

5. Revenue is, therefore, before us in these appeals and it is argued 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, and these activities cannot be called as charitable activity within the purview of Section 2(15) of the Act; that being notified u/s. 10(23C)(iv) does not make assessee entitled to claim exemption till it is proved that the activities carried out by it are within the scope of activities enumerated in the said section, and the assessee institution is also hit by 7th proviso 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 for the said activity; and that allowance of depreciation on the fixed assets acquisition of which has been allowed as application of income in earlier years will tantamount to double deduction.

6. Per contra, Ld. AR submitted that when the Ld. CIT(A) followed the earlier editions of the Hon'ble Delhi High Court and also the Tribunal, without establishing any change in the facts are law, it is not open for the Revenue to contend that the CIT went wrong in granting relief to the assessee. Copies of the orders are produced before us.

7. We have gone through the record in the light of the submissions made on either side. Record reveals that the main reasons of denying exemption u/s 10(23C)(iv) of the Income Tax Act by the learned Assessing Officer is that the activities of the assessee Trust are hit by the proviso to section 2(15) of the Act and according to the learned Assessing Officer, assessee's activities of providing food and beverages, accommodation against which charges are made from the members and non-members constitute commercial activities and therefore according to the Assessing Officer, the activities of the assessee Trust are not governed by the proviso to section 10(23C)(iv) of the Act. Ld. Assessing Officer has also noted that although the assessee claims that it is working on "no profit and no loss basis", yet the income and expenditure account of the assessee Trust reveals that it earning surplus year after year.

8. It is not in dispute that the reasons for denying the exemption by the learned Assessing Officer in 2013-14 and 2014-15 or identical to the reasons recorded for earlier years, namely, Assessment Year 2009-10 by the learned DIT in his order u/s 263 of the Income Tax Act and thereafter, on the identical grounds and by making similar observations the exemption has been denied. It is also not in dispute that the order u/s 263 for the Assessment Year 2009-10 was quashed by a coordinate Bench of this Tribunal in ITA No. 3124/Del/2014 vide its order dated 11.05.2015 wherein it was held that the activities of the Trust of providing accommodation and food and beverages etc. does not

constitute commercial activities and activities of the Trust are not hit by any proviso to section 2(15) of the Act. There is no denial of the fact contended by the Ld. AR that though Revenue carried the matter in appeal to the Hon'ble Delhi High Court, such an appeal was dismissed by Hon'ble High Court. Further there is no denial of the contention of the assessee that the order of the Tribunal for the Assessment Year 2009- 10 was followed another Bench of this Tribunal in Assessment Year 2011-12 in ITA No. 5288/Del/2015 by order dated 09.10.2017, against which the Revenue challenged before the Hon'ble Delhi High Court and it was dismissed vide order dated 14.03.2018 in ITA No. 300 of 2018. Appeal against the order order of Hon'ble Delhi High Court to the Hon'ble Supreme Court in SLP was also dismissed by the Hon'ble Supreme Court in Civil Appeal No. 12034 of 2018 vide its order dated 17.01.2020 due to low tax effect.

9. It is, therefore, clear that the findings given in Appeal No. 3124/D/2014 for 2009-10 by the Tribunal were followed in Assessment Year 2011-12 and accepted at all levels. Ld. AR therefore prays that such findings for the assessment year 2009-10 and 2011-12 or equally applicable to the years under consideration, and the same may please be followed and appeals filed by the Revenue may please be dismissed.

10. In the circumstances, since the learned CIT(A) followed the order of Tribunal in ITA No. 3124/Del/2014 and also the orders of his predecessor for Assessment Year 2011-12 and 2012-13, which orders have become final because even the appeal filed by the department before the Hon'ble High Court in Assessment Year 2011-12 has been dismissed, we find it difficult to hold that the impugned orders suffer any illegality or irregularity. Since no interference is warranted in these appeals, while confirming the findings of

the Ld. CIT(A), we hold that the rounds of appeal are devoid of merits and are liable to be dismissed. Appeals are accordingly dismissed.

11. In the result, appeals of the Revenue are dismissed.

Order pronounced in the open court immediately after the conclusion of the hearing in the Virtual Court on 30/12/2020.

Sd/-
(G.S. PANNU)
VICE PRESIDENT
Dated 30.12.2020
*Kavita Arora, Sr. PS

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

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

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI