

**THE INCOME TAX APPELLATE TRIBUNAL IN
(DELHI BENCH "A" NEW DELHI)**

**BEFORE SHRI N.K.SAINI, ACCOUNTANT MEMBER
AND
SHRI C.M.GARG, JUDICIAL MEMBER**

**ITA NO. 3271/DEL/2014
(Assessment Year: 2009-10)**

Association of State Road Transport Vs. CIT- V
ASTRU Bhawan, Plot No. 4A, PSP Block,
Pocket-14, Sector -8, Dwarka
New Delhi
PAN : AAAAA0233A

New Delhi

(Applicant)

(Respondent)

ASSESSEE BY : Sh. Tarundeep Singh, CA
REVENUE BY : Sh. A.Misra, CIT DR

Date of hearing : 26.02.2015

Date of pronouncement : 08 .05.2015

**ORDER
PER C.M.GARG, JUDICIAL MEMBER :**

This appeal has been preferred by the Assessee against the order of the Director of Income Tax (Exemptions), New Delhi dated

28/03/2014 passed u/s 263 of the Income Tax Act 1961 (for short the act).

2. The main grounds raised by the assessee in this appeal reads as under :

- “ 1. That on facts and in law the Director of Income Tax (Exemptions), New Delhi {hereinafter referred to as the “DIT(E)”} erred in assuming jurisdiction u/s 263 of the Act in as much as the order passed by the Asstt Director of Income Tax (Exemptions) {hereinafter referred to as the “AO”} u/s 143(3) of the act was neither erroneous nor prejudicial to the interest of Revenue.
2. That on facts and in law the DIT(E) erred in holding / observing that :
- a. Receipts of appellant from Test Laboratory Services of Rs. 7.72 crores and Consultancy Services of Rs. 62.47 lakhs do not fall within the ambit of Section 2(15) of the Income Tax Act.
- b. The appellant is not eligible for claiming exemption u/s 11 of the Act on income derived from the above receipts.
- c. In proceedings u/s 143(3), the AO had not examined the issue of taxability of above receipts in light of provisions of section 2(15) of the Act.
3. That on facts and in law the order of DIT(E) suffers from an inherent contradiction vitiating his order in as much as on one hand he decided the issue on merits while at the same time he directed the AO to make a de novo examination.
4. That on facts and in law the DIT(E) erred in setting aside the order of assessment dated 28th December 2011 passed by the AO u/s 143(3) of the Act.
5. That on fact and in law the order passed by DIT(E) u/s 263 of the Act is bad in law and void ab-initio.”

3. Briefly stated the facts giving rise to this appeals are that the assessee filed its return of income on 30.3.2010 declaring return

income at nil. Thereafter the assessment in this case was completed on 28.12.2011 at an income of Rs. 4,39,07,729/- being accumulated amount in financial year 2003-04 not utilized within a period of 4 years which was expired on 31.3.2009. It is pertinent to note that the Assessing Officer accepted nil return of income u/s 143(3) of the act but made addition of accumulated amount as per Clause (a) given after third proviso to section 10 (23C) (iv) of the Act.

4. Subsequently on going through the records it was noticed by the DIT(E) that the assessee had received under the head of “revenue from tax laboratory” of Rs. 7.72 crores and “consultancy receipts” of Rs. 62.47 lakhs which were found to be commercial in nature by the DIT(E). The DIT(E) proceeded to issue notice u/s 263 of the Act in pursuance by observing that as per amended provisions of Section (2) (15) of the Act, charitable purpose includes relief of the poor, education, medical relief, preservation of environment (including watersheds, forests and wildlife) 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 of 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, if aggregate receipt exceeds Rs. 10 lacs during the year irrespective of the nature of use or application, or retention, of the income from such activity.

5. The Ld. DIT(E) issued a notice u/s 263 of the Act vide dated 06.02.2014 to the assessee and after considering the written submissions of the assessee filed on 10.3.2014 the DIT(E), rejected the submissions and objection of the assessee and passed impugned order by holding that the order passed by the AO is erroneous inasmuch as it is prejudicial to the interest of the Revenue and the DIT(E) set aside the original assessment order with the directions to the AO to frame the assessment afreshing after due application of mind and law and after calling and examining necessary details / evidences and giving due opportunity of hearing to the assessee.

Now the aggrieved assessee is before this tribunal with the grounds as reproduced hereinabove.

6. We have heard argument of both the sides and carefully perused the relevant material placed on record. The Ld. Assessee's Representative (AR) submitted that the assessment order passed

u/s 143(3) of the Act was neither erroneous nor prejudicial to the interest of Revenue and the DIT(E) erred in holding and observing that the receipts of the assessee appellant from test laboratory services and consultancy services do not fall within ambit of Section 2(15) of the Act and therefore, the Assessee is not eligible from claiming exemption u/s 11 of the Act on the income derived from the above receipts. The Ld. AR vehemently contended that during the assessment proceedings u/s 143(3) of the Act, the AO examined and verified the issue of taxability of above receipts in the light of provisions of Section 2(15) of the Act and the DIT(E) was not justified in holding that the AO had not examined the same. The Ld. AR also contended that the impugned order suffers from inherent contradiction as much as on one hand he decided the issue on merits and at the same time he directed to AO to make a de novo examination setting aside the original assessment order dated 28.12.2011 passed u/s 143(3) of the Act.

7. The Ld. AR further drawn our attention towards order of Hon'ble jurisdictional High Court of Delhi in the case of India Trade Promotion Organisation Vs. DGIT (E) 2015 – TIOL-227-HC-DEL-IT and submitted that the first proviso to Section 2(15) of the Act as

amended by the Finance Act would have to be read down and interpreted in the context of Section 10(23C) (iv) of the Act as the context requires such interpretation and where an institution is not driven primarily by desire or motive to earn profit but to do charity with an object of general public utility then it must be recorded as an institution established for charitable purposes.

8. The Ld. AR also placed a reliance on various decisions including decision of Hon'ble Delhi High Court in the case of Institute of Chartered Accountant of India Vs. DGI reported in 347 ITR 99(Delhi) and submitted that the first proviso to Section 2(15) of the Act to include any transaction for a fee or money and the activity would be "business" if it is undertaken with a profit motive, but in some cases this may not be determinative and the profit motive test should be specified in the context of Section 10(23C) (iv) of the Act.

9. The Ld. AR also pointed out that the assessee is an association and apex coordinating body of State Road Transport Undertakings (STUs) registered as a Society under the Societies Registration Act and is wholly patronized by Central Government for working under aegis of Ministry of Road Transport and Highways. The Ld. AR, further, pointed out the Secretary to the Government of

India, Ministry of Road Transport and Highways is ex-officio president of the assessee association and the Governing Body of the ASTRU comprises of Representative from all State Road Transport Undertaking. The Ld. AR further pointed out that the Assessee association was established with the main object of improving public transport system in the country and some of the relevant aim and objects of the assessee association mentioned in its Memorandum of Association which are as follows :-

“ (i) to undertake and promote research studies in transport economic and engineering and other matters affecting the transport industry.

(ii)- A to have established a Central Institute of Road Transport (CIRT) for undertaking Training and Research, Laboratory and Development of appropriate and advanced

technology, new technologies, improvement of indigenous technology, adoption and development of imported technology in the field of transport;

(ii) to secure and provide a technical consultancy service which can be availed of by the State Transport Undertakings.

(iii) to render common service to the members and assist them in such matters as standardization of equipment, purchase of materials for their own use at economic prices, promotion of efficiency of Road Transport services and reduction in the operational costs of the members.

(iv) To provide and promote facilities for advancing the skill of persons employed or to be employed in the State Transport Undertakings through instruction, training and research.

(xii) To assist in the work of prescribing standards and specifications and in carrying out tests.”

10. The Ld AR further, submitted that the assessee is registered under the provisions of Section 12A of the act with effect from 27.4.1982 and the assessee has also been notified as a charitable organization u/s 10(23C) (iv) of the Act vide notification no. 1348 dated 31.10.2007 and these registration, approval and notification are still subsisting as on the date.

11. The Ld. AR further, pointed out that the impugned test charges have not been changed / revised since 2001 which supports the fact that the assessee is not running on commercial lines having profit as a pre-dominant motive the Ld. AR elaborated that in accordance with one of the main object of Central Institution of Road Transport was established by the assessee in 1967 and CIRT has been awarded the ISO 9001 and ISO 14001 Certificates by TUV Suddeutschland of Munich, Germany for the design and execution of training, research, consultancy and testing services. The main income of CIRT is from the test charges conducted in compliance to the statutory obligations entrusted and bestowed upon it. The test charges are charged from the manufacturers are just to meet the running cost of laboratory and

no commercial rate is being charged and the charges for testing are same without any change or revision since 2001.

12. About impugned consultancy charges the Ld. AR submitted that apart from Automobile components testing, the other primary activity of the Assessee is management development, research and consultancy in the field of automobile components and in the interest of the Road Transport Sector as a whole. The Ld. AR further, drawn our attention towards test application filed page 7 and submitted that the CIRT offers consultancy services specially akin to traffic policies, promotion of efficiency of Road Transport services, reduction in the operational management and maintenance function of automobile parts, performance improvement measures, bus body inspection, inspection of CNG buses, improvement on tyre life and fuel economy of fleet etc. The Ld. AR strenuously contended that for providing these kind of services to the State Transport Undertakings which provide transport facility to a common public , a very nominal and economical rate is charged. The AR lastly pointed out that these activities are being carried out in the furtherance and advancement of the object of the assessee as set out in the Memorandum of Association and that too not on commercial lines, as the predominant

object of Assessee is not to earn profit but to sub-serve and provide services to its member STUs and the Government of India.

13. The Ld. AR reiterates its argument and grounds of appeals submitted that the DIT(E) rejected detailed objection of the assessee dated 10.03.2014 and passed impugned order by directing the AO to frame de novo assessment after calling and examining necessary details and evidences and after providing due opportunity of being heard for the assessee. The Ld. AR finally contended that the DIT(E) misunderstood the proviso to section 2(15) of the Act which was inserted by Finance Act, 2008 with effect from 01.04.2009 as the same should be considered in the context of Section 10 (23C) (iv) of the Act, therefore, the notice u/s 263 of the Act as well as impugned order may kindly be quashed.

14. Replying to the above, the Ld. DR supported the impugned order and submitted that the AO had not examined the issue as per provisions of the Act specially as per proviso attached to Section 2(15) of the Act and the AO did not examined the issue of taxability of Revenue from Test Laboratory and Consultancy charges in the light of amended provisions of Section 2(15) of the Act and therefore, the DIT(E) was quite justified in holding that the order is erroneous and

inasmuch as it is prejudicial to the interest of the Revenue. The Ld. DR also contended that the assessee would get due opportunity of hearing and to submit necessary details, evidences and explanations regarding his claim during reframing of de novo assessment in pursuance to impugned order passed u/s 263 of the Act and there would be no prejudiced of the assessee in this regard.

15. On careful consideration on above submissions at the very outset we find appropriate to the produce notice issued by the DIT(E) dated 6.2.2014 to the assessee which reads as under :-

*“The Principal Officer,
Association of State Road Transport Undertaking*

*Plot No. 4A PSP Block, Pocket-14 Sector 8
Dwarka, New Delhi-110075*

Sir,

Sub : Show cause notice for setting aside the assessment u/s 263 of the Income Tax Act, 1961 – Asstt. Year 2009-10.

Please refer to the subject cited above

It is noted that the assessment of the above mentioned assessee was completed in December, 2011 at an income of Rs. 4,39,07,729/- as the assessee has failed to utilize the accumulated sum within the specified period. Activities of the Trust are covered under the last limb of amended section 2(15) i.e. “Advancement of any other object of general public utility”. A perusal of TDS certificates and Income & Expenditure A/c revealed that the assessee had receipts under the heads “Revenue from Test Laboratory” of Rs. 7.72 crores and “Consultancy receipts” of Rs. 62.47 lacs, which were commercial in nature and their aggregate exceeded Rs. 10 Lacs.

2. *As per amended provisions of Section 2(15) of the Income Tax Act, 1961, 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, if aggregate receipt exceeds Rs. 10 Lacs during the year irrespective of the nature of use or application, or retention, of the income from such activity.*

3. *In view of the above stated facts and as per the amended provisions of section 2(15), the activities of the assessee are not charitable in nature. Hence, the assessee was not eligible for exemption u/s 11 of Income Tax Act and its income should be brought to tax in view of the provisions of section 2(15) read with section 13(8) of the*

Income Tax Act, 1961. Thus, the AO has failed to assess this taxable income of the assessee and has erroneously treated its income amounting to Rs. 1,32,76,185/- as exempt u/s 11 of the Income Tax Act.

4. *This has resulted in framing an erroneous assessment and causing prejudice to the interest of revenue. You are hereby given an opportunity of being heard to explain as to why the order passed by the AO may not be set aside u/s 263 to be made afresh. Date of hearing has been fixed for 14.2.2014 at 11.00 AM at my office. You may produce all evidence necessary in support of your explanation.”*

16. From the bare reading of the impugned order we further observe that the DIT(E) rejected the objection of the assessee and passed the impugned order by holding as under :-

“I have gone through facts of the case and submissions of the assessee. There is not merit in the submissions of the assessee. The assessee has contended that its activities are charitable in nature as it is catering the State Road Transport Undertakings (STUs) needs for expertise which in turn are carrying out activities of general public utility as the assessee is not carrying out any business with parties other than STUs which are also members of Federation. There is no element of commerce and business involved. It is further contended that this issue was examined by the AO at the time of framing assessment hence provisions of section 263 of the Act cannot be invoked in its case.

4.1 *It is seen that the activities of providing lab test service and consultancy are being carried out like any other agency performing this function. Its activities cannot be termed as charitable simply because it is catering to government agency. Further STUs can get the same work done from any other agency too by paying the requisite charge. The assessee is only a preferred source of service for STUs. Its activities are clearly hit by the provision of section 2(15) of the Act.*

4.2 *Business normally has following ingredients .*

- (i) Continuance and systematic activity,*
- (ii) Transaction between two persons,*
- (iii) Element of reciprocity; and*
- (iv) Profit motive.*

Normally, profit motive test must be satisfied, but it is not final. If there is evidence and material to show that the activities were carried out on sound and recognized business principles and pursued with reasonable continuity, it would constitute business, even if there is no profit motive. In the case of P. Krishnamanon (356 ITR 48), the Apex Court has held that it is not motive of the person doing an act, which decides whether the act done by him is the carrying on what otherwise would be a business vocation. If it were not so, a person carrying on what otherwise would be a business may say that he did not carrying on business because it was not his intention to make any income out of it. The Supreme Court followed the 1888 British decision in the case of Incorporated Council of Law (3 Tax – Cas 105)

wherein it was held that it was not essential to carrying on of trade that the people carrying it on should make profit nor is it necessary that the people carrying it on should desire or wish to make a profit. In the case of Customs and Excise Commissioner vs. Lord Fissur (1981 STC 238), it was held that lack of pursuit of profit or earnings did not prevent an activity from being a business if in any other respect it plainly was.”

17. On careful consideration of above submission of both the sides and the allegations mentioned by the DIT(E) in the notice u/s 263 of the Act (supra) and conclusion of the DGIT(E) in the impugned order (supra) from page no. 34 and 35 of the Stay Application folder we note that the assessee filed detailed reply to the DIT(E) to the notice u/s 263 of the Act. The Ld. AR has submitted that the purpose of introducing the proviso to u/s 2 (15) of the Act can be understood from the page speech of the Finance Minister while introducing the finance bill, 2008 the relevant extract of the speech has been mentioned as under :-

“charitable purpose includes relief of the poor, education, medical relief and any other object 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 function of parliament and, hence, apropos to amend the

law to exclude the aforesaid cases, genuine charitable organizations will not in any way be affected.”

18. The Ld. AR has also contended that during the course of assessment proceedings vide questionnaire dated 1.8.2011. The AO directed the assessee to submit a reply in the light of recent amendment to section 2(15) of the Act and the assessee filed vide written submissions dated 5.9.2011 and 22.9.2011. The Ld. AR also contended that in reply to the carry of the AO the information sought by the AO was placed on record vide submissions dated 28.12.2011 of the assessee and assessee is placed copies of the bills approvals, certificates and rates- list evidencing the nature of activities and modus of operation of CIRT Central. The Ld. AR also pointed out that after considering the above replies, the AO, in his order of assessment dated 28.12.2011, granted the charitable status to the assessee. Therefore, the Assessing Officer made detailed inquiries about charitable purpose of the assessee as well as impugned amount of tax charges and consultancy charges.

19. The Ld. AR has also placed on reliance on the decision of Hon'ble Delhi High Court in the case of DIT(E) Institution of Chartered Accountant of India (2012) 347 ITR 86 (Delhi) and submitted that the

purpose and object to do business is normally to earn and is carried out with a profit motive; in some cases the absence of profit motive may not be determinative. The Ld. AR contended that in that case the Hon'ble Jurisdictional High Court has held that where the Commissioner without examining the concept of business had held that the institution was carried on business and coaching and programmes were held by them and a fee was being charged for the same then also in absence of profit motive the order of revision u/s 263 Act was not held to be valid.

20. The Ld. AR placing reliance on the another decision of Hon'ble Delhi High Court in the case of Institute of Chartered Accountants of India and Ors. Vs. DGI reported in 347 ITR 99 (Delhi) submitted that the denial of exemption on the ground that the activity constituted with the business within the meaning of Section 2(15) of the Act is not valid as there should be material and sustainable facts and other incriminating circumstances which justify and show that the activity under taken by the assessee is in fact in the nature of business. The Ld. AR pointed out that when the assessee association is not carrying out any business activities and simply rendering services to meet the purpose and objects for which it was

incorporated then the receipts of the assessee from ancillary activities cannot be held on business activity and such income cannot be held as business income of the assessee. The Ld. Counsel vehemently pointed out that the assessee association never carried any business activity with profit motive, therefore, allegation of the department are baseless.

21. The Ld. AR of the assessee, further, placing reliance on the recent decision of Hon'ble Delhi High Court in the case of ICAI vs. DGIT (E) 258 ITR 91 (Delhi) submitted that the expression "business", "Trade" or "Commerce" as used to proviso to Section 2(15) of the Act is not objected to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fees without any profit motive and these words use in the first proviso must be interpreted restrictively and where the main object of association is charitable then any incidental activity for furtherance of the object does not fall within the expression of "business", "Trade" or "Commerce" for profit motive.

22. The Ld. AR completed his submission and contention by contending that when the Assessing Officer is regularly granting exemption u/s 11 of the Act for alleged receipts then merely because

a new proviso was inserted to Section 2(15) of the Act does not put the Assessee Association out of ambit of charitable organization and it cannot be held that the activities of the assessee in order to imparting test and consultancy services and charges earn therefrom are the activities with profit motive. The Ld. AR reiterating its argument submitted that the activity of testing of Auto Mobile parts and the activity of consultancy are being carried out in furtherance and advancement of the object of the Assessee Association set out to in the memorandum of association (Clause no. ii) and not on commercial lines because the pre dominant object of the assessee association is not to earn profit but to subserve and provide services to its member State Transport Undertakings and Government of India without any profit motives within the limits of its charitable purpose and objects. The Ld. AR finally prayed that the impugned order passed u/s 263 of the Act and all subsequent proceedings and orders deserve to be quashed.

23. Replying to the above, the Ld. Departmental Representative placing reliance on the decision of Hon'ble Punjab and Haryana High Court in the case of CIT vs. Truck Operators Association 328 ITR 636 (P & H) submitted that when the assessee was vigorously pursuing

business activity by receiving huge quantum of laboratory & test and consultancy charges then that the same could not be termed for general public utility and therefore, the assessee association cannot be held as entitled to the benefit of the registration u/s 12AA of the Act and exemption u/s 11 and other relevant provisions of the Act. Supporting the action of the CIT(A) the Ld. DR pointed out that the activities of providing lab test services and consultancy are being carried out by the Assessee Association like any other agency or business entity performing this kind of similar function and thus these activities cannot be termed and charitable because it is catering to Government Agency. The Ld. DR, further submitted that the State Transport Undertakings can get same work done from any other agency by paying the requisite charges and the assessee is only a preferred service provider, therefore, activities conducted by the assessee association clearly hit by newly insert proviso to Section 2(15) of the Act.

24. The Ld. Departmental Representative also contended that there is reliable evidence and material to show that the activities were carried out on sound and recognized business principles and pursued with reasonable continuity it would constitute business even if there

is no profit motive. The Ld. DR, further, contended that it is not the motive of the person doing on Act which decides whether the act done by him is the carrying on business, profession or vocation but a person carrying on what otherwise would be a business may say that he did not carrying on business because it was not his function to make any income out of it. Supporting the impugned notice and order u/s 263 of the Act, the Ld. DR also pointed out that simply because certain details were called by the AO and also placed on record do not in fact that the AO has applied his mind to the case while granting exemption u/s 11 of the Act to the assessee. The Ld. DR vehemently contended that as the impugned assessment order is silent on the issue of applicability of proviso to section 2(15) of the Act then it was rightly held that the AO did not examine the issue of taxability of revenue from test laboratory and consultancy charges in the light of newly inserted proviso to Section 2(15) of the Act and therefore, the CIT rightly held that the order so framed by the AO was erroneous and prejudicial to the interest of the revenue as the receipts / income from test laboratory at Rs. 7.72 crores and consultancy charges of Rs. 62.47 lakh have not been brought to tax.

25. A careful consideration on above submissions at the very outset, we respectfully take guidance from the recent judgment of Hon'ble Jurisdictional High Court Delhi in the case of ICAI vs. DGIT (E) 358 ITR 91 (Delhi) wherein their lordship provided a landmark interpretation to section 2(15) of the Act as well as newly inserted proviso to this section after considering the ratio and prepositions laid down by various judgments and orders of Hon'ble Supreme Court and High Court the relevant operative part of this order at page 122 para 67 reads as under :-

“67. The expressions “trade”, “commerce” and “business”, as occurring in the first proviso to section 2(15) of the Act, must be read in the context of the intent and purport of section 2(15) of the Act and cannot be interpreted to mean any activity which is carried on in an organized manner. The purpose and the dominant object for which an institution carries on its activities is material to determine whether the same is business or not. The purport of the first proviso to section 2(15) of the Act is not to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee. The object of introducing the first proviso is to exclude organizations which are carrying on regular business from the scope of “charitable purpose”. The purpose of introducing the proviso to section 2(15) of the Act can be understood from the Budget Speech of the Finance Minister while introducing the Finance Bill, 2008. The relevant extract to the Speech is as under (see [2008] 298 ITR (St.) 33, 65) :

“ ... ‘Charitable purpose’ includes relief of the poor, education, medical relief and any other object 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 purposes would also fall under ‘charitable purpose’ . obviously, this was not the intention of Parliament and, hence, I propose to amend the law to exclude the aforesaid cases. Genuine charitable organizations will not in any way be affected.”

The expressions “business”, “trade” or “commerce” as used in the first proviso must, thus, be interpreted restrictively and where the dominant object of an organization is charitable any incidental activity for furtherance of the object would not fall within the expressions “business”, “trade” or “commerce”.

26. It would be also appropriate to consider the ratio of the decision of Hon’ble Punjab and Haryana Court in the case of CIT Vs. Truck Operator Association (Supra), as relied by the Ld. DR, wherein facts of that case and observations of Hon’ble High Court reads as under :-

“On examination of the objects and the purpose of the association in the present case, it emerges that the respondent-association is union of truck operators constituted for facilitating its members to carry on the trade of transportation and not to allow the outsider or non-member to undertake any business activity within the precincts of Hansi town/village. The asso-ciation charges fees from its members before the transportation on the basis of the distance involved. The membership and payment of fees are mandatory and the element of voluntary contribution is missing. The asso-ciation is vigorously pursuing transportation business by receiving freight charges on behalf

of its members. The welfare activities adopted for the truck drivers, cleaners and mechanics of the truck owners are in the nature of staff welfare activities, as are common in other business organization which cannot be termed for general public utility.”

27. In view of above, we have not hesitation of hold that the facts of the present case clearly distinguishable. We are in agreement with the contention of the Ld. AR that the facts of the present case are clearly distinguishable from this case of Truck Operators Association (Supra) as in that case the assessee association was vigorously pursuing transportation with this by receiving freight charges on behalf of its member and the so called welfare activities adopted for the Truck Drivers, cleaners, mechanics of the truck owners were in the nature of staff welfare activities which were similar and common in the other transport business organizations which could not be termed for general public utility. In the present case, the CIT(A) have not conclusively held that the assessee association was carrying on laboratory test and consultancy services with the main object of earning profit in the line of “business”, “trade” or “commerce”. Accordingly we respectfully held that the benefit of the ratio of the decision of Hon’ble Punjab & Haryana High Court (Supra) is not

available for the revenue as the facts of the present case are clearly distinguishable from that case.

28. Turning to the facts of the present case, we note that the assessee association is an association of Apex Governing Body of State Road Transport Undertakings (STU) registered as a society under the Society's Registration Act which is wholly patronized by the Central Government for working under the Ministry of Road Transport and Highways and the Secretary to the Government of India, Ministry of Road Transport and Highways is the ex-officio president of the assessee association and the governing body of the assessee association includes representatives from all the State Road Transport Undertakings.

29. We also note that the assessee association was established with the main object of improving public transport system in the country and its objects as per memorandum of association as reproduced hereinabove in para 9 of this order clearly reveals that the objects of the assessee association are dedicated towards improving road safety standards and to promote facilities for advancing the skill of employees of State Transport Undertakings

through regular training and research which cannot be held as business activities. It is also pertinent to note that the Ld. DR has not disputed this fact that the assessee association was provided exemption u/s 11 of the act in the earlier assessment orders on the revenue receipts from test laboratory charges and consultancy charges.

30. Now we consider the effect of insertion of proviso to section 2(15) of the Act. As per recent judgment of Hon'ble High Court of Delhi in the case of ICAI Vs. DGIT (Supra). We respectfully note that their lordship has explicitly held that the first proviso to section 2(15) of the Act carves out an exception which excludes advancement of any object of general public utility from the scope of charitable purpose to the extent that it involves carrying on any activity in the nature of "Trade", "Commerce" or "business" or any activity of rendering certain services in relation to any "trade", "commerce" or "business" for a cess or fee or any other consideration, irrespective of the nature of the use or obligation or retention of income from such activity. Their lordship also held that the expression "trade", "commerce" or "business", as occurring in the first proviso of section

2(15) of the Act, must be read in the context of the intent in purported of Section 2(15) of the Act and cannot be interpreted to mean any activity which is carried on in an organized manner.

31. Explaining the dominant of object of newly inserted proviso to section 2(15) of the Act, speaking for Jurisdictional High Court of Delhi, their lordship also held that the first proviso to section 2(15) of the act does not purported to exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee and the object of introducing first proviso is to exclude organizations which are carrying on regular business from the scope of charitable purpose. It was also held that expression “business” “trade” or “commerce” as used in first proviso must, thus, we interpreted restrictively and where the dominant object and organization is charitable any incidental activity for furtherance of the object would not fall within the expression “business”, “trade” or “commerce”.

32. In view of the ratio of the judgment of Hon’ble High Court of Delhi if we analysis the facts and circumstances of the present case at the outset we note that the activity laboratory testing and

consultancy is certainly bringing revenue for the assessee association but the CIT has not controverted or demolished this fact that the main object for which assessee association was created by Government of India is to impart services to the State Road Transport Undertakings and from careful reading of the objects of the assessee association as reproduced hereinabove clearly mandates its charitable objects and purpose. The contention of the assessee association also support from this fact that the assessee association have not revised its laboratory test charges since 2001 and the services are provided on the similar line by charging reasonable fees without any profit earning object.

33. After going through the objects and activities of the assessee association it is clear that the assessee association did not carry on any "business", "trade" or "commerce" with the main object of earning profit. The activity of imparting support services to State Road Transport Undertakings without any profit motive are being conducted in furtherance of the object for which assessee association had not constituted by the Government of India. The activities of providing laboratory test services and consultancy to the State Road

Transport Undertakings of all over India cannot be held to be “trade”, “business” or “commerce” merely because some fee or charges are being received by the assessee association. Accordingly, even if some fees or charges are being charged by the assessee association for providing laboratory test services and consultancy services in accordance with its charitable objects, the activities cannot be held to be rendered in relation to any “trade” , “commerce” or “business” as such activities are undertaken by the assessee association in furtherance of its main objects which are undisputedly of charitable nature and which is not an activity of “trade”, “commerce” or “business” with main object of earning profit.

34. We are unable to agree with the reasoning of DGIE that there is evidence and material to show that the activity were carried out on sound and recognized business principles and persuaded with reasonable continuity then it would constitute business even if there is no profit motive as we have already noted that in assessee’s own case for A.Y. 1989-90, 1990-91 and 1993-94, ASRTU vs. DDIT(E) (Supra) it was held that the aims and objects of the assessee were to render common services to members and assist them in such matters

as standardization of equipment, purchase of materials for thereon use at economical prices, promotional efficiency of Road Transport Services and deduction is operational cost of member State Road Transport Undertakings are the activities of charitable purpose towards promotion of main objects set out in the Memorandum of Association of the assessee association, thus, in absence of any substantial allegation or incriminating material. We are unable to accept view of the CIT that the assessee association is conducting these activities with the main object of earning profits. In the present case, the activities of the assessee's association cannot be termed either "trade" , "commerce" or "business" simply because the assessee association is receiving some charges or fees for rendering services on non-commercial principles to State Road Transport Undertakings and other concern members for a fee or charges.

35. At this juncture , we also respectfully follow the ratio laid down by the Hon'ble Delhi High Court in the case of Indian Trade Promotion Organisation vs. DGIT (Supra) wherein it was held that thus, first proviso to section 2(15) of the Act would have been to be read down and interpreted in the context of section 10 (23C) (iv) of

the Act as the context requires such interpretation where assessee is not driving primarily by desired or motive to earn profit but to pursue activities in furtherance of its objects of general public utility then it must be recognized as an institution established for charitable purposes. The Hon'ble Delhi High Court in the case of Institute of Chartered Accountant of India vs. DGI 347 ITR 99 (Delhi) held that the object of the first proviso to section 2(15) of the Act is to include any transaction for a fee or money and the activity would be business if it is undertaken with the profit motive but in some cases this fact must be determinative and the profit motive test should be specified and viewed in the context of section 10 (23C) (iv) of the Act. As we have already noted that we found force in the contention of the Ld. AR that the Assessing Officer raised query about the revenues received from test laboratory charges and consultancy charges and the assessee placed required details and explanation before the AO in this regard and this fact was also noted by the CIT(A) in paragraph 4.4 of the impugned order. We are unable to approve the observations of the CIT that the AO did not examine the issue of taxability of revenue from test laboratory and consultancy charges in

the light of proviso to section 2 (15) of the Act. We may also point out that the AO has considered this issue in paragraph no. 2 and 3 of the assessment order and conclusion of the AO cannot be held as erroneous merely because the AO has not decided the issue in so many words as per expectation of the Ld. CIT.

36. Under above noted facts and circumstances, we reach to a conclusion that the CIT was not justified in holding that the view taken by the AO was granting exemption u/s 11 of the act was not inaccordance with law and was unsustainable. Per contra, from bare reading of the assessment order, it is vivid that the assessing officer made reasonable inquiry on the issue of test laboratory charges and consultancy charges and the AO took a plausible and reasonable view that the revenue earn from these activities cannot be held as income with the main object to earn profits. We also clearly note that the activities of laboratory testing and consultancy was in furtherance of main and charitable object of the assessee association it cannot be termed as activities with the main object of profit earning motive. Thus, notice u/s 263 of the Act and impugned order is not sustainable and assumption of jurisdiction for revising the assessment order u/s

263 of the act is also not held be valid and the same is void ab initio and therefore, we quash the same.

37. Accordingly, appeal of the assessee is allowed and impugned notice and order u/s 263 of the act and all subsequent proceedings and orders in pursuant thereto are quashed.

In the result, the appeal of the assessee association is allowed.

Order pronounced in open court on 08th May , 2015.

Sd/-
(N.K.Saini)
Accountant Member

Sd/-
(C.M.Garg)
Judicial Member

Dated 8th May, 2015
B.Rukhaiyar

Copy forwarded to

1. APPELLANT
2. RESPONDENT
3. CIT
4. CIT (A)
5. CIT (ITAT), New Delhi.

By order

AR, ITAT
N. Delhi

