

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC-2', NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER**

**ITA No. 816/Del/2015  
AY: 2010-11**

Bhartiya Shiksha Samiti  
Paschim Uttar Pradesh  
Saraswati Kunj, Nehru Nagar-III,  
Ghaziabad – UP – 201 001  
PAN: AAATB8095N

vs.

Addl. Commissioner of  
Income Tax, Range-1,  
Ghaziabad

**(Appellant)**

**(Respondent)**

**Appellant by : Sh.J.P. Jain, CA  
Respondent by : Mrs. Rakhi Vimal, JCIT**

**ORDER**

This is an appeal filed by the Assessee against the order dt. 25.11.2014 of Ld.CIT(A), Ghaziabad for Assessment Year 2010-11.

2. The facts in brief are that the Society is registered with the Registrar of Societies, Meerut vide Registration No. 2206 dated 5.1.1013 and it was granted Registration u/s. 12A of the Income Tax Act, 1961 vide letter No. 36/GZB/97-98 dated 20.4.1998 dated 20.4.1998 by the Commissioner of Income Tax, Ghaziabad. The exemption certificate u/s. 80G was also granted u/s. 80G on 14.9.2011. The Assessee filed its return of income on 17.8.2010 for the assessment year 2010-11 claiming exemption u/s. 11 of the Income Tax Act, 1961. The AO in his order passed u/s. 143(3) on 6.2.2013 held that the activities of the Assessee are not covered under the provisions of the Act after the amendment to Section 2(15) and hence, exemption u/s. 11 cannot be

granted. He further held that mere grant of registration u/s. 12A does not entitle the Assessee for exemption u/s. 11 and that the real activity of the society has to be looked into.

3. The alternative claim of the society that the society is governed by the principle of mutuality, and also by Section 10(23C) was rejected. The income of the Assessee was determined at Rs. 2,37,819/-.

4. Aggrieved, the Assessee carried the matter in the Appeal. The Ld. First Appellate Authority has held that the Assessee was not engaged in “Education”, in view of the interpretation to the term ‘Education’ in the judgment of Supreme Court in case of Trustee Loka Shikshana Trust vs. CIT 101 ITR 234 and other decisions. . The Ld. CIT(A) held that the Assessee is not engaged in the activity of providing education as defined u/s. 2(15) of the I.T. Act and therefore, the aims and objectives of the Trust fall under the category of “advancement of any other object of general public utility” and that the proviso to 2(15) is attracted. In view of the fact that the receipt of the Assessee are above Rs. 10 lacs from the activities which are in nature of business, the profits were held to be taxable.

5. On the claim of the Assessee for exemption on the principle of mutuality or u/s. 10(23C)(via), Ld. CIT(A) held that these claims cannot be entertained, as they were not made in the Return of Income. He further held that the receipts from affiliated schools are in the nature of fees and that the schools are not shown to be the members of the Society and thus the principle of mutuality do not apply. He upheld the order of the AO.

6. Aggrieved, the Assessee is in appeal before me on the following grounds:-

*“1. That the assessment order passed by Ld. Assessing Officer is bad in law and is not based on facts.*

*2. That treatment of the activities of the society as business activity instead of activities covered u/s 2(15) is bad in law and is not based on facts.*

*3. That Ld. Assessing Officer has erred in law and on facts in not treating the activities of the society as educational activities and activities for educational purposes covered u/s 10(23C)(iiiad).*

*4. That Ld. Assessing Officer has not considered the alternative submission of the society that its activities are covered under the principle of mutuality and its income is not taxable.*

*5. That Ld. AO erred in law in holding that activities of the Samiti are not for charitable purpose even when the registration u/s 12A is still valid.*

*6. That the CIT (Appeal) has not considered the submissions made by the society.*

*7. That the Ld. CIT (Appeal) has erred in law and on facts while dismissing the appeal.”*

7. I have heard Sh. J.P. Jain, Ld. Counsel for the Assessee and Mrs. Rakhi Vimal, Ld. DR on behalf of the Revenue. On a careful consideration of the facts and circumstances of the case and on perusal of the documents on record and the orders of the authorities below as well as case laws cited, I hold as follows.

8. The assessee-society affiliates schools, through which it pursues its objects. 65 schools are affiliated with the Society. A list of such schools with details are filed by the Assessee before us.

9. The objects of the Assessee-society are as follows:-

“a) To develop the form and system of education by coordinating the achievements in the field of education with the Indian culture, in such a way that it is in accordance with the economic, social and cultural needs of the nation.

b) To establish schools at different places with the object of education with Indian ideals towards life and to bring other schools under its guidance and to guide, take care and control in order to bring homogeneity in their activities and improvements with coordination.

- c) To inculcate patriotism, discipline, self-reliance and dignity towards labour among the students and to do all necessary activities for their moral development.
- d) To do all necessary activities to achieve the objectives of the society and compile, distribute and publish necessary literature and material and to form sub-committees.
- e) To take donations and collect funds and provide assistance for the fulfillment of the objectives of the society.
- f) Activities of the society will be public and for general welfare and all Indians, irrespective of religion, cast, section, language or state, will be the beneficiaries of the society.”
10. The activities of the Society are listed out as follows:-
- 1) Principals Conference:-  
Principals conference of the affiliated institutions was held from 24th July 2009 to 16th July 2009 at Balaram Brijbhushan Saraswati Shishu Mandir Inter College, D Block, Shastri Nagar, Meerut. List of participants enclosed. (Page No. 6 to 7 of Paper Book)
  - 2) Sanskriti Gyan Pariksha:-  
Sanskriti Gyan Pariksha conducted by Vidya Bharti Sanskriti Shiksha sanstha" Kurukshetra was conducted on 24th December in which 27040 students took part from class 6<sup>th</sup> to 12<sup>th</sup> from 59 affiliated schools. List of school wise/Class wise students participants enclosed. (Page no. 8 to 13 of Paper Book)
  - 3) Appointment and transfer of Principals:-  
During the year eight principals were appointed and six were transferred to meet the requirements of the affiliated schools. List enclosed. (Page no. 14 to 15 of Paper Book)
  - 4) Fixation of Pay scales of teachers and Principals:-

Pay scales of teachers and principals affiliated with the society are fixed by the society. Sample salary approval sheet and circular dt. 25-04-2011 for one affiliated school is enclosed. (Page no. 16 to 19 of Paper Book)

5) Publication of magazine:-

Society publishes one magazine, 'DARPAN', every year in which educational, innovative and imaginative entries are contributed by students and teachers. Magazine also contains statistics pertaining to affiliated institutions and activities of the society and affiliated schools. (Page no. 20 of Paper Book)

6) Setting and Preparation of examination papers:-

The society provides examination papers to the affiliated institutions twice in a year for which a workshop of selected principals and teachers is conducted. During the year the workshop was held on 21st September, 2009. Sample copy of examination paper is enclosed. (Page no. 21 to 22 of Paper Book)

7) Sports Activity:-

Society organizes a sports meet every year at state level. During the year it was held from 1st October, 2009 to 17th October, 2009 at Saraswati Vidya Mandir Inter college Shamli, Muzaffarnagar (UP), in which 536 students participated (Page No. 23 to 24 of Paper Book),

a) Sample list of winners as declared by umpires is enclosed (Page No-25 of Paper Book)

b) The winners of the state sports meet participate in regional sports meet organized by Vidhya Bharti Akhil Bhartiya Shiksha Sansthan, Lucknow. 89 students participated in regional sports meet organised at Krishna Bal Vidya Mandir Inter College Mangupura Distt. Muradabad (Page No. 26).

c) One student Sudhir Kumar of Class XI from Surajbhan Saraswati Vidya Mandir Inter College, Shikarpur, Distt. Bulandshahr participated in

National sports meet organized by SCHOOL GAMES FEDERATION OF INDIA.

d) A few photographs of events are enclosed. (Page no. 27 of Paper Book)

8) Personality Development Camp:-

A personality development camp of students from class 6<sup>th</sup> to 8<sup>th</sup> from the affiliated institutions was organized at Lala Jadish Prasad Saraswati Vidya Mandir Inter College 'Jansath road, Muzzaffarnagar (UP) from 14<sup>th</sup> June, 2009 to 21<sup>st</sup> June 2009. The camp was conducted in association with Surya Foundation, New Delhi.

9) Science Fair and Quiz Programme:-

a) Society annually organizes a science fair and quiz programme for the students of affiliated institutions.

b) During the year it was organized at Dayawati Deewan Singh Shukl Saraswati Vidya Mandir, Inter College, Gulawati Road, Sikandrabad, District Bulanshahar (UP), from 31<sup>st</sup> October, 2009 to 1<sup>st</sup> of November, 2009 in which 483 students participated and 31<sup>st</sup> October, 2009 to 1<sup>st</sup> of November, 2009 in which 483 students participated and 66 students were selected for regional competition.

c) The selected students were taken to regional/national science fair and quiz programme organized by Vidhya Bharti Akhil Bhartiya Shiksha Sansthan. List of category wise participants enclosed (Page no. 28 to 34 of Paper Book)

10) Scholarship to Meritorious students:-

a) Society conducts a scholarship examination to identify the meritorious students from the affiliated institutions. 10 students from class 8<sup>th</sup> are selected every year and given scholarship in two installments. List of meritorious students alongwith the scholarship

eligibility test papers to whom scholarship was given is enclosed (Page No. 35 to 43 of Paper Book)

11) Financial assistance to educational institutions:-

During the year society provided financial assistance to two institutions. List is enclosed (Page No. 44 of Paper Book)

12) Group Insurance:-

The society arranges group insurance from LIC for the willing teachers and Principals. Part of the premium is paid by the society. List of beneficiaries of group insurance is enclosed. (Page no. 45 to 46 of Paper Book)

13) JAN SHIKSHA NIDHI:-

Society collects Rs. 2 from each student affiliated to the society for the benefit of Jan Shiksha Samiti (A society running educational institutions in rural areas), During the year the society has collected and paid Rs. 33,824/-. Certificate enclosed (Page no. 47 of Paper Book)

14) Inspection of Schools:-

Every year society coordinates and monitors the inspection of schools with respect to the standard of education, financial management, general administration and infrastructure. On the basis of inspection report the suggestions for improvement are given by the inspection team to the principal of the institution and the management of the institution. A sample inspection report is enclosed. (Page no. 48 to 74 of Paper Book)

15) Other activities:-

In addition to the above activities of the society, the office bearers of the society and senior officials from Vidhya Bharti Akhil Bhartiya Shiksha Sansthan, visits the school frequently for the purpose of better coordination and overseeing the activities of the affiliated schools in order to achieve the objectives of the society. The office bearers frequently interact with dignitaries in various fields and arrange their

interaction with the students and teachers affiliated to the society from time to time.

11. The issue that is to be adjudicated is whether these activities of the Society would fall within the term of “Education” for the purpose of Section 2(15) of the Act.

12. The term “Education” as interpreted by the various Courts including the Hon’ble Supreme Court of India is discussed below.

“The expression ‘education’ has not been defined under the provisions of Income Tax Act. The Hon’ble Supreme Court in the case of Lok Shikshana Trust (supra), has been pleased to explain the meaning of the word ‘education’ in the context of section 2(15) of the Act. As per this decision education is the process of training and developing the knowledge, skill, mind and character of students by schooling by way of systematic instruction, schooling or training. The Hon’ble Delhi High Court in the case of Delhi Music Society vs. DGIT (supra) has been pleased to hold that since the assessee society was teaching and promoting all forms of music and dance , western, Indian or any other and was run like any school or educational institution in a systemic manner with regular classes, the same therefore meet the requirement of an educational institution within the meaning of section 10(23C)(vi) of the Act. In the case of ITO vs. SRM Foundation of India (supra) the Delhi Bench of the Tribunal, where the assessee was engaged in spreading the system of transcendental meditation (TM) has held that irrespective of the fact that the assessee has its own prescribed syllabus, trained teachers, branches all over India to spread system of transcendental deep meditation among people in all walks of life, the same constituted imparting of education and the assessee was entitled to exemption u/s 10(22) of the Act. We thus come to the conclusion that any form of educational activity involving imparting of systematic training in order to



develop the knowledge, skill, mind and character of students, is to be regarded as 'education' covered u/s 2(15) of the Act.

13. In my view the activities carried out by the assessee fall within the term 'Education'. The Revenue was wrong coming to the conclusion that, only when Assessee runs schools directly, it can be held to impart education. In my view, the Education can be imparted, even through affiliated schools also. A perusal of the activities listed above demonstrates the same. The activity of the assessee-society in my view is educational activity.

14. Even otherwise, we find that Ld. CIT(A), Ghaziabad has recorded that the AO has concluded that the aims and objects of the Society-Trust falls under the category "advancement of any other objects of general public utility". The exemption was denied only on the ground that the proviso to section 2(15) of the Act was attracted. The law on this aspect has been laid down by the decision of the Hon'ble Delhi High Court in the case of M/s GSI India vs. DIT, Delhi reported in 360 ITR 138 wherein it has been held that :

"Section 2(15) of the Income-tax Act, 1961, was amended by the Finance Act, 2008, with effect from April 1, 2009, and a proviso was added to it. A second proviso was inserted to section 2(15) by the Finance Act, 2010, with retrospective effect from April 1, 2009. There are four main factors that need to be taken into consideration before classifying the activity of the assessee as "charitable" under the residuary category, i.e., "advancement of any other object of general public utility" under section 2(15) of the Act. The four factors are (i) the activity should be for advancement of general public utility; (ii) the activity should not involve any activity in the nature of trade, commerce and business; (iii) the activity should not involve rendering any service in relation to any trade, commerce, or business; and (iv) the activities in clauses (ii) and (iii) should not be for fee, cess or other consideration and if for fee, cess or consideration the aggregate value of the receipts from the

activities under (ii) and (iii) should not exceed the amount specified in the second proviso. The earlier test of business feeding or application of income earned towards charity because of the statutory amendment is no longer relevant and apposite. It is evident from Circular No. 11 of 2008 that a new proviso to section 2(15) of the Act is applicable to assesseees who are engaged in commercial activities, i.e., carrying on business, trade or commerce, in the garb of "public utility" to avoid tax liability. The legal terms "trade, commerce, or business" in section 2(15) mean activity undertaken with a view to make or earn profit. Profit motive is determinative and a critical factor to discern whether an activity is business, trade or commerce. Business activity has an important pervading element of self-interest, though fair dealing should and can be present, whilst charity or charitable activity is the anti-thesis of activity undertaken with profit motive or activity undertaken on sound or recognised business principles. The quantum of fee charged, the economic status of the beneficiaries who pay commercial value of benefits, in comparison to the fee, the purpose and object behind the fee, etc., are several factors which will decide the seminal question, is it business? Charitable activities require operational/running expenses as well as capital expenses to be able to sustain and continue in the long run. There is no statutory mandate that a charitable institution falling under the last clause should be wholly, substantially or in part must be funded by voluntary contributions. A practical and pragmatic view is required to examine the data, which should be analysed objectively and a narrow and coloured view will be counter-productive and contrary to the language of section 2(15). The second proviso applies when business was/is conducted and the quantum of receipts exceeds the specified sum. The proviso does not seek to disqualify a charitable organization covered by the last limb, when a token fee is collected from the beneficiaries in the course of activity which is not a business but clearly charity for which it is established and it

undertakes.

15. The propositions laid down, this judgments, when applied to the facts of the case, I am of the considered opinion that the exemption cannot be denied to the Assessee u/s. 11 of the I.T. Act, 1961. The assessee is not engaged in any commercial acitivity. It does not carry on any business, trade or commerce. The fee charged cannot be called a business receipt or fee taken for business activity or for service in relation to any trade, commerce or business. There is no profit motive in the case of the assesseen, hence, the Proviso in question is not attracted in the case of the assessee. Hence, I direct the Assessing Officer to grant exemption u/s. 11 of the I.T. Act.

16. As relief has been granted to the assessee on this ground, I do not deal with the arguments of the assessee on the issue of principal of mutuality or on the claim of exemption u/s. 10(23C)(via) of the Act.

17. In the result, the Appeal filed by the assessee stands allowed.

Order pronounced in the Open Court on 16<sup>th</sup> October, 2015.

Sd/-  
**(J.SUDHAKAR REDDY)**  
**ACCOUNTANT MEMBER**

Dated: the 16<sup>th</sup> October, 2015

**\*SR BHATNAGAR\***

Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asstt. Registrar