# Charitable activities cannot be held as business merely due to charge of fee for rendering services

**Case Law Citation-**

Institute for Development and Research in Banking Technology (IDRBT) Vs. ACIT (ITAT

Hyderabad), ITA No. 1712/HYD/2014, Date of Decision: 30.06.2015

**Issue before court**:

Whether the activities of the assessee fall within the purview of the proviso to section 2(15) of Income Tax Act, 1961 while activities of the assessee fall within the purview of ‘imparting education’ and ‘research’ in Banking Technology which is very much within the first three limbs of section 2(15) of the Income Tax Act, 1961.

Whether assessee is ineligible for the claim of exemption u/s. 11 even though the activities of the society are charitable in nature and are in line with the objectives of the society having got registered u/s. 12AA of the I.T. Act, 1961.

**Brief facts**:

Assessee was established by the Reserve Bank of India with the main object of providing Banking Technology Services to the Banks apart from carrying out research in the field of Banking Technology.

For the AY 2011-12, the assessee filed the return of income declaring ‘NIL’ income after

claiming exemption under the provisions of Section 11 of the Income Tax Act, 1961.

AO denied exemption u/s 11 held that the aims and objects of the society are mostly in the nature of advancement of any other objects of General Public Utility Services and for this purpose.

AO noted that the total receipts received by the Appellant society on account of rendering such services were Rs.48,06,14,013/-. Hence, he was of the opinion that the proviso to section 2 (15) is clearly applicable to the case of assessee.

On appeal CIT (A) partly allowed appeal of the assessee. He admitted view of the AO that assessee was engaged partly in education and partly in activities aimed at advancement of any other object general public utility and held that the proviso to Section 2(15) of the Act is applicable and confirmed the additions made by the Assessing Officer.

**Contention of the revenue**:

The aims and objects of the society are mostly in the nature of advancement of any other objects of General Public Utility Services and for this purpose, revenue relied on the decision of Hon’ble Supreme Court in the case of Sole Trustee, LokShikshana Trust v CIT [1975] 101 ITR 234(SC).

Assessee generated surplus out of its receipts from the consultancy services rendered to various banking institutions and other organizations. Therefore, assessee is engaged in rendering services in relation to trade, business and commerce

**.Contention of the assessee:**

Objects of the Appellant society are purely educational in nature. Rendering consultancyservices on account of which the Appellant society had received some consideration is only for the purposes of attainment of the main objects and in connection with the main objects.

The proviso to Section 2(15) cannot be made applicable to the Appellant society since the proviso is applicable only in respect of the activities carried on, which are in the nature of objects for advancement of general utility services.

Assessee continues to enjoy the registration u/s 12A of the Act and therefore, the Assessing Officer was not justified in denying the exemption u/s. 11 of the Act. In this connection, he brought to our attention the earlier orders of the Co-ordinate Benches of this Tribunal whereby the registration u/s.12A of the Act was granted.

In support of the contentions,assessee relied upon the decision rendered in the case of Indian Chamber of Commerce vs. Income-tax Officer – ITAT Kolkata ‘C’ Bench in ITA No. 1491/KOL/2012 and the Hon’ble Delhi High Court in the case of Indian Trade Promotion vs. Director General of Income Tax 371 ITR 333 and Gujarat High Court in the case of Director of Income-tax (Exemption) vs. Ahmedabad Management Association [2014] 366 ITR 85.

**Held by the court:**

The primary objects of society is to promote study, dissemination of knowledge and conduct research in the area of Information and Technology Institute for Development & Research in Banking Technology (IDRBT), Hyderabad. Service in Banking Business and financial sectors. The Appellant society was also granted Associate Institute status of the University of Hyderabad for undertaking research for award of Ph.D Degree under External category in the areas of computer sciences information technology. But the primary object for which the Appellant society was created is to promote the Information Technology in the Banking Sector and undertake research which is clear for the genesis of the organization produced from website.

The term ‘education’ has not been defined by the provisions of the Income Tax Act, 1961. The term ‘education’ had come up for interpretation before the Hon’ble Supreme Court in the case of Sole Trustee, LokaShikshana Trust v. Commissioner of Income-Tax, Mysore – 101 ITR 234. It is clear from the above judgment that in order to fall within the ambit and scope of the term “education” as per Section 2(15) of the Act, there must be a schooling, systematic instructions or the process of training, developing the knowledge, skill, mind and character of students by normal schooling.

In the case of entity or organization whose objects are several, some of which are charitable and noncharitable;

the test of predominant object for which the organization was set up is alone to be applied. Five

judge decision of Hon’ble SC, in Additional Commissioner of Income-tax, Gujarat v. Surat Art Silk Cloth Manufacturers Association 121 ITR 1, relied upon.

The objects of the assessee are aimed at improving the Information Technology in the Banking and Financial Sector. The question of private gain or profit motive cannot be attributed to the appellant society as the Reserve Bank of India is the creator of the appellant society. Therefore, the objects of the trust fall within the ambit and scope of the expression “general public utilityservices”, which is a fourth limb of the definition of word “charitable” as defined under Section 2(15) of the Act.

The services rendered by the appellant society to the Banks make clear that there is no profit motive in such activities because these activities were entrusted to the appellant society by the Reserve Bank of India as a part of its supervisory role over the Banks in India.

The proviso to Section 2(15) of the Act cannot be applied to the assessee as clarified by theCircular No.11 of 2008 issued by the CBDT which was issued due to clarification of Hon’ble Finance Minister, during the course of the debate in the Parliament, that the proviso to Sec. 2(15) of the Act is not intended to apply to genuine charitable organizations.

**Conclusion:**

The object and activities of the assessee were entrusted to it by RBI as a part of its supervisory role over the bank in India. Revenue doubted that assessee is engaged in commercial activities and hence proviso of section 2 (15) was applicable to the case of assessee and hence not eligible for exemption u/s 11. CIT (A) though partly allowed the appeal filed by assessee but concurred the view of AO. ITAT examined whether activities of the assessee can be held as charitable or commercial in nature and found that there is no profit motive in the activities of the assessee.

Source courtesy:taxguru.in