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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

I.T.A Nos. 1647 & 1648/Del/2018
(ASSESSMENT YEARs: 2013-14 & 2014-15)

ITO (Exception) Ward 1(1) New Delhi.	Vs.	All India Fine Arts & Crafts Society, 1-Rafi Marg, New Delhi. PAN No. AABAA3719N
(Appellant)		**(Respondent)**

&

I.T.A Nos. 1630 & 1631/Del/2018
(ASSESSMENT YEARs: 2013-14 & 2014-15)

All India Fine Arts & Crafts Society, 1-Rafi Marg, New Delhi. PAN No. AABAA3719N	Vs.	ITO (Exception) Ward 1(1) New Delhi.
(Appellant)		**(Respondent)**

Appellant By	**None**
Respondent by	**Sh. Satpal Gulati, CIT (DR)**
Date of Hearing	**16.09.2021**
Date of Pronouncement	**14.10.2021**

Hearing conducted via Webex

ORDER

PER DIVA SINGH, J.M.

By these cross appeals filed by the Revenue and the Assessee for 2013-14 and 2014-15 Assessment Years, the parties assail the correctness of the separate orders dated 18.12.2017 passed by the CIT(Appeals)-40, Delhi on near identical grounds in the two years.

2. At the time of hearing, no one was present on behalf of the assessee. However, after hearing the Ld. CIT (DR) Shri Satpal Gulati and considering the material available on record it was deemed appropriate to proceed with the present appeals ex-parte qua the assessee on merits.

3. In both the departmental appeals i.e. ITA Nos. 1647 & 1648/Del/2018 the grounds raised by the Revenue are identical. Accordingly, for the sake of convenience the Department's ground from ITA 1647/Del/2018 are being reproduced hereunder:

> *1. "On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in holding that the activities carried out by the assessee are in the field of charitable purpose as defined under section 2(15) of the I.T. Act, 1961 and are clearly hit by proviso to section 2(15) of the Act.*
> *2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the activities carried out by the assessee are not in nature of trade business or commerce.*
> *3. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing."*

4. Addressing the issues raised in the two appeals filed by the assessee in both the years it is seen that the grounds raised are identical except for the difference in the amounts in the two years. Accordingly, grounds from ITA No. 1630/Del/2018 are reproduced hereunder for completeness:

> *1. "That the Ld. CIT(A) has erred in passing the order both in law and on facts.*
> *2. On the facts and circumstances of the case and in law, the Ld. CIT(Appeals) has erred in giving directions in its appellate order to include a sum of Rs. 2,02,28,490/- (Rs. 2,43,32,550/-) as income to be taxed u/s 11(3) of the Income Tax Act, 1961 without giving any opportunity of showing cause against enhancement of income u/s 251(2) of the Income Tax Act, 1961.*
> *3. Without prejudiced to Ground No. 2 above, on the facts and circumstances of the case and in law, the Ld. CIT(Appeals) has erred in reaching to a conclusion and consequently holding that the unspent amount of Rs. 2,02,28,490/- (Rs. 2,43,32,550/-) considered as deemed income u/s 11(3) of the Income Tax Act, 1961, is to be taxed u/s 11(3) and is not subjected to any exemption/benefit or for accumulation therefore.*
> *4. On the facts and circumstances of the case and in law, the Ld. CIT(Appeals) has erred in denying the set off of unspent amount of Rs. 2,02,28,490/- (Rs. 2,43,32,550/-) deemed to be income u/s 11(3) on account of non utilization of the accumulated amount u/s*

> *11(2), against the excess of application over income for the assessment year 2013-14.*
> *5. That the Appellant craves your honor's leave to add, alter, modify, change, substitute, withdraw any of the grounds of appeal at any stage of appellant proceedings."*

5. Taking up the Departmental appeals first the Ld. CIT (DR) addressing the Department's grounds relied upon the assessment order. However, no contrary fact was referred to. The findings arrived at in the impugned order by the CIT(A) in para 4.1.2 to 4.1.3 were not shown to be incorrect on facts. The reason possibly was on account of the glaring fact on record that consistently similar appeals of the Revenue stood dismissed by the ITAT on similar facts in the earlier years.

6. We have seen that the finding arrived at by the ld. CIT(A) in the aforesaid para. It is seen that he has relied upon the order of his predecessor for 2011-12 and 2012-13 assessment years. We have seen that these two orders of the CIT(A) have also been upheld by the ITAT. **(Order dated 19.06.2019 in ITA 1806/Del/2016)** and **(order dated 26.02.2020 in ITA 5293/Del/2016)**. It is also worth taking note of the fact that similar decisions of the ITAT were considered by the Hon'ble High Court in 2009-10 assessment year wherein the Hon'ble High Court vide ITA 754/Del/2019 dismissed the appeal of the Revenue. Thus, we find that as far as the Revenue's appeals are concerned, there is no merit. Conscious of this fact the ld. Sr. DR in all sincerity could at best place reliance upon the assessment order and did not belabor the issue any further.

7. For the sake of completeness, we have taken note of the facts as emanating on a perusal of the record that the assessee society is claimed to be a leading society engaged in the

promotion and development of Fine Arts and Crafts in India. It has been in existence since 1938 and is stated to have contributed in the field of development of arts and sculptures in India having eminent painters, sculptors etc. on its governing body. The Society is stated to be catering to the needs of the upcoming and not so established artists thus enabling them to display their skills etc. To promote these aims it is stated to hold exhibitions, organizes art camps, etc. It has also been stated that it gives financial assistance to old and needy artists; has been publishing news letter in the field of arts and sculpture during the last few decades. We find that as in the earlier years in the year under consideration also the Assessing Officer has observed that the assessee is renting out galleries to the artists for displaying their work and has thus concluded that the assessee is engaged in a business activity and held to be in violation of the statutory remit in view of the amendment in section 2(15) of the Act by Finance Act, 2009 where the activities involved in the carrying on of any trade, commerce and business or any services rendered in relation to the trade, commerce or business against any cess, fee or consideration has been considered to be not amenable to the benefits carved out in this section. The conclusion on facts is assailed by the assessee before the CIT(A) on the grounds of being ill founded on facts. The assessee before the Ld. CIT(A) is seen to have canvassed that the assessee Society rents out the galleries to the artists for "very nominal charges" so as to enable them to display their work so that their work may be recognized by the visiting public and provide them with an opportunity to show-case their talent. It has been argued on facts that the expenditure cost to the society for enabling this

facility is much higher as compared to the charges received from the persons taking the gallery on hire. It has been canvassed by the assessee before the CIT(A) that the expenditure incurred by the society on these galleries consists of both the direct as well as indirect expenses and these are much higher when compared to the receipts received from this activity of renting etc. It has been stated that all these facts were brought to the notice of the Assessing Officer also.

7.1 It is also noticed that qua the critical observations of the AO alleging regular receipt of money from the sale of paintings, it is seen that it has been argued that this is not a regular activity of the appellant. On behalf of the assessee, it has been submitted that it is not engaged in the purchase and sale of paintings. The paintings sold are those paintings which have accumulated with the Society over the years. These are those paintings which have been left by the artists in the art-camps organized by the Society.

7.2 It has been clarified referring to the books of account and the records that the AO is also incorrect in alleging that the assessee society makes a deduction of 15% out of the sale proceeds of art work which gets sold in the annual exhibition, for rendering of services of exhibiting the artists works.

7.3 It has been clarified that no charges are recovered from the artists participating in the annual exhibitions. It has been argued that on the contrary, free art materials are supplied to the artists to paint giving live performances during the holding of art events held on the campus of the assessee Society. Apart from this, it has been argued that for the artists who

come from out of station free boarding and lodging is also provided in addition to bearing their to and fro travel costs for visiting these events. Substantial expenses are stated to be incurred by the Society for conducting these art events. These claims are found to be demonstrated on facts.

7.4 It has been explained before the tax authorities that the paintings which are made by these artists during the art event/annual exhibitions are left with the Society as these have been made from the materials supplied by the assessee society and this is referred to as the property of the Society. The primary reason for having these paintings with the assessee society, it has been explained, is to adjudge the winners amongst the participants and hence these paintings are kept aside. It has been explained that these paintings accumulate over the years, and as and when there is a shortage of space for storage of the same and/or on noticing deteriorations etc. in the paintings with the efflux of time, these are sold in lots at very reasonable prices. It has been argued that the intention here is not to make any profit but to utilize the possible waste of these paintings piling up and utilize these for augmenting the resources to serve the prime objective of promotion of art for which it has been established.

7.5 It has simultaneously been also argued that the AO's allegation that the society charges 15% on sales made during the holding of these events is factually incorrect. The assessee society, it has been argued in fact deducts 20% out of the sale proceeds of paintings sold during the display of the same by the artists who hire the gallery for showcasing their works. This deduction, it has been submitted represents the artist's contribution for the welfare of fellow artists and accordingly

credited to the **"artist welfare fund"** to be utilized for needy poor and aged artists. It has been submitted that this amount is very minimum so much so that during the last few years the receipts from these sales have been stated to be as under: -

A.Y.	Amount (In Rs.)
2010-11	NIL
2011-12	7,000/-
2012-13	18,400/-
2013-14	27,000/-

7.6 On the basis of these facts, it has been submitted before the CIT(A) as is evident from the reproduction of the submissions made in the order itself that in the activities of the Society, there is no profit motive and they are undertaken only towards the fulfillment of the Society's objects which are to promote art and culture. These activities, it has been argued do not generate enough funds let alone any surplus, to meet the overall expenditure incurred by the Society on year to year basis towards its objects.

7.7 Based on these manifold arguments supported by facts it has been stated that the activities of the Society are not driven by profit-motive. Reliance has been placed on the following figures of the overall expenditure incurred by the Society during the last 3 years. On the basis of these facts, it has been argued that it can be seen that from the sale of paintings and rental etc. the receipts are no match to cover the kind of expenditure the Society has to incur every year for the promotion of art and sculpture. The following table has been referred to:

A.Y	Receipt from Gallery Rent/Sale of Painting (In Rs.)	Expenses Incurred (Amount in Rs.)
2013-14	25,49,582/-	2,00,43,106/-
2012-13	38,41,025/-	1,71,81,315/-
2011-12	5,20,400/-	1,78,26,000/-

2010-11	9,75,071/-	1,45,47,697/-

7.8 We find that these submissions on facts remain un-assailed in the present proceeding.

7.9 Reverting back to the order we note that in the said factual background reliance was placed on the decisions of the **Hon'ble Delhi High Court in the case of India Trade Promotion Organization vs. DIT (Exemption) & Others writ petition (C) 1872/2013 (judgment delivered on 22.01.2015) (P. No. 31-55), India International Centre Vs. Assistant Director of Income Tax by the Hon'ble ITAT Delhi – 'C' Bench (ITA No. 3124/Delhi/2014 and Dy. Director of Income Tax (Exemption) Delhi Vs. All India Football Federation (2015) 62 Taxman.com 362 (Delhi Tribunal).** Taking strength from the ratio decidendi of these decisions it has been canvassed that if some incidental activities are carried out by a charitable organization whose dominant and prime objective is not a profit motive, the organization cannot be deemed to be pursuing non charitable objects and hence be considered to be existing for non-charitable purposes.

7.10 Considering the facts as elaborated hereinabove, we find no infirmity in the following finding of the CIT(A) on facts which is challenged by the Revenue in the present proceedings before us:

> *"4.1.2 I have considered the assessment order and the submissions of the appellant. I have also referred to the orders of my Ld. Predecessor for assessment years 2011-12 and 2012-13 in appellant's own case in appeal nos. 195/2014-15 and 129/2015-16 respectively. The relevant portions of the order of my ld. predecessor while deciding appeal for assessment year 2012-13 are reproduced below:*
>
> > *"…*
> > *The argument of the appellant is that it is a society existing for the promotion of art, craft and culture and it has no motive to derive any profit from the renting of galleries and for that matter sale of paintings also, which is not a regular feature, but are sold after a lapse of certain years so that the proceeds fetchable against the same may also be utilized for the purposes of the object of the society. It has been explained by the appellant that the appellant is not existing for a profit motive and actually incurring losses vis-à-vis renting of galleries. It has*

been explained that the purposes of giving galleries on a nominal rent to the artists is to help them to show case their talent, especially to the new artists who wants to display their paintings for public exhibition. It has been also stated that the society is charging very reasonable amounts and that too is not sufficient to cover up the direct and indirect expenses in relation to the renting of these galleries. Further it has also been stated that even the amount charged by them is also lower as compared to the amount being charged by other art galleries in Delhi. With regard to sale of paintings it has been submitted that sale of paintings is not a regular feature or activity undertaken by the society. The society organizes annual art competition to which new as well as veteran artists are invited and the competition is held amongst those artists and the best paintings made by them at the spot during the course of this annual contest, are given awards. This way the artists are encouraged to perform better. All the painting materials are supplied by the society totally free of cost. Not only this, the artist who come from outside Delhi are provided free boarding and lodging in addition to reimbursement of travelling expenses incurred by them for visit to the annual event held by the society. After the competition is held the paintings made by these various artists are kept with the society amongst which the best paintings are given awards by the jury comprising group of artists. These paintings are kept and remain with the assessee for a very long time. When there is a dearth of further storage because of regular annual events held for such contests, the old paintings are sold in lots to clear space for further storage for paintings etc. received out of which the award winning paintings are selected. The paintings kept by the society are also deteriorated due to efflux of time and, thus, are sold in lots at a very reasonable price. The argument of the appellant's counsel is that paintings are not disposed off as a business but is only undertaken to prevent wastage of probable resources.

The appellant has supplied the figures for the last three years showing the revenue from the letting out of galleries as well as sale of painting vis-à-vis the total expenses incurred by it for the promotion of objects of the society i.e. advancement of the object of art, culture and craft. These figures have been given at page 12 of the written submissions filed by the appellant during the course of the hearing of the appeal which are as under: -

A.Yr.	*Receipt from Gallery Rent/Sale of Painting (in Rs.)*	*Expenses Incurred (Amount in Rs.)*
2012-13	*38,41,025/-*	*1,71,81,315/-*
2011-12	*5,20,400/-*	*1,78,26,000/-*
2010-11	*9,75,071/-*	*1,45,47,697/-*

These figures itself shows that the receipts from these two activities is on a very lower side as compared to the over-all expenditure incurred by the society.

....

It has been further argued by the appellant's counsel that the Ld. AO is not correct in holding that the motive of making profit or not is not necessary to determine whether any activities in the nature of business, trade or commerce is carried out by the charitable society. The appellant has stated that each and every case has to be seen in light of the facts present therein and as a general rule the first proviso to section 2(15) cannot be applied without considering the peculiar facts of the case at hand and, thus only on receipt of some incidental incomes, the organization cannot be termed as non-charitable entity.

The appellant has relied on legal authorities, namely,

1. *India Trade Promotion Organisation Vs. DIT (Exemption) & Others writ petition I 1872/2013 by the Hon'ble Delhi High Court (judgment delivered on 22.01.2015)*
2. *India International Centre Vs. Assistant Director of Income Tax by the Hon'ble ITAT Delhi – 'C' Bench (ITA No. 3124/Del/2014)*
3. *Dy. Director of Income Tax (Exemption) Delhi Vs. All India Football Federation (2015) 62 Taxman.com 362 (Delhi Tribunal)*

The Counsel has impressed upon the point that if the charitable organization is carrying out an object of general public utility not driven primarily by profit motive, then it is not hit by the first proviso to section 2(15) of the Income Tax Act, or if any incidental income or receipts are made by such organization whose prime motive is not to drive profit, they cannot be said to be carrying on any activity in the nature of trade, commerce or business and, thus, should not be deprived of exemption u/s 11/12 of the Income Tax Act.

It has also been brought to my notice that for the immediately preceding assessment year 2011-12 I have accepted in principle the contention of the appellant that it is not driven by profit motive and, thus, is entitled to exemption u/s 11 & 12, though in that case barring rental income of Rs. 4,80,00,000/- from G.E. Groups of Companies, the receipts from renting of galleries and sale of paintings were less than Rs. 10 lacs, the threshold limit relevant for that assessment year under the second proviso to section 2(15) of the Income Tax Act. However, it is emphasized that regardless of the receipt during assessment year 2011-12, concurrence on principle has been given with regard to the fact that the overall objective/dominant purpose of the assessee-society is not to do business or earn income.

…

Considering of the above said facts, arguments advanced by the appellant and the case laws relied upon by its counsels, I am inclined to accept their contention. I hold that the appellant should not be termed as a non-charitable organization under the first proviso to section 2(15) of the Income Tax Act as it is not primarily driven by profit motive, keeping in view the facts of the case discussed above. Therefore, the appellant shall be entitled to exemption u/s 11/12 of the Income Tax Act.

The relief of 15% statutory exemption as well as application of income is consequential because of my finding that the appellant is a charitable organization. The Ld. AO is directed to allow 15% statutory exemption of Rs. 1,29,02,516/- on gross income as well as application of income of Rs. 3,2895,740/- claimed by the appellant, after verifying the same from the assessment records and necessary details with regard to the claim."

…..

4.1.3 Since the facts are similar for those for assessment years 2011-12 and 2012-13, respectfully following the decision of my ld. predecessor for these years and in accordance with the principle of consistency in following the earlier orders of CIT(A), it is held that the appellant is eligible for exemption under section 11 with all consequential benefits including 15% statutory exemption and application of income as per law."

7.11 As noted by us in the earlier part of this order it is seen that these issues have been considered by the ITAT in the earlier years. It is seen that in assessment year 2011-12, before the Co-ordinate Bench an identical grievance was agitated by the Revenue which is extracted hereunder:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the

activities of the assessee does not fall under the definition of charitable purpose as defined in Section 2(15) of the Income Tax Act, 1961."

7.11.1 The following background facts of the assessee Society were set out for consideration by the co-ordinate Bench:

3. Facts of the case, in brief, are that the assessee is a society and filed its return of income on 28.09.2011 declaring total income of Rs.1,30,00,000/-. The assessee is registered under the Societies Registration Act, 1860. The Assessing Officer during the course of assessment proceedings observed that the aims and objects of the assessee society are as under:
"(a) To foster and Develop fine and applied arts in India and to promote appreciation by means of publications, lectures, conferences, demonstration, exhibition;
(b) To organize and establish a national art gallery in New Delhi;
(c) To organize art exhibitions and societies in India and abroad;
(d) To act as the Central Organizations of Arts and Crafts in India;
(e) To do all such law full things as are incidental or conducive to the attainment of above objects and any other objects of arts and literature not mentioned above."
4. The Assessing Officer asked the assessee to explain as to why the benefit u/s 11 & 12 of the Act in respect of the income should be allowed in view of the amended Section 2(15) of the Act introduced w.e.f. 01.04.2009 i.e. relevant to assessment year 2011-12 under consideration, since its activities fall in the category of "advancement of object of general public utility" and its income including rental income is in the nature of business, trade or commerce and the same income exceeds Rs.10,00,000/-. Rejecting the various explanation given by the assessee and relying on the amended provisions of Section 2(15) of the Act and CBDT Circular No. 11/2008 dated 19.12.2008, the Assessing Officer held that the activities of the assessee society is not for charitable purpose and therefore, the income of the assessee is taxable. He noted that the assessee during the year under consideration has derived income under the following heads:

"a. Rental Income	*4,80,00,000/-*
b. Interest Income	*2,10,45,261/-*
c. Income from Gallery Maintenance	*5,11,400/-*
d. Misc. Income	*3,01,587/-*
Total	*6,98,58,248/-"*

7.11.2 The relevant and applicable aims and objects of the assessee Society from its Memorandum of Association were encapsuled as under:

> *"(j) To purchase or acquire on lease, or in exchange, or on hire, or otherwise, any real or personal property, and any rights or privileges necessary or convenient for the purposes of the Society.*
> *(l) To sell, improve, manage and develop all or any part of the property of the Society.*
> *(m) To do all such lawful things as are incidental or conducive to the attainment of the above objects and any other objects of Arts and literature not mentioned above."*

7.11.3 Relying on the past history of the assessee and the decision of the Delhi High Court in India Trade Promotion Organization vs. DGIT (E) (supra), wherein vide judgment dated 22.01.2015, the Hon'ble Delhi High Court, upholding the constitutional validity of proviso to Section 2(15) of the Act, had held that mere receipt of fee or charge will not mean that the assessee is involved in any trade, commerce or business. The co-ordinate Bench further taking note of the past orders of the ITAT in assessee's case on same set of facts and circumstances drew strength from the principle as held in India Trade Promotion Organization, the Ld. DGIT (E) wherein considering the fact that despite huge surpluses in banks, the receipt of rentals from space during Trade Fairs and Exhibitions, and receipt of income by way of sale of tickets and income from food and beverage outlets in Pragati Maidan, etc. The Court in categoric terms held as under:

> *(i) "It is apparent that merely because a fee or some other consideration is collected or received by an institution, it would not lose its character of having been established for a charitable purpose. It is also important to note as to what is the dominant activity of the institution in question. If the dominant activity of the institution was not business, trade or commerce, then any such incidental or ancillary activity would also not fall within the categories of trade, commerce or business. It is clear from the facts of the present case that the driving force is not the desire to earn profits but, the object of promoting trade and commerce not for itself, but for the nation – both within India and outside India. Clearly, this is a charitable purpose, which has as its motive the advancement of an object of general public utility to which the exception carved out in the first proviso to Section 2(15) of the said Act would not apply;*

(ii) If a literal interpretation were to be given to the said proviso, then it would risk being hit by Article 14 (the equality clause enshrined in Article 14 of the Constitution). It is well settled that the courts should always endeavour to uphold the Constitutional validity of a provision, and in doing so, the provision in question may have to be read down;
(iii) Section 2(15) is only a definition clause. The expression "charitable purpose" appearing in Section 2 (15) of the said Act has to be seen in the context of Section 10(23C)(iv). When the expression "Charitable Purpose", as defined in Section 2(15) of the Act, is read in the context of Section 10(23C)(iv) of the said Act, we would have to give up the strict and literal interpretation sought to be given to the expression "charitable purpose" by the revenue.
In conclusion, we may say that the expression "charitable purpose", as defined in Section 2(15) cannot be construed literally and in absolute terms.
It has to take colour and be considered in the context of Section 10(23C)(iv) of the said Act. It is also clear that if the literal interpretation is given to the proviso to Section 2(15) of the said Act, then the proviso would be at risk of running fowl of the principle of equality enshrined in Article 14 of the Constitution India. In order to save the Constitutional validity of the proviso, the same would have to be read down and interpreted in the context of Section 10(23C)(iv) because, in our view, the context requires such an interpretation. The correct interpretation of the proviso to Section 2(15) of the said Act would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities 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. In both the activities, in the nature of trade, commerce or business or the activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. If the dominant and prime objective of the institution, which claims to have been established for charitable purposes, is profit making, whether its activities are directly in the nature of trade, commerce or business or indirectly in the rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a 'charitable purpose'. On the flip side, where an institution is not driven primarily by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an institution established for charitable purposes.

7.11.4 The co-ordinate Bench noted that the Hon'ble Delhi High Court took cognizance of Circular No. 11 of 2008 issued by the CBDT and had observed that the proviso to Section

2(15) of the Act, which was inserted by Finance Act, 2008, was directed to prevent the unholy practice of pure trade, commerce and business entities from masking their activities and portraying them in the garb of an activity in the object of a general public utility but was not designed to hit at those institutions, which had the advancement of the objects of general public utility at their hearts and were charity institutions.

8. Accordingly considering the legal position as found settled with respect to interpretation of proviso of Section 2(15) of the Act in the case of India Trade Promotion Organisation vs. DGIT (Exemption) (supra) the coordinate bench held that the benefit of exemption u/s 11 & 12 of the Act could not be denied. We find that similar view has been followed right from 2009-10 assessment year till date. The decision of the ITAT in 2009-10 assessment year before the Hon'ble High Court wherein the Revenue failed in its appeal filed. In ITA No. 754/Del/2019 in its order dated 19th August, 2019 the Jurisdictional Court dismissed the appeal filed by the Revenue holding as under:

> *"1. The Revenue is in appeal against an order dated 14th February, 2019 passed by the ITAT in ITA No. 1449/Del/2013 for the Assessment Year 2009-10.*
> *2. The question sought to be urged by the Revenue is whether the ITAT erred in allowing relief to the Assessee, following the decision of this Court in India Trade Promotion Organisation Vs. DGIT(E)(2015) 371 ITR 333 (Del) and holding that merely because a small percentage of the income of the Assessee is from letting out of its premises and sale of paintings, the essential activity of the Assessee would not cease to be charitable for the purposes of Sections 11 and 12 of the Income Tax Act, 1961.*
> *3. Having heard Ld. Counsel for the Revenue, and having examined the impugned order of the ITAT, this Court is of the view that the ITAT has committed no legal error in applying the law explained by this Court in the aforementioned decision. No substantial question of law arises."*

9. We have seen that again the order of the ITAT in AY 2011-12 was upheld by the Hon'ble High Court and hence the issue has attained finality wherein the Court dismissing the Revenue's appeal held as under:

> *"At the outset, Ld. Counsel for the appellant has fairly drawn our attention to the order dated 19.08.2019 passed in ITA No. 754/2019, whereby the Revenue's appeal from the order dated 14.02.2019 passed in ITA No. 1449/Del/2013 in relation to the respondent assessee for the assessment year 2009-10 was dismissed by this Court. The impugned order passed by the Tribunal relies on the said earlier order dated 14.02.2019 in relation to the assessment year 2009-10. Since this Court has already held that no substantial question arises for our consideration, we find no merit in this appeal and the same is dismissed."*

10. Thus, we find on the basis of elaborate discussion hereinabove wherein considering the facts on record in the respective years we hold that the appeals filed by the Revenue have to be dismissed in view of the consistent orders available on record qua the issue ordered accordingly.

11. Addressing the assessee's appeals, it is seen that lack of opportunity is pleaded by the assessee assailing that it has resulted in an enhancement. Ld. Sr. DR Shri Satpal Gulati submitted that the decision challenged by the assessee is a consequential decision and no specific hearing hence is required to be given. However, the fact remains that the conclusion drawn on the unspent amount needed necessarily to be specifically confronted to the assessee which has not been done. No doubt the statutory provisions applicable on facts will result, however the fact remains that confronting the facts to the assessee before applying the statutory provisions in no way can be said to cause any inconvenience to the Revenue and on the other hand advances the cause of justice having prevailed.

Once an order is passed after giving due opportunity to the assessee no grievance can then be said to subsist. On a reading of the impugned order, it is evident that without hearing the assessee the Ld. Commissioner has decided the issue on the basis of the decision of the position of law as considered in **Director of Income Tax (Exemption) Vs. Girdharilal Shewnarain Tantia Trust [(1993) 199 ITR 215 (Cal.)** and *in the case of* **B.N. Gamadia Parsi Hunnarshala Vs. Asstt. DIT (Exemption) [(2002) 77 TTJ 274 (Mum.)**, however, without hearing the assessee. Accordingly, without commenting upon the correctness, of the conclusions drawn addressing the procedural shortcoming only, we deem it to appropriate to set aside the orders of the Ld. First Appellate Authority to this extent and restore the issue back to the file of the CIT(A) with a direction to give a specific opportunity to the assessee to make its submission before the passing of the order. No doubt technically the resultant addition may not be capable of being desribed as an enhancement, however, the fact remains that when the administrative authorities proceed to pass an order adverse to a party then due notice of this fact necessarily in all fairness needs to be given to the assessee. In the facts of the present case, it is evident that the assessee was not heard. The law is well settled that it cannot be inferred/presumed that the assessee even if given an opportunity would have nothing further to state on facts or law. The principles of natural justice mandate that a reasonable and effective opportunity of being heard needs to be granted specifically where an administrative authority proceeds to take an adverse view. Accordingly, in the interests of justice, it is deemed appropriate to set aside the impugned order back to the file of

the Ld. CIT(A) with a direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard.

12. Said order was pronounced in the Open Court at the time of hearing itself.

13. In the result, appeals of the Revenue are dismissed and Appeals of the Assessee are allowed for statistical purposes.

Order pronounced on 14/10/2021

Sd/-	Sd/-
(O.P. KANT)	**(DIVA SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

(*Poonam, SPS/Chd.)
**Kavita Arora, SPS*

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

ASSISTANT REGISTRAR
ITAT NEW DELHI