

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

BEFORE SHRI I.C. SUDHIR, JUDICIAL MEMBER

**I.T.A .No. 2686/Del/2014
(ASSESSMENT YEAR- 2010-11)**

DDIT(E), New Delhi.	vs	Association of Unified Telecom Providers of India, B-601, Gauri Sadan, 5, Hailey Road, New Delhi. AAAAA1951B
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Appellant by	Sh. P.D. Taneja, Sr. DR
Respondent by	Sh. K.V.S.R. Krishna, CA

Date of hearing	01/07/2015
Date of pronouncement	30/07/2015

ORDER

The Revenue has questioned the first appellate order on the following grounds:

1. *“On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in treating the assessee as charitable institution exempt u/s 11 of the Income Tax Act, 1961, especially when the assessee itself has accepted that it is a mutual organization.*
 2. *On the facts and in the circumstances of the case and in law, the ld. CIT(A) has failed to appreciate the fact that a mutual organization cannot be treated as ‘charitable’ within the meaning of section 2(15) of the Income Tax Act, 1961.”*
2. At the outset of the hearing the ld. AR pointed out that the issue raised in the ground is fully covered by the decision of the Tribunal in the case of the assessee itself for the A.Y. 2002-03 in ITA No. 593/Del/2006, vide order dated 25/01/2008. He submitted further that relevant facts of the case during the year are similar to those facts of the assessment years 2002-03, 2003-04, 2005-06 & 2009-10. He submitted further that in the assessment years 2003-04, 2005-06 & 2009-10 the first appellate authority has also accepted that the assessee is eligible for claiming exemption u/s 11 being a charitable association.

3. The Id. Sr. DR Shri P.D. Taneja on the other hand tried to justify the assessment order with this contention that while treating assessee as charitable institution eligible for exemption u/s 11 of the Act. The Id. CIT(A) has failed to appreciate that the assessee itself had accepted that it is a mutual organization. He submitted that immutual organization cannot be treated as charitable within the meaning of section 2(15) of the Income Tax Act.

4. Considered the arguments advanced by the party in view of orders of the authorities below and the decisions relied upon.

5. The assessee is an Association of Telecom Operators in India. It was granted registration u/s 12AA of the I.T. Act and income was exempt u/s 11 thereof. The AO denied the benefit of exemption u/s 11 on the basis that the assessee is not a charitable association. He however, allowed the exemption to the assessee on the principle of mutuality. The contention of the assessee before the Id. CIT(A) remained that the assessee exists for the welfare of general public, hence, it is a charitable organization.

6. On perusal of the orders of the authorities below, I find that the Id. CIT(A) has decided the issue in favour of the assessee following the decision of Tribunal in the case of assessee itself for the A.Y. 2002-03 in ITA No. 593/Del/2006, vide order dated 25/01/2008. An identical issue was also raised before the Tribunal in the case of assessee itself for the A.Y. 2008-09 in ITA No. 4770/Del/2011 and the Tribunal, vide order dated 31/01/2012 has decided the issue in favour of the assessee following its earlier order for the A.Y. 2002-03. For a ready reference para no. 5 of the order of the Tribunal for the A.Y. 2002-03 is being reproduced hereunder:

“5. We have considered the facts of the case and rival submissions. On review of the ratio of various cases cited by rival parties, namely, Andhra Chamber of Commerce, Surat Art Silk Cloth Manufacturers Association, Bar Council of Maharashtra and Federation of Indian Chamber of Commerce & Industries, we find that promotion of trade, commerce or industry is an object of general public utility and, therefore, it constitutes a charitable purpose. The only condition is that the activity should not be carried on with a profit motive. In other words, if such activities are undertaken and they result in a surplus, the surplus should not be passed on directly or indirectly to the settler, the trustees, the members or any one claiming through them. Such surplus should remain for application

towards the objects of general public utility. In the case of Indian Sugar Mills Association, the rules contained provision to the effect that profits could be distributed to the members on passing of a resolution. The Hon'ble Supreme Court pointed out that this amounted to private gain and, therefore, the purpose could not be held to be charitable purpose. It is also clear that the activities, undertaken for the benefit of public at large, will not cease to be charitable purpose if any benefit incidentally arises to the members, settler or the trustee, as the case may be. Therefore, the argument that the litigation was pursued for the gain of the members does not hold good in the light of the fact that the objects were for promotion of basic telephone services, whose benefits ensured to public at large being the industries and the users. The benefits to the members, if any, was incidental and it was not the dominant object of the association. Therefore, we agree with the ld. CIT(A) that the objects of the assessee are charitable in nature. This conclusion also gets some sustenance from the fact that even after passing of the assessment order, the Director of Income Tax (E) did not cancel the registration u/s 12A of the Act. It may be pointed out that registration by the Director of Income Tax (E) is not an empty formality and unless reasons exist about the genuineness of the activities of the association, the exemption cannot be denied u/s 11(1)(a) if a charitable institution pursues its objects, which were considered to be charitable in nature by the director. Thus, we are of the view that the assessee society is entitled to exemption u/s 11(1)(a)."

7. Since the first appellate order is based on the order of the Tribunal in the case of the assessee itself on identical issue for the A.Y. 2002-03 which has also been followed by the Tribunal in the A.Y. 2009-10, I do not find any infirmity in the first appellate order in this regard. The same is upheld. The grounds are accordingly rejected.

8. In the result, the appeal is dismissed.

The order is pronounced in the open court on 30/07/2015

**Sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER**

Dated: 30/07/2015

*Kavita, P.S.

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT NEW DELHI**

Sl. No.	Description	Date
1.	Date of dictation by the Author	22.07.2015
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6.	Date of pronouncement of order	30.07.2015
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8.	Date on which file goes to the Head Clerk	
9.	Date of dispatch of order	