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Trainings carried on by taxpayer (including information technology enabled trainings) qualify as educational activities for charitable purposes

The Delhi Bench of the Indian Income tax Appellate Tribunal has held that the trainings carried on by the taxpayer (including information technology enabled training activities) qualify as educational activities for charitable purposes, eligible for income-tax benefits.

Facts of the case:

- NIIT Foundation (the taxpayer)¹, is a society registered under the Societies Registration Act, 1860. It is also registered under section 12A of the Income-tax Act, 1961 (ITA) and recognised under section 80G(5)(vi) of the ITA. The taxpayer was formed, amongst others, with the following objectives:
 - To promote, support and strengthen education, research and training of information technology (IT) and its application in all fields;
 - To collaborate, co-operate and enter into partnerships with universities, colleges and schools for expanding IT education and training;
 - To play an active role in the human development initiatives of the country by supporting and sponsoring, wherever feasible, the establishment of new universities, colleges and schools for organising innovative education and training programmes; etc.
- The taxpayer filed its income-tax return for the financial year (FY) 2013-14, corresponding to assessment year (AY) 2014-15, declaring 'Nil' income on the basis that it carried out charitable activities in the field of education and hence, eligible for income-tax benefits. The taxpayer's return was selected for audit by the Assessing Officer (AO).
- The Assessing Officer (AO) after examining the following details, held that the taxpayer's activities qualified as educational activities for charitable purposes, eligible for income-tax benefits:
 - Objects,
 - Activity,
 - Receipt of fees,
 - Taxes deducted at source (TDS) and its reconciliation with the form 26AS,
 - Service tax payments and its nature,
 - Donors / contributors, etc.

¹ NIIT Foundation v. CIT(E) ITA No. 4868/Del/2019

The AO, after going through other details / facts computed the income of the taxpayer at Nil and passed the order.

- The Commissioner of Income tax-Exemptions [CIT(E)], after examining the AO's order and submissions filed by the taxpayer before the CIT(E), held that the activities carried out by the taxpayer:

Did not qualify as educational activities for charitable purposes on the following basis:

- The taxpayer's courses were not approved by any government body;
- The government body viz. National Skill Development Corporation (NSDC) had approved the courses run by a group company. The said group company made payment to the taxpayer for the use of infrastructure provided and support services rendered by the taxpayer;
- To qualify as education for charitable purposes there should be normal schooling by way of regular and systematic instruction, as per the case of Sole Trustee, Lok Shikshana Trust v. CIT². In the case under consideration, the element of formal schooling was missing. The courses were run for a duration spanning between 20 to 200 hours without any fixed curriculum, criteria, discipline and other essential ingredients of formal education. Further, the taxpayer merely taught how to operate a smart phone, or use an e-mail, and speak English which did not qualify as education for charitable purposes.

Did not qualify as general public utility activities for charitable purposes on the following basis:

- The taxpayer received fees for training the students, which was in the nature of trade, commerce or business.
 - The taxpayer had paid service tax on fees received from the students.
 - The taxpayer acted as a professional / consultant appointed by its client for rendering services in the field of training (as the taxpayer raised invoices and the clients deducted TDS under provisions relating to TDS on payments for professional / fees for technical services).
- Accordingly, the CIT(E) held that the AO's order was erroneous and prejudicial to the interest of the Revenue. The CIT(E) cancelled the AO's order and directed the AO to pass a fresh order.
 - Aggrieved by the CIT(E)'s order, the taxpayer filed an appeal before the Delhi bench of the Income-tax Appellate Tribunal (ITAT).

Decision of the ITAT:

- The ITAT noted the following facts:
 - The taxpayer was primarily operating various education and development centers in rural areas; and in slums and in economically backward pockets of semi-urban areas across India. The objective was to impart education to and develop skills of the students of underprivileged or economically backward strata of the society, so that their employability could improve.

² Sole Trustee, Lok Shikshana Trust v. CIT [1975] 101 ITR 234 (SC)

- The training centers comprised of classrooms, computer labs and other infrastructure required to educate and train the students.
 - The taxpayer charged fees to students either at subsidised rates or at free of cost.
 - The taxpayer got the centers approved from the NSDC to conduct various educational courses approved by the NSDC.
 - The taxpayer had developed fixed curriculum which was approved either by the government authorities or by other globally recognised institutions.
 - The course sessions were conducted in a planned manner, attendance was compulsory for students to be eligible for examination and certificates were issued to successful students.
 - The taxpayer also provided trainings in relation to the national digital literacy mission of the government.
- The ITAT relied on the case of Gujarat State Co-Operative Union³, wherein it was held that ‘schooling’ also meant instructing or educating and therefore, it could not be said that the word ‘education’ was given an unduly restricted meaning (i.e. there should be normal schooling by way of regular and systematic instruction) by the Supreme Court in the case of Sole Trustee, Lok Shikshana Trust v. CIT⁴.
 - In view of the above, the ITAT held that the taxpayer was engaged in educational activity.
 - The ITAT held that the world was experiencing a ‘new normal’ and education was no exception. In the new normal:
 - Classrooms do not have brick, mortar, benches and blackboards. ‘Blackboard collaborate’ and digital white boards had replaced blackboards.
 - Teachers and students meet on cloud classes such as Meets, Teams, WebEx, Zoom, etc.
 - Books and notebooks have been replaced by smart phones, tabs, etc.
 - Attendances were also virtual and timings were 24*7.

Still the new normal had all the essentials of a classroom. It covered process of training, development of knowledge, skill, mind and character of students like normal schooling. Thus, the activities of the taxpayer were similar to classrooms.

- The ITAT held that the following factors were not relevant for determining whether the income of the taxpayer was in the nature of business income:
 - Reimbursement of deficit of certain projects by several corporate entities by spending out their corporate social responsibility obligation.
 - TDS deducted by clients to fulfil their own tax obligations.
 - Character of outflow for the payer could not always determine the character of inflow for the recipient.

³ Gujarat State Co-Operative Union v. CIT [1992] 195 ITR 279 (Guj HC.)

⁴ Sole Trustee, Lok Sikshana Trust v. CIT [1975] 101 ITR 234 (SC)

- Compliance with service tax law obligations.
- In view of the above, the ITAT held that the activities of the taxpayer qualified as educational activities for charitable purposes and not as business of profession, eligible for benefits under the ITA.
- The ITAT held that the AO had considered various factors before passing the order. The level and manner of enquiry could have been different due to change in perception. The CIT(E) had not in substance held that any due enquiry to be made by the AO, was not made. Accordingly, the ITAT held that the AO's order was not erroneous.

Comments:

- This ruling lays down the principle that, scope of education for charitable purposes is not to be confined to formal schooling by way of regular and systematic instruction. The ruling lays down the principle that in the new normal, education for charitable purposes need not be confined to the traditional means of classroom training / learning. The use of latest technology tools to conduct training (i.e. IT enabled training) and virtual trainings are also eligible to qualify as education for charitable purposes.



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