

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH " H", NEW DELHI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA Nos. 4177 & 4178/Del/2010
AYs: 2006-07, 2007-08**

ADIT (E)
Trust Circle-IV,
2nd Floor, Ayakar Bhawan,
Laxmi Nagar,
New Delhi – 110 092
(Appellant)

Vs. The Delhi Public School Society
DPS Staff Flats, "F" Block,
East of Kailash,
New Delhi – 110 065

(Respondent)

Appellant by : Shri O.P. Meena, Sr. DR
Respondent by : Sh. Hiren Mehta, CA

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

Both these appeals are filed by the Revenue directed against the consolidated order of the Ld.CIT(Appeals)-XXI, New Delhi dated 23.6.2010 pertaining to the A.Ys 2006-07 and 2007-08.

2. Facts in brief:- The assessee is a Society and derives income from running of schools. It runs 17 schools in the name of Delhi Public School (DPS) by itself. Further more, it has granted permission to 90 Societies/Trusts spread across India to open schools in the name of DPS. Similarly permission is granted to 25 entities outside India, to open schools in the name of DPS. Thus DPS Schools are opened and run by other Society/Trusts, after obtaining permission from the assessee Society. These are called Satellite Schools. These Satellite Schools are bound by an agreement, to pays service charges for using the name, mottos and logos of DPS. The assessee earns service charges from the Satellite Schools for granting permission to use the above name, mottos and logo and exercising certain control in the overall educational operations of these Satellite Schools. These service charges are reflected as Society maintenance

receipts, in the books of accounts of the assessee. The assessee is registered u/s 12A of the Act. It was also notified u/s 10(23)(C) of the Act by DGIT(Exemptions), Delhi vide Notification No.4/2005 dt. 19.5.2005. The DGIT(E) vide his order dt. 26.2.2009 rescinded the notification no.4/2005 dt. 19.5.2005 under which the assessee had been granted exemption u/s 10(23C)(vi). In view of the same, the benefit of exemption u/s 10(23C)(vi) is no longer available to the assessee for A.Y. 2006-07. However, since the assessee has been granted registration u/s 12AA of the Act, the assessment for A.Y. 2006-07 has been carried out subject to the provisions of s.11 and 12 of the Act. In this regard, in the assessment order it has clearly been recorded that “In view of the fact that notification u/s 10(23C)(vi) of the Act is no longer available to the assessee in AY 2007-08. Therefore, the present assessment is being made subject to provisions of s.11/12 of the Act.”

2.1. The A.O. treated the society maintenance fees receipts as business income and not incidental to the attainment of the objects of the assessee society. He further stated that separate books of accounts have not been maintained, which is violative of provisions of s.11 and 12 of the Act. He held that the society maintenance fee, being in the name of franchisee income earned by the assessee was taxable.

2.2. Aggrieved the assessee carried the matter in appeal before the First Appellate Authority, who held that, similar issue has arisen in the assessee's own case from the A.Y. 1998-99 onwards to the A.Y. 2005-06, and the ITAT, in various orders, as consistently upheld the orders of the Ld.CIT(A) and decided the issue in favour of the assessee.

3. Aggrieved, the Revenue is in appeal before us on the following grounds.

“1. On the facts and in the circumstances of the case, the Ld.CIT(A) ;has erred in deleting the addition of Rs.6,56,56,420/- made by the AO in respect of franchise fees received by the DPS Society from different satellite schools which are running under the name and logo of Delhi Public School (DPS) having different management than The DPS Society.

2. *The appellant craves leave to add, alter or amend any ground of appeal raised above at the time of hearing.”*

4. We have heard Shri O.P.Meena, Ld.Sr.D.R. on behalf of the Revenue and Shri Hiren Mehta, C.A. the Ld.Counsel for the assessee.

5. The issue is covered in favour of the assessee and against the Revenue by a series of decisions of the Tribunal in the assessee's own case. The Ld.CIT(A) has followed the binding decisions of the ITAT in the assessee's own case for the A.Y. 1998-99, 1999-2000, 2001-02, 2003-04 vide consolidated order dt. 23.5.2006 and ITAT orders for the A.Y. 2004-05.

6. In view of the above we find no infirmity in the order of the Ld.CIT(A) and we dismiss both the appeals of the Revenue.

7. In the result both ITA nos. 4177/Del/10 and 4178/Del/10 are dismissed.

Order pronounced in the Open Court on 30th November,2015.

Sd/-

**(SUDHANSHU SRIVASTIAVA)
JUDICIAL MEMBER**

Sd/-

**(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER**

Dated: the 30th November, 2015

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Copy of the Order forwarded to:

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

By Order

Asst. Registrar