

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
&
SHRI K.N. CHARRY, JUDICIAL MEMBER**

**ITA No.-750/Del/2014
(Assessment Year: 2009-10)**

ITO (E) Trust Ward-IV New Delhi.	vs	Management Development Institute IFCI Tower, 14 th Floor, 61, Nehru Place, New Delhi. AAATM0612L
Assessee by		Sh. Sumant Chadha, CA
Revenue by		Sh. Pradeep Kumar, Sr. DR

Date of Hearing	04.09.2017
Date of Pronouncement	19.09.2017

ORDER

PER SHRI K.N. CHARRY, JUDICIAL MEMBER

This is an appeal challenging the order dated 12.11.2013 in appeal no. 399/2011-12 passed by the Ld. Commissioner of Income Tax (Appeals)-XXI, New Delhi (hereinafter for short called as "Ld. CIT (A)").

2. Briefly stated facts are that the assessee is a registered society and registered u/s 12AA of the Act, and its income was exempt u/s 11 of the Act. Assessee has been sponsored by the IFCI (Industrial Financial Corporation of India Ltd.) which is a PSU (Public Sector Undertaking). Assessee has been in the field of education for providing education and training for the courses of management like MBA etc. and was established in 1973. For the AY 2009-10 the assessee filed their return of income on 30.09.2009 declaring the total income as 'Nil'. However, during the scrutiny the Assessing Officer has denied exemption u/s 11 to the assessee on the ground that the assessee is involved in commercial activity since the assessee receives consultancy charges for various research products taken up by them. AO computed the total income of the assessee at Rs. 13,27,75,036/-. In the appeal, by way of impugned order, Ld. CIT (A) found that the assessee is entitled for exemption u/s 11 of the Act and consequently he deleted the addition of Rs. 51,957/- under the head of "Sale of Assets", Rs. 2,39,77,823/- under the head of "Capital Expenditure", Rs. 11,10,00,000/- under the head of "accumulation of income" and also allowed carry forward the

earlier year deficits. Challenging the impugned order the Revenue is in appeal before us.

3. It is the argument of the Ld. DR that the Ld. CIT (A) erred in allowing the assessee to carry forward the deficit of the current year and to set off the same against the income of the subsequent years and in that process he ignored that the determination of income u/s 11 to 13 is a separate code and does not contain such provisions as contained in Chapter VI of the Act. He further submitted that the Ld. CIT (A) erred in holding that the assessee is in the field of education of management and comes within the definition of charitable purpose u/s 2(15) of the Act and as a matter of fact the assessee is not covered under the provisions of Section 11(4A) of the Act as the business of giving consultancy to business houses/other entities by charging fees, is not incidental to the objects of the society. He lastly contended that without adjudicating the issue of contravention of provisions of Section 13(1)(c) & 13(1)(d) of the Act the assessee cannot be held to be eligible for exemption u/s 11 of the Act.

4. Per contra, it is the argument of the Ld. AR that the similar issue had arisen in assessee's own case for the AY 2004-05 but the Ld. CIT (A) vide order dated 05.10.2007, allowed the claim of the assessee and the successive appeals preferred by the Department to this Tribunal, High Court and the Hon'ble Supreme Court were dismissed by orders dated 12.03.2010, 03.02.2011 & 27.02.2012 respectively, as such, the order of the Ld. CIT (A) in this matter following the judicial precedent while granting the exemption u/s 11 of the Act by holding that the education of management comes under the definition of charitable purposes u/s 2(15) of the Act and a consequent relieves granted by the Ld.CIT (A), cannot be interfered with by this Tribunal. It is submitted that for the AY 2007-08 also a similar relief was granted by a coordinate bench of this Tribunal in ITA No. 1143/Del/2011. Ld. AR produced the copy of the order dated 27.07.2010 in ITA No. 589/Del/2008 & 930/Del/2009 of the Hon'ble Jurisdictional High Court, where under a relief was granted to the assessee. Order dated 30.09.2011 passed by the Hon'ble Supreme Court in assessee's own case is also produced.

5. In the light of the above arguments advanced before us, we have gone through the orders of the authorities below as well as the order of a coordinate bench of this Tribunal in ITA No. 1143/Del/2011, orders of the Hon'ble High Court in ITA No. 589/Del/2008 and ITA No. 930/Del/2009 and also the order dated 30.09.2011 passed by the Hon'ble Supreme Court in assessee's own case dismissing the special leave petition preferred by the Revenue. There is no denial of the factual matrix set out by the Ld. CIT (A) in paragraph no. 2.2 in his order that for the AY 2004-05 similar denial of exemption u/s 11 was made by the Assessing Officer but the Ld. CIT (A) vide order dated 05.10.2007 allowed the appeal, the appeal preferred by the Department by such a first appellate order was dismissed by a coordinate bench of this Tribunal by order dated 12.03.2010 in ITA No. 170/Del/2008, the Hon'ble Jurisdictional High Court dismissed the further appeal in ITA No. 1431/Del/2010 by order dated 03.02.2011 and ultimately the Hon'ble Supreme Court by order dated 30.09.2011 dismissed the special leave petition preferred by the Department against the order of the Hon'ble Jurisdictional High Court in ITA No. 1431/Del/2010. So while respectfully

following these orders vide paragraph no. 2.3 the Ld. CIT (A) reached the conclusion that the assessee is in the field of education of management and, as such, comes within the definition of charitable purposes u/s 2(15) of the Act and eligible for exemption u/s 11 of the same. In view of this, we are unable to find any illegality or irregularity in the findings of the Ld. CIT (A) in restoring the exemption u/s 11 or deleting the addition of Rs. 51,957/- under the head of "sale of assets" or Rs. 2,39,77,823/- under the head of "capital expenditure" or Rs. 11,10,00,000/- under the head of "accumulation of income" or in allowing carry forward of the earlier year deficit against the current year's income. Further basing on the decision of the Hon'ble Bombay High Court in CIT vs. Banking Personnel Selection (2003) 131 taxman 386 (Bom.) (HC) Ld. CIT (A) held that since the exemption u/s 11 has been allowed to the assessee, there is no proper justification for the denial of adjustment of earlier year's deficits against the current year's income. We, therefore, find no reason to interfere with the orders of the Ld. CIT (A) and we, accordingly, uphold the same. With this view of the matter, we hold that the

appeal of the Revenue is liable to be dismissed and the same is accordingly dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 19.09.2017

Sd/-

(N.K. SAINI)

ACCOUNTANT MEMBER

Dated: 19.09.2017

*Kavita Arora

Sd/-

(K.N. CHARY)

JUDICIAL MEMBER

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

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