

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.6615/Del./2015
(ASSESSMENT YEAR : 2011-12)**

DCIT (E),
Circle 1 (1),
New Delhi.

vs. DLF Qutab Enclave Complex
Educational Charitable Trust,
9th Floor, DLF Centre,
Sansad Marg,
New Delhi – 110 001.

(PAN : AAATD0852D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.S. Singhvi, CA

REVENUE BY : Smt. Paramita Tripathy, CIT Dr

Date of Hearing : 19.09.2017

Date of Order : 21.09.2017

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, Deputy Commissioner of Income Tax (E), Circle 1 (1), New Delhi (hereinafter referred to as 'the Revenue'), by filing the present appeal, sought to set aside the impugned order dated 16.09.2015 passed by the Commissioner of Income-tax (Appeals)-40, New Delhi qua the assessment year 2011-12 on the grounds inter alia that :-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in allowing the appeal of the assessee ignoring the fact that though the objects of the assessee may seem to be charitable but the activities carried out by the society are commercial in nature.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in relying on the decision of Hon’ble ITAT in assessee’s own case by ignoring the fact that department has filed an appeal against the decision of ITAT setting aside the order of DIT (E) cancelling the registration of the assessee.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee is a society registered under section 12A of the Income-tax Act, 1961 (for short ‘the Act’) and has also been granted certificate u/s 80G(5)(vi) of the Act w.e.f. AY 2009-10. From the financial statement of the assessee, Assessing Officer noticed that the assessee trust is constructing and letting out the properties and earning income of rent and making huge profits which is again being applied for constructing and letting out the properties. AO concluded that the assessee has created vicious cycle to hide its true purpose to evade the tax firstly by constructing the building earmarked for education purpose and letting the properties to the society. The main object of the Trust is to build, establish and run schools to provide education facilities to the residents of DLF Qutab Enclave Complex, Gurgaon but the

Trust is only constructing and investing the amount in properties which are further leased out/rented out to society and shopping malls, which is not a charitable purpose as defined u/s 2(15) of the Act and thereby assessed the long term capital gain in terms of section 45 read with section 12 of the Act by assessing the total income at Rs.25,25,99,150/-.

3. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has allowed the same. Feeling aggrieved, the Revenue has come up before the Tribunal by way of challenging the impugned order passed by Id. CIT (A).

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, in AY 2009-10, the coordinate Bench of the Tribunal vide an order dated 20.08.2014 passed in assessee's own rejected the appeal filed by the Revenue denying the benefit of exemption under sections 11 & 12 of the Act. It is also not in dispute that there is no change in the facts and circumstances of the case during the year under assessment.

6. In the backdrop of the aforesaid undisputed facts and circumstances of the case, when we examine the assessment order

passed by the AO and grounds of appeal raised by the Revenue, it is transpired that present appeal has been filed just for sole reason that *“the decisions rendered by the Tribunal in assessee’s own case for AY 2009-10 has not been accepted by the department and appeal has been filed in the Hon’ble High Court.”* This trend of filing appeal is not only disappointing but leads to the multiplicity of the litigation because otherwise no substantial illegality or perversity has been pointed out by the Revenue.

7. Not only this decision rendered by the Tribunal has further been affirmed by the Hon’ble High Court of Delhi in ITA No.626/2012 order dated 27.02.2013, copy of which is available at pages 4 to 6 of the paper book, by making following observations:-

“ The respondent had challenged the said order of cancellation of registration before the Tribunal on the ground that the Director of Income-tax (Exemptions) did not have the power to cancel a registration under section 12A prior to 01.06.2010 which was the date on which an amendment was brought about in section 12AA(3). Section 12AA(3) reads as under:-

“(3) Where a trust or an institution has been granted registration under clause (b)of sub-section (1) or has obtained registration at any time under section 12A(as it stood before its amendment by the Finance (No.2) Act, 1996 (33 of 1996) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the

case may be, he shall pass an order in writing cancelling the registration of such trust or institution.?

However, the words- “or has obtained registration at any time under section 12A (as it stood the before its amendment by the Finance (No.2) Act, 1996 (33 of 1996)” were inserted by virtue of the Finance Act, 2010 with effect from 01.06.2010. This meant that the power to cancel the registration was conferred under section 12AA(3) only with effect from 01.06.2010. This is exactly what has been held by this court in DIT v. Mool Chand Khairati Ram Trust-339 ITR 622 (Del) This would be clear from the observations to the following effect:-

“7. From the conjoint reading of sub-section (1) clause (b) and sub-section (3) of section 12AA, it would be seen that the cancellation of the registration was provided where the registration was granted under clause (b) of sub-section (1). Further cancellation under sub-section (3) was also provided where the registration was obtained at any time under section 12A (may be under clause (a) or clause (aa) of sub-section (1) of section 12A). But this power of cancellation of registration obtained under section 12A came to be incorporated by way of amendment introduced by the Finance Act, 2010 with effect from 1st June, 2010. That being the interpretation of sub-section (3), it is amply clear that the power to cancel the registration once granted was only confined to the registration granted under clause (b) of sub-section 1 of section 12AA till before 1st June, 2010 of course, now with effect from 1st June, 2010, the power vests with the Commissioner even to cancel the registration granted under any of the clauses of sub-section (1) of section 12A. In that view of interpretation, we are of the considered view that there was no power vested with the Commissioner to cancel or withdraw the

registration granted to the assessee under section 12A(a) in the year 1974.”

Therefore, the Tribunal was right in holding that the order dated 31.12.2009 passed by the Director of Income-tax (Exemption) cancelling the registration of the respondent under section 12A was invalid inasmuch as the Director Income-tax (Exemptions) did not have the jurisdiction to do so till 01.06.2010 when the amendment was introduced in section 12AA(3) as indicated above.

8. In view of what has been discussed above and following the order passed by the coordinate Bench of the Tribunal affirmed by the Hon'ble Delhi High Court and the fact that there is no change in the facts and circumstances in case at hand nor there is any change in the objects and activities of the society, we find no illegality or perversity in the impugned order passed by the Id. CIT (A), hence the present appeal filed by the Revenue is hereby dismissed.

Order pronounced in open court on this 21st day of September, 2017.

**Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 21st day of September, 2017
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-40, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.