

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

I.T.A. No.4821/DEL/2016		
A.Y. : 2012-13		
INCOME TAX OFFICER (E), WARD 1(2), ROOM NO. 2417, 24 TH FLOOR, E-2 BLOCK, PRATYAKSH KAR BHAWAN, DR. SHYAMA PRASAD MUKHERJEE CIVIC CENTRE, JAWAHAR LAL NEHRU MARG, NEW DELHI - 110 002	VS.	M/S INDIAN YOUTH CENTRE TRUST, VISHWA YUVAK KENDRA, CIRCULAR ROAD, CHANKYAPURI, NEW DELHI - 110 021 (PAN:AAATI0141C)
(ASSESSEE)		(RESPONDENT)

Revenue by : Sh. Arun Kumar Yadav, Sr. DR
Assessee by : Sh. Ashish Chadha, CA

ORDER

PER H.S. SIDHU : JM

The Revenue has filed this Appeal against the impugned Order dated 24.6.2016 of the Ld. CIT(A)-40, New Delhi relevant to assessment years 2012-13.

2. The grounds raised in this Appeal read as under:-

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in*

ignoring the fact that the activities of the assessee of running hostel/ canteen and providing Auditorium and Conference Hall on hire in lieu of fee to everyone and was not restricted to members only, was purely commercial in nature and hence, 1st proviso to Section 2(15) of the Income Tax Act, 1961 is applicable in this case.

- 2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of depreciation of Rs. 39,60,948/- to the assessee ignoring the fact that the assessee had claimed the amount incurred on purchase of assets in earlier years as application of income, on which depreciation has been claimed now and further allowance of depreciation will be tantamount to double deduction.*
- 3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of depreciation of Rs.*

39,60,948/- to the assessee in view of the recent decision of the Hon'ble Delhi High Court in the case of DIT(E) vs. Charanjiv Charitable Trust dated 18.3.2014.

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

3. The brief facts of the case are that the assessee filed its return of income at NIL for AY 2012-13 on 28.9.2012. The case of the assessee was selected for scrutiny as per norms and notice u/s 143(2) of the Income Tax Act, 1961 (hereinafter referred as the Act) was issued on 23.9.2013. In response to the said notice and subsequent notice u/s. 142(1) of the Act, the AR of the assessee appeared from time to time and submitted details and particulars as requisitioned. The assessee is registered u/s. 12A of the Act vide registration dated 15.5.1974. The Trust received order u/s. 80G(5) vide DIT(E), Delhi order dated 02.12.2009 applicable for period commencing from AY 2010-11 till date it is rescinded. The objects of the society as per its MOA are to establish, maintain and conduct one or more National or International Youth Centers at and suitable Centres in India, for the benefit of the foreign students and youth

delegations as well as individuals visiting India. The society also sponsors programmes for interaction of youth leaders, young workers and students etc. The AO observed that providing of facilities on hire on day to day basis to all types of customers by running hostel / canteen and giving Auditorium and Conference Hall on hire on commercial lines was considered to satisfy the requirements of running a business on commercial lines. The AO further observed that considering the main heads of income and the main heads of expenditure the activities attracted Amendment in Section 2(15) of the Income Tax Act applicable w.e.f. 2009-10 assessment year onwards. In view thereof the deduction claimed under section 11 of the Act was denied and the net taxable income of Rs. 1,42,27,701/- computed u/s. 143(3) of the Act vide order dated 10.3.2015. Against the assessment order, assessee appealed before the Ld. CIT(A)-40, New Delhi, who vide his impugned order dated 24.6.2016 has allowed the appeal of the assessee. Aggrieved with the impugned order of the Ld. CIT(A), the Revenue is in appeal before the Tribunal. He further stated that the issue in dispute has also been covered by the decision of the earlier CIT(A) for AY 2010-11 & 2011-12; decision of ITAT for AY 2009-10, 2011-12 and the decision of the Hon'ble High Court of Delhi for AY 2011-12, in assessee's own case. For the sake ready reference, he has

filed a Paper Book containing pages 1 to 209 which includes the assessment as well as appellate records and also the copy of the Ld. CIT(A) decision for AY 2010-11 & 2011-12; copy of ITAT's decision for AY 2009-10 & 2011-12 and the Hon'ble Delhi High Court decision for AY 2011-12, in assessee's own case by which the issue in dispute is squarely covered.

4. Ld. DR relied upon the Order of the AO and reiterated the contentions raised in the grounds of appeal.

5. On the contrary, Ld. Counsel of the assessee has relied upon the order of the Ld. CIT(A) and stated he has passed a well reasoned order which does not need any interference.

6. We have heard both the parties and perused the relevant records, especially the impugned order as well as the Paper Book filed by the assessee's counsel. This Appeal has been filed by the Revenue against the order dated 24/06/2016 passed by the Ld. CIT(A) u/s 250 of the Income Tax Act, giving relief on the following issues:

- (i) Denial of exemption claimed u/s 11 of the Income tax Act by the AO.
- (ii) Disallowance of depreciation claimed by the assessee

6.1 We note that both the issues are covered by the order of Tribunal in the assessee's own case for A.Y. 2009-10, dated 23.08.2013 in ITA No. 5502/Del/2012 (enclosed at PB 133-163), holding that the assessee is eligible for exemption u/s 11 of the Act in Page 26-31 in Para 6.4 to 8 (PB 158-160) and allowing the claim of depreciation in Page 29-31 in Para 7 (PB 161-163). There were similar denial of exemption u/s. 11(1) for the AY 2010-11 & 2011-12 but the same were allowed by the Ld. CIT(A)-XXI, New Delhi (old) following the order of the Tribunal for the AY 2009-10, as aforesaid. We further note that AO has again invoked the mischief of proviso of section 2(15) and has denied the exemption u/s. 11(1) to the assessee during the current AY 2012-13 following the orders of the earlier assessment years mainly on the ground that the assessee is involved in trade, commerce or business activity.

6.2 We further note that similar, issue came before this Tribunal in assessee's case for A.Y. 2011-12 in ITA No. 3635/Del/2014 dated 23/05/2016, whereby, following its earlier order for A.Y. 2009-10, ITAT held that the assessee is eligible for exemption u/s 11 of the Act. The findings of Tribunal in this regard are in Para 4.9-4.10 (PB 176-181). The same order is affirmed by the Hon'ble High Court vide ITA no. 868/2016 dated 14.12.2016, (PB 185-186) by holding as under:-

".....The AO felt that since the assesses were engaged in providing commercial activity, he proviso to Section 2(15) was attracted. The ITAT ruled - on the basis of this Court judgements in India Trade Promotion Organization vs. DGIT 2015 (374) ITR 333 and Institution of Chartered Accounts vs. DGIT(E) 2013 (358) ITR 91 (Del.) that the mere circumstances of collection of such amounts did not result in the assesses losing their essential character of being established for charitable purposes.

We are of the opinion that the ITAT's decision is sound in law and facts. No substantial question of law arises. The appeals are accordingly dismissed."

7. In view of the above, we are of the considered view that the facts of the present case are identical to the facts of the preceding years. Therefore, the AO is not justified to deny the exemption u/s. 11(1) as the assessee is involved in the charitable work of promoting the welfare and cause of the youth. In our opinion, the issues raised in the present appeal is squarely covered by the order of the Ld. CIT(A) for AY 2009-10, ITAT decision for 2009-10 & 2011-12 as well as Hon'ble Delhi High Court's decision for AY 2011-12, as aforesaid. Therefore, respectfully following the precedents,

as aforesaid, we are of the considered opinion, the Ld. CIT(A) has rightly directed the AO to allow the exemption u/s. 11(1) of the Act to the assessee with all the consequential benefits, which does not need any interference on our part, hence, we affirm the impugned order of the Ld. CIT(A) on the issues in dispute and reject the grounds raised by the Revenue.

8. In the result, the appeal filed by the Department stands dismissed.

Order pronounced in the Open Court on 04/10/2017.

Sd/-

**[L.P. SAHU]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 04/10/2017

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches