

**THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. N. K. Saini, AM and Sh. K. N. Chary, JM

ITA No. 5228/Del/2015 : Asstt. Year : 2011-12

Dy. Commissioner of Income Tax (E), Circle-1(1), New Delhi	Vs	M/s India International Centre, 40, Max Muller Marg, Lodhi Estate, New Delhi-110003
(APPELLANT)		(RESPONDENT)
PAN No. AAATI0660C		

**Assessee by : Sh. Pradeep Dinodia, CA &
Sh. R. K. Kapoor, CA
Revenue by : Sh. S. P. Gupta, Sr. DR**

Date of Hearing : 14.09.2017	Date of Pronouncement : 09.10.2017
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ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 01.06.2015 of Id. CIT(A)-40 (Exemption), New Delhi.

2. Following grounds have been raised in this appeal:

"1 "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the benefit of section 11 & 12 of the Income-Tax Act, ignoring that the activities of the trust were not within the purview of section 2(15) of the Act, 1961 during the year."

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.2,55,61,000/- 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 is 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.2,55,61,000/- 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 18.03.2014.

4. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the provision for doubtful debts amounting to Rs. 1,62,000/- as allowable expense.

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

3. As regards to Ground No. 1, the Id. Counsel for the assessee at the very outset stated that this issue is squarely covered in assessee's favour vide order dated 11.05.2015 in ITA No. 3124/Del/2014 for the assessment year 2009-10 (copy of the said order was furnished which is placed on record).

4. In his rival submissions, the Id. DR although supported the order of the AO but could not controvert the aforesaid contention of the Id. Counsel for the assessee.

5. After considering the submissions of both the parties and the material on record, it is noticed that on an identical issue, the ITAT Delhi Bench -Cø, New Delhi while deciding the assessee's appeal against the order passed by the DIT(E) u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the Act) in ITA No. 3124/Del/2014 vide order dated 11.05.2015 for the assessment year 2009-10 observed as under:

“6.17. From the detailed submissions of assessee, reproduced earlier, which have not been controverted by department, we fail to understand as to how these activities can be said to have an iota of commercial/ trade colour. The dominant object of the assessee is definitely for the well being of public at large by organizing various seminars for the welfare of people by disseminating knowledge in various fields in order to uplift the social consciousness of the society at large. The composition of membership clearly exemplifies the real intention of assessee. We fail to understand as to how the hostel accommodation provided to various invitees could be considered as a commercial activity. Before any activity can be branded as being in the nature of trade or commerce, the AO has to demonstrate the intention of parties Backed with facts and figures of carrying out activities with profit motive. Mere surplus from any activity, which undisputedly has been undertaken to achieve the dominant object, does not imply that the same is run with profit motive. The intention has to be gathered from circumstances which compelled the carrying on an activity. In the

present case, ld. counsel has clearly demonstrated that surplus was generated from interest income and not from catering or hostel activities. Therefore, the objection of ld. DIT(E) does not survive on this count also.

8.18. The primary object of insertion of proviso to section 2(15) was to curb the practice of earning income by way of carrying on of trade or commerce and claiming the same as exempt in the garb of pursuing the alleged charitable object of general public utility. This proviso never meant to deny the exemption to those institutions, where the predominant object is undeniably a charitable object and in order to achieve the same incidental activities, essential in the given circumstances, are carried on.”

6. It is noticed that the ld. CIT(A) while allowing the claim of the assessee had followed the aforesaid decision of the ITAT Delhi Bench -Cø, New Delhi. In that view of the matter, we do not see any valid ground to interfere with the findings of the ld. CIT(A) and do not see any merit in this appeal of the department.

7. As regards to the another issues raised by the department vide Ground Nos. 2 to 4, the ld. Counsel for the assessee drew our attention towards the impugned order passed by the ld. CIT(A) and submitted that no such issue was adjudicated by the ld. CIT(A). Therefore, these grounds do not arise out of

the impugned order. The aforesaid contention of the Id. Counsel for the assessee was not controverted by the Id. DR.

8. After considering the submissions of both the parties and the material available on record, it is noticed that the Id. CIT(A) has not given any findings on the aforesaid issues, since those were not the subject of his consideration and moreover, when the exemption u/s 11(1) of the Act is allowed to the assessee those issues become academic in nature. We, therefore, do not see any merit in these grounds of the departmental appeal.

9. In the result, the appeal of the department is dismissed.
(Order Pronounced in the Court on 09/10/2017)

Sd/-
(K. N. Chary)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 09/10/2017

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR