

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.:- 184/Del/2015
Assessment Year: 2010-11

DCIT (E) Circle 2(1) New Delhi – 110 002	Vs.	P.B. Seth Jessa Ram & Bros. Charitable Hospital Trust W.E.A. Karol Bagh, New Delhi – 110 005 PAN AAATR0291G
(Appellant)		(Respondent)

Department by:	Shri S.L. Anuragi, Sr. DR
Assessee by :	Shri N.L. Gandhi, AR
Date of Hearing	25/04/2018
Date of pronouncement	03 /05/2018

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeal has been filed by the revenue against the order of Ld. CIT(A) XXI, New Delhi dated 17.10.2014 for the assessment year 2010-11. The revenue has raised the following grounds:-

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the assessee is eligible for*

exemption u/s 11 despite it having discontinued its activities for which registration 12AA was granted.”

2. “On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the assessee is carrying out charitable activities and thus eligible for exemption u/s11 of the I.T. Act despite having handed over the complete operation and management control of the Hospital to another agency in lieu of revenue sharing in a pre-determined ration.”

2. At the outset, the Ld. Counsel for the assessee submitted that this issue is squarely covered by the decision of the Tribunal in assessee’s own case for the assessment year 2008-09, which has been confirmed by the Hon’ble High Court vide judgement and order dated 4.1.2016 in ITA No. 1021/2015 and 1022/2015. Ld. DR on the other hand strongly relied upon the order of the Ld. CIT (A).

3. Brief facts are that assessee trust was constituted in the year 1952 and was running a charitable hospital in New Delhi. It was granted registration u/s 12 A (b) in the year 1975. The AO noted that assessee has entered into an agreement with Fortis Healthcare Ltd. on 29.10.2003 for operation and maintenance agreement and thereafter right from the assessment year 2003-04 to 2009-10, exemption u/s 11 was denied holding that now the primary control over the property held under the trust and income derived thereafter lies with the Forties Healthcare Limited. Accordingly relying with the earlier orders AO denied the exemption u/s 11. Ld. CIT(A) following the earlier

orders has directed the AO to allow the exemption u/s 11 after observing and holding as under :-

“3.5 I have considered the order of the AO and the submissions of the assessee and I find considerable merit in the submissions of the assessee that there is no proper justification in the order of the AO for denying exemption u/s 11(1) and the case of the assessee is also covered by the orders of the Hon’ble Tribunal for the A.T. 2004-05 to 2008-09 as referred above. There is also merit in the submissions of the assessee that there is no change in the objects and activities of the society and in fact the assessee is running on huge loss and no payment has been made by the assessee to the Fortis Healthcare Ltd. After considering all the facts and circumstances of the case, I am of the view that there is no proper justification for denying the exemption u/s 11(1) and accordingly the AO is directed to allow the exemption u/s 11(1) and all the consequential benefits.”

4. We find that the right from the assessment year 2003-04 and onwards, Ld. CIT(A) has been allowing the assessee’s appeal and Tribunal has been consistently allowing exemption u/s 11 and in some of the years the said order of the Tribunal has been confirmed by the Hon’ble High Court. The year-wise status right from the assessment year 2003-04 till the present assessment year is as under:

S.No.	Asstt. Year.	Remarks
1.	2003-04	The then AO passed order u/s 143(3) thereby denying exemption u/s 11 & 12. Aggrieved by assessment order passed, the assessee filed appeal before the CIT(A) which was allowed. Department did not file appeal before ITAT against the orders passed by the first appellate authority and thus the same, in our view, attained finality of decision.
2.	2004-05	-Treated as exempt u/s 11 of the Act by the CIT(A), Hon'ble Bench and the Hon 'ble High Court.
3.	2005-06 & 2006-07,	-Treated as exempt u/s 11 of the Act by the CIT(A), Hon'ble Bench and the Hon 'ble High Court.
3.	2007-08	- Treated as exempt u / s 11 of the Act by the CIT(A) , Hon 'ble Bench and the Hon'ble High Court. -No appeal filed by Department before the Hon'ble High Court - New Delhi.
4.	2008-09	-Treated as exempt u/s 11 of the Act by the CIT(A) , and Hon'ble Bench. -No appeal filed by Department before the Hon'ble High Court - New Delhi.
5.	2009-10	-Treated as exempt u/s 11 of the Act by the CIT(A). -No further appeals filed by Department before the Hon'ble Bench and the Hon'ble High Court - New Delhi.
6.	2010-11	Treated as exempt by the CIT(A) u/s 11 of the Act (under appeal to the Hon'ble Bench by Department.

5. Accordingly relying with the precedence for the earlier years we uphold the order of the Ld. CIT (A) allowing exemption u/s 11 to the assessee trust. Thus, the grounds raised by the revenue are dismissed.

6. In the result the appeal of the revenue is dismissed.

Order pronounced in the Open Court on 3rd May, 2018.

sd/-

sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 03 /05/2018

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi