IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH'A', CHANDIGARH

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.577/Chd/2008
Assessment Year: 2004-05

The Asst. CIT Panchkula Circle, Panchkula	Vs.	M/s Haryana State Agricultural Marketing Board, Sector-6 Panchkula PAN No. AAALH0016R

ITA No.1014/Chd/2009
Assessment Year: 2006-07

The DCIT Panchkula Circle, Panchkula	Vs.	M/s Haryana State Agricultural Marketing Board, Sector-6 Panchkula

ITA No.538/Chd/2010
Assessment Year: 2003-04

The DCIT Panchkula Circle, Panchkula	Vs.	M/s Haryana State Agricultural Marketing Board, Sector-6 Panchkula

ITA No.614/Chd/2011
Assessment Year: 2008-09

The DCIT Panchkula Circle, Panchkula	Vs.	M/s Haryana State Agricultural Marketing Board, Sector-6 Panchkula

(Appellant) (Respondent)

Assessee By : Sh. Harish Nayyar
Revenue By : Dr. Gulshan Raj

Date of hearing : 08/03/2018
Date of Pronouncement : 22/05/2018

ORDER

PER BENCH:

All the above appeals have been filed by the Revenue against the separate orders of Ld. CIT(A), Panchkula.

2. The year wise grounds of the appeals are read as under:

i. Ground raised by the Revenue in ITA 538/CHD/2010 for A.Y. 2003-04 is as under:

" Whether on the facts and in the circumstances of the case, the Hon'ble ITAT has erred in holding that the assessee is eligible for exemption under section 11 without appreciating the fact that the assessee did not maintain books of accounts as stipulated and thus the assessee has not satisfied the required conditions for exemption,"

ii. Ground raised by the Revenue in ITA 1014/CHD/2010 for A.Y. 2006-07 is as under:

" Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the assessee is eligible for exemption under section 11 without appreciating the fact that the assessee did not maintain proper books of account which is a pre-requisite for the grant of exemption under section 11 ?

iii. Ground raised by the Revenue in ITA 614/CHD/2010 for A.Y. 2008-09 is as under:

" Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is right in holding that the assessee is eligible for exemption under section 11 without appreciating the fact that the assessee did not maintain proper books of account as stipulated and thus the assessee has not satisfied the required conditions for exemption ?"

3. Since the issue in all the three years is identical therefore they are being decided together by way of this common order.

4. Brief facts of the case are that, the assessee filed return of income declaring taxable income NIL on 11.11.2004. The Assessing Officer noticed that the Auditor in Form No.3BC has stated that in the absence of Profit & Loss Accounts, Income & Expenditure account is not verifiable. The auditors reported that the Books of Accounts of various other offices have not been examined. It is stated in the Audit Report that the Books of Accounts of only the Head Office were examined and no Books of Accounts of Branch Offices were produced.

5. During the assessment proceedings, assessee contested that he has been granted registration u/s 12AA, therefore, his income is exempt. This plea of the assessee has been examined by the Assessing Officer who held that for claiming exemptions u/s 11 & 12, the assessee should maintain complete books of accounts and these should be properly audited. The Assessing Officer held that the assessee's Books of Accounts are not maintained and the accounts maintained under the Income Tax Act are not true and verifiable and as per the

observations of the Auditor. Therefore, the assessment was completed in the manner of AOP and not in the status of charitable institution.

6. The matter travelled up to the Hon'ble High Court vide judgment dt. 20/02/2017, the Hon'ble High Court has held as under:

1. This order shall dispose of ITA Nos. 126, 568 of 2009, 588 of 2010, 110 of 2011, 40 of 2012 and 323 of 2015 as issue involved in all these appeals is identical. However, the facts are being extracted from ITA No. 126 of 2009.

2. ITA No. 126 of 2009 has been preferred by the appellant- revenue under section 260a of the income tax act, 1961 which (in short, the Act) against the order dated 19.08.2008, Annexure A.3, passed by the Income Tax Appellate Tribunal, Chandigarh Bench (A), Chandigarh (in short, the Tribunal) in ITA No. 577/CHANDI/2008 for the assessment year 2004-05. On 10.02.2010, this appeal was admitted to consider the following substantial question of law. Whether on the facts and circumstances of the case, the Learned ITAT has erred in holding that the assessee is eligible for exemption under Section 11 without appreciating the fact that the assessee did not maintain books of account as stipulated under the Income Tax Act, 1961 which was stated by the auditor itself and the assessee therefore not satisfying the necessary conditions?

3. In ITA No. 588 of 2010, additional substantial question of law raised by the appellant-revenue reads thus:-

"Whether on the facts and circumstances of the case, the learned ITAT is justified in allowing the exemption under Sections 11 and 12 to the assessee without considering the merits of the case for the year under consideration especially when the facts of the case for the year under consideration are not identical to those of the earlier years, merely by relying on its earlier order?"

4. A few facts relevant for the decision of the controversy involved as narrated in ITA No. 126 of 2006 may be noticed. The respondent-assessee M/s Haryana State Agricultural Marketing Board, Panchkula filed its return of income for the assessment year 2004-05 on 11.11.2004 declaring income at NIL. The assessment was completed under Section 143(3) on 22.12.2006, Annexure A.1 by the Assessing Officer at total taxable income of ` 11,03,11,164/-. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 17.03.2008, Annexure A.2, the CIT(A) partly allowed the appeal of the assessee. It was held that the assessee being a statutory body cannot function beyond the statutory provisions under which it has been created. Non production of sanction letters due to paucity of time, may be procedural irregularity but it shall not affect the taxability of income so long as expenditure has been incurred towards the object of the Board. It was concluded that the Assessing Officer was not justified in denying exemption in respect of the surplus that had been brought to tax. Not satisfied with the order, the revenue filed an appeal before the Tribunal. Vide order dated 19.08.2008, Annexure A.3, the Tribunal upheld the order passed by the CIT(A) and dismissed the appeal of the revenue. It has been recorded by the Tribunal that even while granting registration under Section 12A of the Act, the assessee was found to be maintaining accounts which were duly audited. The assessee was also found having complied with the requirement of law in getting its account audited. There is finding by the CIT(A) that the auditors had certified in the audit report and they had examined the books of account and trial balances of various offices. This factual position was not controverted by the revenue. Thus, the Tribunal did not find any infirmity in the order passed by the CIT(A). Hence, the instant appeals by the revenue.

5. We have heard learned counsel for the parties.

6. On April 11, 2014, learned counsel for the respondent-assessee stated that the books of account of the assessee were being maintained and in the audit reports, it was mentioned with regard to the preparation of profit and loss

account and balance-sheet. Learned counsel prayed for time to produce the audit reports. On 11.02.2016, learned counsel for the respondent-assessee prayed for further time to produce relevant material to substantiate that the record was maintained in which the various incomes and expenditure could be easily verified. On 24.01.2017, learned counsel for the assessee again prayed for time to file an application placing certain documents on record. The needful was not done.

7. A perusal of the order passed by the Tribunal dated 19.08.2008, Annexure A.3 shows that while completing the assessment, the Assessing Officer denied the benefit of exemption under Sections 11and 12 of the Act on the ground that the accounts of the assessee were not correct and no separate books of account had been maintained as required under the Act. The assessment was completed not in the status of charitable institution. Thus, the exemption was not allowed. The matter went to the Tribunal and it was sent back to the Assessing Officer. The Assessing Officer completed the assessment. The CIT(A) sought remand report from the Assessing Officer. The assessee claimed that the books of account were regularly maintained. Accordingly, the Assessing Officer was asked to examine the matter vide letter dated 23.07.2007. While granting registration under Section 12A of the Act, the assessee was found to be maintaining accounts which were duly audited. It was further recorded by the CIT(A) that the auditors had certified in the audit report that they had examined books of account and trial balance of various offices. In view of this finding the Tribunal did not find infirmity in the order passed by the CIT(A). The relevant findings recorded by the Tribunal read thus:-

"We have considered the rival submissions and perused the material on file. Brief facts are that the assessee is a statutory body, set up under Haryana State Agricultural Market Board, for the welfare of the farming community at large and is a charitable organization carrying on the charitable activities as defined in Sec-2(15) of the Act. As far as, registration is concerned, the issue was settled and the assessee was granted registration. While completing the assessment the learned Assessing Officer denied the benefit of exemption under section 11 and 13 on the ground that accounts of the assessee are not correct and no separate books of account have been maintained as required under the Act, consequently the assessment was completed as AOP and not in the status of charitable institution. Therefore, exemption claimed by the assessee under Section 11(1) was not allowed. The matter even travelled to the Tribunal and it was set aside to the learned Assessing Officer. In the set aside proceedings and pursuance to compliance of the order of the Tribunal, the learned Assessing Officer completed the assessment. During first appellate stage, learned CIT(A) again sought the remand report from the Assessing Officer and the same was duly considered. The remand report dated 24.12.2007 is in the Paper Book available on the file. The learned CIT(A) has also considered the submissions of the assessee which are available at page 4 onwards. Even written submissions filed by the assessee were forwarded to the learned Assessing Officer for examination and comments. There is finding in the impugned order that the learned Assessing Officer instead of examining the books of account, simply reiterated his observations as made in the earlier assessment order. In its written submissions, the assessee has claimed that books of account were regularly maintained, therefore, the learned Assessing Officer was asked to examine the matter vide letter dated 23.07.2007 along with certain directions. Even while granting registration under Section 12A of the Act, the assessee was found to be maintaining accounts which are duly audited. The assessee was also found having complied with the requirement of law in getting its accounts audited. At page 16 of the impugned order, there is a finding that the auditors have certified in the audit report that they have examined the books of account and trial balance of various offices. This factual matrix was not controverted by the revenue. Even otherwise the assessee is a statutory body and cannot function beyond the statutory provisions under which it was created. In view of this finding, we have not found any infirmity in the impugned order of learned CIT(A), consequently the same is upheld.

8. Learned counsel for the revenue very emphatically submitted that the finding recorded regarding maintenance of books of account by the assessee are perverse and more so when inspite of taking several opportunities before this

court as well, the learned counsel for the assessee was unable to substantiate these findings by producing the record in the High Court. Thus, the finding recorded by the Tribunal is required to be verified and since the respondent-assessee has not been able to produce the books of account and the audit report, it is appropriate to set aside the impugned orders and remand the matter back to the Tribunal for fresh decision in accordance with law after hearing both the parties. As regards the additional substantial question of law raised in ITA No. 588 of 2010, though no serious error was raised, since the matter is being remanded, the Tribunal shall look into this fact also.

9. As a result, all the appeals stand disposed of accordingly.

7. Since the moot issue of maintenance of the books of accounts has not been examined as they have not been produced before the Assessing Officer and as well as before the Hon'ble High Court, the matter was remanded back for decision afresh after hearing both the parties in accordance with law.

8. During the hearing before us, the Ld. AR submitted as under in his written reply:

"Appellant board who is fully owned by State Govt, of Haryana has been set up under the PAPM Act for the welfare of farmers community in the State of Haryana. The accounts of the Appellant Board are subject to audit by the Accountant General Audit, Haryana, Chandigarh which is being undertaken regularly by Accountant General Audit, Haryana. Copies of audit certificates for the assessment years 2003-04, 2004-05 and 2005-06 issued/given by the Accountant General Audit, Haryana, Chandigarh are enclosed for your kind reference. These certificates clearly affirm the fact that proper books of accounts have been maintained by the Appellant board during :he years under appeals.

Further the accounts of Appellant board were also audited by the firm of Chartered Accountants. Copies of audit reports were duly filed by the Appellant Board along with its income tax returns.

It may also be relevant to mention here that the matter regarding maintenance of books of accounts of the Appellant board came up for hearing for the first time during the course of assessment proceedings for the assessment year 2004-05, when the benefit of exemption under section 11 and 12 was denied by the AO by assessing the Appellant Board as AOP on the ground that accounts of the Appellant Board are not correct and no separate books of accounts have been maintained by the Appellant Board. The matter eventually travelled to Hon'ble ITAT and was set aside by Hon'ble ITAT to AO. In the set aside proceedings, the Ld. Commissioner of income tax (Appeals) sought remand report from the Assessing Officer. After considering the remand report and after having been satisfied that Appellant board is maintaining proper books of accounts, Ld. CIT(A) allowed the appeal of the Appellant board. Thereafter, the matter came to the Hon'ble Income tax Appellate Tribunal, who also upheld the order of CIT(A) and held that books of accounts have been maintained by the appellant board. The relevant findings of the Hon'ble Income tax Appellate Tribunal are contained in Para(s) 3 to 5 of order in ITA No.577/Chandigarh/2008 (enclosed herewith) for your kind consideration and taking necessary action in the matter.

Since the Appellant board has maintained proper books of accounts, thus Appellant board is eligible for exemption under section 11 and 12 of the Income tax Act 1961. *It is thus prayed that appeals of the Income tax department*

remanded to the Hon'ble Income tax Appellate Tribunal by the Hon'ble Punjab and Haryana High Court may kindly be dismissed."

9. As against the submission of the Ld. AR, the departmental representative vehemently argued that the basis of addition was non production of books of accounts before the Assessing Officer who is the primary authority to examine the same and come to a reasonable conclusion and allow or disallow the exemption. Hence, he argued that in fitness of things, if the books of accounts are being maintained by the assessee, then the Assessing Officer should get an opportunity to examine the same.

10. Having heard the arguments of both the parties and since the assessee categorically submits that books of accounts have been duly maintained and can be produced for verification along with the audit reports and also the arguments of the Ld. DR that if the books are maintained, they are required to be examined by the primary authority i.e; the Assessing Officer, we hereby remand the matter back to the file of the Assessing Officer for the limited purpose of passing an order *denovo* with regard to this ground only and with directions to the assessee to produce books of accounts promptly before the Assessing Officer.

11. This ground of appeal of the Revenue is allowed for statistical purposes.

12. The ground no. 2 of the Revenue appeal for the A.Y. 2008-09 is as under:

2. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the depreciation of Rs. 89,04,073/- by way of disallowance of depreciation made by the Assessing Officer?

13. Brief facts of the case are that the Assessing Officer has disallowed an amount of Rs. 89,04,073/- on account of depreciation claimed by the assessee in the income and expenditure statement. The Assessing Officer held that a charitable institution registered under section 12AA of the Income Tax Act,1961 can claim the entire cost of fixed asset purchased as application of income in the year of purchase. Hence, he opined that the subsequent claim of depreciation on the same assets cannot be allowed.

14. We find that the Ld. CIT(A) has rightly deleted the addition as it has been held in various cases based on the judicial pronouncements that depreciation to a charitable institution registered under section 12AA of the Act is an

allowable expenditure. Since, the decision of the Ld. CIT(A) is based on the judgment passed by the Coordinate Bench of ITAT Chandigarh in the case of Haryana Labour Welfare Board Vs. CIT in ITA No. 894/CHD/2009 and also based on the judgment of jurisdictional High Court in the case of Market Committee, Pipli 45 DTR 381, we decline to interfere in the order of the Ld. CIT(A).

15. The appeal of the Revenue on this ground stands dismissed.

16. As a result, appeals of the Revenue are partly allowed for statistical purposes.

Order pronounced in the open court.

Sd/-	**Sd/-**
(DIVA SINGH)	**(DR. B.R.R.KUMAR)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated : 22/05/2018
AG
Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR