

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.:-5253/Del/2016
Assessment Year: 2012-13

ACIT(E), Circle 1(1), E-2 Block, Pratyaksh Kar Bhawan, Dr. Shyama Prasad Mukherjee Civic Centre, New Delhi.	Vs.	DLF Qutab Enclave Complex Educational Charitable Trust, 9 th Floor, DLF Centre, Sansad Marg, New Delhi – 110 001
(Appellant)		(Respondent)

Department by:	Shri Vijay Kumar Jiwani, Sr. DR
Assessee by :	Shri R. S. Singhvi, CA & Shri Satyajeet Goel
Date of Hearing	30/05/2018
Date of pronouncement	29/06/2018

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeal has been filed by the revenue against the impugned order dated 20.07.2016 passed by Ld. CIT(Appeals) -40, New Delhi for the quantum of assessment passed u/s 143(3) for the assessment year 2012-13. In the grounds of appeal revenue has raised following ground:-

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 I.T. Act to the assessee by ignoring the fact that though the objects of the assessee may seem to be charitable, but activities carried out by the society which yielded income to the society are commercial in nature.”*
2. At the outset Ld. Counsel for the assessee submitted that the issue raised by the revenue stands squarely covered by the decision of the Tribunal in assessee’s own case for the earlier years and not only that, in the appeal for the assessment year 2009-10, the order of the Tribunal has been confirmed by the Hon’ble Delhi High Court also. Ld. DR though admitted that the issue involved is squarely covered, however he relied upon the order of the AO.
3. The facts in brief are that, M/s. DLF Limited was mainly engaged in developing a DLF Township/colony in the state of Haryana. It was under a legal obligation by the State Government to provide educational facilities to the resident of ‘DLF Qutab Enclave Complex’ as per the allotment terms from the Haryana Government. Accordingly, the assessee trust was to provide educational facilities through construction of building, and running and maintain schools. For carrying out such educational activities, it was granted registration u/s 12B vide order dated 27.12.1988. Later on the said

registration was cancelled vide order dated 31.12.2009. However the same was restored by the Tribunal vide order dated 8.7.2011 and the said order of the Tribunal was upheld by the Hon'ble Delhi High Court also. The AO had denied the exemption u/s 11 on the ground that the activities carried out by the assessee are not for the charitable purposes but is in the nature of commercial activities. He also observed that earlier order of the Tribunal restoring the registration u/s 12A and affirmed by the Hon'ble High Court has not been accepted by the Tribunal and SLP has been filed before the Hon'ble Supreme Court. Accordingly, he denied the exemption u/s 11 to the assessee.

4. Ld. CIT (A) following the appellate order observing and holding as under:-

“3.10. I have perused the facts of the case, observation of the AO as well as decision rendered by me in appellant's case in the AY 2011-12. It reveals that contention of the appellant is correct in as much as, the facts of the case continue to be identical as compared to earlier year(s). I agree with the contention of the appellant that the Ld. Assessing Officer has failed to appreciate and erred in law, i.e., the benefit of Section 11 & 12 cannot be denied while registration u/s 12A is still in force. It is an admitted position of law that till registration u/s 12A is in place and there in no amendment or alteration or violation of objectives as enshrined in the Trust Deed, the benefit u/s 11 & 12 cannot

be denied to the appellant. In this view, I derive support from the following judicial decisions:

The Hon'ble Punjab & Haryana High Court in the case of Sonepat Hindu Educational and Charitable Society Vs. CIT (2005) 278 ITR 262 have held that "Registration of an Institution u/s 12A is sufficient proof of it being established for charitable purpose."

Similar view has been earlier affirmed in the following judicial decisions too:

(a) CIT Vs. Ootacamund Gymkhana Club (1977) 110 ITR 392 (Mad.)

(b) Hiralal Bhagwati Vs. CIT (2000) 246 ITR 188, 193 (Guj.)

(c) Addl. CIT Vs. Surat City Gymkhana [SLP (C) Nos. 20439-440 of 2001: (2002) 257 ITR (St.) 34 (SC)]

(d) Madhya Pradesh Madhyam Vs. CIT (2002) 256 ITR 277, 279 (MP)

Therefore, following my own decision rendered, for the AY 2011-12 and that of AY 2009-10 duly upheld by ITAT, the AO is hereby directed to allow exemption u/s 11(1), to the appellant for the year under appeal, with all the consequential benefits. Accordingly grounds no. 1 to 7 are hereby allowed.

3.11. In Ground No. 8, the appellant has agitated that the Ld. Assessing Officer has erred in law in charging tax at a maximum marginal rate on assessed income by treating the Trust as an AOP.

3.12 In view of my decision, supra, in regard to ground no. 1 to 7 directing the benefit of Section 11 & 12 to the appellant, this ground of appeal has now become infructuous and shall be treated for statistical purposes as allowed. ”

4. We find that in assessee's own case the Tribunal for the assessment year 2011-12 has allowed the exemption of section 11 to the assessee following the order of the Tribunal for assessment year 2009-10, which has been affirmed by the Hon'ble Delhi High Court. Copy of the order in ITA No. 6615/Del/2015 dated 21.9.2017 has been filed before us, which reads as under:-

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 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 tile 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 tile clauses of sub-section (1) of section 12A. In that view of interpretation, we are of tile 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 i no chang 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. "

Thus, respectfully following the earlier year precedence we uphold the order of the Ld. CIT (A).

Order pronounced in the Open Court on 29th June, 2018.

sd/-

(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 29/06/2018

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Copy forwarded to

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

sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, New Delhi