

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'A', NEW DELHI**

**BEFORE SHRI G.D.AGRAWAL, HON'BLE PRESIDENT
AND SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 2555/Del/2015
A.Y. 2010-11**

Indraprastha Cancer Society and Research Centre C/o Rajiv Gandhi Cancer Institute D-18, Sector 5, Rohini New Delhi 110 085 PAN: AAAT10440C	vs.	ITO (Exemption) Trust Ward IV New Delhi 110 002
(Appellant)		(Respondent)

Assessee by	Shri Shailender K Bajaj, C.A.
Department by	Ms. Ashima Neb, Sr.D.R.
Date of Hearing	27/06/2018
Date of Pronouncement	02.07.2018

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

This appeal is preferred by the Assessee against the order dated 20.10.2014 passed by the Ld. Commissioner of Income Tax (Appeals)-XXI, New Delhi for the Assessment Year (A.Y.) 2010-11 on the following grounds:

- “1. That on the facts and circumstances of the case the Ld. CIT (A) - XXI has erred both in facts and in law while sustaining the disallowance, made by the assessing officer, of depreciation of Rs. 6,52,45,727/- for the purposes of computing income of the appellant society under section 11 of the Income Tax Act.*
- 2. That the Ld. CIT (A) has erred both in facts and in law by sustaining the disallowance made by the assessing officer of provision for bad debts of Rs.12,74,419/- claimed while determining the income of the society on commercial principles of the appellant society under section 11 of the Act.*
- 3. That the Ld. CIT(A) erred both in facts and in law while sustaining the disallowance , made by the assessing officer , of the loss on sale of capital assets of Rs. 6,92,232/- while determining the income of the appellant society under section 11 of the Act.*
- 4. That the order passed by the Ld. CIT(A) - XXI is bad in law and against the facts of the case.*
- 5. That the appellant craves leave to add , delete or amend any of the ground of appeal on or before the disposal of the present appeal.”*

2. Brief facts of the case are that the assessee is a Charitable Society registered under the Societies Registration Act, 1860 and is also registered u/s 12AA(1) of the Income Tax Act, 1961 ('the Act', for short). The assessee is running a renowned cancer hospital in Rohini, Delhi in the name of Rajiv Gandhi Cancer Institute. The assessee is a charitable society and income is

exempt u/s 11(1) of the Act. The assessee has also got approval u/s 10(23)(VI)(a) of the Act. During the year the assessee had claimed depreciation of Rs.6,52,45,727/- which was disallowed by the A.O. on the ground that this was a double deduction as the entire capital expenditure on the purchase of capital asset had already been treated as application of income. Apart from this the assessee had claimed deduction of Rs.12,74,419/- under the head 'provision for bad debts'. This provision was also disallowed by the A.O. on the ground that this was only a provision and that bad debts are allowable only when they are written off in the books of accounts. Further, the assessee had also claimed a loss of Rs.6,92,232/- against sale of capital assets. The A.O. was of the opinion that no capital loss was allowable under the provisions of Section 11 of the Act. Aggrieved, the assessee approached the Ld. CIT (A) who upheld all these three additions/disallowances. Now, the assessee has approached the ITAT and has challenged the confirmation of disallowances by the Ld. CIT (A).

3. The Ld. A.R. submitted that the issue of depreciation was covered in favour of the assessee in assessee's own case by the order of Hon'ble Delhi High Court in DIT(Exemptions) vs.

Indraprastha Cancer Society reported in 229 Taxmann 93 (Del). With respect to the provision for bad and doubtful debts, reliance was placed on the judgement of Hon'ble Delhi High Court in the case of DIT(E) vs. National Association of Software and Services Companies reported in 345 ITR 362 (Del.). With respect to the third ground pertaining to disallowance of loss with respect to the assets written off, the Ld.AR submitted that this ground was not being pressed in view of the huge losses of the assessee Society.

4. In response, the Ld. SR. D.R. placed reliance on the concurrent findings of both the lower authorities and vehemently argued that the findings of both the lower authorities had been given after due consideration of the facts and it was submitted that no interference was called for.

5. We have heard the rival submissions and also perused material on record. Although, the Ld. Sr. D.R. has argued vehemently against the two issues under challenge, she was not able to negate the fact that the issue of depreciation is squarely covered in favour of the assessee in assessee's own case by the judgement of Hon'ble Delhi High Court in case of DIT(E) vs. Indraprastha Cancer Society (supra). In the said judgement the Hon'ble Delhi High Court has duly noted that insertion of Sub-

Section (6) to Section 11 of the Act has been inserted w.e.f. 01st April, 2015 only and, therefore, the legal position would undergo a change and will be applicable w.e.f. 1st April, 2015 only and will not be applicable to earlier Assessment Years. Since the present appeal before us pertains to the A.Y. 2010-11, the issue stands covered in favour of the assessee by the judgement of Hon'ble Delhi High Court in assessee's own case as aforesaid. Thus, we have no hesitation in allowing ground no.1 of assessee's appeal.

5.1 Coming to ground no.2, we find that this issue is also covered in favour of assessee by the judgement of Hon'ble Delhi High Court in the case of DIT(E) vs. National Association of Software and Services Companies (supra). The relevant portion of the judgement, as contained in paragraph 40 of the said judgement, is being reproduced for a ready reference.

“40. As regards the provision for bad and doubtful debts, the question again is whether in computing the income of the trust on commercial principles, the provision can be deducted or where the deduction can be allowed only in accordance with the provisions of Section 36(i)(vii) read with Section 36(2)(i) of the Act. We have already held that the income of the trust available for application to charitable purposes in India should be computed not in accordance with the strict provisions of the Income Tax Act but should be computed in

accordance with commercial principles and it is on this footing that the payment of Income Tax Act under the VDIS was treated as a deduction and as proper application of the income of the trust. The same line of reasoning holds good for the provision for bad and doubtful debts. Even under the computation provision of the Act such a provision was considered allowable up to and including the assessment year 1988-89 and it was only from the assessment year 1989-90 that the Act required that a mere provision would not be allowable as a deduction and the actual writing off of the debt was a necessary pre-condition. Be that as it may, under the commercial principles it has always been recognized that a provision, reasonably made for a loss or an outgoing, can be deducted from the income if there is apprehension that the debt might become bad. There is nothing brought on record to show that the provision was not made bonafide. In such a situation, the ratio of the decisions cited by us while dealing with the deductibility of the taxes paid under the VDIS will equally apply. We accordingly hold that while computing the income available to the trust for application to charitable purposes in India in accordance with Section 11(1)(a) the provision for doubtful debts must be deducted. Accordingly, we frame the following substantial question of law and answer the same in the affirmative in favour of the assessee and against the Revenue: -

""Whether the Tribunal was right in law in holding that the provision for doubtful debts must be deducted from the

income of the trust on commercial principles, for the purposes of Section 11(1)(a) of the Act?"

5.2 In view of the ratio of judgement of Hon'ble Delhi High Court as reproduced in the preceding paragraph, it is our considered opinion that this issue also is decided in favour of the assessee. Accordingly we allow ground no.2 of assessee's appeal.

5.3 As the Ld.AR has submitted that ground no.3 is not being pressed in view of huge accumulated losses, the same is dismissed as 'not pressed'.

5.4 Ground nos. 4 and 5 are general in nature and hence the same are not being adjudicated upon.

6. In the result appeal filed by the Assessee stands partly allowed.

Order pronounced in the Open Court on 02.07.2018.

Sd/-

**(G.D.AGRAWAL)
PRESIDENT**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dt. 02nd July, 2018

*manga

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches