

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.-2547/Del/2015
(Assessment Year: 2011-12)**

ITO(Exemptions) Ward-1(4), Room No. 2421, Pratyaksh Kar Bhawan, 24 th Floor, E-2, Block, Dr. S.P. Mukherjee Civic Centre, New Delhi.	vs	Khetri Trust, 5, Sardar Patel Marg, New Delhi. PAN No. AAATK0565C
APPELLANT		RESPONDENT
Revenue by		Sh. K. Tewari, Sr. DR
Assessee by		Sh. P.J. Khanna, CA

Date of Hearing	10.07.2018
Date of Pronouncement	10.07.2018

ORDER

PER K. NARASIMHA CHARY, J.M.

Challenging the order dated 09.02.2015 in appeal no. 563/2013-14 passed by the Commissioner of Income Tax (Appeals)-40, New Delhi ("Ld. CIT(A)"). Revenue preferred this appeal on the following grounds:

1. *"On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in not adjudicating the addition of the accumulated surplus of Rs. 71,00,470/- as income of the trust ignoring this fact that assessee failed to utilized the same within the specified time.*
2. *The appellants craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing."*

2. Facts of the case are that the assessee is a charitable trust registered on 14.04.1987 and is also registered u/s 12AA(1) of the Income Tax Act, 1961 ("the Act") dated 14.06.1989. The trust was founded by Raja Bahadur singh of Khetri of Rajasthan. The Raja had made a will of his own property in the name of the trust but his legal heirs had made a claim on the share of the property and the dispute is pending in the High Court and the probate is yet to be granted. The cases are pending in the Rajasthan and Delhi High Courts and there is status quo on the properties of the trust. The assessee receives the rental income and the FDR interest etc. which are utilized for administrative expenses of the trust. The AO has been denying the exemption u/s 11(1) of the Act on the ground that the dispute regarding the probate of the will regarding the trust is still pending and trust is yet to take a legal status and as such the assessee cannot be assessed for any income. The same was, however, allowed by the Hon'ble Delhi High Court for the AY 1991-92 vide the order dated 17.07.2014 in ITA No. 162/2001. The AO had also denied the exemption during the AY 2010-11 but the same has been allowed by the Ld. CIT (A)-XI, Delhi following the order of the Hon'ble Delhi High Court vide the appellate order dated 17.10.2014. The AO has again denied the exemption u/s 11(1) of the Act during the current AY 2011-12 following the earlier year's order mainly on the ground that the assessee has not done any charitable work.

3. The assessee was in appeal before the ld. CIT(A) against the order of the AO and it is submitted that the AO is not justified to deny the exemption u/s 11(1) of the Act. The assessee also relied

on the order of the Ld. CIT (A)-XI, Delhi for the AY 2010-11 in which the appeal of the assessee has been allowed in a detailed order vide the order dated 17.10.2014. Ld. CIT(A) followed the rule of consistency and the precedence of the earlier appellate orders of the AY 2010-11 of his predecessor and directed the AO to allow the exemption to the assessee without consequential benefits. Hence the Revenue is before us in this appeal.

4. We have gone through the record in the light of the arguments of the Counsel on either side. There is no denial of the fact that under the very similar circumstances the Hon'ble High Court allowed the exemption u/s 11(1) of the Act by order dated 17.07.2014 in ITA No. 162/2001 for the AY 1991-92 and ever since the Tribunal has been following the same whenever this dispute has arisen.

5. We have perused the orders passed by the Tribunal in respect of the assessment years 2001-02 to 2010-11 the copies of which are produced before us and this Tribunal has allowing the claim of the assessee u/s 11(1) of the Act consistently. Copies of the orders dated 11.02.2016 and 22.07.2016 passed by the Assessing Officer u/s 143(3) of the Act for the assessment years 2013-14 and 2014-15 are produced before us to demonstrate the fact that the Assessing Officer allowed the claim of the assessee.

6. In the circumstances, following the rule of consistency and precedence, in view of the consistent view taken by this Tribunal while respectfully following the orders of the Hon'ble High Court, we do not find any illegality or irregularity in the impugned order,

as such, while upholding the same, we do not find any merits in this appeal.

7. In the result, the appeal of the Revenue is accordingly dismissed.

Order pronounced in the open court on 10.07.2018

Sd/-

Sd/-

(G.D. AGRAWAL)
PRESIDENT

(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Dated: 10.07.2018

*Kavita Arora

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	10.07.2018
Date on which the typed draft is placed before the dictating Member	10.07.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	10.7.18
Date on which the fair order is placed before the Dictating Member for pronouncement	10.7.18
Date on which the fair order comes back to the Sr. PS/PS	11.7.18
Date on which the final order is uploaded on the website of ITAT	11.7.18
Date on which the file goes to the Bench Clerk	11.7.18
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	