

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D" NEW DELHI**

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

I.T.A. No.2974/DEL/2012  
Assessment Year: 2002-03

ITO, Ward-4, Hisar.	vs.	M/s. Truck Operator Association, Tosham Road, Hansi
TAN/PAN: AAAAT 5752B		
(Appellant)		(Respondent)

Appellant by:	Shri Amit Jain, Sr.D.R.		
Respondent by:	None		
Date of hearing:	26	07	2018
Date of pronouncement:	07	08	2018

**ORDER**

**PER AMIT SHUKLA, J.M.:**

The aforesaid appeal has been filed by the Revenue against the impugned order dated 22.03.2012, passed by the CIT(Appeals), Rohtak for the quantum of assessment passed u/s.143(3) for the Assessment Year 2002-03. In the grounds of appeal, the Revenue has raised the following grounds:-

*"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the amount of Rs.85,64,762/- is neither gross receipt nor income of the assessee without appreciating the fact that these payments were received by the assessee as freight as trade receipts as result a of (oral/written) contract with certain parties.*

*2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact that the freight of*

*Rs.85,64,762/- were the receipt of the assessee as the assessee has received them during normal course of business and it has claimed credit/refund of TDS of Rs. 183345/- deducted out of the said receipt.*

3. *On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the facts that the amount of Rs.85,64,762/- received as freight should have been accounted for in the books of the assessee as receipt/revenue and the assessee should have claimed the expenses made by it against these receipts including payments made to Truck Owners who physically transport the goods.*

4. *On the facts and in the circumstances of the case, the Ld. CIT (A) has erred in holding that the AO has not given any adverse findings regarding the claim of expenditure by the assessee.*

*(i) The CIT (A) has failed to appreciate that the assessee has not taken entire receipt and expenditure through Profit & Loss Account.*

*(ii) The CIT (A) has also failed to appreciate that findings about expenditure would be made by the AO only after such claims are made by the assessee.”*

2. The facts in brief are that the assessee was registered as a society for which it has applied for registration u/s. 12AA, however as noted by the Assessing Officer the registration u/s.12AA which was rejected by the ld. CIT, was granted by the Tribunal. However, post passing of assessment order, Hon'ble Punjab & Haryana High Court had set aside the order of the Tribunal granting registration and held that assessee's activities are not covered u/s. 2(15), hence it was not a charitable institution. Learned Assessing Officer for different reasons denied benefit of section 11 and has treated the entire receipts of Rs.85,64,762/- as income and taxed the

assessee in the status of AOP.

3. Ld. CIT(A) held that the learned Assessing Officer has completely failed to appreciate the fact that the income of the assessee was only by way of commission of Rs.7,80,824/- on the freight receipts of Rs.85,64,762/- and the excess of expenditure over income was only Rs.81,024/- and even if the registration u/s.12AA has been cancelled then also the amount of Rs.85,64,762/- cannot be taxed in the hands of the assessee, because it is neither the gross receipts nor income of the assessee.

4. None appeared on behalf of the assessee despite service of notice; therefore, we are proceeding to decide the appeal on merits based on material available on record.

5. After hearing the learned Department Representative and on perusal of the relevant findings, we find that the assessee does neither own any truck nor any receipts from freight belong to the assessee. It is association of truck operators. The goods of various parties are booked for carriage and goods are transported in trucks owned by the members (truck owners) of the assessee's society. The freight is charged from the concern parties for providing the transportation services. The assessee only gets commission which is voluntarily contributed by the members to the assessee society which is fixed on the basis of distance for which goods are carried. The gross freight received by the assessee from various parties by cheque is paid to the

concerned truck owners who all are the members of assessee society and assessee maintains the collection and distribution of freight receipts and the entire amount is given back to the owners. Under these facts, the gross freight of Rs.85,64,762/- cannot be held to be gross receipt or income of the assessee. The assessee has already shown commission of Rs.7,80,824/- and after claiming the expenditure, excess over expenditure of Rs.81,024/- is the income. Thus, the finding of the ld. CIT(A) in deleting the said addition on the ground that it is neither gross receipt nor income of the assessee is correct on facts, and therefore, same is upheld.

6. In the result, the appeal of the Revenue is dismissed.

**Order pronounced in the open Court on 7<sup>th</sup> August, 2018.**

Sd/-  
**[PRASHANT MAHARISHI]**  
**ACCOUNTANT MEMBER**

Sd/-  
**[AMIT SHUKLA]**  
**JUDICIAL MEMBER**

DATED: 7<sup>th</sup> August, 2018

PKK: