

**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 Nos. 607 To 610/Chd/2017

(Assessment Years : 2009-10 To 2012-13)

Improvement Trust Khanna G.T. Road Khanna, Ludhiana	Vs.	The ITO Ward IV Khanna
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PAN No. AAAL0030N

(Appellant)

(Respondent)

Assessee by	:	Shri. Parikshit Aggarwal
Department by	:	Sh. Manoj Kumar

Date of hearing : 14/06/2018

Date of Pronouncement : 12/07/2018

ORDER

PER BENCH:

All the above appeals have been filed by the Assessee against the separate order of the Ld. CIT(A)-4 Ludhiana.

2. Year wise grounds of appeal are reproduced hereunder:

Ground in ITA No. 607/Chd/2017 for A.Y. 2009-10

That on the facts and in the circumstances of the case and in law, learned CIT-A erred in upholding the action of Ld AO that the appellant falls under the proviso to section 2(15) of the Act and hence section 13(8) is applicable in the appellant's case and the appellant is not eligible for the benefit of section 11 & 12 of the Act and by affirming addition made on account of disallowing of the expenses Rs. 5,15,533/- by Ld AO

1. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in upholding the action of Ld AO that the appellant falls under the proviso to section 2(15) of the Act and hence section 13(8) is applicable in the appellant's case and the appellant is not eligible for the benefit of section 11 & 12 of the Act thereby giving perverse finding on basis of irrelevant material and ignoring relevant facts and jurisdictional Tribunal precedents.*

2. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in upholding Ld AO's action of disallowing expenses R. 5,15,533/- on account of expenditure of public utility without any material and facts provided during assessment and in his assessment order.*

Legal ground on validity of assumption of jurisdiction under section 147A48 of the Act

3. That on the facts and in the circumstances of the case and in law, learned CIT-A erred in upholding the impugned assessment order passed by Ld AO in violation of mandatory jurisdictional conditions spelt u / s 147 of the Act.

Ground in ITA No. 608/Chd/2017 for A.Y. 2010-11

That on the facts and in the circumstances of the case and in law, learned CIT-A erred in upholding the action of Ld AO that the appellant falls under the proviso to section 2(15) of the Act and hence section 13(8) is applicable in the appellant's case and the appellant is not eligible for the benefit of section 11 & 12 of the Act and by affirming addition made Rs.6,94,637/- by Ld AO by ignoring various jurisdictional Tribunal and Court precedents and our submissions on record.

Ground in ITA No. 609/Chd/2017 for A.Y. 2011-12

That on the facts and in the circumstances of the case and in law, learned CIT-A erred in upholding the action of Ld AO that the appellant falls under the proviso to section 2(15) of the Act and hence section 13(8) is applicable in the appellant's case and the appellant is not eligible for the benefit of section 11 & 12 of the Act and by affirming addition made on account of disallowing of the expenses Rs. 1,02,27,697/- by Ld AO ignoring various jurisdictional Tribunal precedents and our submissions on record.

1. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in upholding the action of Ld AO that the appellant falls under the proviso to section 2(15) of the Act and hence section 13(8) is applicable in the appellant's case and the appellant is not eligible for the benefit of section 11 & 12 of the Act thereby giving perverse finding on basis of irrelevant material and ignoring relevant facts and jurisdictional Tribunal precedents.*

2. *That on the facts and in the circumstances of the case and in law, learned CIT-A erred in upholding Ld AO's action of disallowing following expenses without any material and facts provided during assessment and in his assessment order:-*

a.	Rebate & discount	Rs. 99,792/-
b.	Survey expenses	Rs. 1,50,835/-
c.	Advertisement expenses	Rs. 9,94,441/-
d.	Repair & Maintenance of Scheme	Rs. 70,13,218/-
e.	Repair and maintenance (Street light)	Rs. 10,98,728/-
f.	Repair & Maintenance	Rs. 3,66,667/-
g.	Public utilizes expenditure	Rs. 5,04,016/-

Ground in ITA No. 610/Chd/2017 for A.Y. 2012-13

That on the facts and in the circumstances of the case and in law, learned CIT-A erred in upholding the action of Ld AO that the appellant falls under the proviso to section 2(15) of the Act and hence section 13(8) is applicable in the appellant's case and the appellant is not eligible for the benefit of section 11 & 12 of the Act and by affirming addition made Rs. 5,05,37,905/- by Ld AO by ignoring various jurisdictional Tribunal and Court precedents and our submissions on record.

3. Brief facts of the case are that the assessee is an improvement trust registered under Punjab Town Improvement Act, 1922 and was having

registration under section 12 AA. However the registration was withdrawn by the CIT vide order dt. 07/02/2013 w.e.f 01/04/2009 i.e. A.Y. 2009-10 by relying on amendment due to insertion of proviso to section 2(15). This withdrawal of registration stands confirmed by the Hon'ble ITAT in ITA No. 406/CHD/2013 dt. 26/11/2014. The appeal of the assessee is pending in ITA No. 533/2017 before the Hon'ble Punjab & Haryana High Court.

4. Consequent to the above order of the CIT withdrawing registration under section 12AA, assessments of assessee were framed under section 147 r.w.s 143(3) for respective years. The summary of additions made thereon are as under:

Sr. No	A.Y.	Assessment framed u/s	ITA No.	Addition made by rejecting exemption u/s 11 due to withdrawal of registration u/s 12AA	Disallowances confirmed by the Ld. CIT(A).
1.	2009-10	147	607/2017	1,31,65,039/-	5,15,533/-
2.	2010-11	143(3)	608/2017	6,94,637/-	Nil
3.	2011-12	143(3)	609/2017	Nil	1,02,27,697/-
4.	2012-13	143(3)	610/2017	5,05,37,905/-	Nil

5. For the A.Y. 2009-10 the Ld. CIT(A) confirmed the addition holding that " the assessee had debited expenditure of Rs. 5,15,533/- on account of public utilities. The appellant was asked to furnish details of these expenses so as to verify the veracity of the expenses claimed. The Assessing Officer further observed that out of these expenses payment of Rs. 3,52,667/- made to M/s Jai Durga Security Agency and Rs. 1,62,866/- paid to Shri. Anil Kumar, Contractor. The Assessing Officer also observed that these amounts had no relevancy to have public utility.

6. Before us, it was argued that the amounts were incurred for Street Light installation, and construction of bathrooms.

7. We find that the Ld. CIT(A) has not passed any speaking order giving the rationale or reasoning for confirming the additions. Hence, the matter is remanded back to the file of Ld. CIT(A) to pass a speaking order.

8. For the A.Y. 2011-12 the Ld. CIT(A) confirmed the additions holding that “ the appellant has not given any other plea except it was entitled for exemption. The Assessing Officer was fully justified in disallowing all the expenses, hence there are no interference in the Assessing Officer's order”.

9. Before us, it was argued that the amounts were incurred on account of rebate and discount, Survey expenses, Advertisement expenses, Construction activities etc.

10.(a) We find that the Ld. CIT(A) has not passed any speaking order giving the rationale or reasoning for confirming the additions. Hence, the matter is remanded back to the file of Ld. CIT(A) to pass a speaking order. It is also hereby directed that the assessee would also submit all the relevant details and comply fully to the directions of the Ld. CIT(A) in adjudication process.

10(b). Regarding the issue of withdrawal of registration under section 12AA, the order of the Ld. CIT(A) was confirmed by the ITAT in ITA No. 406/CHD/2013 dt. 26/11/2014. Since there is no material difference in the facts and circumstances of the case for the year under consideration, we hereby confirm the revocation of registration under section 12AA.

12. As a result, the appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open court.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated : 12/07/2018

AG

Copy to:

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