

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

**Before Sh. N. K. Saini, AM and Sh. Laliet Kumar, JM**

**ITA No. 2675/Del/2015 : Asstt. Year : 2011-12**

DCIT(E), Circle-2(1), New Delhi	Vs	New Delhi Young Men's Christian Association (YMCA),1, Jai Singh Road, Connaught Place, New Delhi-11001
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAATN1200H</b>		

**CO No. 82/Del/2016 : Asstt. Year : 2011-12**

New Delhi Young Men's Christian Association (YMCA),1, Jai Singh Road, Connaught Place, New Delhi-11001	Vs	DCIT(E), Circle-2(1), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAATN1200H</b>		

**Assessee by : Sh. V. Raja Kumar, Adv.**

**Revenue by : Sh. Sanjeet Singh, CIT DR**

<b>Date of Hearing : 11.07.2018</b>	<b>Date of Pronouncement : 14.08.2018</b>
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**ORDER**

**Per N. K. Saini, AM:**

The appeal by the department and the Cross Objection by the assessee are directed against the order dated 05.02.2015 of Id. CIT(A)-40, New Delhi.

2. Following grounds have been raised in the appeal of the department:  
*"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring that commercial activities of the assessee which are squarely covered under the last limb of proviso to*

*section 2(15) of the Act, as the assessee is providing hostel services by letting out A/C rooms and by providing other facilities and luxuries to the visitors. Thus, the benefit of section 11 & 12 are not allowable to the assessee.*

*2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in 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.*

*3. That the appellant craves to be allowed to add any fresh grounds of appeal and/or deleted or amend any of the grounds of appeal.”*

3. During the course of hearing, the Id. Counsel for the assessee at the very outset stated that the issue under consideration is squarely covered in favour of the assessee and against the department by the earlier orders of the ITAT. It was further stated that the order of the ITAT for the assessment year 2012-13 has been affirmed by the Honøble Jurisdictional High Court vide order dated 07.05.2018. Therefore, now the issue agitated by the department stands covered in favour of the assessee.

4. In his rival submissions, the Id. CIT DR although supported the order of the AO but could not controvert the aforesaid contention of the Id. Counsel for the assessee.

5. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is noticed that the Id. CIT(A) decided the issue in favour of the assessee by following the earlier order dated 26.07.2014 by his predecessor for the assessment year 2010-11. The relevant observations given therein are as under:

*“4.1 The assessee is in appeal against the order of the AO and it is submitted that the AO is not justified to deny the exemption to the assessee which the assessee has been enjoying over a long period of time and the assessee is involved in charitable activities. It is submitted that the assessee is a non-profit organization and is involved in charitable activities and the assessee is not involved in any trade, commerce or business. It is submitted that mere receipt of fees from students for the education, fees from the hostels, interest income or receipt of rental income cannot be said that the assessee is involved in any business activity. It is also submitted that during the A.Y 2010-11, the AO had denied the exemption to the assessee but the Ld. CIT (A)-XXI, New Delhi(old) has allowed the exemption u/s 11(1) vide the appellate order dated 27/06/2014.*

*4.2 I have considered the order of the AO and the submissions of the assessee and I find considerable merit in the submissions of the assessee that the assessee is a charitable non-profit organization and mere receipt of fees and rents etc. cannot be said that the assessee is involved in any trade, commerce or business.*

*4.3 Recently the **Hon'ble Delhi High Court** in the case of **India Trade Promotion Organisation vs. DGIT(E)**, 53 Taxmann.com 404 (Delhi) 2015 (order dated 22/01/2015) has upheld the constitution validity of the proviso of section 2(15) which was under challenge being discriminatory in view of the Article 14 (Equality before law) of the Constitution of India but has read down the strict and literal interpretation of the Proviso of section 2(15) and has accordingly allowed the relief in this case to the ITPO vide Para 58 and 59 of the order.*

*4.4 After considering all the facts and circumstances of the case, I am of the view that the assessee is purely a charitable and non-profit organization and I do not find that the assessee is involved in any trade, commerce or business and accordingly the AO is directed to allow the exemption to the assessee u/s 11(1) with all the consequential benefits.”*

6. The said order was a subject matter of the departmental appeal in ITA No. 4997/Del/2014 for the assessment year 2010-11 wherein vide order dated 27.04.2018, the issue has been decided by the ITAT Delhi Bench -E, New Delhi in favour of the assessee and against the department by following the earlier order

of the Tribunal for the assessment year 2012-13 in ITA No. 4983/Del/2015 and the relevant findings are given in paras 5.2 and 5.3 of the said order dated 27.04.2018 which read as under:

*“5.2 Although the Ld. Sr. DR has vehemently argued against the order of Ld. CIT (A) in directing the AO to allow the benefit of exemption to the assessee with all the consequential benefits, we find that the case is squarely covered in favour of the assessee by order of the ITAT in assessee’s own case for assessment year 2012-13 wherein a similar direction by the Ld. CIT(A) was upheld by the coordinate bench of this Tribunal. We also find that the assessee has been allowed the benefit of exemption by the Tribunal in assessment years 1989-90, 1990-91, 1991-92, 1992-93, 1993-94, 1997-98, 2010-11 and 2012-13. Although, the department has argued vehemently against the action of the Ld. CIT (A) in directing the allowance of exemption, no material evidence distinguishing the facts from the earlier years or any factual or legal infirmity in the order of the Ld. CIT (A) could be pointed out before us. Para 26-27 of the ITAT’s order for assessment year 2012-13 in ITA No. 4983/Del/2015 are relevant and the same are being reproduced for a ready reference:-*

*“26. We notice that in the past similar objections have been taken in assessment by the respective Assessing Officers. In AY 1989-90 the Tribunal in the assessee's own case dismissed the departmental ground of appeal where it was alleged that the CIT (A) had erred in holding that the assessee was entitled to benefit u/s 11 (1) of the Act read with Section 2(15) of the Act. In the AY 1990-91 the departmental appeal was again dismissed by the Tribunal where the ground raised was that the CIT (A) had erred in allowing the benefit of Section 11 of the Act by holding that the activities of the Society were charitable though the Assessing Officer had rightly applied the provisions of Section 11 (4)(A) of the Act by holding the same as business activity. In AY 1993-94 once again the departmental appeal was dismissed by the Tribunal. Where the point in issue was that the CIT(A) erred in allowing the benefit u/s 11 of the Act by holding that the activities of the Society were chargeable(sic) although the Assessing Officer had rightly applied the provisions of Section 11 (4)(A) of the Act by holding the same as business activity. It seems that the CIT(A)'s first appeal order in AY 1992-93 became final where it was held by the CIT(A) that the Appellant was entitled to exemption*

*u/s 11 Of the Act and the provisions of Section 11 (4)(A) of the Act were not applicable to the case. There-after in AY 1997-98 the Assessing Officer himself in the assessment order dated 11.01.2000 conferred charitable status to the assessee by applying Section 11 of the Act. While fees may be charged and there may even to be a surplus out of charitable activities, the principle that so long as the surplus funds are redeployed in charitable activities no objection can be taken as to the charitable pursuits is in exceptionable. This has been so held by the apex court in Thiagarajar Charities vs. Addl CIT (1997) 225 ITR 1010 (SC).*

*27. Further the Hon'ble Delhi High Court has ruled that the expression charitable purpose as defined in Section 2(15) of the Act could not be construed literally and in absolute terms. The expression would take its colour and had to be considered in the context of Section 10(23C)(iv) of the Act. The court held that if in terms of the dominant and primary objectives of the Institution there was no desire to gain profits and the object was to promote trade and commerce not for itself but for the nation was to be construed as a charitable purpose. Thus, on a careful consideration of the entirety of the facts and the material on record and based on the history of the case and the existing precedents on this point, we have no hesitation in holding that the CIT (A) has rightly decided the issue in favour of the assessee Association by directing relief u/s 11 read with section 12AA of the Act. Resultantly the appeal filed by the Department is dismissed.”*

*5.3 Accordingly, on identical facts, respectfully following the order of the coordinate bench in assessee's own case for assessment year 2012-13, we find no reason to interfere with the findings and directions of the Ld. CIT (A) in both the years under consideration.”*

7. It is also noticed that the order of the ITAT for the assessment year 2012-13 was a subject matter of the departmental appeal before the Honøble Jurisdictional High Court in ITA No. 537/2018 wherein vide order dated 07.05.2018, the issue has been decided in favour of the assessee and against the department. The relevant findings given therein read as under:

*“The Revenue is aggrieved by an order of the Income Tax Appellate Tribunal (ITAT) which upheld the order of the Appellate Commissioner*

*who granted relief to the assessee. The assessee claimed the benefit of Section 11 and 12 of the Income Tax Act, 1961 (hereafter referred to as „the Act“) on the ground that it was a charitable organization. The Assessing Officer (AO) brought to tax receipts on the ground that they were real income having regard to the nature of activity for which the payments were made. The CIT(A) and the ITAT relied upon several judgments including the ruling in India Trade Promotion Organization v. DGIT (Exemptions) 371 ITR 333 to hold that the AO's view was incorrect; accordingly relief was granted to the assessee.*

*This Court is of the opinion that having regard to the ruling in India Trade Promotion Organization (supra) which was followed by the ITAT, no question of law arises. The appeal is dismissed.”*

8. In view of the above, we do not see any merit in this appeal of the department.

9. As regards to the Cross Objection, it is noticed that the assessee had not sought any relief, therefore, it becomes infructuous. Accordingly, the same is dismissed as infructuous.

10. In the result, the appeal of the department as well as the Cross Objection of the assessee is dismissed.

(Order Pronounced in the Court on 14/08/2018)

**Sd/-**  
**(Laliet Kumar)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**Dated: 14/08/2018**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**