

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A' CHANDIGARH**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**ITA No. 65/CHD/2017
Assessment Year : 2012-13**

The DCIT,
Circle-1 (Exemptions),
Chandigarh

Vs. Apeejay Education Society,
Jawahar Nagar,
Jalandhar

PAN No. AAATA3534F

(Appellant)

(Respondent)

Appellant by : Sh. Surinder Meena, JCIT
Respondent by : Sh. Sumit Lalachdani

Date of Hearing : 24.05.2018
Date of Pronouncement : 23.08.2018

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 7.10.2016 of the Commissioner of Income Tax(A)-2, Jalandhar [hereinafter referred to as 'CIT(A)'].

2. The Revenue in this appeal has taken the following grounds of appeal:-

- (i) *Whether the Id. CIT(A)-2, Jalandhar has erred in law while allowing the benefit under Section 11 of the Act without appreciating that there was a clear violation of Section 13 of the Income Tax Act.*
- (ii) *Whether the CJT(A)-2, Jalandhar has erred in law while not considering Section 13(1)(c) of the I.T. Act, 1961, according to which, any income of the*

trust directly or indirectly applied for the benefit of any person referred to in Section 13(3) of the Act shall not be excluded from the total income and provisions of Section 11 shall not apply to the same.

- (iii) Whether the CIT(A)-2, Jalandhar is right in law as the findings recorded are perverse and contrary to the evidence/material/statements available on record and duly considered by the AO.*
- (iv) Whether on facts and in the circumstances of the case, the Ld. CIT(A)-2, Jalandhar is right in deleting the addition when the statement of Sh. Sanjay D. Sonawani was not reliable whereas he had clearly confirmed that he had provided accommodation entries to the assessee and had deposed that no software was sold to the assessee and his company had no infrastructure, manpower and expertise to even develop the softwares.*
- (v) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) -2, Jalandhar is right in deleting the addition even when A.O. has clearly brought out that the assessee could not produce the software developed by M/s WSL Limited during the survey operation and in fact did not follow the normal procedure and procurement as in the cases of other purchase.*

3. At the outset, Ld. Counsel for the assessee has submitted that the facts and issue involved in this appeal are squarely covered in favour of the assessee by the decision of the Amritsar Bench of the Tribunal in the case of the assessee in ITA Nos. 712 to 714/Asr/2014 vide order dated 12.8.2016. It has been further pleaded that while allowing the appeal of the assessee, the Ld. CIT(A) has followed the decision of the Amritsar Bench of the Tribunal. (supra). The relevant findings of the CIT(A) are as under:-

“4.3 I have gone through the assessment order passed by the AO and submissions made in this regard by the appellant including the judicial citations given therein, and find that income of the trust has been assessed at Rs. 1,08,40,363/- mainly on account of disallowance of depreciation on purchase of software which has been considered as not genuine by the AO. It is stated by the AO that no software was actually purchased by the trust and an accommodation entry was arranged in the books of accounts and therefore the claim of depreciation was disallowed. AO has followed the earlier year's orders on tills issue. AO has further held that as per the provisions of section 167B of the IT act, the income of the trust has to be taxed at the maximum marginal rate.

4.4 The appellant has submitted that the issue of purchase of software from M/S Washington software Ltd has already been considered by the honourable ITAT Amritsar bench in the case of the appellant in respect of assessment year 2008-09, 2010-11 & 2011-12 and it was held that all the conditions of section 11 of the IT act stand fully satisfied by the assessee. Therefore, the additions made by the AO may be deleted as the present case of the appellant is squarely covered by the decision of the honourable IT AT.

4.5 I have gone through the copy of order of honourable ITAT Amritsar bench, in the case of the appellant in ITA number 712 to 714/Asr /2014 dated 12-08-2016 and find that this issue of purchase of software from M/S Washington Software Ltd, which is based at Pune has been examined in detail by the Honourable Tribunal and after going through the same it was held that exemption under section 11 of the IT act was wrongly denied to the appellant. The order passed by the AO and confirmed by the CIT-A was reversed for these years.

4.6 In view of the above slated facts, respectfully following the order of the honourable ITAT Amritsar bench, since there is no change in the facts of the case in tin's year, I hold that AO was not justified in making a disallowance of depreciation of Rs. 1,08,40,363/- on

account of bogus purchase of software. Further, I hold that appellant trust is entitled to the claim of exemption u/s 11 of the IT Act. Accordingly, the disallowance of depreciation made by the AO of Rs. 1,08,40,363/- is deleted.”

4. The Ld. counsel has further relied upon up on the decision of the Coordinate Chandigarh Bench of the Tribunal in the own case of the assessee for assessment year 2013-14 in ITA No. 1444/Chd/2017, wherein, the appeal of the Revenue on identical matter has been dismissed by the Tribunal vide order dated 27.3.2018.

4. The Ld. DR could not produce any case laws contrary to the above decision of the Tribunal in the own case of the assessee. Hence, we do not find any infirmity in the order of the CIT(A) in allowing the claim of the assessee while following the decision of the Amritsar Bench of the Tribunal (supra). Therefore, there is no merit in the appeal of the Revenue and the same is accordingly dismissed.

In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 23.08.2018

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Dated : 23.08.2018
Rkk

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Copy to:

- *The Appellant*
- *The Respondent*
- *The CIT*
- *The CIT(A)*
- *The DR*

