

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 512 & 513/JP/2018
निर्धारण वर्ष / Assessment Years : 2014-15 & 2015-16

The DCIT(E), Circle, Jaipur.	बनाम Vs.	M/s Rajasthan Housing Board, Janpath Jyoti Nagar, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAALR 0046 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 27/09/2018
उदघोषणा की तारीख / Date of Pronouncement : 01/10/2018

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two appeals filed by the Revenue against the order of Id. CIT(A)-3, Jaipur dated 23.02.2018 for the Assessment Years 2014-15 & 2015-16 respectively. Both these appeals were heard together and are disposed off by this common order.

2. In ITA No. 512/JP/2018 for AY 2014-15, the Revenue has taken the following grounds of appeal:

- "1. On the facts and circumstance of case and in law the Ld. CIT(Appeals) has erred in allowing exemption u/s 11 of the I.T. Act, 1961 without appreciating the facts the AO has given detailed reasons in the assessment order to establishes that activities of the assessee are not charitable in view of amended provisions of section 2(15) of I.T. Act, 1961 despite it being registered u/s 12AA of the Act and therefore, it is not entitled for benefit of exemption under section 11 of the Act.*
- 2. On the facts and circumstance of case and in law the Ld. CIT(Appeals) has erred in deleting the additions of Rs. 9,79,79,97,625/- made on account of disallowance made U/s 11 & 12 of the I.T. Act, 1961.*
- 3. On the facts and circumstance of case and in law the Ld. CIT(Appeals) has erred in deleting the addition made on account of Contingencies and Equalization Reserve (CER) fund of Rs. 50,97,94,544/-.*
- 4. On the facts and circumstance of case and in law the Ld. CIT(Appeals) has erred in ignoring the facts that the Opening balance of Contingencies and Equalization reserve- (CER) fund was first to be utilized and then further claim can be allowed.*
- 5. On the facts and circumstance of case and in law the Ld. CIT(Appeals) has erred in ignoring the facts that Contingencies and Equalization reserve- (CER) is not ascertained liability but a contingent liability which is not allowable.*
- 6. On the facts and circumstance of case and in law the Ld. CIT(Appeals) has erred in deleting the addition of undisclosed profit from auctioned property amounting to Rs. 53,72,71,648/- made by the AO."*

3. Briefly stated, the facts of the case are that the assessee is engaged in the activity of developing housing schemes in the State of Rajasthan. The assessment was framed U/s 143(3) vide order dated 30.11.2016 wherein the AO observed that though the assessee's activity

falls under the ambit of "general public utility", however they are of commercial in nature and covered by the first and second proviso to Section 2(15) of the Act. It was held by the AO that even through the assessee is registered U/s 12AA of the Act, no benefit under Section 11 and 12 can be provided to the assessee in terms of Section 13(8) r.w. first and second proviso to Section 2(15). Accordingly, the income of the assessee was computed without giving any benefit for application of income and accumulation of income for the objects of the Housing Board and income was computed in accordance with commercial principals and the adjusted net surplus amounting to 97,79,97,625/- was brought to tax. Further, the AO made an adjustment towards contingencies equalization reserve amounting to Rs. 50,57,94,544/- holding the same as contingent liability and not as an ascertained liability. Further, additions were made on account of disallowance of depreciation amounting to Rs. 2,06,97,523/- and undisclosed profit from auction of the properties amounting to Rs. 53,72,71,648/-.

4. The assessee, being aggrieved by the order of the Assessing Officer, preferred an appeal before the Id. CIT(A) who has allowed the appeal of the assessee following the earlier order passed by the Coordinate Bench in assessee's own case and his own decision for AY 2013-14. Now the Revenue is in appeal before us against the said findings of the Id. CIT(A).

5. At the outset, the Id. AR submitted that the matter is squarely covered by the decision of the Coordinate Bench in ITA No. 21/JP/2013 for A.Y. 2009-10 dated 20.01.2017 wherein all these grounds of appeal

were decided in favour of the assessee. It was accordingly submitted that the same may kindly be followed.

6. In ITA No. 21/JP/2013 for A.Y. 2009-10, the Coordinate Bench has held as under:-

"23.2. We have heard rival contention, perused the material available on record and gone through the orders of the authorities below. We find that the Coordinate Bench has dealt with the identical issue elaborately in the case of Hoshiarpur Improvement Trust & Others vs. ITO in ITA No. 200/Asr/2010. The Coordinate Bench has considered various judgments and came to the conclusion that as long as broader public cause is served, whether by the State funding or by efficient regulation of the affairs, it is an object of general public utility. Authorities below were not justified in declining the benefit of section 11 read with section 2(15) to the assessee, and in holding that the assessee trust was not covered by advancement of any object of general public utility. The Coordinate Bench has held that even if the activities in the nature of trade, commerce or business etc. are undertaken in the course of actual carrying out of advancement of any object of general public utility, till the end of the previous year relevant to the assessment year 2016-17, the activities will continue to be covered by the scope of Section 2(15). The year under appeal is 2009-10, therefore, respectfully following the decision of the Coordinate Bench in the case of Hoshiarpur Improvement Trust & Others vs. ITO in ITA No. 200/Asr/2010, we do not see any reason to interfere in the order of Id. CIT (A). Ground Nos. (ii) and (iii) are rejected."

"24.2 We have heard rival contention, perused the material available on record and gone through the orders of the authorities below. The Id. CIT (A) has decided the issue in para 13 of his order as under :-

" After going through rival submissions it is seen that CER of Rs. 26,99,65,069/- is not debited in the P&L account. The disallowance of the Reserve does not affect the appellant's eligibility of claiming exemption u/s 11. Section 11 states that 85% of the total income of the institution should be applied towards the objects for which it was created. As the application of income by the Board during the year of R. 232,59,28,849/- as specified in Form 10B Audit Report is much more than the total income of the appellant shown at Rs. 98,90,80,448/- in the statement of total income filed with the return. It was informed by the Id. ARs that source of application of R. 232 crores are Capital loans of R. 27 crores (approx) taken by the appellant and Deposits made by the persons interested in buying houses of Rs. 360 crores odd and also income of Rs. 98 crore odd shown in the return. The appellant has been held as a charitable organization following Hon'ble ITAT Jaipur Bench order dated 4.5.2012 and its income to the extent of application as mentioned in section 11 is exempt from taxation u/s 11, therefore there is no justification for making the disallowance of Rs. 26,99,65,069/- specially when the Reserve has been informed created from the sale proceeds of houses and not appropriated from profit shown in the P&L account called Revenue account as presumed by the AO."

Since we have affirmed the view of the Id. CIT (A) regarding entitlement of exemption u/s 11, the Id. CIT (A) has given a finding of fact in respect of application of income by the Board. Therefore, we do not see any reason to interfere in the order of Id. CIT (A), which is hereby confirmed. The ground of the revenue is rejected."

"26.2. We have heard rival contentions and perused the material available on record. We find that the Id. CIT (A) has given a finding of fact that the addition has been made at 30% without any basis with the presumption that the profit of 30% should have been earned on auction of commercial properties by the Board. This finding of fact is not controverted by the revenue by placing any contrary material on record. Therefore, we do not see any reason to interfere in the order of Id. CIT (A), which is hereby confirmed."

7. Undisputedly, there are no changes in the facts and circumstances of the case or in the legal position for the impugned assessment year. Following the decision of the Coordinate Bench in assessee's own case referred (supra), the grounds of appeal taken by the Revenue are hereby dismissed.

8. In ITA No. 513/JP/2018 for AY 2015-16, the Revenue has taken the following grounds of appeal:

"1. On the facts and circumstance of case and in law the Ld. CIT(Appeals) has erred in allowing exemption u/s 11 of the I.T. Act, 1961 without appreciating the facts the AO has given detailed reasons in the assessment order to establishes that activities of the assessee are not charitable in view of amended

provisions of section 2(15) of I.T. Act, 1961 despite it being registered u/s 12AA of the Act and therefore, it is not entitled for benefit of exemption under section 11 of the Act.

2. On the facts and circumstance of case and in law the Ld. CIT(Appeals) has erred in deleting the additions of Rs. 74,27,12,228/- made on account of disallowance made U/s 11 & 12 of the I.T. Act, 1961.

3. On the facts and circumstance of case and in law the Ld. CIT(Appeals) has erred in deleting the addition made on account of Contingencies and Equalization Reserve (CER) fund of Rs. 52,13,31,492/-.

4. On the facts and circumstance of case and in law the Ld. CIT(Appeals) has erred in ignoring the facts that the Opening balance of Contingencies and Equalization reserve- (CER) fund was first to be utilized and then further claim can be allowed.

5. On the facts and circumstance of case and in law the Ld. CIT(Appeals) has erred in ignoring the facts that Contingencies and Equalization reserve- (CER) is not ascertained liability but a contingent liability which is not allowable.

6. On the facts and circumstance of case and in law the Ld. CIT(Appeals) has erred in deleting the addition of undisclosed profit from auctioned property amounting to Rs. 28,22,11,361/- made by the AO."

9. Both the parties fairly submitted that the facts and circumstances of the present case are exactly identical facts to ITA No. 512/JP/2018 and therefore, our findings and directions contained in ITA No. 512/JP/2018 shall equally apply to this appeal as well. In the result, the appeal of the Revenue is dismissed.

In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court on 01/10/2018.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated: -01/10/2018.

*Santosh

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- DCIT(E), Circle, Jaipur.
2. प्रत्यर्थी / The Respondent- M/s Rajasthan Housing Board, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 512 & 513/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar