

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

**BEFORE SH. R.K. PANDA, ACCOUNTANT MEMBER
AND
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

ITA No.1377/Del/2015
Assessment Year: 2010-11

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| DCIT (E) Circle . 1 (1) Civic Centre New Delhi (APPELLANT) | Vs | All India Football Federation Sector-19, Phase-1, Dwarka New Delhi . 110075 AAAAA3856D (RESPONDENT) |
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| Appellant by | Sh. Raghunath, Sr. DR |
| Respondent by | Ms. Gunjan Jain, CA |

Cross Objection No.57/Del/2018
(ITA No.1377/Del/2015)
Assessment Year: 2010-11

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| All India Football Federation Sector-19, Phase-1, Dwarka New Delhi . 110075 AAAAA3856D (APPELLANT) | Vs | DCIT (E) Circle . 1 (1) Civic Centre New Delhi (RESPONDENT) |
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| Appellant by | Ms. Gunjan Jain, CA |
| Respondent by | Sh. Raghunath, Sr. DR |

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| Date of hearing: | 20/09/2018 |
| Date of Pronouncement: | 28/09/2018 |

ORDER**PER R.K. PANDA, AM:**

This appeal filed by the revenue is directed against the order dated 29.12.2014 of the CIT (A)-40, New Delhi relating to A. Y. 2010-11. The assessee has filed the cross objection against the appeal filed by the revenue. For the sake of convenience these were heard together and are being disposed of by this common order.

2. Facts of the case, in brief are that the assessee is registered under Societies Registration Act, 1860 and is also registered u/s 12AA(1) of the I.T. Act, 1961 vide order dated 17/01/2007. For the impugned assessment year, the assessee filed its return of income on 30.03.2011. Assessee is a federation of six football associations which was established in 1937. The main object of the federation is to promote the game of football, to organize tournaments, to organize training for players, trainees and coaches etc. and the assessee is also affiliated with FIFA from the year 1948 which organises the world cup football. The assessee is registered u/s 12AA(1) and the income of the assessee is exempt u/s 11(1) and the same was allowed to the assessee up to the A.Y 2008-09.

3. The case for the assessment year 2009-10 was taken up for scrutiny and the AO denied exemption u/s 11(1) to the assessee mainly on the ground that the assessee is involved in trade, commerce or business activities as per the provisions of Section 2(15) as the assessee receives sponsorship and telecasting rights fees. The assessee appealed against the order of the AO and the Ld. CIT(A)-XXI, New Delhi (old) allowed the appeal vide order dated 16/09/2013. The AO denied the exemption u/s 11(1) in the current A.Y 2010-11 also by following the order for earlier A.Y 2009-10 mainly on the ground that the assessee is involved in trade, commerce or

business and was hit by the provisions of section 2(15). The AO also denied the claim of depreciation.

4. Before CIT (A) the assessee submitted that it is engaged in the promotion of sports like football and organizes various tournaments in the country and is providing training to the players and the coaches etc. It was submitted that it is not involved in any trade, commerce or business activity. It was argued that the mere receipt of sponsorship fees and telecasting rights fees does not tantamount to running of any trade, commerce or business and as such the AO is not justified in denying the exemption u/s 11(1) to the assessee. The assessee also relied on the following decisions in which the assesseees have received sponsorship fees:

- i) ***Hamsadhwani vs. DIT (E)*** (2012) 19 Taxmann.com 10 ITAT Chennai.
- ii) ***ADIT (E) vs. Chembur Gymkhana*** (2009) 34 SOT 103 Mumbai ITAT.
- iii) Hlmanchal Pradesh Environment Protection and Pollution Control Board vs. CIT (2010) 42 SOT 343 Chandigarh ITAT.

5. It was further submitted that the AO is not justified in denying the depreciation as the same has been claimed on the basis of computing the income on commercial principle. It was submitted that the exemption u/s 11(1) was denied by the AO for the A.Y 2009-10 but the same was allowed by the Ld. CIT(A)-XXI, New Delhi and the same should be followed in the current A.Y 2010-11 also as the facts and circumstances of the case are same.

6. Based on the arguments advanced by assessee, the CIT(A), following the decision of the Chennai Bench of ITAT in the case of Hamsadhwani Vs. DIT (Exemption) reported in (2012) 19 taxmann.com allowed the claim the claim of exemption u/s 11 (1) by observing as under :-

“4.7 So far as the claim of exemption u/s 11(1) is concerned 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. The assessee is involved in the promotion of football games and sports and as such it is a charitable work and the assessee is eligible for exemption u/s 11(1). The case of the sports and its promotion comes within the meaning of charitable purposes u/s 11(1). The mere fact that the assessee receives sponsorship fees and the telecasting rights fees does not mean that the assessee is involved in any trade, commerce or business activity. The case laws of the assessee relied on by the assessee is also applicable. It is seen that in case of Hamsadhwani Vs. DIT (E) (2012) 19 Taxman.com 10 ITAT Chennai, the assessee was promoting music in Tamil Nadu for which it was receiving sponsorship and coaching fees and the Hon’ble Tribunal did not accept the argument of DIT(E) that the assessee was involved in any trade, commerce or business activity and the exemption was allowed. After considering all the facts and circumstances of the case, I am of the view that the assessee is a charitable institution and accordingly the AO is directed to allow exemption u/s 11(1) to the assessee and the appeal of the assessee is allowed on the principle of consistency following the earlier order of A.Y 2009-10.”

7. So far as the claim of depreciation is concerned, the Ld. CIT (A) following the decision of the Hon’ble Delhi High Court in the case of DIT (E) Vs. Charanjiv Charitable Trust in ITA No.321 to 323 of 2013 vide order dated 18.03.2014 rejected the claim of depreciation.

8. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal by raising the following grounds of appeal :-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in deleting the addition of Rs.7,08,89,243/- (Rs.723,68,290/-14790047/-) on account of income assessed by the Assessing Officer. while invoking the proviso to section 2 (15) of the Income Tax Act, 1961.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate the fact that the Assessing Officer. denied the claim of exemption to the assessee u/s 11 & 12 of the Income Tax Act, 1961.

3. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”

9. The assessee has filed the cross objection by raising the following grounds of appeal :-

1. *Under the facts and circumstances of the case, the ld. CIT (A) has grossly erred in affirming the action of Ld. Assessing Authority disallowing the assessee's claim of depreciation which is highly injudicious, unwarranted, against the facts of case and bad at law.*

10. The Ld. Counsel for the assessee at the outset submitted that identical issue had come up before the Tribunal in the immediately preceding assessment year and the Tribunal vide ITA No.6352/Del/2013 order dated 23.09.2015 has allowed the claim of exemption u/s 11 (1). Since the Assessing Officer following the order for the A. Y. 2009-10 has denied the claim of exemption u/s 11 (1) by treating the activities of the assessee as commercial in nature , therefore, this being a covered matter in favour of the assessee the grounds raised by the revenue should be dismissed.

11. So far as the ground of cross-objection by the assessee is concerned, she submitted that the issue stands covered in favour of the assessee by the decision of Hon'ble Delhi High Court in the case of DIT (E) Vs. M/s. Indraprastha Cancer Society in ITA No.384/2014 which has been followed by the Hon'ble High Court in assessee's own case for A. Y. 2009-10. She accordingly submitted that both the issues are covered in favour of the assessee. Therefore, the appeal filed by the revenue should be dismissed and cross objection filed by the assessee should be allowed.

12. Ld. DR on the other hand fairly conceded that both the issues have been decided in favour of the assessee by the decision of the Tribunal which has been upheld by the Hon'ble High Court.

13. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the Assessing Officer in the instant case denied the claim of the exemption u/s 11 (1) on the ground that the activities of the assessee are commercial in nature as per the provisions of section 2 (15) of the I. T. Act, 1961 and therefore, the assessee is not eligible for exemption u/s 11 (1) of the Act. The Assessing Officer further rejected the claim of depreciation on the ground that it will amount to double deduction. We find the Ld. CIT(A) allowed the claim of exemption u/s 11 (1), the reasons of which are already re-produced in the preceding paragraph. We find the issue of exemption u/s 11 (1) has been decided by the Tribunal in assessee's own case in the immediately preceding assessment year by observing as under :-

25. " In view of the above discussion and judicial pronouncements, what needs to be emphasized is whether the receipt of amounts by way of sponsorship from various parties would make the activity 'commercial' as held by the Assessing Officer . There mere fact that the appellant society had generated sponsorship funds, during the course of carrying on the ancillary objects, shall not alter the character of the main objects so long as the predominant object continues to be charitable and not to earn the profit.

25.1 Therefore, we hold that the Respondent Assessee is entitled to exemption of income under the provision of Section 11 of the Act. Further the proviso to Section 2 (15) of the Act cannot be applied to the appellant society as it is not engaged in any activity which is in the nature of trade, commerce and business. Accordingly, we direct the Assessing Officer to allow the exemption under the provision of Section 11 of the Act."

14. We find on further appeal filed by the revenue the Hon'ble High Court dismissed the appeal filed by the revenue on this issue by observing that no substantial question of law arises.

15. Therefore, this being a covered matter in favour of the assessee by the decision of the Hon'ble High Court the ground raised by the revenue is dismissed.

16. So far as the issue of depreciation is concerned as per the ground raised by the assessee in the cross objection we find the Tribunal in the immediately preceding assessment year decided the issue in favour of the assessee by observing as under :-

“30. We have perused the records and submissions by both the parties. It is observed that the Respondent Assessee is only claiming that depreciation should be reduced from the income for determining the percentage of funds which have to be applied for the purposes of trust. IT is further observed that the Respondent Assessee has not claimed double deduction.

30.1 The Judgement of Indraprastha Cancer (supra) has considered the judgment of Charanjiv Charitable Trust (supra) and Indian Trade Promotion (surpa). On consideration of the two views that Hon'ble Jurisdictional High Court has decided to allow depreciation on capital asset in the computation of income apart from treatment of purchase of capital asset as application of income.

30.2 The ratio laid down by the Hon'ble Delhi High Court in Indraprastha Cancer (supra) has been followed by Delhi Tribunal in the case of Hon'ble International Goudiya Vedanta Trust vs. ADIT (E), ITA No.1136/Del/2015 vide order dated 25.08.2015.

30.3 Therefore, following the jurisdictional High Court in the case of Indraprastha Cancer Society (supra), we uphold the order of the ld. CIT(A) and dismiss this ground of the Revenue.

31. The appeal filed by the Revenue is thereby dismissed.”

17. We find on further appeal by the revenue the Hon'ble High Court in ITA no. 246/2016 order dated 29.05.2017 dismissed the appeal by the revenue by holding as under :-

“3. In deciding the second question, the ITAT has relied on the decision of this Court in DIT (E) v. M/s. Indraprastha Cancer Society (decision dated 18th

November 2014 in ITA No.384/2014). The court is, therefore, of the view that no substantial question of law arises therefrom.”

18. In view of the above discussion, the appeal filed by the revenue is dismissed and the cross-objection filed by the assessee is allowed.

Order pronounced in the open court on 28/09/2018.

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

NEHA

Date:- 28.09.2018

Copy forwarded to:

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

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

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| Date of dictation | 24.09.2018 |
| Date on which the typed draft is placed before the dictating Member | 26.09.2018 |
| Date on which the approved draft comes to the Sr.PS/PS | |
| Date on which the fair order is placed before the Dictating Member for Pronouncement | |
| Date on which the fair order comes back to the Sr. PS/ PS | |
| Date on which the final order is uploaded on the website of ITAT | |
| Date on which the file goes to the Bench Clerk | |
| Date on which file goes to the Head Clerk. | |
| The date on which file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |