

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

**BEFORE SHRI G.D.AGRAWAL, HON'BLE VICE PRESIDENT
&
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.-3629/Del/2015
(Assessment Year: 2010-11)**

M/s. Seth Anandram Jaipuria Educational Society Vashundhra Sector 14C, Ghaziabad, (U.P.) PAN : AAAAS0860P	Vs.	Joint Commissioner of Income Tax Range-2, C.G.O. Complex-2, Kamla Nehru Nagar Ghaziabad (U.P.)
Appellant		Respondent

**Assessee by: Sh. Satyajeet Goel, CA
Revenue by: Shri G Johnson, Sr.DR**

Date of Hearing	11.10.2018
Date of Pronouncement	09.01.2019

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.:

This assessee's appeal preferred against order dated 27.02.2015 passed by the Ld. CIT (Appeals), Muzaffarnagar for assessment year 2010-11.

2. The brief facts of the case are that the assessee is a society which enjoys registration u/s 12AA of the Income Tax Act, 1961 (here in after called as the 'Act'). The assessee society is running educational institutions/schools imparting education in various

courses like BBA, MBA, PGDBM etc. The return of income was filed for the institution declaring nil income. Subsequently, the case was selected for scrutiny. During the course of scrutiny proceedings, the AO observed that the total receipts were shown at Rs. 22,07,39,653/-. This was excluding hostel receipts of Rs. 39,37,067/- and conveyance of receipts of Rs. 1,26,54,025/-. The AO further observed that against the hostel receipts of Rs. 39,37,067/-, the assessee had incurred expenditure of Rs. 12,26,998/- as 'hostel expenses' and further as against the conveyance receipts of Rs. 1,26,54,025/- expenditure of Rs. 66,94,175/- was shown as 'Bus Hire Charges' and a further expenditure of Rs. 15,35,201/- under 'Vehicle Expenditure' was disclosed. The AO also observed that no separate books of accounts were maintained for the running of hostel as well as for running of buses. On a query from the AO, the assessee submitted that the hostel and transportation activity were composite activity and part of the main object of the society of providing education and was not separable and, therefore, the same could not be treated as business. It was also submitted that the maintenance of separate books of accounts was not mandatory as the entire surplus of the society was used for the attainment of the object of the society i.e. imparting of education. However, the AO did not

accept the assessee's contention and treated the surplus from hostel amounting to Rs. 27,10,069/- as business income. Similarly, the surplus from conveyance amounting to Rs. 37,91,948/- was also treated as business income. Both these amounts were added to the income of the assessee's society. The assessment was completed at an income of Rs. 65,02,017/-. Aggrieved, the assessee approached the Ld. CIT (Appeals) who upheld the assessment order and now the assessee is before the ITAT and has challenged the action of the Ld. CIT (Appeals) in holding that the provision of hostel facilities and conveyance facilities was a business activity.

3. The Ld. Authorised Representative submitted that the issue is covered in favour of the assessee by order of ITAT Delhi Bench in the case of Delhi Public School Ghaziabad Society vs. ACIT in ITA no. 3593/Del/2015 vide order dated 08.05.2018 wherein it has been held that hostel facilities and transport facilities were intrinsic part of the activity of the society and were very much incidental to the attainment to the main object of imparting of education. A copy of the said order was filed by the Ld. Authorised Representative.

4. In response the Ld. Sr. Departmental Representative placed reliance on the concurrent findings of both the lower authorities. It was submitted by the Ld. Sr. Departmental Representative that by

running the buses and the hostel the assessee was generating surplus which was not being distributed to the students and was also not being reduced from the fees and, thus, these facilities were earning surplus which remained with the assessee's society. It was vehemently argued that the lower authorities had correctly held the two activities to be business activities.

5. We have heard the rival submissions and have also perused the material on record. We have also perused the order of the co-ordinate bench in the case of Delhi Public School Ghaziabad Society vs. ACIT (supra) and we find that the averment of the Ld. Authorised Representative that the assessee's case is covered in favour of the assessee by this order in the case of Delhi Public School Ghaziabad Society is correct. The relevant paragraphs of the Co-ordinate Bench in the case of Delhi Public School Ghaziabad Society are paragraphs 10, 11, 12 and 13 and the same are being reproduced herein under for a ready reference :-

“10. It is, therefore, clear that the entire dispute in this matter revolves around the question whether or not the activity of running school buses exclusively for the facility of the students and staff, is an intrinsic part of the activity of running a school. Such a question is no longer res Integra. In the case of Krishna Charitable Society Vs. Addl CIT in ITA No. 4639/Del/2015 for AY 2011-12 dated

15.09.2017, a similar question had arisen. Vide para No.11, a coordinate bench of this Tribunal held that transport and hostel facility surplus cannot be considered as business income of the society as these activities are incidental to the main object of the assessee society of education. Relevant observations on this aspect are as under:-

"11. We have carefully considered the rival contentions and perused the orders of the lower authorities and other judicial pronouncement placed before us. In the grounds No. 1-3 assessee is contesting that addition made by the Ld. assessing officer treating hostel places provided to college student as business of the society and text the alleged surplus of Rs. 9887873/- as business income of the appellant. It was not the case of the revenue that assessee has rented out these hostels to the students who are not parted education in the above institutes. It was also not the case of revenue that assessee is primarily engaged in the business of providing hostel facilities to the students. The above issue is no more res Integra in view of the decision of the Hon'ble Karnataka High Court in CIT versus Karnataka Lingayat education society in ITA No. 5004/2012 dated 15/10/2014 wherein it has been held that -providing hostel to the students/staff working for the society's incidental to achieve the object of providing education, namely the object of the society. In view of this we are of the opinion that providing of hostel facilities and transport facilities to the student and staff member of the educational Institute cannot be considered as business activity but is subservient to the object of educational activities performed by the society. We are also supported by our view by the decision of the Hon'ble

Allahabad High Court in IIT versus state of UP, (1976) 38 STC 428 (All) wherein question arose in Indian Institute of Technology v. State of U.P. (1976) 38 STC 428 (All) with respect to the visitors' hostel maintained by the Indian Institute of Technology where lodging and boarding facilities were provided to persons who would come to the Institute in connection with education and the academic activities of the Institute. It was observed that the statutory obligation of maintenance of the hostel, which involved supply, and sale of food was an integral part of the objects of the Institute nor could the running of the hostel be treated as the principal activity of the Institute. The Institute could not be held to be doing business. Further meals being supplied in a hostel to the scholars, visitors, guest faculty etc. cannot be exigible to sales tax where main activity is academics as held in Scholars home Senior Secondary School 42 VST 530. Further, the reliance placed by the lower authorities on the decision of the Hon'ble Madras High Court in case of DCIT versus Wellington charitable trust is also misplaced because in that case, the only activity of that particular trust was renting out of the property and not education. We are also not averse to considering the latest legal developments too where in the recently introduced new legislation of Goods and service tax it is provided that no GST would be chargeable on the hostel fees etc recovered from the Students , faculties and other staff for lodging and boarding as they are engaged in education activities . Therefore we reverse the finding of the lower authorities and held that transport and hostel facilities surplus cannot be considered as business income of the assessee society which is mainly engaged in business activities and these activities

are subservient to the main object of education of the trust.”

11. In Kanha Charitable Trust Vs. ACIT ITA Nos.3297 & 5987/Del/2015, while placing reliance on its earlier decision in the case of Krishna Charitable Society Vs. ACIT it was held that in the absence of any clinching evidence to show that the hostel facilities and transport facilities were provided to anybody other than students and staff of the trust. The transport and Hostel facilities provided by the educational institution shall be construed to be the intrinsic part of the 'educational activities' of the assessee and they cannot be considered different than activities of the society of 'education'. The hostel and transport facilities are incidental to achieve the object of providing education as per object of the trust.

12. Further, in Mallikarjun School Society vs. CCIT (2018) 90 taxmann.com 160 (Uttarakhand), the Hon'ble High Court held that an educational institution will not cease to be one existing solely for educational purposes since the object is not to make profit and the decisive or as a test as observed by the Hon'ble Apex court is whether on an overall view of the matter the object is to make profit and one should bear in mind the distinction between the corpus, the objects and the powers of the concerned entity.

13. In the present case also, it is not the case of the revenue that the transport facility is also provided to the outsider. Hon'ble Karnataka High Court in the case of Karnataka Lingayat Education Society in ITA No.

5004/2012 dated 15.10.2014 has held that providing the hostel to the students and the staff working for the society is incidental to achieve the object of providing education and i.e. the object of the society. Therefore, in view of the above decision of the Hon'ble Karnataka High Court as well as the decision of a coordinate bench of this Tribunal in ITA No. 4639/Del/2015, we are of the view that the transport activities of the assessee trust are not in the nature of business, inasmuch as the transport is also incidental to the attainment of the main object of the trust of the education. Therefore, the provisions of Section 11(4A) of the Act do not apply to the assessee. With this view of the matter, we allow the grounds of appeal.”

5.1 Although the Ld. Sr. Departmental Representative has argued vehemently against the Ld. AR's contention that provision of hostel facilities and transport facilities is not intrinsic to the activity of imparting education, he could not point out any order of the jurisdictional Bench or the Hon'ble jurisdictional High Court to the contrary. Accordingly, respectfully following the ratio as laid down by the co-ordinate bench of the ITAT in the case of Delhi Public School Ghaziabad Society vs. ACIT in ITA no. 3593/Del/2015, we are of the considered view that hostel activities and transport activities of the assessee society are not in nature of business

inasmuch as these two activities are incidental to the attainment of the main object of education. Accordingly, we allow the grounds of appeal raised by the assessee.

6. In the final result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 09.01.2019.

Sd/-
(G.D.AGRawal)
VICE PRESIDENT

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 09.01.2019
BR

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

