

**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.-3636/Del/2015
(Assessment Year: 2010-11)**

ITO (Exemption) Ward-1(2), Room No. 2417, 24 th Floor, E-2-Block, Pratyaksh Kar Bhawan, Dr. Shyama Prasad Mukherjee Civic Centre, Jawahar Lal Nehru Marg New Delhi	Vs.	Indian Islamic Cultural Centre Opp. Mausam Bhawan, 87-88, Lodhi Estate New Delhi PAN : AAATI2770F
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 appeal is preferred by the department against order passed by the Ld. CIT (Appeals) - 40, New Delhi for assessment year 2010-11 wherein Ld. CIT (Appeals) has held that the restaurant/coffee shop run by the assessee society in the premises of the assessee does not tantamount to assessee being involved in trade, commerce or business.

2. The brief facts of the case are that the assessee is registered under the Societies Registration Act, 1860 and is also registered u/s 12AA of the Income Tax Act 1961 (hereinafter called the 'Act'). The assessee also enjoys benefit of Section 80G. The main object of the assessee is to promote Indian art and culture and communal harmony etc. The assessee had been enjoying exemption u/s 11(1) since the grant of registration u/s 12AA w.e.f. 1982. However, this exemption was denied for the first time in assessment year 2009-10 by invoking the mischief of Proviso to Section 2(15) on the ground that assessee was involved in trade, commerce or business as there was a restaurant run by Saleem Restaurant Pvt. Ltd. in the name of *Dilli Dastarkhan* in the premises of the assessee and the assessee was receiving income from the restaurant. The assessee's appeal against the denial of exemption was allowed by the Ld. CIT (Appeals)-21, New Delhi vide order dated 30.05.2012 and the department's appeal against the order of Ld. CIT (Appeals) for assessment year 2009-10 was dismissed by the ITAT vide order dated 30.07.2014 in ITA no. 4127/Del/2012. A similar view was taken by the AO by denying exemption u/s 11(1) in assessment year 2011-12 also and here also the Ld. CIT (Appeals) allowed the assessee's

appeal and the department's appeal was dismissed by the ITAT vide order dated 22.01.2018 in ITA no. 4443/Del/2015.

2.1 During assessment year 2010-11, i.e. present year, the AO had again invoked the mischief of proviso to Section 2(15) and again denied the benefit of exemption u/s 11(1). The assessee's appeal was allowed by the Ld. CIT (Appeals)-40 vide the impugned order and the department is now before the ITAT challenging the action of the Ld. CIT (Appeals).

3. The Ld. Sr. Departmental Representative placed reliance on the order of the Assessing Officer and submitted that the principle of *res judicata* were not applicable in this case as each assessment year is a separate assessment year for the purposes of levy of Income Tax.

4. The Ld. Authorised Representative filed copies of the ITAT orders in assessee's own case for assessment years 2009-10 and 2011-12 and submitted that there was no change in the facts and circumstances in this year as compared to assessment years 2009-10 and 2011-12 and, therefore, the revenue's appeal deserved to be dismissed.

5. We have heard the rival submissions and have also perused the material on record. We find that the issue is squarely covered in favour of the assessee by the earlier orders of the

Tribunal for assessment year 2009-10 and 2011-12 in assessee's own case as aforementioned as the department could not point out any distinguishing reason or change in the facts of the present year as compared to assessment years 2009-10 and 2011-12. It is not in dispute that the assessee has not generated any profit from its activities as a charitable institution and it is also not in dispute that the aims and objects of the society are objects of general public utility inasmuch as the attempt to promote understanding amongst various sections of the society and establish communal harmony are its objects. It is also a matter of fact that the facilities of the restaurant/cafeteria are provided for the members of the assessee society and the surplus so generated is utilized for achieving the aims and objects of the society and does not get distributed amongst the members. The assessee society continues to enjoy registration u/s 12AA of the Act as well as the approval u/s 80G and the department has not made any attempt to cancel the said registration. Thus, there being no change in the facts of the case, respectfully following the orders of the ITAT in assessee's own case for assessment years 2009-10 and 2011-12, we find no illegality or perversity

in the impugned order and we dismiss the grounds raised by the department.

6. In the final result, the appeal of the department stands dismissed.

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

