

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.3615/Del/2015
Assessment Year: 2010-11

DCIT, Circle-1(1), Pratyaksh Kar Bhawan, Dr. Shyama Prasad Mukherjee Civic Centre, Jawahar Lal Nehru Marg, New Delhi	Vs.	M/s. GSI India (Formerly EAN India)330, 2 nd Floor, C- Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi
PAN :AAATE0387N		
(Appellant)		(Respondent)

Appellant by	Shri Manoj Kumar Mahar, Sr.DR
Respondent by	S/Shri Rishabh Sancheti & Anchit Bhandari, Advocates

Date of hearing	07.01.2019
Date of pronouncement	16.01.2019

ORDER

PER O.P. KANT, A.M.:

This appeal by the Revenue is directed against order dated 23/03/2015 passed by the Ld. Commissioner of Income-tax (Appeals)-21, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2010-11, raising following grounds:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the benefit of section 11 & 12 of the Income Tax Act ignoring the fact that the assessee activities are not within the purview of the section 2(15) of the I.T. Act, 1961 during the year.*

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of depreciation of Rs.13,64,241/- to the assessee ignoring the fact that the assessee had claimed the amount Incurred on purchase of assets in earlier years as application of income, on which depreciation is claimed now and further allowance of depreciation will be tantamount to double deduction.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of depreciation of Rs.13,64,241/- to the assessee in view of the recent decision of the Hon'ble Delhi High Court in the case of DIT(E) Vs. Charanjiv Charitable Trust dated 18.03.2014.*
4. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the claim of accumulated funds of Rs.5,98,77,553/- u/s 11(2) in absence of benefit of exemption u/s 11 and 10(23C) of the Act.*
5. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

2. The assessee society working under the Ministry of commerce, government of India is engaged in giving barcode technology to its customers. For the year under consideration, the assessee filed return of income on 24/09/2010 declaring nil income. The case was selected for scrutiny and notice under section 143(2) of the Income-tax Act, 1961 (in short 'the Act') was issued and complied with. The Assessing Officer noticed that the assessee society was not registered under section 12A(a) of the Act and was also not notified under section 10(23C) of the Act and thus the exemption claimed by the assessee of its income under section 11 & 12 of the Act was not justified. In the assessment completed under section 143(3) of the Act on 28/03/2013, the Ld. Assessing Officer held that the activity of the assessee, falls under the ambit of "any other object of general public utility" under section 2(15) of the Act and was duly covered by the first proviso to the said section. The Assessing Officer

treated receipt of the assessee by giving barcode technology to its customers, against fee charged as commercial in nature observing that the license agreement is a pure business agreement for running royalty income for extending the licence for use of the intellectual property right. According to the Assessing Officer there is no charitable activity involved in granting license to all type of customers irrespective of whether the user is using in his business affairs or for charitable purposes. The Assessing Officer also stated that that despite the assessee carrying on commercial/business activity, yet it has not maintained separate books of accounts as required under the provisions of section 11(4) and 11(4A) of the Act. In view of the observation the Assessing Officer made addition of Rs.13,63,42,813/- holding that activities of the assessee were in the nature of business or commerce and therefore hit by the proviso to section 2(15) of the Act. The break-up of the addition made by the Assessing Officer are as under:

- *Rs.7,51,01,019/- on account of exempt income(excess of income over expenditure)*
- *Rs.13,64,241/- on account of depreciation disallowed.*
- *Rs.5,98,77,553/- on account of disallowance of accumulation carried forward u/s 11(2).*

2.1 Aggrieved with the above additions, the assessee filed appeal before the Ld. CIT(A) and submitted that the registration granted to the assessee society was cancelled by order under section 12AA dated 30/06/2009 w.e.f. assessment year 2009-10, however, the appeal filed by the assessee against the same has been allowed by the Tribunal and the Hon'ble High Court has also upheld the order of the Tribunal. The assessee also submitted that the

appeal filed against the order of the DGIT(E) withdrawing the approval under section 10(23C) has been allowed by the Tribunal and the order of the Tribunal has been upheld by the Hon'ble High Court. After considering the submission of the assessee, the Ld. CIT(A) allowed the appeal of the assessee.

2.2 Aggrieved, the Revenue is in appeal before the Tribunal raising the grounds as reproduced above.

3. Before us, the Ld. DR relied on the order of the Assessing Officer and submitted that the activity of charging fee against the barcode technology to the customers is purely in the nature of commercial and business activity and therefore the assessee is hit by the provision to section 2(15) of the Act. Thus, according to him, in absence of separate books of accounts maintained by the assessee, the Assessing Officer has rightly disallowed the benefit of section 11(4) and 11(4A) to the assessee.

4. The Ld. counsel of the assessee on the other hand relied on the order of the Ld. CIT(A) and submitted that the activity of the assessee are charitable in nature and the assessee has been allowed benefit under section 10(23C)(iv) of the Act and registration under section 12AA(1) of the Act by the Hon'ble Delhi High Court in ITA 333/2018. He submitted that the Tribunal in ITA No. 5042/del/del/2015 for assessment year 2011-12 has upheld the order of Ld. CIT(A) granting relief to the assessee in respect of addition made on identical grounds. He also submitted that similarly in assessment it 2012-13, the assessee has been granted relief on the all the three issues of addition of excess of receipt or the expenditure, depreciation and allowing of claim of accumulated funds. Accordingly, he submitted that order of the Ld. CIT(A) might be upheld in the year under consideration also.

5. We have heard the rival submission and perused the relevant material on record. We find that subsequent to the order of the Assessing Officer, the assessee has been granted registration under section 12AA(1) as well as approved under section 10(23C)(vi) by the Hon'ble High Court. The relevant finding of the Hon'ble High Court in ITA 333/2018 is reproduced as under:

“This Court notices that the same issue for another A.Y. was held in favour of the assessee and against the Revenue (in the case of Commissioner of Income Tax vs. M/s. GSI India, ITA No. 691/2017 decided on 16.02.2018)

The Court had in both its previous judgment- dated 26.09.2013 in W.P.(C) 7797/2009 as well as in the appeal bearing ITA No.691/2017 decided on 16.02.2018 held that the assessee is entitled to the benefit under Section 10(23C)(iv) of the Act and also for its registration under Section 12AA(1) of the Act.

In these circumstances, no substantial question of law arises. The appeal is dismissed.”

6. We have also noticed that in identical circumstances the Tribunal in ITA No. 5042/Del/2015 for assessment year 2011-12 has allowed the appeal of the assessee observing as under:

“5. We have carefully gone through the record. It is submitted by the Ld. DR and also we could found from the order of the Ld.CIT (A) that pursuant to the orders dated 26.09.2013 of the Hon'ble Jurisdictional High Court in assessee's own case for the AY 1996-97, by order dated 23.10.2013, Ld. DGIT (E) had allowed the exemption u/s 10(23C)(iv) of the Act to the assessee and against the cancellation of registration u/s 12AA(3) of the Act w.e.f. 2009-10 a coordinate bench of this Tribunal in ITA No. 3733/Del/2009 vide order dated 11.10.2013 allowed the appeal of the assessee by placing reliance on the above order of the Hon'ble Jurisdictional High Court in assessee's own case. Further, for the assessment years 2009-10 and 2010-11 the Ld. CIT (A), vide orders dated 24.12.2013 and 23.03.2015, allowed the plea of the assessee. After recording all these facts in the impugned order Ld. CIT (A), considered the assessment order and contentions of the assessee in the light of the orders referred to above and held that the activities of the assessee are covered u/s 2(15) of the Act under the sixth limb and that the assessee is eligible for exemption u/s 11(1) of the Act. There is no

change of circumstances since the date of the order of the Honhble High Court and also from the facts relevant to the assessment years 2009-10 and 2010-11. In the circumstances, while respectfully following the order of the Honhble Jurisdictional High Court and also in view of the fact that the Ld. CIT (A) granted relief in respect of the assessment years 2009-10 and 2010-11 also, we find no legal infirmity in the order of the Ld. CIT (A) and we confirm the same. Consequently, the grounds of appeal of the Revenue are dismissed.”

7. Similarly, in assessment year 2012-13, the Tribunal in ITA No. 1251/Del/2016 in the case of the assessee itself has allowed relief to the assessee on all the 3 grounds. On the issue of allowing benefit under section 11 and 12 to the assessee, the Tribunal relying on the decision of the Hon’ble Delhi High Court observed as under:

“5.5 There is no dispute on the fact that the assessee continued the same activity which was carried in assessment year 2011-12 & 2010-11. As the activities of the assessee have been held as charitable in nature by the Hon’ble High Court and the Tribunal, respectfully following the same, we hold the activity of the assessee in the year under consideration as also charitable and the assessee is entitled to benefit of section 11 and 12 of the Act and, thus, application of income has to be allowed in accordance with law. The finding of the Ld. CIT(A) on the issue-in-dispute is upheld. The ground No. 1 of the appeal of the Revenue is accordingly dismissed.”

8. On the issue of allowing depreciation despite claiming benefit of application of the purchase of the assets, the Tribunal (supra) following the decision of the Hon’ble Supreme Court in the case of CIT Vs. Rajasthan and Gujarat Charitable Foundation Poona (Civil Appeal No. 7186 of 2014 with Anr.) allowed the claim of the assessee observing as under:”

“6.4 Further, the Hon’ble Supreme Court, has mentioned in the above judgment that the amendment in section 11(6) of the Act brought vide Finance Act No. 2/2014, which became effective from assessment year 2015-16, but the said amendment has been held by the Hon’ble Delhi High Court as prospective in nature.”

9. The claim of the accumulated funds was also allowed by the Tribunal (supra) in view of the exemption already granted, observing as under:

“7.1 While adjudicating the ground No. 1, we have already upheld that the activity of the assessee are charitable in nature and, thus, the claim of the assessee for carry forward under section 11(2) has been rightly allowed by the Ld. CIT(A), accordingly, we uphold the same. The ground No. 3 of the appeal is thus accordingly dismissed.”

10. Thus, we note that all the three issues in dispute in the present appeal are decided in favour of the assessee by the coordinate bench of the Tribunal. In view of the above, all the grounds of appeal of the Revenue are dismissed.

11. In the result, appeal of the Revenue is dismissed.

Order is pronounced in the open court on 16th January, 2019.

Sd/-

[AMIT SHUKLA]
JUDICIAL MEMBER

Dated: 16th January, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-

[O.P. KANT]
ACCOUNTANT MEMBER

Asst. Registrar, ITAT, New Delhi