

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 7020/MUM/2016
Assessment Year: 2012-13**

The Dy. Commissioner of Income Tax – (Exemptions)-2(1), Room No. 519, 5 th Floor, Piramal Chambers, Lalbaug, Lower Parel, Mumbai - 400077	Vs.	Sri Sri Radha Damodar Charitable Trust, Hare Krishna Land, Juhu, Mumbai PAN: AAFTS2570L
(Appellant)		(Respondent)

Revenue by : Shri R. Manjunatha Swamy (DR)

Assessee by : Shri Hiten Chande (AR)

Date of Hearing: 22/11/2018
Date of Pronouncement: 28/01/2019

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 14.09.2016 passed by the Commissioner of Income Tax (Appeals)-1 (for short 'the CIT (A)'), Mumbai, for the assessment year 2012-13, whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against the assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee a charitable Trust registered with DIT(E), Mumbai under section 12A and with Charity Commissioner, filed its return of income declaring deficit of Rs. 30,53,455/-. The case was selected for scrutiny and accordingly notices u/s 143 (2) was issued by the AO. In response to the said notice, the authorized representative attended the proceedings and submitted the details called for. The AO noticed that the

assessee is engaged in various commercial activities which prima facie are in the nature of business. Accordingly, the AO issued show cause notice as to why the exemption u/s 11 of the Act should not be denied and the income should not be computed as business income. It was contended on behalf of the assessee that the Ld. CIT (A) vide its order dated 30.09.2014 has allowed the assessee's appeal on the identical issue pertaining to the A.Y. 2011-12, the application of section 2(15) does not arise. However, the AO rejected the contention of the assessee on the ground that the department has challenged the said order before the ITAT. Accordingly, the AO determined the total income of the assessee at Rs. 59,46,550/-.

3. The assessee challenged the impugned order before the Ld. CIT (A). The Ld. CIT (A) relying on the orders passed by his predecessors in assessee's own case for the A.Y. 2010-11 and 2011-12 by following the decision of the ITAT in assessee's own case for the A.Y. 2008-09 allowed the appeal of the assessee and directed the AO to allow the exemption u/s 11 of the Act. The revenue is in appeal against the said findings of the Ld. CIT (A).

The revenue has challenged the impugned order passed by the Ld. CIT (A) by raising the following effective grounds:

1. *"That on the facts of the case and in the circumstances of the case and in law, the ld. CIT (A) in directing to allow the exemption u/s 11 of the I.T. Act, 1961, without appreciating the fact that the assessee is running a commercial or business activity viz. a restaurant, which is generating huge profit, is open to outsider, not engaged in distribution of food to poor and needy people as contemplated in its charitable objects, and can no way be construed as a charitable activity, ignoring the detailed finding on the facts by the A.O.*
2. *That on the facts and circumstances of the case and in law, the Ld. CIT (A) has erred in directing the AO to allow the exemption u/s 11 of the I.T. Act, 1961, when the only charitable work carried out by the assessee is running a vegetarian restaurant*

and earning huge profits year after year and showing the expenses of running restaurant as expenses on the objects of the trust.

3. *That on the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in relying upon the order of his predecessors in the assessee's own case for A.Ys. 2010-11 and 2011-12, as per which the appeals of assessee were allowed relying upon the order of Hon'ble ITAT for A.Y. 2008-09 in assessee's own case, without appreciating the fact that the Department has not accepted the decision of Hon'ble ITAT on merit and filed appeal before the Hon'ble High Court for A.Y. 2008-09, which are pending for adjudication.*

4. At the outset, the Ld. counsel for the assessee pointed out that the issue involved in the present cases is squarely covered by the order of the ITAT rendered in the assessee's own case pertaining to the earlier assessment years. The Ld. counsel further placed on record, the order dated 04.04.2018 passed by the Tribunal in the assessee's own case pertaining to the A.Y. 2009-10 and order dated 16.04.2018 pertaining to the A.Y. 2010-11 and 2011-12. Since, the Tribunal has decided the identical issue in favour of the assessee, there is no merit in the appeal of the revenue.

5. On the other hand, the Ld. Departmental Representative (DR) relying on the assessment order passed by the AO submitted that the department has challenged the order of the ITAT rendered in the assessee's case 2008-09, therefore, the Ld. CIT (A) has wrongly decided the issue in favour of the assessee by following the decision of the ITAT.

6. We have heard the rival submissions and also perused the relevant material on record including the cases relied upon by the Ld. counsel. We notice that the coordinate Bench of the Tribunal has decided the identical issue in favour of the assessee in assessee's own case for the A.Y. 2009-10, 2010-11 and 2011-12 by following the earlier decisions of the coordinate Benches rendered in the assessee's own case. The coordinate Bench has

decided the identical issues in favour of the assessee in the assessee's appeal ITA No. 4336/Mum/2015 pertaining to the A.Y. 2010-11 and ITA No. 7009/Mum/2014 pertaining to the A.Y. 2011-12 and upheld the findings of the respective Commissioners (Appeals). We further notice that the coordinate Bench has relied on the decision rendered by the ITAT in the assessee's own case ITA No. 3809/Mum/2016 dated 04.04.2018 pertaining to the A.Y. 2009-10. The concluding part of the order passed by the coordinate Bench aforesaid reads as under:

“9. We have given a thoughtful our consideration on the facts qua the issue before us. We find that the activities of the assessee trust were directed for promoting its objects of vegetarianism and distribution of Prasadam and food to the general public to support the cause of Lord Krishna consciousness movement. The assessee trust follows the principle of Bhagwat Gita while Cooking, selling and preparation of vegetarian Prasadam. The activities of the assessee are essential to spread the thought of understanding the Lord Krishna consciousness and vegetarianism. The assessing officer has not disputed that the assessee trust is not spreading the Krishna consciousness and vegetarianism. The assessing officer has not brought any material on record to show that distribution of Prasadam has any commercial angel. We are of the considered view that the providing of the aforesaid services is indispensably required to facilitate the furtherance of the very interest of the Lord Krishna consciousness in the society. Even, we are of a strong conviction that in the absence of the aforesaid activities of the assessee trust, which as observed by us hereinabove can safely be held to have been indispensably required to achieve the object of the assessee trust.”

7. Since, the coordinate Bench has dismissed the revenue's appeal and decided the identical issue in favour of the assessee in the assessee's own cases discussed above, we do not find any infirmity in the order passed by the Ld. CIT (A). Hence, respectfully following the order passed by the coordinate

Benches referred above, we uphold the findings of the Ld. CIT (A) and dismiss the revenue's appeal.

In the result, appeal filed by the revenue for assessment year 2012-13 is dismissed.

Order pronounced in the open court on 28th January, 2019.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 28/01/2019

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

आदेश प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai