

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'C', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 5057/Del/2016
Assessment Year: 06.03.2019**

IILM Foundation Academy, Plot No. 69, Sector-53, Village Wazirabad, Gurgaon. PAN- AACCI0734J (Appellant)	vs.	DCIT, Circle 1(1), New Delhi (Respondent)
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Appellant by	Sh. Puneet Chugh, Advocate
Respondent by	Sh.Amit Katoch, Sr. DR

Date of Hearing	06.03.2019
Date of Pronouncement	12.03.2019

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order of ld. CIT(A)-2, Gurgaon dated 15.07.2016 on the following grounds :

1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals -2), Gurgaon. confirming the income of Rs. 51,81,080/- u/s 143 (3) of the I Tax Act, 1961 by the AO, is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the income rejecting the contention of the assessee that ITAT has directed that Appellant is eligible u/s 11/12 of the Tax Act and consequently shall be granted registration under section 12AA and 80G of the I Tax Act.*

3. *On the facts and circumstances of the case, the learned CIT(A) has erred in confirming that the excess of income over expenditure of Rs. 51,81,080/- as business income. The aforesaid action is erroneous as learned CIT (A) failed to appreciate that pursuant to binding direction of Tribunal, the appellant is eligible for exemption u/s 11/12 of the I Tax Act, notwithstanding the specific Registration Certificate to the above said order has not been issued.*
 4. *On the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in not passing any order over charging of interest u/s 234B by AO.*
 5. *That the CIT (A) failed to appreciate the fact that the Appeals filed by Department bearing ITA No. 198 of 2011 and ITA No. 200 of 2011 were pending consideration before the Hon'ble Punjab and Haryana High court on the issue of grant of Section 12AA and benefits under Section 80G of the Income Tax, 1956. These Appeals have been dismissed by the Hon'ble Punjab and Haryana High court against the Department and in favour of the assessee.*
2. The brief facts of the case are that the assessee filed return of income on 28.09.2012 in ITR – 7 declaring nil income claiming exemption u/s. 11/12 of the IT Act. The case was selected for scrutiny and statutory notices were also issued. In the assessment proceedings, the assessee was asked to produce certificate u/s. 12A granted by the Commissioner of Income Tax for the relevant assessment year, but the assessee could not furnish the same and relied that the CIT has not granted registration and against the order of Id. CIT, appeal has been made before the ITAT, New Delhi, who has directed vide his order dated 31.08.2010 in ITA No. 758 & 759/Del/2010 to grant registration u/s. 12A, but till date no registration has been granted. The Assessing Officer after considering the submissions of the assessee held that

the assessee is not eligible for exemption u/s. 11 & 12. He resulted that the matter may be sent back to the Assessing Officer.

3. The ld. DR, on the other hand, though supported the orders of the authorities below, but has no objection on the request of the assessee to remit the case back to the Assessing Officer.

4. After hearing both the sides and perusing the materials available on record, we find that the ld. CIT(Exemption) has granted registration u/s. 12AA of the IT Act, 1961 effective from assessment year 2010-11 onwards. Accordingly, on certain terms and conditions, the assessee is eligible for exemption u/s. 11/12 of the Act. We observe from the order of the Assessing Officer that the exemption was not granted for want of registration u/s. 12A. Therefore, this matter is sent back to the Assessing Officer to decide the claim of exemption made by the assessee in the light of registration granted to the assessee as per law. Needless to say, the assessee shall be given reasonable opportunity of being heard to the assessee.

5. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 12.03.2019.

Sd/-

(H.S. Sidhu)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated:

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