

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

**BEFORE SHRI G. D. AGRAWAL, VICE PRESIDENT  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 1846/DEL/2016 (A.Y 2011-12)**

ACIT(E) Circle-1(1), Room No. 2418, 24 <sup>th</sup> Floor, E-2 Block, Pratyaksh Kar Bhawan, Dr. Shyama Prasad Mukherjee Civic Centre, Jawahar Lal Nehru Marg, New Delhi <b>(APPELLANT)</b>	Vs	Hamdard Laboratories (India) 2A/3, Hamdard Building, Asaf Ali Road New Delhi AAATH0843G <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Smt. Nidhi Srivastava, CIT(DR)</b>
<b>Respondent by</b>	<b>Sh. R. M. Mehta, Adv</b>

<b>Date of Hearing</b>	<b>02.04.2019</b>
<b>Date of Pronouncement</b>	<b>04.04.2019</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order dated 18/01/2016 passed by CIT(A)-40(E), New Delhi for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

*“1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in allowing depreciation by ignoring the fact that where the capital expenditure has been treated to have been applied for the object of the trust, allowance of deduction on account of depreciation will amount to double deduction.”*

3. The assessee is governed by its constitution dated 28/8/1948 under which the partners of a business known as “Hamdard Dawakhana” dedicated

the said business to charity. Hamdard generates income from the manufacture and sale of Unani medicines and other allied products. The assessee is enjoying the benefit of Section 11 since inception. It had also been enjoying exemption u/s 10(23C)(IV) since 1984-85. The aforesaid position prevails till the Assessment Year 2005-06. Thereafter, the Assessing Officer vide order passed u/s 143(3) of the Act observed that the main activity of the assessee is to provide health care in the field of Unani Medicines. The proceeds of the assessee are governed by the Wakf Deed and applied to the charitable purposes. The activities of the assessee are within the meaning of Section 2(15) of the Income Tax Act and as such exemption was allowed to the assessee u/s 11 of the act as claimed. The assessee applied for the renewal of the Exemption u/s 10(23C) (IV) from the Assessment Year 2004-05 onwards and the same came to be renewed by the DGIT(E) vide order dated 28/12/2007 w.e.f. 2004-05 subject to certain conditions stipulated in the order. A show cause notice proposing to rescind the exemption was issued to the assessee. The assessee filed its submissions. The DGIT(E) vide order dated 22/2/2012 withdrew the exemption granted to Hamdard with retrospective effect from the Assessment Year 2004-05. As a consequence of the aforesaid order, the Assessing Officer passed Assessment Orders in respect of Assessment Years 2006-07 to 2009-10 rejecting the claim for exemption u/s 11 read with Section 10(23C) (IV) of the Act. The Assessing Officer also re-opened the assessment for the Assessment Year 2005-06 by issuing a notice u/s 148 of the Act. The assessee by means of a writ petition challenged the order dated 22/2/2012 before the Hon'ble Delhi High Court whereby the Hon'ble High Court vide order dated 11/4/2013 quashed the order and remanded the matter to the DGIT(E) to decide the issue afresh. On remand, the DGIT(E) vide order dated 21/08/2013 held with Hamdard was not entitled to the exemption u/s 10(23C)IV) w.e.f. Assessment Year 2004-05. In the meantime, the assessment order for the Assessment Years 2006-07 to 2009-10 came up for adjudication before the CIT(A) who by means of an identical orders dated 10/07/2013 held that the assessee was not entitled to the benefit of Section 11 of the Act in the

Assessment Year 2011-12. The Assessing Officer rejected the claim of exemption u/s 11 of the Act. As a sequence of the rejection of the claim u/s 11, the Assessing Officer taxed the assessee as an AoP computing its taxable income at Rs.83,66,50,250/-.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. DR relied upon the Assessment Order.

6. The Ld. AR pointed out that in the Assessment Year, the Assessing Officer though allowed depreciation on assets purchased during current year has given a noting (that depreciation on earlier year asset purchased not allowed because those assets have been claimed application of income in earlier years). The Ld. AR further submitted that the CIT(A) has taken cognizance of the Hon'ble Delhi High Court decision dated 18/9/2015 wherein the Hon'ble High Court quashed the orders of the CIT(A) for Assessment Year 2006-07 to 2009-10 whereby exemption u/s 11 had been denied to the assessee. Thus, allowed the appeal of the assessee. The Ld. AR submitted that the issue on merit in the present appeal is already decided by the Hon'ble Supreme Court in case of CIT(A) Vs. Rajasthan & Gujarati Charitable Foundation, Pune (2018) 89 taxmann.com 127 (SC).

7. We have heard both the parties and perused the material available on record. The Hon'ble Jurisdictional High Court in assessee's own case being W.P. (C) No. 5711/2013 has given a following conclusion which are summarized by the CIT(A) in para 6 of the order as under:-

“6. ....

*1. To the extent that there is no change in the facts and circumstances of the case or the law applicable the revenue is bound to follow the principle of consistency. (Page 31, Para 55 of the Judgement).*

2. That Hamdard's objects fall within the head of "education", "medical relief" and "relief of the poor" and not the residual category under Section 2(15) (page 36 para 63 of the judgement).

3. A trust which donates funds to another trust would qualify for exemption since its activities would be charitable in nature and while determining the head of "charitable purpose" under which it falls it would be inharmonious not to relate it to the nature of activity carried out by the donee trust or the further set of trusts/institutions to which the donee trust transfers its surplus (page 38 para 66).

4. That the dominant object test laid down in the Surat Art Silk Judgement still held good (pages 43 & 44 para 71).

5. In the case of Hamdard, it provided the trust with the means of achieving the objects of the trust-which was education, medical relief and relief for the poor. That business run by a trust was part of its corpus and thus business held under Trust (page 45, para 72).

6. That Hamdard is not guided by a profit motive and all proceeds generated from its activities are solely in furtherance of its charitable objects (page 45 para 73).

7. That the application of the surplus and accumulated income towards the ongoing projects relating to the business of Hamdard was in order and consequential to the view that the business carried on by Hamdard was only meant to act as a source of funds for its- charitable activities and it was undisputedly a case of a business held in Trust (para 77 at page 48, para 80 at page 50 and para 81 at page 51).

8. That Hamdard was not required to maintain separate books of accounts since its case would fall under Section 11(4) and not Section 11 (4A) the latter

*stipulating the condition of maintaining separate books of accounts (paras 93 and 94 at pages 61 and 62).*

*9. That Hamdard's dominant purpose was charitable in nature and it was not guided by the motive of profit making and that the first proviso to Section 2(15) did not alter the charitable status of the organization (paras 101 & 102 at pages 68 & 69).*

*.....”*

Besides that the decision of the Hon'ble Supreme Court in case of Rajasthan & Gujarati Charitable Foundation Pune (Supra) clearly held that depreciation in respect of cost of the assets are allowable to the assessee as expenditure as it gives rise to double deduction. Thus, the Ld. AR succeeds in his submissions made before the CIT(A) and the CIT(A) has given a proper finding to that effect. Therefore, the appeal of the Revenue does not survive.

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

**Order pronounced in the Open Court on 04<sup>th</sup> APRIL, 2019.**

Sd/-

**(G. D. AGRAWAL)  
VICE PRESIDENT**

Sd/-

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 04/04/2019  
R. Naheed \*

Copy forwarded to:

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

## ASSISTANT REGISTRAR

## ITAT NEW DELHI

Date of dictation	02.04.2019
Date on which the typed draft is placed before the dictating Member	02.04.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	04.04.2019
Date on which the final order is uploaded on the website of ITAT	04.04.2019
Date on which the file goes to the Bench Clerk	04.04.2019
Date on which the file goes to the Head Clerk	