IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.3199/Del./2015
(ASSESSMENT YEAR : 2010-11)

Indian Institute of Management & Engineering Society, 27, KM Stone (AKGEC Complex), NH 24, Delhi Hapur Bye Pass Road, Ghaziabad.	vs.	ACIT, Range – 1, Ghaziabad.

(PAN : AAATI3688N)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate
Shri Akshit Goel, CA
REVENUE BY : Ms. Ashima Neb, Senior DR

Date of Hearing : 16.04.2019
Date of Order : 30.04.2019

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, Indian Institute of Management & Engineering Society (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 27.02.2015 passed by the Commissioner of Income-tax (Appeals), Muzaffarnagar, qua the assessment year 2010-11 on the grounds inter alia that :-

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals)[(CIT(A)] 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 upholding the action of the AO in assessing the income of the appellant society at Rs.3,71,99,570/- as against Nil income declared and assessable under the provisions of the Act.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the appellant that hostel and transport facilities being incidental to the education activities by way of running school, the AO was not justified in holding that these activities tantamount to business and as such not eligible for deduction under Section 11 of the Income Tax Act.

4(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in disallowing exemption under Section 11 to the assessee in respect of activities related to running of hostel and providing transport to the students.

(ii) That the learned CIT(A) has erred both on facts and in law in confirming the abovesaid action of the AO rejecting the contention of the assessee that hostel and transport facilities being part of activities of providing education only, the same are eligible for exemption under Section 11 of the Act.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in holding the action of the AO that the hostel and transport activities constitute independent business and as such assessee is responsible to maintain separate books of accounts under Section 11 (4A) of the Act.

6(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the appellant that the AO was not justified in deducting a sum of Rs.4,35,23,067/- being depreciation, while computing total amount utilized and applied towards charitable purpose.

(ii) That the above action of the AO is against the express provision of Section 11 of the Income Tax Act.

7(i) Without prejudice to the above and in the alternative, the learned CIT(A) has erred both on facts and in law in confirming

the income from hostel and transport computed by AO at Rs.3,71,99,567/-.

(ii) That the AO has erred in not deducting all the expenses attributable to hostel and transport activities while computing income from hostel and transport activities.

(iii) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the alternative contention of the appellant that income computed by the AO for hostel and transport activities at Rs.3,71,99,567/- is not correct.

(iv) That the explanation and details submitted by the appellant in this regard have been rejected arbitrarily."

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee society is running a school being a charitable education society registered under section 12AA of the Income-tax Act, 1961 (for short 'the Act') and as such claimed its income as exempt u/s 11 of the Act . Assessing Officer made addition of Rs.3,71,99,570/- on account of surplus generated on account of providing transport and hostel facilities to the students by treating the same as independent business. AO has also disallowed an amount of Rs.4,35,23,067/- on account of depreciation claimed by the assessee on the ground that claiming full expenditure as an application of income and simultaneously claiming depreciation on the same expenditure will result into double taxation. AO has also disallowed an amount of Rs.1,27,127/- on account of repair and maintenance of buses and fuel charges of Rs.2,55,135/- incurred for running the school buses.

3. Assessee carried the matter by way of an appeal before the ld. CIT (A) who has confirmed the additions by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1

5. Ground No.1 is general in nature, hence needs no adjudication.

GROUNDS NO.2, 3, 4(i), 4(ii) & 5

6. Undisputedly, the assessee society is duly registered u/s 12A of the Act to avail of the exemption of income u/s 11 of the Act. It is also not in dispute that the assessee has been providing hostel as well as transport facilities to its own students. It is also not in dispute that the assessee has not maintained separate books of account for running transportation and hostel services. It is also not in dispute that all the vehicles engaged in providing transportation facilities to the students by the assessee are hired one except two vehicles owned by the assessee society.

7. AO as well as CIT (A) have made disallowance of exemption u/s 11 of the Act pertaining to running of hostels and providing transportation facilities to the students of the Institute by invoking the provisions contained u/s 11(4A) of the Act on the ground that the assessee has failed to comply with both the limbs u/s 11(4) of the Act. Ld. AR for the assessee contended that both the facilities of transportation as well as hostel are being provided to the students of the Institute are incidental to the education and receipt therefrom cannot be treated as income from independent business.

8. We are of the considered view that hostel and transportation facilities being provided by the assessee society to the students are incidental activities hence part and parcel of the main objects of the society qua providing education. Even otherwise, it is a matter of common knowledge that when students are living in the hostel provided by the educational institution, their parents feel comfortable and at the same time when school buses are ferrying the students from institute to home and vice-versa, it is again part and parcel of the main objects of the assessee society because it saves the time and money of the students. Moreover, when there is not an iota of material on record that hostel and transportation facilities are simultaneously being provided by the assessee society

to the outsider other than students and its staff, it cannot be disallowed. At the same time, it is not the case of the Revenue that the assessee society is into the business of running of hostel and vehicles. More particularly, all the vehicles except two vehicles owned by the assessee society are hired one for ferrying the students at the competitive rates.

9. AO has made an opinion that for providing transportation facilities, students are charged on commercial basis and he has made some comparative study in this regard. But we are of the considered view that when hostel as well as transportation facilities are not being on competitive basis, no student would avail of the transportation and hostel facilities if they are charged commercially at exorbitant rates. So, the AO has just made an observation to fortify his case that surplus generated on account of running of transportation and hostel facilities is an independent business.

10. At the same time, we are of the considered view that in case, surplus has been generated on account of running of transportation and hostel facilities the same would be set off, in case in the subsequent period, assessee suffered some loss on account of providing these facilities. So, merely on the basis of the fact that the assessee society has generated surplus on account of running of

transportation and hostel services, the same cannot be treated as an independent business.

11. This issue has been decided by the coordinate Bench of the Tribunal in case cited as ***Delhi Public School Ghaziabad vs. ACIT – 2018 (5) TMI 1482 – ITAT Delhi*** by relying upon the decision rendered by Hon'ble Karnataka High Court in ***Karnataka Lingayat Education Society in ITA No.5004/2012 dated 15.10.2014*** wherein it is held that providing of the hostel to the students and staff working for the society is incidental to achieve the object of providing education. In ***Kanha Charitable Trust vs. ACIT in ITA Nos.3297 & 5987/Del/2015***, the coordinate Bench of the Tribunal also held that when hostel and transport facilities are being provided to the students and staff of the society only it shall be construed to be intrinsic part of the educational activities.

12. So, in the case at hand, it is undisputed case of the assessee that hostel and transportation facilities are only being provided to the students of the Institute and as such is incidental to achieve the object of providing education in compliance to the aims and objects of the assessee trust. So, in these circumstances, provisions contained u/s 11 (4A) invoked by the AO are not applicable to the facts and circumstances of the case.

13. We are of the considered view that activity of assessee society in providing transport and hostel facilities to the students and staff is incidental to achieve the charitable object of providing education.

14. AO made disallowance of Rs.1,27,127/- and Rs.2,55,135/- on account of repair and maintenance of buses and on account of fuel charges for running the buses respectively on ad hoc basis on the ground that the same are on higher side as the assessee society is owning only two buses.

15. It is contended by the ld. AR for the assessee that the assessee has duly explained to the AO that all the expenses have been duly recorded in the books of account which have never been disputed and actual expenses have been claimed. Since both AO/CIT (A) have disallowed/confirmed the expenses on ad hoc basis only on the ground that the same are on higher side without disputing the incurrence of the expenses it is not permissible under law. Moreover, maintenance charges as well as fuel charges of the buses depends upon the age and condition of the vehicle which has not been examined by the AO. So, we are of the considered view that these expenses are liable to be allowed, hence disallowances of Rs.1,27,127/- and Rs.2,55,135/- are ordered to be deleted.

16. Moreover, it is a matter of record that when the assessee society has been claimed exemption u/s 11 of the Act, no such question has been raised by the AO regarding disallowance of exemption claimed on account of hostel and transportation facilities as is evident from assessment order for AYs 2009-10, 2012-13 and 2013-14 passed u/s 143 (3) of the Act, copies available at pages 65 to 67, 102 to 105 and 106 to 108 of the paper book. When there is no change in the facts and circumstances of the case, the Revenue is also bound to follow rule of consistency.

17. In view of what has been discussed above, we are of the considered view that disallowance of exemption of receipt of Rs.3,71,99,570/- from the activities of providing hostel and transport facilities to the students of the institution is not sustainable in the eyes of law being intrinsic part of the educational activities of the assessee society. Consequently, grounds no.2, 3, 4(i), 4(ii) & 5 are determined in favour of the assessee.

GROUND NO.6(i) & 6(ii)

18. AO/CIT (A) made disallowance of Rs.4,35,23,067/- on account of depreciation on fixed assets while computing total amount utilized and applied towards charitable purposes by relying

upon the decision rendered by Hon'ble Supreme Court in the case of ***Escorts Limited vs. UOI – 199 ITR 43***.

19. Ld. AR for the assessee challenging the impugned order contended that the decision rendered by Hon'ble Supreme Court in case of ***Escorts Limited*** (supra) is not applicable having been distinguished by the Hon'ble Delhi High Court in case cited as ***Director of Income-tax vs. Vishwa Jagriti Mission 73 DTR (Del.) 195***.

20. Undisputedly, assessee being a society registered u/s 12AA of the Act is entitled for exemption of its income u/s 11 of the Act. Now, the issue in controversy is :-

> ***"as to whether the assessee is entitled for depreciation on the fixed assets utilized for charitable purposes and as to whether income of assessee should be computed on commercial principle."***

21. Hon'ble Delhi High Court decided the identical issue in case of ***Vishwa Jagriti Mission*** (supra) in favour of the assessee after examining the decision rendered by Hon'ble Supreme Court in case of ***Escorts Ltd.*** (supra) by returning following findings :-

> ***"13. The judgment of the Supreme Court in Escorts Limited Vs. Union of India(supra)has been rightly held to be inapplicable to the present case. There are two reasons as to why the judgment cannot be applied to the present case. Firstly, the Supreme Court was not concerned with the case of a charitable trust/institution involving the question as to whether its income should be computed on commercial principles in order to determine the amount of income available for application to charitable***

purposes. It was a case where the assessee was carrying on business and the statutory computation provisions of Chapter IV-D of the Act were applicable. In the present case, we are not concerned with the applicability of these provisions. We are concerned only with the concept of commercial income as understood from the accounting point of view. Even under normal commercial accounting principles, there is authority for the proposition that depreciation is a necessary charge in computing the net income. Secondly, the Supreme Court was concerned with the case where the assessee had claimed deduction of the cost of the asset under Section 35(1) of the Act, which allowed deduction for capital expenditure incurred on scientific research. The question was whether after claiming deduction in respect of the cost of the asset under Section 35(1), can the assessee again claim deduction on account of depreciation in respect of the same asset. The Supreme Court ruled that, under general principles of taxation, double deduction in regard to the same business outgoing is not intended unless clearly expressed. The present case is not one of this type, as rightly distinguished by the CIT(Appeals).

14. Having regard to the consensus of judicial opinion on the precise question that has arisen in the present appeal, we are not inclined to admit the appeal and frame any substantial question of law. There does not appear to be any contrary view plausible on the question raised before us and at any rate no judgment taking a contrary view has been brought to our notice. In the circumstances, we decline to admit the present appeal and dismiss the same with no order as to costs."

22. Identical issue has also been decided by Hon'ble Supreme Court in case of ***CIT vs. Rajasthan and Gujarati Charitable Foundation Poona in Civil Appeal No.7186 of 2014 dated 13.12.2017*** in favour of the assessee wherein view taken by Hon'ble Bombay High Court in case of ***Director of Income-tax (Exemption) vs. Framjee Cawasjee Institute (1993) 109 CTR 463*** has been affirmed by returning following findings :-

"4. Question No.2 herein is identical to the question / which was raised before the Bombay High Court in the case of Director of Income-tax (Exemption) v. Framjee Cawasjee Institute [1993] 109 CTR 463. In that case, the facts were as follows: The

> ***assessee was the Trust. It derived its income from depreciable assets. The assessee took into account depreciation on those assets in computing the income of the Trust. The ITO held that depreciation could not be taken into account because full capital expenditure had been allowed in the year of acquisition of the assets. The assessee went in appeal before the Assistant Appellate Commissioner. . The Appeal was rejected. The Tribunal, however, took the view that when the ITO stated that full expenditure had been allowed in the year of acquisition of the assets, what he really meant was that the amount spent on acquiring those assets had been treated as 'application of income' of the Trust in the year in which the income was spent in acquiring those assets. This did not mean that in computing income from those assets in subsequent years, depreciation in respect of those assets cannot be taken into account. This view of the Tribunal has been confirmed by the Bombay High Court in the above judgment. Hence, Question No. 2 is covered by the decision of the Bombay High Court in the above Judgment. Consequently, Question No.2 is answered in the Affirmative i.e., in favour of the assessee and against the Department."***

23. Hon'ble Supreme Court in case of ***Rajasthan and Gujarati Charitable Foundation Poona*** (supra) also held that amendment in section 11 (6) of the Act vide Finance Act (No.2), 2014 effected from AY 2015-16 is prospective in nature.

24. So, following the decisions rendered by Hon'ble Delhi High Court in ***Vishwa Jagriti Mission*** (supra) and decision rendered by Hon'ble Supreme Court in case of ***Rajasthan and Gujarati Charitable Foundation Poona*** (supra), we are of the considered view that while computing income from those assets of which full expenditure has been allowed in the year of acquisition, in the subsequent years depreciation in respect of those assets has also to be taken into account. So, AO/CIT (A) have erred in making disallowance of RS.4,35,23,067/- on account of depreciation on

fixed assets claimed during the year under assessment because application of income is not computation of income and the provisions of application of income would come into play only after the income chargeable to tax is determined and the income has to be in the general sense and depreciation is one of the deductions availed under law and there is no reason for disallowing the same. Consequently, grounds no.6(i) & 6(ii) are determined in favour of the assessee.

GROUND NO.7(i), (ii), (iii) & (iv)

25. In view of our findings on grounds no.2, 3, 4, & 5, no findings are required to be returned on this ground because the earlier grounds have been decided in favour of the assessee and ground no.7 has been raised without prejudice and in the alternative. Consequently, grounds no.7(i), (ii), (iii) & (iv) are determined against the assessee.

26. Resultantly, the appeal filed by the assessee is partly allowed.

Order pronounced in open court on this 30th day of April, 2019.

Sd/-	**sd/-**
(R.K. PANDA)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 30th day of April, 2019
TS

Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT(A), Muzaffarnagar.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.