

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 4101/Del/2016
Asstt. Year. 2010-11

Indian Society for Technical Education ISTE Building, New Mehrauli Road, IIT Campus, New Delhi – 110 016	Vs.	ADIT (E) Trust Circle-II New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Sunil Arora, CA
Department by :	Shri Amit Katoch, Sr. DR
Date of Hearing	15/05/2019
Date of pronouncement	16/05/2019

ORDER

PER O.P. KANT, A.M.

This appeal by the assessee is directed against order dated 25/05/2016 passed by the Ld. Commissioner of Income-tax (Appeals)-40(exemption) , New Delhi [in short the Ld. CIT(A)] for assessment year 2010-11 raising the grounds as under:

1. *“Under the facts and circumstances of the case, ld. First Appellate Authority has grossly erred in affirming the action of ld. A.O. assuming jurisdiction U/S 154 of the*

Act, rectifying order passed U/S 143(3) of the Act wherein there was no mistake apparent from record, which is grossly injudicious, unwarranted, without jurisdiction, against the facts of the case and bad at law.

2. *Under the facts and circumstances of the case, ld. First Appellate Authority has grossly erred in upholding the rectification order passed u/s 154 of the Act by the ld. A.O., ignoring the ratio of various judicial precedents including the ruling of Hon. Apex Court in the case of T.S. Balaram, ITO vs. Volkart Bros. [1971] 82 ITR 50 (SC), wherein it has been held that issue on which there may be conceivably two opinions cannot be a subject matter of rectification u/s 154 of the Act.*
3. *Without prejudice to the above, ld. First Appellate Authority has grossly erred in affirming the action of the ld. A.O. making addition amounting to ' 35,19,200/- on account of Institutional Membership Fee alleging that exemption u/s 12A(a) of the Act is not allowable on the said receipts, which is grossly injudicious, unwarranted, against the facts of the case and bad at law.*
4. *Without prejudice to the above, ld. First Appellate Authority has grossly erred in affirming the action of the ld. A.O. making addition amounting to ' 1,54,71,650/- on account of Life Membership Fee alleging that exemption u/s 12A(a) of the Act is not allowable on the said receipts, which is grossly injudicious, unwarranted, against the facts of the case and bad at law.*
5. *Without prejudice to the above grounds, the addition of Institutional membership fees amounting to 35,19,200/-*

to the returned income is injudicious, unwarranted and bad at law.

6. *Without prejudice to the above grounds, the addition of Life membership fees amounting to 1,54,71,650/- to the returned income is injudicious, unwarranted and bad in law.”*

2. Briefly stated facts are that the assessee society is registered u/s section 12A of the Income Tax Act, 1961 (in short the Act) and was engaged in disseminating technical knowledge through publication, seminars, workshops etc. The assessment u/s 143(3) of the Act was completed on 04/03/2013 accepting the Nil income filed by the assessee. Subsequently the Assessing Officer rectified the order u/s 143(3)/ u/s 154 of the Act on 24/09/2014 and assessed the taxable income to Rs. 1,89,90,850/-. In the rectification order dated 24/09/2014, the Assessing Officer held that membership fee of Rs. 35,19,200/-and the life membership fee of Rs. 1,54,71,650/-was not allowed as exempt under the provisions of the Act and that being mistake apparent on the record, hence rectified. On further appeal, the assessee contended that membership fee received was capital receipt being part of corpus fund and thus cannot be part of the regular income. The assessee submitted that the addition in dispute cannot be made under the rectification order as it was not an apparent mistake on record and on the issue of taxability of membership fee two opinions exist. The assessee in its submission before the Ld. CIT(A) referred to various decisions of the Tribunal, where amount of membership fee has been held as not income of charitable institution. The Ld. CIT(A) adjudicated the appeal observing as under:

“4. I have carefully and critically examined the aforesaid submissions of the appellant on jurisdictional issue and merits of the controversy. I proceed to record my findings on the two fold issues raised before me.

I have carefully considered the arguments of the arguments of Ld. AR, on deeper examination of extent issue I cannot persuade myself with the erudite arguments of Ld. AR. The assumption of jurisdiction u/s 154 and addition of life membership fees etc. is upheld on the basis of reason given to the impugned order. So, the grounds of appeal are jettisoned. So, appeal gets dismissed.”

3. The assessee is aggrieved with the above finding of the Ld. CIT(A) and hence before the Tribunal.

4. Before us the Ld. Counsel of the assessee filed a paperbook containing pages 1 to 139 and submitted that the Ld. CIT(A) has not examined the contention raised before him challenging the jurisdiction of the Assessing Officer in making addition under rectification order. He submitted that the assessee treated life membership and institutional membership fee as corpus fund in previous years and same has been duly accepted by the Department . He drawn our attention to the order passed under section 143 (3) of the Act for assessment year 2005-06 . The Ld. Counsel submitted that the assessee has been consistently following this treatment of fee received right from its inception in earlier assessment years and the Revenue has accepted the membership fee as not taxable. He also submitted that on the issue of the taxability of membership fee two views are available in judicial precedents and thus according to him, the addition in dispute cannot be made under the rectification order.

5. The Ld. DR on the other hand relied on the order of the lower authorities.

6. We have heard the rival submissions and perused the relevant material on record. We find that in the rectification order, the Assessing Officer has not mentioned as why the membership fee was held as taxable. Before the Ld. CIT(A), the assessee made detailed presentation, both challenging the action of the Assessing Officer of making addition u/s 154 of the Act, as well as on the merit of the addition. But the Ld. CIT(A) dismissed the appeal of the assessee without assigning any reason for confirming the addition in dispute. The order of the Ld. CIT(A) is not a speaking and reasoned order. The Ld. CIT(A) has not dealt the objections of the assessee on assumption of the jurisdiction u/s 154 of the Act. Accordingly, we feel it appropriate to restore the issue in dispute to the file of the Ld. CIT(A) for deciding afresh in accordance with law after considering the submission of the assessee and providing opportunity of being heard to both the parties. The ground of the appeal are accordingly allowed for statistical purposes.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

This decision was pronounced in the Open Court on 16th May, 2019.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 16/05/2019

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1. Applicant

2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi