

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

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

ITA No-1826/Del/2016

(Assessment Year: 2011-12)

Lajpat Rai Educational Society	vs	Addl. CIT
IMT Campus,		Range-1
Hapur Road		Ghaziabad
Ghaziabad		
PAN: AAATL1391H		

ITA No-1928/Del/2016

(Assessment Year: 2011-12)

DCIT (Exemption)	vs	Lajpat Rai Educational
Room No. 105, 1 st Floor,		Society
CGO-2, Hapur Road		Hapur Road
Ghaziabad		Ghaziabad
		PAN: AAATL1391H

Revenue by	Sh. Abhishek Kumar, SR. DR
Assessee by	Sh. Rakesh Gupta, Adv & Sh. Somil Aggarwal, Adv

Date of ~~H~~earing 14.05.2019

Date of ~~P~~ronouncement 16 .05.2019

DORDER

PER K. NARSIMHA CHARY, J.M.

Challenging the order dated 22/1/2016 in Appeal No. 629/2014-15/GZB passed by the learned Commissioner of Income Tax (Appeals)-Ghaziabad ("Ld. CIT(A)") both revenue and assessee preferred these appeals.

2. Brief facts of the case are that the assessee is a society, engaged in educational activities and are running the educational institutions. For the assessment year 2011-12, they have filed their return of income on 21/7/2011 declaring nil income. By order dated 28/2/2014, learned Assessing Officer assessed the income of the assessee at Rs. 1,61,26,450/- by making certain additions which includes, for the purpose of this appeal is of Rs. 1,98,64,393/-by disallowing the depreciation claimed by the assessee in respect of the assets acquired by the assessee in application of the funds, Rs. 1,57,47,296/- on account of surplus of hostel receipts by treating it as business income, and also a sum of Rs. 3, 79, 156/- on account of disallowance of expenses incurred on a travel by the top official and office bearer of the society.

3. In the appeal preferred by the assessee Ld. CIT(A) deleted the addition of Rs. 1,98,64,393/- basing on the decision of the Hon'ble jurisdictional High Court in the case of Indraprastha cancer society in ITA No. 240/2014 on the file of the Hon'ble High Court by order dated 18/11/2014 and other decisions. Ld. CIT(A), though rejected the contention of the assessee that the running of hostel is an integral to education, but reduced the addition from Rs. 1,57,47,296/- to Rs.89,60,290/-and thereby granted relief to the tune of Rs. 67, 87, 006/- on that score. In respect of the travelling expense of Rs. 3,79,156/- claimed by the assessee, Ld. CIT(A) confirmed the findings of the learned Assessing Officer to the effect that the travel by chartered flight is definitely unreasonable expenditure particularly by an assessee who enjoys tax benefit for charitable activities.

4. Revenue therefore filed ITA 1928 /Del/ 2016 challenging the deletion of Rs. 1,98,64,393/- on account of the depreciation and granting relief to the tune of Rs. 67,87,006/- on account of hostel activities. At the same time, aggrieved by the finding of the Ld. CIT(A) that the surplus from hostel running activity shall be treated as business income and confirmation of the addition on account of the travel expense, assessee preferred ITA No. 1826 /Del/ 2016.

5. Insofar as the first addition of Rs. 1,98,64,393/- on account of disallowance of depreciation is concerned, learned Assessing Officer had disallowed the depreciation as application of income by following the decisions in the case of Escorts Ltd (supra) and also the decision of the Hon'ble Kerala High Court in the case of Lissie medical institutions vs. CIT 348 ITR 344 (Kerala).

6. Ld. CIT(A), on a consideration of the facts and circumstances of the case, observed that the decisions of the Hon'ble Apex Court in the case of Escorts Ltd (supra), the decision of the Kerala High Court in the case of LissieMedical Institutes (supra) and also the decision of Hon'ble Delhi High Court in the case of ChiranjivCharitable Trust in ITA No. 322-323/2013, dated 18/3/2014 were discussed by the Hon'ble jurisdictional High Court in the case of Indraprastha Cancer Society 229 Taxmann 93 (Del) and answered the issue in favour of the assessee.

7. Ld. AR also brought to our notice that recently in the case of CIT vs. Rajasthan and Gujarati Charitable Foundation, Poona (2018) 402 ITR 441 the Hon'ble Apex Court held that normal depreciation could be

considered as legitimate deduction in computing real income of assessee on general principles or under section 11 (1) (a) of the Income Tax Act, 1961 (“the Act”).

8. Since the question of law involved in this issue is no longer res Integra and in view of the decisions of the Hon’ble jurisdictional High Court and the Hon’ble Apex Court in the cases of Indraprastha Cancer Society (supra) and Rajasthan and Gujarati Charitable Foundation, Poona (supra), we are of the considered opinion that there is nothing illegality or irregularity in the findings returned by the Ld. CIT(A) while deleting the addition made on account of depreciation. We, therefore, find the ground No. 1 in revenue’s appeal as devoid of merits and accordingly the same is dismissed.

9. Now coming to the 2nd issue of surplus of hostel receipts, it is admitted fact that the assessee has been running the hostel along with the educational institution, which activity the learned Assessing Officer found to be a business activity and not charitable activity within the definition of section 2 (15) of the Act. Ld. CIT(A), on this aspect, held that hostel running and generating surplus cannot be termed as education and the contentions of the assessee on this aspect are not tenable in the facts and circumstances of the case and also in view of the legal position. Ld. CIT(A) however reduced the disallowance as stated above.

10. It is the submission of Ld. AR that this issue also is no longer res Integra in view of the decision of the Hon’ble Karnataka High Court in the case of CIT vs. Karnataka Lingayat education society in ITA No.

5004/2012 dated 15/10/2014 followed by the coordinate benches of this Tribunal in a number of matters. He brought to our notice the view taken by the coordinate benches of this Tribunal in the case of Delhi public school vs. ACIT in ITA No. 3593/del/2015 for the assessment year 2010-11 and also in M/s Friends Charitable Society vs. ACIT ITA No. 3298/del/2015 for the assessment year 2010-11.

11. In ITA No. 3593 /Del/ 2015, the coordinate Bench of this Tribunal held as follows:-

“.....In the case of Krishna Charitable Society Vs. Addl CIT in ITA No. 4639/Del/2015 for AY 2011-12 dated 15.09.2017, a similar question had arisen. Vide para No.11, a coordinate bench of this Tribunal held that transport and hostel facility surplus cannot be considered as business income of the society as these activities are incidental to the main object of the assessee society of education. Relevant observations on this aspect are as under:-

“11. We have carefully considered the rival contentions and perused the orders of the lower authorities and other judicial pronouncement placed before us. In the grounds No. 1 – 3 assessee is contesting that addition made by the Ld. assessing officer treating hostel places provided to college student as business of the society and text the alleged surplus of Rs. 9887873/- as business income of the appellant. It was not the case of the revenue that assessee has rented out these hostels to the students who are not parted education in the above institutes. It was also not the case of revenue that assessee is primarily engaged in the business of providing hostel facilities to the students. The above issue is no more res Integra in view of the decision of the Hon’ble Karnataka High Court in CIT versus Karnataka lingayat education society in ITA No. 5004/2012 dated 15/10/2014 wherein it has been held that providing hostel to the students/staff working for the society’s incidental to achieve the object of providing education, namely the object of the society. In view of this we are of the opinion that providing of hostel facilities and transport facilities to the

student and staff member of the educational Institute cannot be considered as business activity but is subservient to the object of educational activities performed by the society. We are also supported by our view by the decision of the Hon'ble Allahabad High Court in IIT versus state of UP, (1976) 38 STC 428 (All) wherein question arose in Indian Institute of Technology v. State of U.P. (1976) 38 STC 428 (All) with respect to the visitors' hostel maintained by the Indian Institute of Technology where lodging and boarding facilities were provided to persons who would come to the Institute in connection with education and the academic activities of the Institute. It was observed that the statutory obligation of maintenance of the hostel, which involved supply, and sale of food was an integral part of the objects of the Institute nor could the running of the hostel be treated as the principal activity of the Institute. The Institute could not be held to be doing business. Further meals being supplied in a hostel to the scholars, visitors, guest faculty etc. can not be exigible to sales tax where main activity is academics as held in Scholars home Senior Secondary School 42 VST 530. Further, the reliance placed by the lower authorities on the decision of the Hon'ble Madras High Court in case of DCIT versus Wellington charitable trust is also misplaced because in that case, the only activity of that particular trust was renting out of the property and not education. We are also not averse to considering the latest legal developments too where in the recently introduced new legislation of Goods and service tax it is provided that no GST would be chargeable on the hostel fees etc recovered from the Students , faculties and other staff for lodging and boarding as they are engaged in education activities . Therefore we reverse the finding of the lower authorities and held that transport and hostel facilities surplus cannot be considered as business income of the assessee society which is mainly engaged in business activities and these activities are subservient to the main object of education of the trust.

11. *In Kanha Charitable Trust Vs. ACIT ITA Nos.3297 & 5987/Del/2015, while placing reliance on its earlier decision in the case of Krishna Charitable Society Vs. ACIT it was held that in the absence of any clinching evidence to show that the hostel facilities and transport facilities were provided to anybody other than students and*

staff of the trust. The transport and Hostel facilities provided by the educational institution shall be construed to be the intrinsic part of the 'educational activities' of the assessee and they cannot be considered different than activities of the society of 'education'. The hostel and transport facilities are incidental to achieve the object of providing education as per object of the trust.

12. Further, in Mallikarjun School Society vs.CCIT (2018) 90 taxmann.com 160 (Uttarakhand), the Hon'ble High Court held that an educational institution will not cease to be one existing solely for educational purposes since the object is not to make profit and the decisive or as a test as observed by the Hon'ble Apex court is whether on an overall view of the matter the object is to make profit and one should bear in mind the distinction between the corpus, the objects and the powers of the concerned entity."

12. In view of the above view taken by the coordinate benches under identical circumstances, following the decision of the Hon'ble Karnataka High Court in the case of Karnataka Lingayat education society (supra) we are of the considered opinion that the findings of the authorities below that the running of hostel facility amounts to business activity or that the surplus generated has to be considered as business income, cannot be sustained. We therefore allow the claim of the assessee and direct the assessing officer to delete the addition made on this score.

13. Lastly, turning to the addition relating to the travel expense, it remains an admitted fact that these expenses relate to the Air travel by the official and office bearer of the society by way of non-scheduled flight (chartered flight). Both the authorities below held that the travel by chartered flight is an unreasonable expenditure particularly by an assessee who enjoys tax benefit for charitable activities and such an

expense by the office bearer cannot relate to charitable activities/objectives of the society.

14. Ld. AR submitted that unless and until the authorities below return a finding that the expenditure is bogus or that it has no nexus with the business of the assessee, it cannot be said that such an expense is not allowable. He submitted that the purpose of travel was to join a meeting with Institute of Management, Hyderabad and other institutes to meet with the requirement of smooth/affective running of Institute for better academic and administrative matters, and since this meeting was convened at a short notice, the official was forced to go by a chartered flight. Ld. AR further submitted that the 85% of the total receipt of Rs. 49,37,48,941/- for applicability of section 11 comes only Rs. 41,96,86,599/- whereas the total sum utilised by the assessee was Rs. 48,01,53,736/-much more than the statutory requirement and therefore the disallowance of this travel expense does not impact the assessee at all.

15. It could be seen from the assessment order, learned Assessing Officer recorded that during the course of assessment proceedings, the authorised representative of the assessee had not shown how the said non-scheduled flights were made exclusive for business purpose. Neither the impugned order nor the assessment order show that the assessee had justified the claim with any evidence to show the purpose of travel or the circumstances forcing the official of the assessee to travel by chartered flight. For want of evidence we find it difficult to take a different view from the view taken by the authorities below. We

therefore confirm the same and dismiss the relevant ground of assessee's appeal. However, as contended on behalf of the assessee that the 85% of the total receipt of Rs. 49,37,48,941/- for applicability of section 11 comes only Rs. 41,96,86,599/- whereas the total sum utilised by the assessee was Rs. 48,01,53,736/- much more than the statutory requirement, the disallowance of this travel expense does not impact the assessee at all.

16. In the result, appeal of the revenue is dismissed and the appeal of the assessee is allowed in part.

Order pronounced in the open court on 16.05.2019

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER
Dated: 16.05.2019

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

R.N

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	15.05.2019
Date on which the typed draft is placed before the dictating Member	16.05.2019
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	20.05.2019
Date on which the final order is uploaded on the website of ITAT	20.05.2019
Date on which the file goes to the Bench Clerk	20.05.2019
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	