

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No. 250 & 251/Del/2017
Asstt. Years: 2011-12 & 2012-13

Seth Anandram Jaipuria Education Society Seth Anand Ram Jaipuria School, Sector -14C, Vasundhara, Ghaziabad Uttar Pradesh. PAN AAAAS0860P	Vs.	ACIT, Exemption Circle Ghaziabad
(Appellant)		(Respondent)

ITA No. 1790/Del/2018
Asstt. Year 2014-15

Seth Anandram Jaipuria Education Society Seth Anand Ram Jaipuria School, Sector -14C, Vasundhara, Ghaziabad Uttar Pradesh. PAN AAAAS0860P	Vs.	JCIT, Range-2, Ghaziabad

Assessee by:	Shri R.S. Singhvi and Shri Satyajit Goel, CA
Department by :	Shri S.S. Rana, CIT(DR)
Date of Hearing	21/05/2019
Date of pronouncement	21/05/2019

ORDER

PER AMIT SHUKLA, J.M:-

The aforesaid appeals have been filed by the assessee against separate impugned orders dated 14.3.2018 and 22.11.2016, for the quantum of assessment for the assessment years 2014-15, 2012-13, 2011-12.

2. We will first take up the appeal for the assessment year 2011-12, wherein the assessee has challenged the addition of Rs. 41,64,154/- by treating the receipt from hostel and transportation facility in the nature of business activity and not allowing the benefit of section 11 on such receipts. Further, the assessee has also challenged the disallowance of claim of depreciation of Rs. 2,37,86,974/-.

2. The facts in brief are that the assessee society is running and maintaining schools and other educational institutions and looking to its educational activity, it was granted registration u/s 12AA as a charitable trust. Ld. AO on the perusal of the details furnished during the course of assessment proceedings, noted that assessee has taken fees in respect to Hostel facilities and transportation charges from the students which he has treated to be a separate activity in the nature of trade and commerce and after invoking *proviso* to section 2(15) and applying section 11 (4A), held that these are separate activities for which no separate books of accounts have been maintained and, therefore, these receipts from these activities have to be treated as business activities. The detailed discussion of the AO contains from pages 3 to 14 of the assessment order.

3. AO has also disallowed the claim of depreciation amounting to Rs. 2,37,86,974/-, following the ratio laid down by the Hon'ble

Supreme Court in the case of Escorts Ltd. and also the assessment order for the assessment year 2010-11.

4. Ld. CIT (A) too has confirmed the said additions.

5. Before us, Ld. Counsel for the assessee submitted that in so far as issue of taxing the hostel and transportation charges facilities separately as business income, now stands covered in favour of the assessee by the order of the Tribunal in assessee's own case for the assessment year 2010-11 in ITA No. 3629/Del/2015 vide order dated 9.1.2019. In so far as claim of allowability of depreciation is concerned, he submitted that, same stands covered by the decision of Hon'ble Allahabad High Court in assessee's own case, reported in 394 ITR 712.

6. On the other hand, Ld. CIT(DR) submitted that in so far as first issue is concerned i.e., charging of hostel facilities and transportation charges the same are separate activities for which assessee was required to maintain separate books of accounts as laid down in section 11(4A). He thus strongly relied upon the order of the AO and Ld. CIT (A).

7. After considering the aforesaid submissions and on perusal of the relevant finding in the impugned orders, we find that it is not in dispute that assessee was granted registration u/s 12AA for carrying out educational activities and is entitled for benefit u/s 11. Ld. AO has held that fees received for hostel facilities and transportation charges is a separate and distinct activities from education and therefore, in view of the section 11 (4A) the same has to be taxed separately, because assessee is not maintaining separate books of accounts. Such a reasoning of the AO cannot be sustained, because these activities are incidental to the main objects of the trust, i.e.,

carrying out educational activities and it cannot be reckoned as a separate business activities for which separate books of accounts is required to be maintained. The hostel facility and transportation of students is inextricably linked with the running of school and is part of overall educational activity. Hon'ble Karnataka High Court in the case of **Karnataka Lingayat Education Society in ITA No. 5004/2012** vide judgment in order dated 15.10.2014, held that providing the hostel to the students and the staff working for the society is incidental to achieve the object of providing education which is object of the society. This issue has also been considered by the Tribunal in assessee's own case. Relevant finding of which has been reproduced hereunder:-

“5. We have heard the rival submissions and have also perused the material on record. We have also perused the order of the coordinate bench in the case of Delhi Public School Ghaziabad Society vs. ACIT (supra) and we find that the averment of the Ld. Authorised Representative that the assessee's case is covered in favour of the assessee by this order in the case of Delhi Public School Ghaziabad Society is correct. The relevant paragraphs of the Co-ordinate Bench in the case of Delhi Public School Ghaziabad Society are paragraphs 10, 11, 12 and 13 and the same are being reproduced herein under for a ready reference :-

“10. It is, therefore, clear that the entire dispute in this matter revolves around the question whether or not the activity of running school buses exclusively for the facility of the students and staff, is an intrinsic part of the activity of running a school. Such a question is no longer res Integra. 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. cannot 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.

13. In the present case also, it is not the case of the revenue that the transport facility is also provided to the outsider. Hon'ble Karnataka High Court in the case of Karnataka Lingayat Education Society in ITA No. 5004/2012 dated 15.10.2014 has held that providing the hostel to the students and the staff working for the society is incidental to achieve the

object of providing education and i.e. the object of the society. Therefore, in view of the above decision of the Hon'ble Karnataka High Court as well as the decision of a coordinate bench of this Tribunal in ITA No. 4639/Del/2015, we are of the view that the transport activities of the assessee trust are not in the nature of business, inasmuch as the transport is also incidental to the attainment of the main object of the trust of the education. Therefore, the provisions of Section 11(4A) of the Act do not apply to the assessee. With this view of the matter, we allow the grounds of appeal.”

5.1 Although the Ld. Sr. Departmental Representative has argued vehemently against the Ld. AR's contention that provision of hostel facilities and transport facilities is not intrinsic to the activity of imparting education, he could not point out any order of the jurisdictional Bench or the Hon'ble jurisdictional High Court to the contrary. Accordingly, respectfully following the ratio as laid down by the co-ordinate bench of the ITAT in the case of Delhi Public School Ghaziabad Society vs. ACIT in ITA no. 3593/Del/2015, we are of the considered view that hostel activities and transport activities of the assessee society are not in nature of business inasmuch as these two activities are incidental to the attainment of the main object of education. Accordingly, we allow the grounds of appeal raised by the assessee.”

8. Thus, respectfully following the same we decide in this issue in favour of the assessee and hold that these activities are incidental to the attainment of the main object of the trust of the education and consequently assessee is entitled for benefit u/s 11.

9. In so far as issue of disallowance of depreciation is concerned now this matter stands in favour of the assessee by the judgment of

Hon'ble High Court after taking note of decisions relied upon by the Ld. AO. In sums and substance the finding of the Hon'ble High Court is as under:-

- *The revenue had pointed out that there is an amendment in section 11 inserting sub section (6) by Finance Act (No. 2) of 2014, with effect from 1.4.2015 which reads that where any income is required to be applied for accumulated or set apart for application, then for such purposes the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the Same or any other previous year.*
- *Memorandum explaining the provision made in Finance Bill for the aforesaid amendment shows that in order to exclude deduction, specific declaration was made by insertion of aforesaid sub-section in Section 11.*
- *The aforesaid amendment is effective from 1-4-2015 and, therefore, will not help revenue in the circumstances of case in hand. Even this aspect has been considered by Karnataka High Court in DIT (Exemptions) v. Al-Ameen Charitable Fund Trust [2016] 383 ITR 517/67 taxmann.com 160/238 Taxman 148 and following CIT vs. Vatika Township (P.) Ltd. [2014] 367 ITR 466/49 taxmann.com 249/227 Taxman 121 (SC) Court has held that the aforesaid amendment is prospective and operative from 1-4-2015. [Para 14]*
- *There are divergent views expressed by Kerala High Court in Lissie Medical Institutions v. CIT [2012] 348 ITR 344/24 taxmann.com 9/209 Taxman 19 (Mag.) wherein it has placed reliance on Supreme Court's judgment in Escorts Ltd. v. Union of India [1993] 1 SCC 249. The judgment in Escorts Ltd. (supra) was in*

respect of different provision while scheme of Section 11 is/was different till 1-4-2015. The view taken by Kerala High Court could not be accepted.

10. Accordingly, respectfully following the binding precedent of the Hon'ble Jurisdictional High Court, we decide this issue in favour of the assessee.

11. In other appeals also, admittedly similar issues are involved and, therefore, findings given above with respect to disallowance of depreciation and hostel and transportation charges are decided in favour of the assessee.

12. In the result appeals of the assessee are allowed.

Order Pronounced in the open court on 21st May, 2019.

sd/-

sd/-

(L.P. SAHU)
ACCOUNTANT MEMBER

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 21/05/2019

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Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi

