

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI

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

I.T.A. No. 3911/DEL/2016
A.Y 2013-14

DCIT (E) Circle-1(1) New Delhi	Vs	India Habitat Centre 3, Lodhi Road New Delhi PAN: AAATI0499M
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(Appellant)

(Respondent)

Appellant by	Sh. Amit Katoch, Sr. DR
Respondent by	Sh. M.P.Rastogi, Adv.

Date of Hearing	03.06.2019
Date of Pronouncement	06.06.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 26/04/2016 passed by Ld.CIT(A)-40 (E), New Delhi for Assessment Year 2013-14.

2. The grounds of appeal are as under:-

"1. On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in ignoring the fact that the activities of the assessee involve rendering of services in relation to carrying on of commerce or business and hence, proviso to Section 2(15) is clearly application in the case of the assessee.

2. On the fact in the circumstances of the case in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,09,75,693/- made on account of bank interest

being not covered under principle of mutuality in view of the Judgment of Hon'ble Supreme Court in the case of Bangalore Club Vs CIT 350 ITR 509 (SC).

3. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing."

3. The assessee Society is registered u/s 12A of the Income Tax Act, 1961 (the Act) vide order dated 13.01.1989. The Society was also granted approval u/s 80G(5)(vi) of the Act vide approval dated 19.07.2011. The return of income declaring 'nil' income was filed by assessee on 30.09.2013. The Assessing Officer observed that the assessee in its Audit Report in Form No. 10B has shown only part of its income and expenditure attributable to activities and mentioned that such receipts are governed by the provisions of Section 11 and other applicable provisions. Thereafter income from such activities has been shown 'Nil' and further processing fee, sale of application forms, annual subscription and tournament receipts have not been included and mentioned that these will not form part of the computation on the principles of mutuality. However, the total income/expenditure/surplus/deficit etc., as per the Income & Expenditure Account/Receipts & Payments Account of the assessee for current assessment year were Rs. 38.36 crores/Rs.39.77 crores/Rs. (1.41 crores) respectively. The Assessing Officer assessed the income of the assessee at loss of Rs.1,32,07,950/-.

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

5. The Ld. DR submitted that the Assessing Officer made additions as the activities of the assessee involved rendering of services in relation to carrying on commercial activities/business and hence Proviso to S. 2(15) of the Act is applicable in assessee's case.

6. The Ld. AR relied upon the order of the CIT(A). The Ld. AR further

submitted that the present Assessment Year is squarely covered in favour of the assessee by the Tribunal's order in assessee's own case for A.Y. 2012-13 being ITA No. 1847/Del/2016 and also that of Hon'ble Delhi High Court in assessee's own case in respect of A.Ys. 1990-91 to 1998-99 being ITA Nos. 226/2005, 228/2005, 229/2005, 230/2005, 1175/2008, 1288/2008 & 1177/2008 order dated 12.10.2011.

7. We have heard both the parties and perused all the material available on record. The Hon'ble Delhi High Court in assessee's own case vide judgment dated 12.10.2011 has held that there is no case made out by the Revenue that the surplus are being appropriated by any individual or by a group of individuals and hence restored the exemption granted u/s 12A of the Act to the assessee. There is a clear finding by the CIT(A) that the assessee has not generated any surplus for anyone - Members or Non-Members. The decision of Tribunal for A.Y. 2012-13 is applicable in the present year as the scenario has not changed in the present year as well. The Tribunal held as under:

"12. We have gone through the record. It is not the case of the revenue that there is any change in the fundamental facts involving the assessment of India Habitat Centre for the last several years. It is not in dispute that the Hon'ble High Court by order dated 12.10.2011 in ITA No. 226,228, 229 & 230/2005 and 1175, 1288 & 1177/2008 held that no substantial question of law arises from the order of the Tribunal wherein the Tribunal held that the assessee is a charitable institution. Similarly, there is no dispute that in the AY 1992-93 and 1993-94 on identical set of facts, the Tribunal accepted the contention of the assessee as to its charitable nature activities and granted relief. So also there is no dispute that in the period from 1999-2000 to 2007-08, learned AO did not raise any dispute as to the charitable nature of the activities of the assessee or the applicability of the principle of mutuality. Further, as could be seen from the order dated 17.2.2012 and 29.4.2016 passed by the coordinate benches of the Tribunal in assessee's own case for the AYs 2008-09 and 2009-10, the contentions of the assessee are upheld. A coordinate bench of this Tribunal in the order for the AY 2008-09 had reviewed all the case law on this aspect to reach a conclusion that when the assessee registered as charitable trust, its income cannot be computed on the principle of mutuality but required to be computed u/s 11, 12 & 13 of the Act.

This decision is followed by another coordinate bench in ITA No. 4212/Del/2012 for the AY 2009-10.

13. *In view of the decision of the Hon'ble Apex Court in the case of Radhasaomi Satsang, in the absence of any material change justifying the department to take a different view from that taken in earlier years, the question of exemption of the assessee should not have been reopened and though strictly speaking the principles of res judicata does not apply to the income-tax proceedings, each assessment year being a unit, what was decided in one year might not apply in next year but where a fundamental aspects permeating through different assessment year has been found as a fact one way or the other and the parties have allowed that position to be sustained by not challenging the order, it would not be at all proper to allow the position to be changed in a subsequent year.*

14. *As noted above, there has never been any dispute as to the continuation of the same set of facts in all these years, right from the AY 1990-91 at different level either it is at the first appellate authority stage or the Tribunal or the Hon'ble High Court, the consistent view has been that the assessee is a charitable institution and its income has to be computed u/s 11, 12 & 13 of the Act. Unless and until, any change in the fundamental facts is brought on the record, we find it difficult to take a different view for this assessment year. Our this view is well fortified by the decisions of the Hon'ble Jurisdictional High Court in the assessee's own case for the earlier assessment year so also the consistent view taken by the Tribunal for the AYs 2008-09 and 2009-10.*

15. *With this view of the matter, we find no irregularity or illegality either in the reasoning or in the conclusion reached by the learned CIT(A) and, therefore, accordingly find that the appeal of the revenue is devoid of merit and as such dismissed."*

The facts in the present Assessment Year as well are identical with the A.Y. 2012-13 and there is no distinguishing factors pointed out by the Ld. DR at the time of the hearing. Therefore, in the light of the decision of the Hon'ble Delhi High Court as well as the Tribunal in assessee's own case, the appeal of the Revenue is dismissed.

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

Order pronounced in the Open Court on 06th June, 2019.

Sd/-
(G. D. AGRAWAL)
VICE PRESIDENT

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 06/06/2019

***Gmv**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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