

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.4016/Del./2016
Assessment Year 2011-2012

Muzaffarnagar Development Authority [MDA], Meerut Road, Muzaffarnagar. [U.P.] PIN – 251 002. PAN AAALM0437D	vs.,	The DCIT, Circle -1 Muzaffarnagar.
(Appellant)		(Respondent)

For Assessee :	Shri C.S. Anand, C.A.
For Revenue :	Ms. Rinku Singh, Sr. D.R.

Date of Hearing :	14.08.2019
Date of Pronouncement :	02.09.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Muzaffarnagar, Dated 15.03.2016 for the A.Y. 2011-2012, on the following grounds :

1. *Having regard to the facts and circumstances of the case, the Learned CIT (A) has erred both, in law and on facts, in not admitting and adjudicating the following Additional Ground of Appeal -*

“Having regard to the facts and circumstances of the case and under law, the assessee is entitled to claim the benefit/exemption under Section 11 of the Income Tax Act,1961 because the Hon’ble ITAT-Delhi, vide its Order dated 12.01.2015 in ITA No. 4231/Del/2013, has restored the Registration granted to the assessee under Section 12AA of the Act.”

2. *In any view of the matter and in any case, the decision of the Learned CIT (A), in not admitting and adjudicating the Additional Ground of Appeal raised before him during the appellate proceedings, is bad in law and is against the facts and circumstances of the case because it is necessary to be adjudicated in order to assess the correct Income of the assessee.*

3. The assessee prays to be allowed the permission to submit further evidence / judgments / written submissions at the time of hearing before the Hon'ble Bench of ITAT."

2. Briefly the facts of the case are that as per assessment order assessee is a Local Authority and nature of business is planning, development and improvement of city etc., The assessee filed return of income declaring income of Rs.2.39 crores. At the assessment proceedings, A.O. disallowed Rs.7,11,765/- under section 40(a)(ia) of the Income Tax Act for not deducting the tax at source. The A.O. also added Rs.4,81,115/- because impugned amount was outstanding since last three years or more and there was no chance of refund of the amount. Therefore, it was treated as income of the current year. The addition was accordingly made.

3. The assessee challenged both the additions before the Ld. CIT(A). The Ld. CIT(A) confirmed the addition of Rs.80,890/- under section 40(a)(ia) of the Income Tax Act.

This ground was partly allowed. The Ld. CIT(A), however, deleted the addition of Rs.4,81,115/-. The assessee also filed application for admission of the additional ground of appeal submitting therein that assessee granted registration under section 12AA of the I.T. Act which was subsequently cancelled by the Ld. CIT, against which, assessee preferred an appeal before the Tribunal in ITA.No.4231/Del./2013 which is decided vide Order dated 12.01.2015 and appeal of assessee has been allowed, meaning thereby, registration of assessee have been restored. The Ld. CIT(A), however, did not admit the additional ground of appeal because the issue of claim of exemption was not originating from the order of the A.O. The additional ground, therefore, was not admitted and appeal of assessee was partly allowed.

4. Learned Counsel for the Assessee apart from raising the above grounds of appeal also raised additional ground of appeal before the Tribunal which reads as under:

“On the facts of the case and under the law, the benefit /exemption under section 11/12 of the I.T. Act 1961 be

allowed to the assessee and accordingly, the Total Income of the assessee for A.Y. 2011-12 be recomputed at NIL (as per Revised Computation of Income read with its various enclosures, which were filed during the course of appellate proceedings before the Commissioner Appeals).”

4.1. Learned Counsel for the Assessee submitted that since Registration under section 12A exist in favour of the assessee and is in operation, therefore, income of assessee is to be computed in accordance with the provisions of Sections 11 and 12 of the I.T. Act, 1961.

5. After considering the rival submissions, we are of the view that additional ground is legal in nature and shall have to be admitted. We, therefore, admit the additional ground of appeal.

6. After considering the rival submissions, we are of the view that the matter requires reconsideration at the level of the Ld. CIT(A), Muzaffarnagar. In the aforesaid case registration under section 12AA was granted to the assessee

which was subsequently cancelled under section 12AA(3) of the I.T. Act. The ITAT, however, allowed the appeal of assessee cancelling the Order under section 12AA(3) of the I.T. Act. The Tribunal restored the registration under section 12AA of the I.T. Act. It, therefore, stands prove on record that registration under section 12AA of the I.T. Act exist and continue in favour of the assessee. Since registration under section 12AA of the I.T. Act exist in the case of assessee, therefore, income of the assessee shall have to be computed with reference to the provisions of Sections 11 and 12 of the I.T. Act. Therefore, there was no justification for the Ld. CIT(A) to reject the additional ground of appeal raised before him. In view of the above, we set aside the Order of the Ld. CIT(A) in refusing to admit the additional ground of appeal. The additional ground raised before the Tribunal is, therefore, admitted.

6.1. In view of the facts and circumstances, we set aside the Orders of the authorities below and restore the matter in issue to the file of the Ld. CIT(A) with a direction to re-decide the additional ground raised before him as well

as additional ground of appeal admitted by us at this stage.
The Ld. CIT(A) shall give reasonable, sufficient opportunity
of being heard to the assessee.

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

Order pronounced in the open Court.

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 02 September, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "E" Bench
6.	Guard File

//By Order//

Asst. Registrar : ITAT : Delhi Benches :
Delhi.

Date of dictation	14.08.2019
Date on which the typed draft order is placed before the dictation Member	14.08.2019
Date on which the approval draft comes to the Sr. PS	02.09.2019
Date on which the fair order is placed before the Dictation member for pronouncement	02.09.2019
Date on which the fair order comes back to the Sr. P.S.	02.09.2019
Date on which the final order is uploaded on the website of ITAT	02.09.2019
Date on which the file goes to the Bench Clerk	02.09.2019
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.	