

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 5190 /Del/2016
(Assessment Year: 2009-10)**

Asstt. Commissioner of Income Tax (E), Circle1(1), E-2 Block, Pratyaksh Kar Bhawan, New Delhi-110002.	Vs.	India International Centre, 40, Max Muller Marg, Lodhi Estate, New Delhi-110003.
PAN No: AAATI0669C		
APPELLANT		RESPONDENT

Revenue by : Shri Janardan Das, Sr. DR
Assessee by : Shri Angad Gulati, Adv.

ORDER

Per Anadee Nath Misshra, AM

(A) This appeal by Revenue is filed against the impugned order of Learned Commissioner of Income Tax (Appeals)- 40 (Exemption), New Delhi, ["Ld. CIT(A)", for short], dated 08.07.2016 for Assessment Year 2009-10. The grounds of appeal are as under:

"1. Ld. CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that the activities of the assessee falls within the purview of commercial activities as it had provided benefits only to selected persons and not to public at large. These activities, with any stretch to the imagination, cannot be called as charitable activity within the purview of Section 2(15) of the Act. Also, revenue preferred an appeal before

Hon'ble High Court against the decision of ITAT in assessee's favour on the issue, in earlier year.

2. *Ld. CIT(A) has erred in allowing the appeal of the assessee by ignoring the ignoring the fact that merely being notified u/s. 10(23C)(iv) does not make assessee entitled to claim exemption till it is proved that the activities carried out by it are within the scope of activities enumerated in the said section. The assessee institution is also hit by 7 proviso to Section 10(23C) as the activities of sale of food and beverages and license fee etc. are the activity of profit or gain of business which is not incidental to the attainment of its objective for which it has been maintaining accounts for the said activity. Also revenue preferred an appeal before Hon'ble High Court against the decision of ITAT in assessee's favour on this issue, in earlier year.*
3. *Ld. CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that allowance of depreciation on the fixed assets acquisition of which has been allowed as application of income in earlier years will tantamount to double deduction.*
4. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing."*

(B) Original Assessment Order dated 26.12.2011 was passed by Assessing Officer u/s 143(3) of Income Tax Act, 1961 ("I.T. Act", for short) wherein income of the assessee was assessed at Nil. This Assessment Order was set aside by learned Director of Income Tax (Exemption) vide revision order u/s 263 of I.T. Act; in pursuance of which a fresh consequential Assessment Order dated 31.03.2015 of I.T. Act was passed by the Assessing Officer U/s 263/143(3) of I.T. Act and assessee's income was assessed at Rs. 3,36,58,900/. The assessee's appeal against the aforesaid fresh Assessment Order dated 31.03.2015 was allowed by Ld. CIT(A) vide the aforesaid impugned order dated 08.07.2016. The present appeal before Income Tax Appellate Tribunal, ("ITAT", for short) has been filed by Revenue against the aforesaid impugned order dated 08.07.2016 of Ld. CIT(A). In the course of appellate proceedings in ITAT, a copy of order dated 11.05.2015 of ITAT for AY

2009-10 in assessee's appeal vide ITA No.- 3124/Del/2014, quashing the aforesaid order passed under section 263 dated 11.05.2015 was filed from assessee's side.

(C) At the time of hearing before us, representatives of both sides [Ld. Counsel for assessee as well as Ld. Departmental Representative] were in agreement, that order U/s 263 of I.T. Act having already been quashed by Tribunal; the aforesaid fresh consequential assessment order dated 31.03.2015 passed in pursuance of the aforesaid order U/s 263 of I.T. Act has no legs to stand being *non est*, and void at present. Accordingly, after hearing both sides, and after perusal of record, we are of the view that this appeal by Revenue also has no legs to stand at present, being connected with aforesaid consequential Assessment Order U/s 263 / 143(3) of I.T. Act, which as aforesaid is *non est* and void at present. When an Assessment Order is held to be *non est* / void; Revenue's appeal based on such an Assessment Order has no force of law, and deserves to be dismissed at the outset. Accordingly, we dismiss this appeal of Revenue, unhesitatingly.

(C.1) In the result, appeal filed by Revenue is dismissed.

Order pronounced in the Open Court on 06/9/2019

Sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Sd/-

**(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER**

Dated: 06/9/2019
(Pooja)

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	