

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA No.1919/Del./2016
(ASSESSMENT YEAR : 2009-10)**

**ITA No.3359/Del./2016
(ASSESSMENT YEAR : 2009-10)**

**ITA No.2508/Del./2016
(ASSESSMENT YEAR : 2010-11)**

ADIT (E), Inv. Circle (1), vs. India Trade Promotion Organisation,
New Delhi. Pragati Bhawan, Pragati Maidan,
New Delhi – 110 001.
(PAN : AAATI2955C)

**ITA No.3135/Del./2016
(ASSESSMENT YEAR : 2011-12)**

JDIT (E), Range 1, vs. India Trade Promotion Organisation,
New Delhi. Pragati Bhawan, Pragati Maidan,
New Delhi – 110 001.
(PAN : AAATI2955C)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Smt. Anju Goel, CA
REVENUE BY : Smt. Aparna Karan, CIT DR

Date of Hearing : 27.08.2019

Date of Order : 13.09.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Since common questions of facts and law have been raised in the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

ITA No.1919/Del./2016 (AY 2009-10)

ITA NO.2508/DEL/2016 (AY 2010-11)

ITA NO.3135/DEL/2016 (AY 2011-12)

2. Appellant, ADIT (E), Inv. Circle (1), New Delhi and JDIT (E), Range 1, New Delhi (hereinafter referred to as the 'Revenue') by filing the present appeals sought to set aside the impugned orders dated 09.03.2016, 15.02.2016 & 10.03.2016 passed by the Commissioner of Income - tax (Appeals) - 40, New Delhi qua the assessment years 2009-10, 2010-11 & 2011-12 respectively on the identical grounds except the difference in amount inter alia that :-

“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 do not qualify for charitable purpose in view of the provisions of Section 2 (15) of the Income Tax Act, 1961, hence the income of the assessee does not qualify for exemption u/s 11/12 of the Income Tax Act, 1961.

2. On the facts and in the circumstance of the case and in law, Id CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that when deduction is allowed in respect of capital expenditure, no depreciation is allowed on the same assets as this will lead to double.

3. On the facts and in the circumstances of the case and in law, Ld. CIT (A) has erred in allowing the

appeal of the assessee by ignoring the fact that assessee is following mercantile system of accounting and rental income has not accounted in the books. The income as per mercantile method of accounting has to be offered to tax on accrual basis. Such income which has accrued but not received is shown as receivable or under the head Sundry Debtor as the case may be in the Balance Sheet. Such income is entitled as and to be written off subsequently when it actually becomes bad, as per provisions of the Act.”

3. Briefly stated the facts necessary for adjudication of the issue at hand are : India Trade Promotion Organisation (ITPO), the assessee is an organisation incorporated under section 25 of the Companies Act, 1956 as not-for-profit organisation, registered under section 12A of the Income-tax Act, 1961 (for short ‘the Act’) to carry on the objects of promoting the Indian Trade through medium of organizing trade fairs, exhibitions etc. in India and abroad and has also exempted from Income-tax u/s 10(23)(iv) of the Act from 1989-90 onwards. It is wholly owned Apex Trade Promotion body of Government of India and Senior Officers of Government are appointed as Directors and Members so as to ensure that the Government Rules & Regulations are complied. Assessing Officer (AO), following the earlier assessment orders, proceeded to conclude that the assessee is covered by the proviso to section 2 (15) of the Act inasmuch as its activities are in the nature of business and thus held to be not charitable in nature and thereby denied the benefit of sections 11 & 12 of the Act despite the fact that it is registered organisation u/s 12AA and notified u/s 10(23C)(iv) of the

Act as the assessee is having income from space rent, hoardings (display site), site of publication, sale of tickets, etc. So, the AO proceeded to hold that the assessee cannot be considered for exemption of its income as even after amendment u/s 2(15) of the Act, its activities are not charitable in nature.

4. AO disallowed the depreciation of Rs.2,11,52,612/-, Rs.1,69,34,321/- & Rs.1,37,55,543 in AYs 2009-10, 2010-11 & 2011-12 respectively on the opening balance of fixed assets as on 01.04.2008 on the ground that the assessee has already claimed the amount spent on purchase of fixed assets as application of funds as and when the assets were purchased. AO also made addition of Rs.1,68,73,663/-, Rs.2,01,86,003/- & Rs.1,83,00,000/- in AYs 2009-10, 2010-11 & 2011-12 respectively to the income of the assessee on account of space rent income on the basis of disclosure in Notes to Accounts.

5. Assessee carried the matter by way of appeals before the Id. CIT (A) who has deleted the additions by partly allowing the appeals. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeals.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1 OF
AYs 2009-10, 2010-11 & 2011-12

7. AO by invoking the amended provisions of section 2 (15) of the Act denied the benefit of exemption u/s 11 & 12 of the Act to the assessee organisation on the ground that the assessee does not qualify for charitable purposes. However, ld. CIT (A) by relying upon the decision rendered by *Hon'ble Delhi High Court in assessee's own case rendered in WP (C) 1872 / 2013* proceeded to hold that the assessee is entitled for benefit of exemption claimed u/s 10(23C)(iv) of the Act. Operative part of the aforesaid decision rendered by Hon'ble Delhi High Court in *assessee's own case* (supra) is extracted for ready perusal as under :-

“58. In conclusion, we may say that the expression "charitable purpose", as defined in Section 2(15) cannot be construed literally and in absolute terms. It has to take colour and be considered in the context of Section 10(23C)(iv) of the said Act. It is also clear that if the literal interpretation is given to the proviso to Section 2(15) of the said Act, then the proviso would be at risk of running fowl of the principle of equality enshrined in Article 14 of the Constitution India. In order to save the Constitutional validity of the proviso, the same would have to be read down and interpreted in the context of Section 10(23C)(iv) because, in our view, the context requires such an interpretation. The correct interpretation of the proviso to Section 2(15) of the said Act would be that it carves out an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration. In both the activities, in the nature of trade, commerce or business or the activity of rendering any service in relation to any trade, commerce or business, the dominant and the prime objective has to be seen. If the dominant and prime objective of the institution, which claims to have been established for charitable purposes, is profit

making, whether its activities are directly in the nature of trade, commerce or business or indirectly in the rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim its object to be a 'charitable purpose'. On the flip side, where an institution is not driven primarily by a desire or motive to earn profits, but to do charity through the advancement of an object of general public utility, it cannot but be regarded as an institution established for charitable purposes.

59. Thus, while we uphold the Constitutional validity of the proviso to Section 2(15) of the said Act, it has to be read down in the manner indicated by us. As a consequence, the impugned order dated 23.01.2013 is set aside and a mandamus is issued to the respondent to grant approval to the petitioner under Section 10(23C)(iv) of the said Act within six weeks from the date of this judgment. The writ petition stands allowed as above. The parties are left to bear their own costs."

8. So, following the decision rendered by Hon'ble Delhi High Court in *assessee's own case* (supra), the Id. CIT (A) has rightly decided the issue in favour of the assessee holding that the assessee cannot be denied the benefit of exemption u/s 10(23C)(iv) of the Act. So, ground no.1 in AYs 2009-10, 2010-11 & 2011-12 is determined against the Revenue.

**GROUND NO.2 IN
AYs 2009-10, 2010-11 & 2011-12**

9. AO made disallowance of Rs.2,11,52,612/-, Rs.1,69,34,321/- & Rs.1,37,55,543 in AYs 2009-10, 2010-11 & 2011-12 respectively on the ground that when deduction is allowed in respect of capital expenditure, no depreciation is allowed on the same assets as it would lead to double deduction. However, the Id. CIT (A) allowed the depreciation by relying upon the decision rendered by *Hon'ble Delhi*

High Court in ITA No.7 / 2013 order dated 27.11.2013 rendered in assessee's own case.

10. Hon'ble Delhi High Court in the aforesaid decision in *assessee's own case* (supra) vide order dated 06.09.2013 dismissed the appeal preferred by the Revenue challenging the order of the Tribunal; the operative part of the order is extracted for ready perusal as under :-

“14. From the year 1984 onwards, there have been a number of decisions of various High Courts taking a similar and identical view, as that of Society of the Sisters of St. Anne (supra). These are as under:-

Income Tax vs. Market Committee, Pipli (2011) 330 ITR 16 (P&H), Income Tax vs. Tiny Tots Education Society, (2011) 330 ITR 21 (P&H), Commissioner of Income Tax vs. Manav Mangal Society, (2010) 328 ITR 421 (P&H), Commissioner of Income Tax vs. Sheth Manilal Ranchhoddas Vishram Bhavan Trust, (1992) 198 ITR 598 (Guj.), Commissioner of Income Tax vs. Raipur Pallottine Society, (1989) 180 ITR 579 (M.P.), Commissioner of Income Tax vs. Institute of Banking, (2003) 264 ITR 110 (Bom), and CIT vs. Shakuntala Tharal Charitable Foundation, (2013) 358 ITR 452 (MP).

15. Kerala High Court was also conscious of the said decisions and the fact that Section 11(1)(a) had been interpreted in a different manner. It was in these circumstances that the Kerala High Court in the last portion of paragraph 6, as quoted above, has stated that the assessee would be entitled to write back depreciation and if done, the Assessing Officer would modify the assessment determining the higher income and allow recomputation of depreciation written back for the purpose of application of income for charitable purposes in future or subsequent years. This may lead to its own difficulties and problems as suddenly the entire depreciation written off would have to be added first and then in one year substantial application of income would be required. This may be impractical and would disturb the working of many a charitable institutions. The legal interpretation which has continued since 1984, if disturbed and implemented, would not appropriately resolved. Consistency and certainty is more appropriate.

16. The equally plausible and consistent interpretation of clause (a) of Section 11(1) of the Act is that income derived from property must be calculated as per the principles of the Act. The said clause is not a computation provision and does not disturb the “income” earned or available but postulates that the “income” as computed in accordance with the provisions of the Act to the extent of 86% must be applied. Application of income may include purchase of a capital asset. The said purchase is valid and taken into consideration for the purpose of ensuring compliance, i.e., application of money or funds and is not a factor which determines and decides the quantum of income derived from property held under trust. Computation of income is separate and distinct and has to be made on commercial basis by applying provisions of the Act.”

11. So, following the decision rendered by Hon’ble Delhi High Court in *assessee’s own case* (supra), the ld. CIT (A) has rightly allowed the depreciation in favour of the assessee and thereby deleted the disallowance made by the AO. So, we find no illegality or perversity in the impugned order on this issue. Consequently, ground no.2 in AYs 2009-10, 2010-11 & 2011-12 is determined against the Revenue.

**GROUND NO.3 IN
AYs 2009-10, 2010-11 & 2011-12**

12. AO made addition of Rs.1,68,73,663, Rs.2,01,86,003 & Rs.1,83,00,000 in AYs 2009-10, 2010-11 & 2011-12 respectively on a/c of space rent income on the basis of disclosure in Notes to Accounts of the assessee. However, ld. CIT(A) deleted the addition on the ground that since space rent account is disputed by two Government Departments viz. National Science Centre and Crafts Museum by contesting the ownership of land attracting rent by the assessee and claimed that they are

in possession of the land and as such it is uncertain, no addition can be made.

13. Ld. CIT (A) has thrashed the facts in detail and by applying the decision rendered by various Hon'ble High Courts and Hon'ble Supreme Court, decided the issue in favour of the assessee on the ground that since the dispute has not been resolved till date, the addition is not sustainable.

14. Assessee has brought on record documents and letter of discussion to resolve the disputes between National Science Centre & Crafts Museum and India Trade Promotion Organisation (ITPO) for non-payment of rent, available at pages 93 to 130 of the paper book, which have been duly examined by the ld. CIT(A). We are of the considered view that when income on account of space rent has not been accrued, as in the instant case due to dispute, there cannot be any rent even though entry in the books of account have been made on account of notional income. So, when the income would be received its taxability can be examined by the Revenue. Ld. DR for the Revenue has not brought on record any document if the dispute between the parties qua the space rent has been resolved. So, in these circumstances, we are of the considered view that there is no illegality or perversity in the findings returned by the ld. CIT (A), consequently ground no.3 in AYs 2009-10, 2010-11 & 2011-12 is determined against the Revenue.

ITA NO.3359/DEL/2016 (AY 2009-10)

15. So far as appeal filed by the Revenue challenging the impugned order dated 09.03.2016 passed by the Id. CIT (A) in which order passed u/s 154 / 143 (3) of the Act was challenged, is concerned, since the issue adjudicated and decided in assessment order dated 09.04.2012 passed u/s 143 (3) and order dated 09.07.2012 passed u/s 154 of the Act have been squarely covered in the grounds discussed in the preceding paras, no separate findings are required to be returned, hence, the appeal filed by the Revenue is hereby dismissed.

16. Resultantly, all the four appeals being ITA Nos.1919/Del./2016, 3359/Del./2016, 2508/Del./2016 & 3135/Del./2016 are hereby dismissed.

Order pronounced in open court on this 13th day of September, 2019.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 13th day of September, 2019
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-22, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**