

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

Before Sh. H. S. Sidhu, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 3260/Del/2017 : Asstt. Year : 2010-11

Asstt. Commissioner of Income Tax(E), Circle-1(1), New Delhi-110002	Vs	M/s DLF Qutab Enclave Complex Educational Charitable Trust, 9 th Floor, DLF Centre, Sansad Marg, New Delhi-110001
(APPELLANT)		(RESPONDENT)
PAN No. AAATD0852D		

**Assessee by : Sh. R. S. Singhvi, CA
Revenue by : Ms. Ashima Neb, Sr. DR**

Date of Hearing: 12.12.2019

Date of Pronouncement: 13.12.2019

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the revenue against the order dated 16.02.2017 of the Id. CIT (A)-21, New Delhi.

2. Following grounds have been raised by the revenue:

"1. On the facts and in the circumstances of the case and in law, the Id. CIT (A) has erred in ignoring the fact that though the objects of the assessee may seem to be charitable, but the activities carried out by the society which yielded income to the society are commercial in nature."

3. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee is a society registered under section 12A of the Income-tax Act, 1961 (for short 'the Act') and has also been granted certificate u/s 80G(5)(vi) of the Act w.e.f. AY 2009-10. From the financial statement of the assessee, Assessing Officer noticed that the assessee

trust is constructing and letting out the properties and earning income of rent and making huge profits which is again being applied for constructing and letting out the properties. AO concluded that the assessee has created vicious cycle to hide its true purpose to evade the tax firstly by constructing the building earmarked for education purpose and letting the properties to the society. The main object of the Trust is to build, establish and run schools to provide education facilities to the residents of DLF Qutab Enclave Complex, Gurgaon but the Trust is only constructing and investing the amount in properties which are further leased out/rented out to society and shopping malls, which is not a charitable purpose as defined u/s 2(15) of the Act and thereby assessed the long term capital gain in terms of section 45 read with section 12 of the Act by assessing the total income at Rs.2,83,31,250/-.

4. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has allowed the same. Aggrieved, the Revenue has come up before the Tribunal by way of challenging the impugned order passed by Id. CIT (A).

5. 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.

6. Undisputedly, in AY 2009-10, the coordinate Bench of the Tribunal vide an order dated 20.08.2014 passed in assessee's own case rejected the appeal filed by the Revenue denying the benefit of exemption under sections 11 & 12 of the Act.

7. We find that this issue before us is no longer res-integra inspite of the amendment in the Section 2(15) . The co-ordinate Bench in the case

of the assessee, for Assessment Year 1994-95 has held that the assessee is entitled to exemption u/s 11 & 12 of the Act. It was held that letting out the school building was aimed at providing assistance in imparting education, which is indisputably for a charitable object. It was held therein as under:-

"13. In view of the above decision, the assessee trust was justified in letting out the school building to the other educational trust and, therefore, it can be said that the leasing activity as well as the income earned through such activity was in furtherance of the objects and ideals of the trust. The leasing activity was also aimed at providing assistance in imparting educational which was undisputedly a charitable object. Thus, the finds of the Id CIT(A) are to be upheld from the this view point also.

14. There is another aspect of the matter. As pointed out by the Id. counsel for the assessee, the accumulation was allowed under section 11 (2) to the assessee in earlier years and in subsequent years, which' is evident from the chart filed by the assessee for assessment years 1990-91 to 1998-99. On the basis of this chart, the argument of assessee s counsel was that as per the rule of consistency also, the claim of the assessee deserves to be allowed. In the case of Director of Income Tax vs. lovely Bal Shiksha Parisad reported in 266 ITR 349, following the decision of apex Court in the case of Radhasoami Satsang vs. CIT 193 ITR 321, it was held that if there was no change in the nature of activities and the assessee was granted exemption under section 10(22) of the Income Tax Act not only in respect of earlier years but subsequent years also, the assessee was entitled to claim exemption in assessment year under consideration i.e. assessment year 1991-92."

8. The aforesaid view was reiterated in the case of the assessee for 2002-03 by an order dated 10th July 2009 and it was held as under:-

"11. We have heard both the parties. We find that this issue is covered by the decision of IT AT in assessee's own case for assessment year 1994- 05 in ITA. No. 1386/Del of 1998 dated 28th July, 2006 wherein it has been held that the assessee trust was justified letting out the school building to other educational trust and, therefore, it can be said that leasing activity as well as income earned through such activity was in furtherance of objects and ideals of the trust. The leasing activity was also aimed at providing assistance imparting education, which undisputedly a charitable object. It was also noted by the Bedi the accumulation was allowed under section 11 (2) to the assessee in Page No. 3 earlier JI8S and in subsequent years. Therefore the assessee was entitled for benefit of section 11 the Act. Since the issue is covered by the decision of ITA T in assessee's own case respectfully following the same it is held that the assessee is entitled for exemption u/s 11of the Act."

9. In the light of the above decision of the Co-ordinate Bench of the Tribunal in the assessee's own case, in the absence of any material change in the factual matrix, we hereby decline to interfere with the order of Id. CIT (A).

10. In the result, the appeal of the revenue is dismissed
Order Pronounced in the Open Court on 13/12/2019.

Sd/-

(H. S. Sidhu)
Judicial Member

Dated: 13/12/2019

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR