

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.4218/Del/2016
निर्धारणवर्ष/Assessment Year:2012-13**

ITO(E) Ward-2(4), Room No. 2409, E-2, Block, Dr. S.P. Mukherjee Civic Centre, New Delhi.	बनाम Vs.	National Foundation Trust, G-36, Jangpura Extension, New Delhi.
		PAN No. AAATN8356J
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

राजस्वकीओरसे /Revenue by	Ms. Rakhi Vimal, Sr. DR
निर्धारितकीओरसे /Assessee by	Shri Rajan Bhatia, Adv.

सुनवाईकीतारीख/ Date of hearing:	11.02.2020
उद्घोषणाकीतारीख/Pronouncement on	11.02.2020

आदेश /O R D E R

PER BHAVNESH SAINI, J.M.

1. This appeal by Revenue has been directed against the order of Ld. CIT(Appeals)-40 (Exemption), New Delhi dated 11.05.2016 for Assessment Year 2012-13 on the following ground:

“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that the assessee has rendered services by way of conducting coaching/learning classes to the individuals in the field of sports and other related activities and charging

fees thereupon which is purely in the nature of business/commerce/trade.”

2. Briefly the facts of the case are that assessee filed return of income declaring NIL income. The assessee produced books of account and other material before the AO. The AO noted aims and objects of the assessee society in the assessment order. The AO noticed from the income and expenditure account that it has received various receipts from sports receipts, activities receipts, work experience receipts, rent, mid day meal planning receipts and interest receipts. The AO considering the explanation of the assessee found that the activities of the assessee are business/commerce activities and first proviso to section 2(15) of the Act is invoked in the case of the assessee. The AO denied benefit of section 11 & 12 to the assessee and completed the assessment at Rs. 74,74,420/-.

3. Assessee challenged the addition before Ld. CIT(A) and submitted that assessee is registered u/s 12AA(1) of the Act on 29.11.2006. The main object of the assessee is to promote the education in sports and other allied education activities. The assessee has not conducted any trade, commerce or business and relied upon the certain decisions in support of the contention. The Ld. CIT(A) accepted the contention of the assessee and directed the AO to allow exemption u/s 11(1) of the Act.

4. Ld. DR relied upon the order of the AO and submitted that in the following cases, it was held that if activities other than the aims and

objects are carried out, proviso to section 2(15) will apply against the assessee:

- 1) *Deshpande Education Trust Vs. ACIT ITAT Bangalore 2016 ITA No. 1422 & 1423 (Bang.) 2016*
- 2) *Matru Karmadhara Trust Vs. ITO ITAT Chennai 2017 ITA No. 2053/Mds/2016*
- 3) *Vodithala Education Society Vs. ADIT ITAT Hyderabad 2007 [2008] 20 SOT 353 (HYD.)*
- 4) *Young Women's Christian Association of Madras Vs. JDIT ITAT Chennai [2014] 41 taxmann.com 142 (Chennai - Trib.)/62 SOT 65*
- 5) *Sukhmani Society for Citizen Services Vs. ACIT ITAT Amritsar [2018] 93 taxmann.com 292 (Amritsar - Trib.)/171 ITD 32 (Amritsar - Trib.)*
- 6) *Nirmithi Kendra Vs. DCIT ITAT Cochin [2018] 100 taxmann.com 293 (Cochin - Trib.)/[2019] 174 ITD 177 (Cochin - Trib.)*

5. On the other hand, Ld. Counsel for assessee submitted that in preceding AY 2011-12 the Departmental appeal in the case of the assessee was decided by ITAT Delhi 'D' Bench in ITA No. 59/2016 vide order dated 20.05.2019 and Departmental appeal has been dismissed. The findings in para 5 & 6 are reproduced as under:

“5. After considering the rival submissions and on perusal of the relevant facts and material on record, we find that it is an undisputed fact that assessee was granted registration u/s 12AA. The aims and objects of the assessee society are as under:

a) “Promote Educational research and studies for qualitative growth of the Institution and the child.

b) Educational trends in the nature of Academic, Cultural, Arts and Sports, strategic environments through National

academic institutions and school for cohesive growth of the child.

c) Work and organize academic conferences, workshops, projects and youth camps with training courses for qualitative growth of the faculty with the child at the centre.”

6. *The nature of receipts as shown in the income and expenditure account and has also been noted by the Ld. AO is flowing from the activities carried out in pursuance of the objects for which it was granted registration u/s 12AA. Assessee trust has basically has received fees from the students for value education workshop and giving coaching for the sports. Such an activity ostensibly falls within the ambit of category of “education” and giving coaching in sports is also one of the related activities for the overall development of the youth and the sports activities. Therefore, any fees received from such activities cannot be held to be in the nature of any trade, commerce, business activities. In this case, proviso to section 2(15) may not attract in this case, because said proviso is applicable only where a trust is carrying out ‘advancement of any other object of general public utility’ and here the activities of the assessee trust falls in the realm of activities of educational and sports. Accordingly, we hold that assessee is eligible for benefit u/s 11 and 12 and we do not find any reason to deviate from the finding of the Ld. CIT(A) and the same is affirmed.*

6. After considering the rival submissions, we are of the view that issue is covered in favour of the assessee by order of ITAT Delhi Bench for AY 2011-12 (supra) in which on identical verdict grounds of appeal, the

Departmental appeal has been dismissed. Though the rule of *resjudicata* does not apply to Income Tax proceedings but rule of consistency shall have to be followed by the Income Tax Authorities. It is also well settled law that decision in the case of the assessee is the best precedent to be followed in subsequent year. Since on identical facts, the Departmental appeal has been dismissed by the Tribunal in the case of the assessee for preceding AY 2011-12. Therefore, no different view could be taken against the assessee. Following the order of the Tribunal dated 20.05.2019 (supra) in the case of assessee, we dismiss the Departmental appeal.

7. In the result, the departmental appeal is dismissed.

Order pronounced in the open court.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 11th February, 2020
*Kavita Arora, Sr. P.S.

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi