

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

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 4484/DEL/2016 (A.Y. 2012-13)**

ACIT (E), Circle 1(1), E-2 Block, Pratyaksh Kar Bhawan, Dr. Shyama Prasad Mukherje Civic Centre, New Delhi – 110 002.  <b>(APPELLANT)</b>	Vs	India HIV/AIDS Alliance, 6, Community Centre, Zamrudpur, Kailash Colony, Extension New Delhi – 110 048 (PAN : AABCI 2577 E)  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Shri Sanjay Goyal, CIT-D.R.</b>
<b>Respondent by</b>	<b>Shri V. K. Tulsian, C.A. Shri Anjani Kr. Sharma, C.A.</b>

<b>Date of Hearing</b>	<b>23.01.2020</b>
<b>Date of Pronouncement</b>	<b>18.02.2020</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order of the Commissioner of Income Tax [Appeals]-40 (Exemption), New Delhi dated 07.06.2016 for Assessment Year 2012-13.

2. The Grounds of appeal are as under:-

1. *“On the facts and in the circumstances of the ease and in law, Ld.CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that even though the objects of the society may have been charitable but the activities carried out by the society which yielded income to the society were commercial in nature.*
2. *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 carry forward and set of deficit is not allowable as the*

*provisions of Section 70, 71, 72, 73 & 74 are not applicable in the case of charitable entities whose income is computed in accordance with the provision of section 11, 12 & 13 of the I.T. Act, 1961.*

3. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*

3. The assessee is a charitable organization and was established as a NGO on 25.02.1999 and is registered u/s 25 of the companies Act, 1956 and also registered u/s 12AA of the Income Tax Act, 1961 vide order dated 17.07.2020 and is also allowed u/s 80G of the Income Tax Act vide order dated 11.09.2006. The income of the assessee is exempt u/s 11 of the Income Tax Act, therefore, the assessee filed nil return. The Assessing Officer denied exemption u/s 11 mainly on the ground that the assessee is in the business activity as the assessee receives management fees from donor and thus made addition of Rs.4,69,02,850/-.

4. Being aggrieved by the assessment order, the assessee filed before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld DR submitted that the Assessing Officer has rightly denied the contention of the assessee that the assessee is exempt u/s 11 of the Income Tax Act. The Ld. DR further submitted that from the activities it can be seen that the assessee is not doing a charitable activities but doing a business activities. The Ld DR, therefore, submitted that the order of the Assessing Officer be sustained.

6. The Ld AR submitted that the CIT(A) has categorically made the finding that the exemption provision u/s 11, 12 & 13 of the income Tax Act are independent provision for the computation of income. The Ld AR further submitted that for allowing exemption the said provision has to be taken into account. In these provisions, there are no provision for adjustment of brought

forward loss or carried forward current year loss against the adjustment of subsequent year income or for allowing depreciation in fixed asset, but it is also seen that the income is to be computed in commercial principle and such adjustment of brought forward loss and carry forward loss is to be allowed. The Ld AR further submitted that since the assessee is involved in social work and charitable activities as defined u/s 2(15) of the Income Tax Act, the assessee is eligible for adjustment of carry forward loss or excess expenditure against the current year income. The Learned AR relied upon the decision of the assessee's own case for A.Y. 2010-11 dated 23.01.2019 (ITA No.7210 & 7216/Del/2017). The Tribunal decided this issue in favour of the assessee.

7. We have heard both the parties and perused all the relevant materials available on record. In the present assessment year also the assessee is registered u/s 25 of the Companies Act, 1956 holding registration u/s 12A of the Income Tax Act and further the assessee also enjoys the benefit u/s 80D of the Income Tax Act. The main object has not changed in the present assessment year which is to provide relief to the persons who are suffering from HIV/AIDS by providing financial, technical and managerial assistance to foster the care and community support to those suffering from that disease. The CIT(A) has rightly allowed the appeal of the assessee and the Tribunal's decision in A.Y. 2010-11 is applicable in the present year as well. Therefore, the appeal of the revenue is dismissed.

8. In result, appeal of the revenue is dismissed.

**Order pronounced in the Open Court on 18th day of February, 2020.**

Sd/-

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 18 /02/2020

*Priti Yadav, Sr. PS /R.N\**

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	29.01.2020
Date on which the typed draft is placed before the dictating Member	30.01.2020
Date on which the typed draft is placed before the Other Member	.01.2020
Date on which the approved draft comes to the Sr. PS/PS	.02.2020
Date on which the fair order is placed before the Dictating Member for pronouncement	.02.2020
Date on which the fair order comes back to the Sr. PS/PS	19 .02.2020
Date on which the final order is uploaded on the website of ITAT	19 .02.2020
Date on which the file goes to the Bench Clerk	19 .02.2020
Date on which the file goes to the Head Clerk	