

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 3696/DEL/2019 [A.Y 2013-14]

ITA No. 5003/DEL/2019 [A.Y 2013-14]

Jogdhian Hari Bhagwan Rastogi  
Charitable Memorial Trust  
House No. 1650/I-13, Dwan Hall Road  
Bhagirath Palace, Chandni Chowk, Delhi

Vs.

The A.C.I.T.  
Circle 1 (1)  
New Delhi

PAN : AAATJ 0294 M

ITA No. 5003/DEL/2019 [A.Y 2013-14]

The A.C.I.T.  
Circle 1 (1)  
New Delhi

Vs.

Jogdhian Hari Bhagwan Rastogi  
Charitable Memorial Trust  
House No.1650/I-13, Dwan Hall Road  
Bhagirath Palace, Chandni Chowk,  
Delhi

PAN : AAATJ 0294 M

[Appellant]

[Respondent]

Date of Hearing : 24.03.2021

Date of Pronouncement : 24.03.2021

Assessee by : Shri K. Sampath, Adv

Revenue by : Shri Mahesh Thakur, Sr DR.

**ORDER**

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

Both the above captioned cross appeals by the assessee and Revenue are preferred against the very same order of the Commissioner of Income Tax [Appeals], Delhi dated 20.03.2019 pertaining to Assessment Year 2013-14. Since both these appeals were heard together, they are being disposed of by this common order for the sake of convenience and brevity.

ITA No. 3696/DEL/2019 [Assessee's appeal]

2. The grievance of the assessee reads as under:
  1. That on the facts and in the circumstances of the case and in law, the action of the Ld. CIT(A) in holding that the assessee Trust is disentitled to the exemption u/s 11(1 A) of the Income-tax Act, 1961 on the capital gains merely because it was posted under a wrong head in the return of income is arbitrary, erroneous, unfair and unjust and must be quashed with directions for the relief;

2. That the action of Ld. CIT(A) in not granting the exemption for the capital gain despite the fact that the same stood reinvested in capital assets being erroneous and unlawful must be quashed with directions for relief;
3. That the Ld. CIT(A) action in denying the relief by relying on Goetze (India) Ltd. without appreciating that the embargo under the cited decision did not cover any action by the Ld. CIT(A) is erroneous and untenable which must be quashed."

3. The ld. counsel for the assessee stated that due to inadvertent mistake in filing the return of income electronically, the claim as regards investment of sale proceeds in acquisition of new capital asset in mutual funds in terms of section 11(1A) of the Act could not be made properly. It is the say of the ld. counsel for the assessee that during the course of scrutiny assessment proceedings, the said claim was made but was denied by the Assessing Officer stating that such claim was never made in the return of income nor by way of revised return of income.

4. When the matter was agitated before the ld. CIT(A), the ld. CIT(A), drawing support from the decision of the Hon'ble Supreme Court in the case of Goetz India Ltd 284 ITR 323, confirmed the findings of the Assessing Officer.

5. We have given thoughtful consideration to the orders of the authorities below. It is true that the claim was not made in the return of income. It is equally true that revised return of income was also not filed. In our considered view, a legal claim can be made at any stage and the decision of the Hon'ble Supreme Court [supra] relied upon by the Id. CIT(A) does not put any fetter on the appellate authorities.

6. The Id. CIT(A) ought to have considered the claim regarding investment in mutual funds. Since no such verification has been done, we deem it fit to restore the issue to the file of the Assessing Officer. The assessee is directed to demonstrate that the sale proceeds have been invested in acquisition of new capital assets in nature of mutual funds. The Assessing Officer is directed to verify the same, and when satisfied, allow the claim of the assessee.

7. The appeal is allowed for statistical purposes.

ITA No. 3696/DEL/2019 [Revenue's appeal]

8. The grievance of the Revenue reads as under:

"1. On the facts and in the circumstances of the case and in law, the action of the Ld. CIT(A) in holding that the income of the society are not covered under amended proviso to section 2(15).

2. On the facts and in the circumstances of the case and in law, the action of the Ld. CIT(A) in holding that the exemption u/s 11 and 12 in light of the facts that activity of the assessee are not as per objects and the assessee has not carried out any worthwhile charitable activity."

9. Before us, the ld. DR strongly placed reliance on the assessment order.

10. Per contra, the ld. counsel for the assessee relied upon the findings of the ld. CIT(A).

11. We have carefully perused the orders of the authorities below. The assessee society is registered u/s 12A of the I.T. Act. The trust was formed on 27.09.1966 with the primary aims of carrying out public charitable objects and purposes including relief of the poor, education, medical relief and advancement of any other object of general public utility not involving the carrying on any activity for profit. In accordance with the object of the trust, it is providing free education

upto preparatory kindergarten to children from poor and economically weaker section of society.

12. In furtherance of its objects, the assessee has also given donation of Rs. 2 lakhs and claimed the same as application of income. There is no dispute that the assessee trust is carrying on its activities since its inception and has never been denied the claim of exemption u/s 11 of the Act. We find that the Id. CIT(A) has correctly appreciated the facts of the case and allowed the claim of exemption. The relevant findings of the Id. CIT(A) read as under:

*"4.1.3 While deciding the appeal in appellant's own case for assessment year 2014-15 (Appeal No. 339/2016-17), it had been held by me as under:*

*"4.1.2 I have considered the assessment order and the submissions of the appellant. I have also perused the orders under section 143(3) in the past wherein on similar facts exemption has been allowed to the appellant. The only reason why exemption has been denied to the appellant is that the expenditure incurred on school is very low. No other facts have been brought on record in support of the contention that no charitable activity in the form of providing preparatory/kindergarten education is provided to children of poor and economically backward classes. Further, it has been held that predominant motive of the assessee is to earn*

rental income.

4.1.3 In the case of DIT(Exemption) vs. Sahu Jain Trust [(2011) 243 CTR 131(Cal.)] the Assessing Officer believed that assessee was earning rent from the property which was obtained under the tenancy rights and thus income earned from said exercise was not incidental to the objects of trust and accordingly such income was assessed as business income. It was observed that the question, therefore, which really arose is whether sub-letting of the tenanted accommodation available to assessee amounts to carrying on any business, i.e., is it carrying on any adventure or concern in the nature of trade, commerce or manufacture? It was held that if it was carrying on any adventure or concern in the nature of trade by sub-letting, then, section 11 (4A) would be attracted and that the true test is whether it is a simple letting out of the building or something more than letting out by bringing the case within the meaning of "carrying on any adventure or concern in the nature of trade or commerce". It was noted that there was no material which was available on record to justify the simple sub-letting done by assessee in order to continue its charitable activity to be branded as a "business activity" and CIT(A) and the Tribunal below rightly did not bring the case within the purview of section 11 (4A) and also in the past, assessee having received the benefit of exemption in respect of the rental income, there was no just reason for disallowing the relief claimed for the relevant assessment year when no fresh materials were brought in this year for coming to a different conclusion.

4.1.4 In the case of the assessee also there is nothing on record to suggest that the assessee is not carrying out any activity since the assessee is not charging the students for carrying out education activity. It is also noted that in the past, exemption has been allowed in respect of rental income and there appears to be reason for disallowing the exemption for the assessment year under consideration wherein no new facts have been brought on record. It is to be noted that even in the past the school expenses were minimum and no income was received from education activities as is evident from the Income & Expenditure account for the year ending 31/03/1994, a copy of which is available at page 33 of the paper book.

4.1.5 In view of the discussion above and relying on the decision of the Hon'ble Calcutta High Court in the case of DIT(E) vs. Sahu Jain Trust (supra), the Assessing Officer is directed to allow exemption under section 11 with all consequential benefits including allowing accumulation under section 11(2) subject to verification that conditions subject to which such accumulation is allowed are fulfilled. Grounds of appeal nos. 1 to 4 are allowed."

13. The ld. DR could not bring any fallacy or error in the findings of the ld. CIT(A). In our considered view, the ld. CIT(A) has correctly appreciated the facts of the case as discussed hereinabove. We, therefore, do not find any error or infirmity in the findings of the ld. CIT(A).

14. As a result, the appeal of the revenue is dismissed.

15. In the result, the appeal filed by the assessee in ITA No. 3696/DEL/2019 is allowed whereas the appeal filed by the Revenue in ITA No. 5003/DEL/2019 stands dismissed.

The order is pronounced in the open court on 24.03.2021 in the presence of ld. DR.

Sd/-

[SUCHITRA KAMBLE]  
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]  
ACCOUNTANT MEMBER

Dated: 24<sup>th</sup> March, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. 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	