

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

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.208/Del/2018
Assessment Year : 2014-15**

ITO(E), Ward-1(2), New Delhi.	Vs	India Islamic Cultural Centre, 87-88, Lodhi Estate, New Delhi-110003. PAN-AAATI2770F
APPELLANT		RESPONDENT
Appellant by	Sh. R.S.Singhvi, CA & Sh.Satyajeet Goel, CA.	
Respondent by	Ms. Sunita Singh, CIT DR	
Date of Hearing	13.04.2021	
Date of Pronouncement	27.05.2021	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the Revenue for the assessment year 2014-15 is directed against the order of learned CIT(A)-40, Delhi dated 16.10.2017. The Revenue has raised following grounds of appeal:-

(i). *“On the facts and in the circumstances of the case and in law, Ld.CIT(A) has erred by allowing exemption u/s 11 & 12 of the I.T.Act, 1961, ignoring the fact that the assessee has shown receipts from business activities and is covered by proviso to section 2(15) of the I.T.Act, 1961.*

(ii) *On the facts and in the circumstances of the case and in law, Ld.CIT(A) has erred in allowing the claim of depreciation on fixed assets which will tantamount to double deduction, since acquisition of such assets had been allowed as application of income in earlier years.*

2. Facts giving rise to the present appeal are that the case of the assessee was picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 ('the Act') was framed vide order dated 20.12.2016. The AO while framing the assessment, disallowed the claim of exemption u/s 11 & 12 of the Act thereby, he assessed the income at Rs. 1,40,97,920/-.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions partly allowed the appeal thereby, the claim of depreciation was allowed and also allowed the benefit of exemption claimed by the assessee.

4. Aggrieved against this, the Revenue is in appeal before this Tribunal.

5. Ground No.1 raised by the Revenue in this appeal is against the allowing exemption u/s 11 & 12 of the Act.

6. Ld. CIT DR supported the assessment order.

7. On the contrary, Ld. Counsel for the assessee submitted that the issue was raised in the earlier years also and the assessee has been successful. He contended that Ld.CIT(A) has followed the decision of predecessor pertaining to Assessment Years 2010-11, 2011-12 & 2012-13 who followed the decision of the Hon'ble Tribunal for the Assessment Year 2009-10.

8. We have heard Ld. representatives of both the parties and perused the material available on record and gone through the orders of the authorities

below. Ld.CIT(A) has decided the issue in paras 4.1 to 4.1.2 observing as under:-

4.1. *“Grounds of appeal nos. 1, 5, 6 and 7 challenge the denial of exemption under sections 11 and 12. Since these grounds of appeal are interlinked, these are being adjudicated together.*

4.1.1. *I have considered the assessment order and the submissions of the appellant. From the past history of the case it is seen that the assessee had been enjoying exemption under section 11 (1) from the very beginning but the same was denied during the assessment year 2009-10 by invoking the proviso to section 2(15) mainly on the ground that the assessee was involved in trade, commerce or business as there was a restaurant run in the name of Dilli Dastarkhwan in the premises of the assessee and the assessee was receiving income from the restaurant. The assessee appealed against the order of the Assessing Officer denying exemption under section 11(1) and the same was allowed by the Id. CIT (A)-XXI, New Delhi (old) vide the order dated 30/05/2012. Appeal filed by the Revenue against the order of held. CIT (A) was dismissed by the Hon'ble ITAT vide order dated 30/07/2014 in ITA No. 4127/Del/2012. The Assessing Officer had also invoked the provisions of the proviso to section 2(15) during the assessment year 2011 - 12 and had denied exemption under section 11 mainly on the ground that the assessee is involved in trade, commerce of business following the order for the assessment year 2010-11. That then Id. CIT (A)-40 in appeal No. 135/2014-15 vide order dated 24/04/2014 allowed exemption under section 11 with all consequential benefits. For the assessment year 2012-13 also, exemption had been denied by invoking the proviso to section 2(15) and the same had been allowed in appeal following the orders of the Hon'ble ITAT in appellant's own case for assessment year 2009-10.*

4.1.2. *In the current year also exemption has been denied by invoking the proviso to section 2(15) mainly on the ground that the assessee is involved*

in trade, commerce of business in view of the income from coffee shop and restaurant since these have been held to be business activity. Since the facts of the case are similar to those for earlier assessment years as discussed above, respectfully following the orders of the Hon'ble ITAT for assessment year 2009-10 and my Id. predecessors for assessment years 2010-11 and 2011-12 and my own orders for assessment year 2012-13, the Assessing Officer is directed to allow exemption under section 11 with all consequential benefits. Grounds of appeal Nos. 1, 5, 6 and 7 are allowed.”

9. We find that the Ld.CIT(A) has followed the decision of the Tribunal pertaining to Assessment Year 2009-10. The Revenue has not brought any other binding precedent into our notice. Therefore, we find that there is no reason to interfere in the findings of Ld.CIT(A). Ground No.1 raised by the Revenue in this appeal is dismissed.

10. Ground No.2 raised by the Revenue in this appeal is against the allowance of depreciation on fixed assets.

11. Ld. CIT DR supported the order of Assessing Officer and submitted that Ld.CIT(A) was not justified in allowing the claim of depreciation on fixed assets. Ld. Counsel for the assessee submitted that the issue has been decided in favour of the assessee by the judgement of Hon'ble Delhi High Court in the case of *DIT(Exemption) vs Indraprastha Cancer Society in ITA no.240, 348, 406, 463 & 464/2014* vide order dated 18.11.2014.

12. We have heard the Ld. Representatives of the parties. We find that the Ld.CIT(A) has decided the issue in favour of the assessee vide para 4.2 to 4.2.5 observing as under:-

4.2.1. *“While computing income, the Assessing Officer has not allowed depreciation on assets purchased in earlier years because purchase of such assets had been claimed and allowed as application of income in earlier years.*

4.2.2 *I have considered the assessment order and the submissions of the appellant. Charitable trusts or institutions are governed by the provisions of sections 11, 12, 12A, 12AA and 13 under Chapter III of the Income-tax Act. These sections constitute a complete code governing the grant, cancellation or withdrawal of registration, providing exemption of income and also conditions subject to which a charitable trust or institution is required to function in order to be eligible for exemption. Section 11(1)(a) provides for exemption to the extent income derived from the property held under trust is applied for charitable purposes. Subject to fulfillment of conditions laid down in section 11, exemption is available in respect of income irrespective of whether the expenditure incurred is revenue or capital in nature. Hence, exemption is available even when the income is applied for acquiring a capital asset. In view of this, charitable institutions were not eligible for depreciation.*

4.2.3 *This view has been clarified in Para 7.5 of the Explanatory Notes to the provisions of the Finance (No. 2) Act, 2014 issued vide Circular No. 1/2015 dated 21st January, 2015. Section 11 was amended by the Finance (No. 2) Act, 2014 whereby a new sub-section has been inserted which provides that under section 11, income for the purposes of its application shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under section 11 in the same or any other previous year. Para 7.5 of the said Explanatory Notes is reproduced as under:*

"7.5 The second issue which had arisen was that the existing scheme of section 11 as well as section 10(23C) of the Income-tax Act provided exemption in respect of income when it is applied to

acquire a capital asset. Subsequently, while computing the income for purposes of these sections, notional deduction by way of depreciation etc. was being claimed and such amount of notional deduction was not being applied for charitable purpose. As a result, double benefit was being claimed by the trusts and institutions. Therefore, these provisions were required to be rationalized to ensure that double benefit is not claimed and such notional amount does not get excluded from the condition of application of income for charitable purpose.

4.2.4 There are many conflicting judgments of various Hon'ble High Courts, including that of the jurisdictional High Court, both in favour and against allowability of depreciation. The Hon'ble Delhi High Court, in the case of Director of Income Tax (Exemption) vs. Charanjiv Charitable Trust [2014] 267 CTR 305, have held that if the cost of the asset has been allowed as deduction by way of application of income, then depreciation on the same asset cannot be allowed in computation of income of the trust (Para 30). However, in a subsequent decision, the Hon'ble Delhi High Court, in the case of DIT(Exemption) vs. Indraprastha Cancer Society in ITA No. 240, 348, 406, 463 & 464/2014 vide the order dated 18.11.2014, have held that the assessee is eligible for depreciation in the case of charitable or religious institution also.

4.2.5 A bare reading of the provisions relating to income from property held for charitable purposes shows that depreciation per se was not allowed as a deduction in the case of charitable or religious institutions. This issue has been laid to rest by amendment to section 11 by the Finance (No. 2) Act, 2014 which is effective from the assessment year 2015- 16 and subsequent years. However, relying on the latest decision of the Hon'ble Delhi High Court in the matter of DIT (Exemption) vs. Indraprastha Cancer Society (supra), the claim of depreciation of the appellant is allowed. Ground of appeal No. 2 is hence, allowed.”

13. The findings of Ld.CIT(A) is not rebutted by the Revenue. The Ld.CIT(A) has followed the judgement of Hon'ble Delhi High Court in the case of *DIT(Exemption) vs Charanjiv Charitable Trust [2014] 267 CTR 305* and also the judgement in the case of *DIT(Exemption) vs Indraprashta Cancer Society (supra)*. Thus, we do not see any infirmity in the order of Ld. CIT(A) and same is hereby affirmed. Thus, Ground No.2 of the appeal raised by the Revenue is dismissed.

14. In the result, the appeal of the Revenue is dismissed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 27th May, 2021.

Sd/-

**(G.S. PANNU)
VICE PRESIDENT**

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI