

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I.T.A. No. 191/DEL/2018 (A.Y 2012-13)**

**&**

**I.T.A. No. 192/DEL/2018 (A.Y 2013-14)**

**(THROUGH VIDEO CONFERENCING)**

Muzaffarnagar Development Authority C/o. Dinesh Gulati & Co. 1 <sup>st</sup> Floor, 554, Ansari Road, Muzaffarnagar Uttar Pradesh AAALM0437D <b>(APPELLANT)</b>	Vs	ACIT Circle-1 Muzaffarnagar  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. C. S. Anand, Adv</b>
<b>Respondent by</b>	<b>Sh. Gaurav Pundir, Sr. DR</b>

<b>Date of Hearing</b>	<b>02.09.2021</b>
<b>Date of Pronouncement</b>	<b>23.09.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 27/12/2016 passed by CIT(A)- Muzaffarnagar for assessment year 2012-13

2. The grounds of appeal are as under:

**I.T.A. No. 191/DEL/2018 (A.Y 2012-13)**

1. *“That on the facts of the case and under the law, the Id. CIT(A) had erred in not appreciating that once the registration u/s 12AA stood restored to the assessee, it cannot be denied exemption u/s 11/12 of the I.T. Act 1961, even though such exemption was claimed through a belatedly filed revised return.*

2. That on the facts of the case and under the law, the CIT(A) had erred in not appreciating the assessee's submissions that the decision of Hon'ble Supreme Court in the case of Goetz (India) Ltd. is confined to the powers of the Assessing Officer and does not affect the powers of the CIT(Appeal).

3. That the Id. CIT(A) had erred in holding that in the light of the ratio of the decision of the Hon'ble Supreme Court in the case of Goetz (India) Ltd., no such claim (exemption u/s 11/12 of the I.T. Act 1961) can be entertained at this (first appellate) stage.

3. That on the facts of the case and under the law, the exemption u/s 11/12 of the I.T. Act 1961 should not had been disallowed to the assessee for the year under consideration, particularly when the registration granted to the assessee u/s 12AA on 30.04.2008 (which was cancelled on 04.06.2008) stood already restored to the assessee vide order dated 12.01.2015 passed by the Hon'ble ITAT, New Delhi in ITA No. 4231/Del/2013.

5. That the authorities below ought to had appreciated that as per Article 265 of the Constitution of India, no tax can be levied except when authorized by law, and also that only legitimate tax can be recovered and even a concession by a tax-payer does not give authority to the tax collector to recover more than what is due from him under the law.

6. That the authorities below ought to had ought to had taken into consideration the Hon'ble CBDT Circular No. 14(XL-35) dated 11-4-1955, through which it was emphasized that the IT Department should not take advantage of an assessee's ignorance, to collect more tax out of him than is legitimately due from him.

**I.T.A. No. 192/DEL/2018 (A.Y 2013-14)**

1. That on the facts of the case and under the law, the Id. CIT(A) had erred in not appreciating that once the registration u/s 12AA stood restored to the assessee, it cannot be denied exemption u/s 11/12 of the I.T. Act 1961, even though such exemption was claimed through a belatedly filed revised return.

2. That on the facts of the case and under the law, the CIT(A) had erred in not appreciating the assessee's submissions that the decision of Hon'ble

*Supreme Court in the case of Goetz (India) Ltd. is confined to the powers of the Assessing Officer and does not affect the powers of the CIT(Appeal).*

*3. That the Id. CIT(A) had erred in holding that in the light of the ratio of the decision of the Hon'ble Supreme Court in the case of Goetz (India) Ltd., no such claim (exemption u/s 11/12 of the I.T. Act 1961) can be entertained at this (first appellate) stage.*

*4. That on the facts of the case and under the law, the exemption u/s 11/12 of the I.T. Act 1961 should not have been disallowed to the assessee for the year under consideration, particularly when the registration granted to the assessee u/s 12AA on 30.04.2008 (which was cancelled on 04.06.2008) stood already restored to the assessee vide order dated 12.01.2015 passed by the Hon'ble ITAT, New Delhi in ITA No. 4231/Del/2013.*

*5. That the authorities below ought to have appreciated that as per Article 265 of the Constitution of India, no tax can be levied except when authorized by law, and also that only legitimate tax can be recovered and even a concession by a tax-payer does not give authority to the tax collector to recover more than what is due from him under the law.*

*6. That the authorities below ought to have taken into consideration the Hon'ble CBDT Circular No. 14(XL-35) dated 11-4-1955, through which it was emphasized that the IT Department should not take advantage of an assessee's ignorance, to collect more tax out of him than is legitimately due from him.*

3. We are taking up the facts of I.T.A. No. 191/DEL/2018 (A.Y 2012-13) as both the appeal are identical. The assessee, Muzaffarnagar Development Authority (MDA) was created by an enactment of Uttar Pradesh Urban Planning and Development Act, 1973 vide Notification (G.O.) No 4521/9 awas-5-96-1 Gathan-96, dated 21-11-1996 for the Objects of Planning, Development and Improvement of Cities, Towns and Villages for General Public Utility. The assessee filed its return of Income for the Assessment Year 2012-13

electronically on 30.09.2012 vide E-filing Acknowledgment No. 506943631300912 , declaring the total income of Rs.3,13,89,620.00. The assessment for the above stated Assessment Year was completed under Section 143(3) of the Income Tax Act,1961 vide Order dated 20.03.2015 at a total income of Rs. 3,19,54,483.00 as detailed below –

Returned Income		Rs.31389620
Add (as discussed above)	Disallowance u/s 40(a)(a)	Rs. 564863
Assessed Income		Rs.3,19,54,483/-

During the course of Assessment Proceedings, the assessee has revised its Return ' to claim benefit/exemption under Section 11 of the Income Tax Act, 1961 because the Hon'ble ITAT-Delhi, vide its Order dated 12.01.2015 in ITA No. 4231/DEL/2013 has restored the Registration granted to the assessee under Section 12AA of the Act. But, the Learned Assessing Officer did not consider the claim of the assessee and the assessment was completed by denying the claims/benefits of Section 11 of the Income Tax Act, 1961. On Assessment, vide Order dated 20.03.2015, the Tax Demand was created for Rs. 3,64,500.00/-.

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

5. The Ld. AR submitted that as regards Ground No. 1 to 4, the 12 Registration was restored by the Tribunal vide order dated 12/1/2015. Therefore, the Assessing Officer has wrongly denied the claim of the exemption u/s 11 of the Act. The Ld. AR relied upon the decision of the Hon'ble Supreme Court in case of Goetz India Ltd. and submitted that the CIT(A) should have entertain the claim of the assessee for Exemption u/s 11 at the time of appellate proceedings which was totally denied by the CIT(A).

6. The Ld. DR relied upon the assessment order and the order of the CIT(A). The Ld. DR also relied upon the decision of Dalmia Power (S.C). The Ld. DR further submitted that the revised return filed by the assessee was after the expiry of the time limit available under the statute and the decision of the Hon'ble Supreme Court in Goetz India will not be applicable in the present case.

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the Registration u/s 12AA was granted to the assessee vide Tribunals order and same was pointed out by the assessee before the CIT(A) which was not at all considered. Since, the Registration was granted w.e.f. 30/04/2008, the claim of the assessee for Assessment Year 2012-13 & 2013-14 are valid claim for exemption u/s 11. Therefore, the appeal of the assessee being ITA No. 191/DEL/2018 (A.Y 2012-13) is allowed. Both the appeals are identical in nature and no distinguishing facts were pointed out by both the parties, hence, ITA No. 192/DEL/2018 (A.Y 2013-14) allowed.

9. In result, both the appeals of the assessee are allowed.

**Order pronounced in the Open Court on this 23<sup>rd</sup> Day of September, 2021**

**Sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 23/09/2021

*R. Naheed \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

