

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “B” BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &
DR.B.R.R.KUMAR, ACCOUNTANT MEMBER**

**ITA No.917/Del/2018
Assessment Year : 2013-14**

ACIT(E), Circle-1(1), New Delhi.	vs	Educate India Society, 19, Rajdoot Marg, Chankya Puri, New Delhi-110021. PAN-AAAAE0085E
APPELLANT		RESPONDENT
Appellant by	Ms. Alka Gautam, Sr.DR	
Respondent by	Ms. Lalitha Krishnamurthy, Adv.	
Date of Hearing	24.08.2021	
Date of Pronouncement	30.09.2021	

ORDER

PER KUL BHARAT, JM :

This appeal filed by the Revenue is pertaining to assessment year 2013-14 and is directed against the order of Ld. CIT(A)-40, Delhi dated 21.11.2017. The Revenue has raised following grounds of appeal:-

1. *“Whether on facts and in the circumstances of the case the Ld.CIT(A) was correct in not appreciating that even though the assessee does not strictly fall in the ambit of the AICTE Act, it is bound to follow the spirit of law on admission to NRI quota, which has not been adhered to and thus the assessee was rightly held not eligible for exemption u/s 11 and 12 of the Act.*
 2. *The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”*
2. The facts narrated by the Ld.CIT(A) in the impugned order are reproduced as under:-

- 3.1. *“The facts of the case are that return of income declaring Nil was filed on 29/09/2013. The assessee society is registered under section 12A vide letter dated 01/07/1996 and is also registered under section 80G (5)(vi) vide order dated 26/09/2007 for the period from 01/04/2007 to 31/03/2010. The society is registered higher education and is running courses in Engineering and MBA. The main object of the society is to provide education.*
- 3.2. *During the course of examination of accounts of the assessee it was noted that 82 students were admitted in the NRI quota against the intake of 550 students who are resident Indians. Details of student admitted in the financial year 2012-13 were submitted which included details of NRI students also. With the view to examine the NRI status of the students admitted under the NRI quota, the society was asked to furnish details of documentation, admission policy of the college and receipts of fee issued NRI quota students. Further to ascertain the genuineness of the students admitted under the NRI quota summons under section 131 was issued along with questionnaire to which responses were received from 29 students.*
- 3.3. *The assessee was specifically required to give details about the process of NRI quota admission done by the management. In response it was, inter alia, mentioned that students sponsored by NRI and not NRI students were given admission. It was also mentioned that no scrutiny committee was needed for the purpose since seats were filled on a first-come first-served basis subject to eligibility criteria and that after admission process was complete, many seats were lying vacant in various courses. The Assessing Officer referred to the AICTE regulations pertaining to admission under NRI/ foreign national/ person of Indian origin category/ quota in AICTE approved institutions which-*
- i. defined NRI to mean non-resident Indian as defined in the Income Tax Act, 1961 with certain clarifications (Regulation 3.9);*

ii. defined "self-financing institution" to mean technical institutions either not receiving any recurring grant from government or government organisations receiving recurring grants less than 50% of its operating expenses from government or government organisations (Regulation 3.24);

iii. provided that in self-financing institutions, 50% seats shall be treated as free seats and other 50% seats shall be treated as payment seats and out of payment seats, of the total intake shall be earmarked for NRIs. The NRI seats shall be treated within the 50% payment seats. Against NRI seats, only a person who is NRI himself/herself may seek admission and no other candidates without NRI status would be eligible (Regulation 4.2);

iv. provided that seats remaining unfilled from the NRI quota will be reverted to the payment seats and this will have to be filled from list of selected candidates prepared as per the procedure laid down for admissions to technical institutions;

v. did not provide for admission of NRI sponsored students (Regulation 4.5);

vi. provided that the institution shall not be permitted to charge equivalent amount of NRI fees from the students admitted under vacant NRI seats (Regulation 4.5).

3.4. The Assessing Officer, after studying the admission forms of the NRI candidates found that neither the candidates who were admitted under various technical courses were institution were himself/herself an NRI nor any of the parents of such candidates were NRI. Relying on regulation 4.2 of the All India Council for Technical Education (Admission under Non-Resident Indian (NRI)/Foreign National (FN)/Persons of Indian origin (PIO) category / quota in AICTE approved institutions) Regulations, 2002, the Assessing Officer held that it is mandatory on the part of the institution that only a person who is NRI himself/herself may seek

admission and no other candidates without NRI status would be eligible. The Assessing Officer also relied upon Regulation 4.5 of the said AICTE Regulations which provided that there is no provision for admission of NRI sponsored students and observed that the institution has not cared to adhere to this mandatory rule and continued with admission under NRI quota by accepting the application forms sponsored by certain persons who were holding either the Indian passport or foreign passports. The Assessing Officer also noted that the institution made its own rules for admission under NRI quota and by passed statutory instructions and guidelines issued by AICTE which is a body of the Ministry of Human Resource Development, New Delhi. The Assessing Officer then relied on various judgements of Hon'ble High Courts on the issue of admission and technical courses under the NRI quota and, it was held that the assessee institution has breached the law and admitted students illegally under NRI quota during the financial year 2012-13 with the objective to rake in large amounts of money from Indian resident students. It was also noted that neither the parents nor the students were NRIs. In view of this it was observed that the institution cannot be treated as a charitable entity within the ambit of section 11. The Assessing Officer relied upon the judgement of the Hon'ble Supreme Court in the property tax case of MCD vs Children Book Trust wherein basic tenets relating to charity were given. It was also noted that the assessee institution did not show any honest purpose to the extent charity to poor students who have remained out of contention for admission to a professional course and hence it was held that charitable purpose was missing in the case. The case was summed up by the Assessing Officer as under:

- i. The institution had admitted students under NRI quota in an illegal fashion by infringing statutory directions given by AICTE and Hon'ble Supreme Court.*

ii. *The concept of charity has to begin with and intent of magnanimity and philanthropy and not with an intent to fraudulently admit students by violating the security guidelines and harming the interest of unsuspecting, innocent and uninformed students. There is no way to compensate these students, who suffered because they could not get admission due to an illegal practice by the assessee institution.*

3.5. *The Assessing Officer also relied upon the provisions contained in section 11(l)(a) and held that the property whose income will not be a part of total income of the assessee has to exist wholly for charitable and religious purpose. It was also held that there is an element of necessity in these words and these words mandate that the property of the institution which is claiming its income to be exempt from income tax must be used in a charitable manner, i.e., with an intent to spread charity amongst the people. It was also noted that in the instant case, the assessee institution has not only violated the guidelines of the controlling authority, i.e., AICTE but also the Supreme Court guidelines on the issue under discussion. It was also held that the assessee institution has to be treated as any other commercial institution which is involved in the process of teaching students for a cost. It was held that the chat activity carried out by the assessee during the period into consideration is not charitable and, therefore, the assessee would not be entitled for exemption under sections 11 and 12. Only depreciation on fixed assets purchased during the year was allowed and depreciation on assets purchased in earlier years would not be allowed because a assets would have been claimed as application of income in earlier years. Income was computed at Rs. 4, 19,80,320/-.”*

3. Aggrieved against this, the assessee preferred appeal before Ld. CIT(A) who after considering the submissions, partly allowed the appeal of the

assessee. Thereby, Ld.CIT(A) directed the Assessing Officer to allow exemption u/s 11 & 12 of the Act with all consequential benefits.

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

5. Ld. Sr. DR strongly relied on the decision of the assessment order and submitted that the assessee has violated the guidelines issued by the Regulatory authority and admitted 82 students in NRI quota against intake of 550 students. Ld.Sr.DR submitted that the Assessing Officer has categorically observed that there is no provision for admission of NRI sponsors of students. Therefore, considering the violation, the Assessing Officer came to just conclusion that the assessee's society is not existing fully for charitable purpose.

6. Per contra, Ld. Counsel for the assessee relied on the decision of Ld.CIT(A) and submitted that the Assessing Officer has mis-directed himself. As in the assessment order, the inference drawn by the Assessing Officer is fallacious and contrary to the records. He submitted that the action of the Assessing Officer is ex-facie illegal, arbitrary and unjustified under the facts and circumstances of the present case. He submitted that law does not permit the Assessing Officer to act in whimsical manner. He submitted that the assessee had placed all relevant information and supporting evidences before the Assessing Officer. Hence, he was not justified to take contrary view.

7. We have heard the rival contentions and perused the material available on records. The Ld.CIT(A) has given finding on fact by observing as under:-

5.1.6. *“The merit cum means fee concession scheme is to be implemented by the University in accordance with the Haryana Private Universities Act, 2006. The University collected extra fees amounting to Rs. 78,45,000/- from NRI category which was used for paying scholarship amounting to Rs. 1,35,03,075/-. From the assessment record it is seen that details of scholarships given were furnished vide letter dated 17/03/2016 which were in response to the query of the Assessing Officer dated 15/03/2016 regarding details of scholarship paid. No adverse inference has been drawn by the Assessing Officer with regard to the scholarships paid.*

5.1.7. *The Assessing Officer has relied on various judgements of various Hon'ble Courts with regard to admission through NRI quota. It is to be noted that all these are with regard to AICTE approved institutions and the same are not applicable in the case of the appellant as discussed above, the case of the appellant being that of a University.*

5.1.8. *The Assessing Officer, in the assessment order, has not doubted the fact that the assessee is providing education. In this case the issue, therefore, is whether exemption under section 11 can be withdrawn even if there is an infringement in the process of admission? It has been held by the Hon'ble Rajasthan High Court in the case of CCIT vs. Geetanjali University trust [(2013) 24 Taxman 11 (Raj.)] that for the purpose of section 10(23C)(vi), failure of the assessee educational institution to provide admissions strictly in accordance with the prescribed rules, regulations and statute could not lead to its losing character as an entity existing solely for the purpose of education. In this case the Commissioner noticed that the High Court had passed an order in assessee's case that admission to medical course had not been made on the basis of system approved by the Medical Council of India and, thus, those admissions were illegal. Relying on the aforesaid order, the Commissioner held that since the assessee-trust had violated the procedure of admission as laid down by the Government/Medical Council, it did not qualify as an institute within the meaning of section 10(23C)(vi) and (via). It was held that:*

- *A plain reading of the provisions of section 10(23C)(vi) would reveal that what is required for the purpose of seeking approval thereunder is that the University or other educational institution should exist 'solely for educational purposes and not for purposes of profit'. It is nowhere the case and/ or finding of the CCIT that on account of the said defect in the admission procedure, the trust ceased to exist solely for educational purposes and/ or it existed for the purposes of profit.*
- *Further, it was not the case of the revenue that the students who were admitted were not imparted education in the college in which they were admitted and/ or the admissions granted were fake or non-existent or that the income generated by admitting the said students was not used for the purpose of the Trust.*
- *The emphasis on part of the CCIT that the purpose of education would not be served if the education is for students who have been illegally admitted and the purpose of education as contemplated in the section would be served only if the students have been legally admitted and not otherwise, appears to be going beyond the requirements of the section.*
- *Of course, the requirement of an educational institution to provide admissions strictly in accordance with the prescribed rules, regulations and statute cannot be less emphasized, rather the same need to be adhered to in letter and spirit, but then, the said violation cannot lead to its losing the character as an entity existing solely for the purpose of education.*

5.1.9 The sole reason for denying exemption is that guidelines laid down by AICTE Regulations have not been followed with respect to admissions to NRI quota and interest of unsuspecting innocent and uninformed students has been harmed. As brought out above, the AICTE Act does not even apply to the case of the appellant. It is also not the case of the Assessing Officer that no education has been imparted or profits have been siphoned off. As mentioned earlier, no adverse inference has also

been given as regards fee concession/ scholarships given to students, details of which are available on record whereas the Hon'ble Supreme Court in the case of P.A. Inamdar v. State of Maharashtra [(2005) 6 SCC 537] have held that differential fee structure is allowable pay higher fees could be charged from richer students with the purpose of subsidising the students from economically weaker section.

5.1.10 In view of the discussion above, the denial of exemption under section 11 and 12 by the Assessing Officer cannot be sustained. The Assessing Officer is directed to allow exemption under section 11 and 12 with all consequential benefits. Grounds of appeal number is 1 to 6 are allowed.”

8. The Revenue could not rebut the aforesaid finding by placing contrary evidence. Therefore, we do not see any reason to interfere in the findings of Ld.CIT(A), the same is hereby affirmed. Hence, Ground No.1 of the Revenue is dismissed.

9. Ground No.2 is a prayer to add, alter or amend any ground of appeal, no such leave is sought during the course of hearing hence, this Ground No.2 raised by the Revenue is also dismissed.

10. 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 30th September, 2021.

Sd/-

**(DR. B.R.R.KUMAR)
ACCOUNTANT MEMBER**

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