

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

(THROUGH VIDEO CONFERENCING)

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA Nos.3369 & 3370/Del/2018
Assessment Years : 2013-14 & 2014-15**

DCIT, Circle-1(1)(E), Room No.2418, 24 th Floor, E-2 Block, Pratyakshkar Bhawan, Dr. Shyama Prasad Mukherjee Civic Centre, Jawaharlal Nehru Marg, New Delhi-110002	vs	DLF Qutab Enclave Complex Educational Charitable Trust, 9 th Floor, DLF Centre, Sansad Marg, New Delhi-110001
		PAN-AAATD0852D
APPELLANT		RESPONDENT

Appellant by	Ms. Nidhi Srivastava-CIT-DR
Respondent by	Sh. R.S. Singhi, CA & Sh.Satyajeet Goel, CA
Date of Hearing	06.10.2021
Date of Pronouncement	07.10.2021

ORDER

Per Sanjay Garg, Judicial Member :

The both appeals have been preferred by the Revenue against the order dated 13.02.2018 of the Ld. Commissioner of

Income Tax (Appeals)-40, New Delhi (hereinafter referred to 'CIT(A)') for the Assessment Years 2013-14 and 2014-15 respectively. The Revenue has raised following grounds of appeal for the Assessment year 2013-14:-

“Whether on the facts and in circumstances of the case and in law, Ld. CIT(A) has erred in law in allowing the assessee the benefit of exemption u/s 11 & 12 of the Act ignoring the fact that though the objects of the assessee society may seem to be charitable, yet the activities carried out by the society, which yielded income to it are commercial in nature.”

2. A perusal of the above ground of appeal reveals that the issue involved in this case is as to whether the assessee is entitled to the benefit of the exemption u/s 11 r.w.s. 12 of the Income Tax Act, (hereinafter referred to 'the Act') for the year under consideration.

3. At the outset, the ld. Counsel for the assessee has brought out attention to the impugned order of the Ld. CIT(A) to submit that the Ld. CIT(A) in para 4 of the impugned order has mentioned that the issue is covered by the decision of the ITAT in assessee's case for the Assessment Years 2002-03, 2005-06 to 2008-09, 2009-10 and 2011-12. The Ld. CIT(A) has also

reproduced the relevant part of the order of the Delhi Bench of the ITAT in the case of the assessee for AY 2011-12 passed in ITA No.6615/Del/2015 for the sake of ready reference is reproduced hereunder as under:-

"4.1.2 Hon'ble ITAT, Delhi Bench "F" in appellant's own case for assessment year 2011-12 in ITA No.6615/Del/2015 have held as under:

"4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, in AY 2009-10, the coordinate Bench of the Tribunal vide an order dated 20.08.2014 passed in assessee's own rejected the appeal filed by the Revenue denying the benefit of exemption under sections 11 & 12 of the Act. It is also not in dispute that there is no change in the facts and circumstances of the case during the year under assessment.

In the backdrop of the aforesaid undisputed facts and circumstances of the case, when we examine the assessment order passed by the AO and grounds of appeal raised by the Revenue, it is transpired that present appeal has been filed, just for sole reason that "the decisions rendered by the Tribunal in assessee's own case for AY 2009-10 has not been accepted by the department and appeal has been filed in the Hon'ble High Court." This trend of filing appeal is not only disappointing but leads to the multiplicity of the litigation because otherwise no substantial illegality or perversity has been pointed out by the Revenue.

6. Not only this decision rendered by the Tribunal has further been affirmed by the Hon'ble High Court of Delhi in ITA No.626/2012 order dated 27.02.2013, copy of which is available at pages 4 to 6 of the paper book, by making following observations:-

" The respondent had challenged the said order of cancellation of registration before the Tribunal on the ground that the Director of Income-tax (Exemptions) did not have the power to cancel a

registration under section 12A prior to 01.06.2010 which was the date on which an amendment was brought about in section 12AA(3). Section 12AA(3) reads as under:-

"(3) Where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A(as it stood before its amendment by the Finance (No.2) Act, 1996 (33 of 1996) and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution. ?

However, the words- "or has obtained registration at any time under section 12A (as it stood the before its amendment by the Finance (No.2) Act, 1996 (33 of 1996)" were inserted by virtue of the Finance Act, 2010 with effect from 01.06.2010. This meant that the power to cancel the registration was conferred under section 12AA(3) only with effect from 01.06.2010. This is exactly what has been held by this court in DIT v. Mool Chand Khairati Ram Trust-339 ITR 622 (Del) This would be clear from the observations to the following effect:-

"7. From the conjoint reading of sub-section (1) clause (b) and sub-section (3) of section 12 A A, it would be seen that the cancellation of the registration was provided where the registration was granted under clause (b) of sub-section (1). Further cancellation under sub-section (3) was also provided where the registration was obtained at any time under section 12A (may be under clause (a) or clause (aa) of sub-section (1) of section 12A). But this power of cancellation of registration obtained under section 12A came to be incorporated by way of amendment introduced by the Finance Act, 2010 with effect from 1st June, 2010. That being the interpretation of sub-section (3), it is amply clear that the power to cancel the registration once granted was only confined to the registration granted under clause (b) of sub-section 1 of section 12AA till before 1st June, 2010 of course, now with effect from 1st June, 2010, the power vests with the Commissioner even to cancel the registration granted under any of the clauses of sub-section (1) of section 12A. In that view of interpretation, we are of the considered view that there was no power vested with the Commissioner to cancel or withdraw the registration granted to the assessee under section 12A(a) in the year 1974."

Therefore, the Tribunal was right in holding that the order dated

31.12.2009 passed by the Director of Income-tax (Exemption) cancelling the registration of the respondent under section 12A was invalid inasmuch as the Director Income-tax (Exemptions) did not have the jurisdiction to do so till 01.06.2010 when the amendment was introduced in section 12AA(3) as indicated above.

8. In view of what has been discussed above and following the order passed by the coordinate Bench of the Tribunal affirmed by the Hon'ble Delhi High Court and the fact that there is no change in the facts and circumstances in case at hand nor there is any change in the objects and activities of the society, we find no illegality or perversity in the impugned order passed by the Id. CIT (A), hence the present appeal filed by the Revenue is hereby dismissed."

4.1.3. *Since facts of the case are similar to those for the earlier assessment years as well as assessment years **2011-12** and **2012-13**, respectfully the decision of the Hon'ble ITAT, Delhi in appellant's own case for assessment year **2011-12**, the Assessing Officer is directed to allow exemption under section with all consequential benefits. Grounds of appeal nos. 1 to 7 are **allowed.**"*

4. In the light of the above decision of the Co-ordinate Bench of the Tribunal in the assessee's own case, in the absence of any material change in the factual matrix, we hereby decline to interfere with the order of Id. CIT(A)

5. In the result, the appeals of the Revenue are dismissed.

Order was pronounced in the Open Court on 07/10/2021.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER
Delhi; Dated: 07/10/2021.

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Shekhar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI