

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

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

**I.T.A. No. 1688/DEL/2018 (A.Y 2013-14)**

**(THROUGH VIDEO CONFERENCING)**

ACIT (E) Circle-1(1) Room No. 2418, 24 <sup>th</sup> Floor, E-2, Civic Centre, New Delhi <b>(APPELLANT)</b>	Vs	J D Tytler School Society, 869, East Park Road, Karol Bagh, New Delhi AAATJ0755F  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Vivek Vardhan, Sr. DR</b>
<b>Respondent by</b>	<b>Sh. Manish Kumar, Adv</b>

<b>Date of Hearing</b>	<b>05.10.2021</b>
<b>Date of Pronouncement</b>	<b>11.10.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order dated 11/12/2017 passed by CIT (A)-40, Delhi for assessment year 2013-14.

2. The grounds of appeal are as under:

*“1. On the facts and in circumstances of the case and in law, Ld CIT(A) has erred in ignoring that the assessee society has not taken the receipt on account of development fund in the Income and expenditure Account rather it was taken directly to balance sheet.*

*2. On the facts and in circumstances of the case and in law, Ld CIT(A) has erred in ignoring the fact that the assesses like any charitable or religious institutions are governed by almost the separate or independent provisions of section 11, 12, 12A, 12AA & 13 and these provisions are independent code in*

*itself in chapter III of the Income Tax Act, 1961. The Income and Expenditure is computed on the basis of application of income for charitable or religious purposes and the deduction is allowed of the entire expenditure including the capital expenditure for purchase of capital assets u/s 11(1).*

*3. On the facts and in circumstances of the case and in law, Ld CIT(A) has erred in allowing the benefit of exemption u/s 11 & 12 of the Act ignoring the fact that the assessee society was involved in violating the rules/guidelines framed in the matter.*

*4. On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in allowing the appeal of the assessee ignoring the fact that in the case of charitable or religious institutions, the assessee is not eligible for any type of depreciation as the entire expenditure for the purchase of capital assets is allowed as a deduction and the same is treated as application of income u/s. 11(1) and claiming depreciation on the same capital assets is a double deduction and is not as per law as these capital assets are not used for the purpose of business of profession as provided u/s 32(1).*

3. The assessee Society is running JD Tytler School since 1954 and is registered u/s 12A(a) of the Income Tax Act, 1961 vide order dated 28/1/1980. The Society has also been granted Certificate u/s 80G (5)(vi) of the Act up to period 31/3/2011. The School run under the Society is affiliated to CBSE and the main and exclusive object of the assessee society is to provide education. Till the scrutiny Assessment Year 2008-09, the benefit of Section 11 & 12 granted consistently to the assessee society for the same activity and the same objects. The return of income declaring income of Rs. NIL was filed on 27/9/2013. The Assessing Officer passed assessment order dated 10/3/2016 thereby making addition of Rs. 88,15,950/- towards development fund, Rs. 10,93,42,735/- as regards total receipts and thus assessed the income at Rs. 9,90,08,122/- less: (Expenditure allowed as per I & E account excluding depreciation).

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

5. As regards Ground No. 1 to 3, the Ld. AR submitted that the same is covered in favour of the assessee by the order of Tribunal as well as by the decision of the Hon'ble High Court in assessee's own case for Assessment Year 2012-13 vide order dated 8/4/2015 in ITA No. 424/2014. As regards Ground No. 4 relating to disallowance of depreciation amounting to Rs. 21,61,384/-, the Ld. AR relied upon the order of the CIT(A) as well as the decision of the Hon'ble High Court in case of DIT Vs. Indraprasth Cancer Society and Rajastani & Gujarati Charitable Foundation Poona (2018) 402 ITR 441 (SC).

6. The Ld. DR relied upon the assessment order for all the issues contested by the Revenue.

7. We have heard both the parties and perused the material available on record. As regards Ground No. 1 to 3, during the course of assessment, the development fund receipts amounting to Rs.88,15,915/- were directly taken to the balance sheet as liability and the same were added back. As per the direction of the Directorate of Education, the school is entitled to collect development fee up to 10 to 15% of tuition fee. The issue is squarely covered in assessee's own case for Assessment Year 2012-13 by the Hon'ble High Court's decision. Hence, Ground No. 1 to 3 are dismissed. As regards Ground No. 4, the CIT(A) has relied upon the decision of the Hon'ble Delhi High Court in case of DIT (Exemption) Vs. Inderprastha Cancer Society, ITA No. 240, 348, 406, 4633 and 464/2014 vide order dated 18/11/2014 wherein it has been held that the assessee is eligible for depreciation in the case of charitable or religious institutions also. As regards the amendment to Section 11 which is effective from Assessment Year 2015-16 and subsequent years, the depreciation has to be allowed in relation to income from property which are in respect of charitable purposes. The Hon'ble Supreme Court in case of CIT vs.

Rajasthani & Gujarati Charitable Foundation Pooona (supra) held that the depreciation in respect of cost of the assets allowed to the assessee as expenditure is allowable. Thus, the issue contested by the Revenue is squarely covered against the Revenue in light of the Hon'ble Supreme Court decision in case of Rajasthani & Gujarati Charitable Foundation Pooona (supra). Ground No. 4 is dismissed. Hence, the appeal of the Revenue is dismissed.

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

**Order pronounced in the Open Court on this 11<sup>th</sup> Day of October, 2021**

**Sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 11/10/2021

*R. Naheed \**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI