

**IN THE INCOME TAX APPELLATE TRIBUNAL
“DELHI” BENCH, DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
& SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos.6407 & 6408/DEL/2018)

(निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15)

ITO(E), Ward-1(2) Room No. 2417, 24 th Floor, E-2, Block, Pratyakash Kar Bhawan, Dr. S.P. Mukharjee Civic Centre, New Delhi.	बनाम/ Vs.	Indian Youth Centre Trust, Circular Road, Chankapuri, New Dlehi.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATI0141C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Kumar Padampani Bora, Sr. DR
प्रत्यर्थी की ओर से/Respondent by :	Shri Ved Jain, Adv.

सुनवाई की तारीख / Date of Hearing	30/11/2021
घोषणा की तारीख /Date of Pronouncement	07/12/2021

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals have been filed at the instance of the Revenue against the respective orders of the Commissioner of Income Tax (Appeals), Delhi ('CIT(A)' in short), dated 24.07.2018 concerning the assessment years 2013-14 & 2014-15 respectively arising from the respective assessment orders passed u/s 143(3) of the Act dated 30/06/2016.

2. The issue involved being common. Both the appeals have been heard together and are being disposed of by this common order. The grounds of appeal raised by the Revenue in ITA No.6407/Del/2018 is reproduced hereunder for ready reference: -

- (i) "On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in ignoring that activities of the assessee of running Hostel/Canteen and providing Auditorium & Conference Hall on hire in lieu of fee to everyone and was not restricted to members only, was purely commercial in nature and first proviso to section 2(15) of the Act was rightly invoked in the case of the assessee and consequently benefits of exemption of section 11 & 12 rightly denied.
- (ii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made on account of prior expenses, interest on service tax and receipts of project funds.
- (iii) On the facts and in the circumstances of the case and in law, Ld. CIT(A) has erred in not appreciating the fact that as the exemption u/s 11 & 12 is not available to the assessee, it is assessable as normal AOP and as the cost of the asset has already been allowed in earlier years, depreciation on the same is not allowable to the AOP. The facts are distinguishable from the ratio as laid down by the Apex Court in the case of Rajasthan Gujarati Charitable Foundation, Poona as in the present case AO has treated assessee as AOP and not considered it as charitable organization within the meaning of provisions of section 2(15) of the IT Act."

3. The assessee company is a trust registered u/s 12A of the Act and is also registered u/s 80G(5)(vi). The return filed by the assessee trust was subjected to the scrutiny assessment. In the course of the scrutiny assessment the Assessing Officer took a view that the receipts of income in relation to hiring of auditorium and conference hall and running of Hostel/canteen activities are in the nature of business receipts and thus, would fall outside the ambit of expression charitable purpose contemplated u/s 2(15) read with proviso thereto of the Act. The AO, accordingly, denied exemption claimed by the trust u/s 11 of the Act and consequently made an addition of Rs. 1,84,38,140/- treating such income to be arising as normal AOP.

4. Aggrieved by the action of the AO the assessee preferred appeal before the CIT(A).

5. The CIT(A) in the first appeal stage found merit in the plea raised by the assessee for eligibility of deduction u/s 11 of the Act

and consequently reversed the action of the AO and restored the position claimed by the assessee. The relevant operative para of the order of the CIT(A) is reproduced hereunder for ready reference: -

“5. Determination.

5.1 Ground of appeal no. 1 is general in nature and does not require separate adjudication.

5.2 Grounds of appeal nos. 2 to 6 challenge the denial of exemption u/s 11 by invoking the proviso to section 2(15). Grounds of appeal nos. 10, 11 and 12 which have been admitted as additional grounds of appeal as per discussion in paras 2.1 to 2.2 challenge the disallowances/additions made consequent to withdrawal of exemption under sections 11 and 12. Since these grounds of appeal are interlinked, these are being adjudicated together.

5.2.1 The Assessing Officer noted that the main source of receipts of the society were from hostel/canteen activities and booking of Auditorium and Conference Hall which were held to be commercial in nature. It was also noted that the expenses are correlating to these sources of income only. It was also noted that the assessee had subjected these receipts to service tax which clearly means that these receipts have been admitted by the assessee itself as business/commercial receipts. Hence, it was held that these activities attract amendment to section 2(15) which is applicable from assessment year 2009-10 onwards.

5.2.2 The appellant has, inter alia, submitted that the services of the assessee are not provided as any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business for a cess or fee or any other consideration. Reliance has also placed on the decision of the Hon'ble ITAT in appellant's own case for assessment years 2009-10, 2010-11, 2011-12 and 2012-13 where exemption has been allowed. Reliance has also been placed on the order of the Hon'ble Delhi High Court in appellant's own case for assessment year 2011-12.

5.2.3 I have considered the assessment order and the submissions of the appellant. I have also perused the orders of my Ld. Predecessors for assessment years 2010-11, 2011-12 and 2012-13. I have also referred to the order of the Hon'ble ITAT in appellant's own case for assessment years 2009-10, 2010-11, 2011-12 and 2012-13 as also the order of the Hon'ble Delhi High Court in the case of the assessee for assessment year 2011-12.

5.2.4 While deciding the appeal for assessment year 2009-10, the Hon'ble ITAT have held as under:

“6.4 We have also taken into consideration, the objections posed by the AO to the advertisement which was placed by the assessee in order to invite attention of the NGOs etc. to utilize the hostel facilities and auditorium and seminar facilities in order to promote leadership activities for the youth of the country and find ourselves in harmony with the findings of the CIT(A) as it does not lead to the conclusion that the activities are in the nature of commercial activity. Merely advertising the fact that facility of hostel, seminar halls, auditorium etc. can be used by organizations interested in having leadership programs for the benefit of youth does not make the activity a commercial activity. We have also taken into consideration the arguments advanced by the assessee before us in support of the impugned order which are found supported by the explanation dttd. 19.12.2011 afforded by the assessee before the AO, copies placed at pages 510-516 of the paper book in response to show cause notice dated 19.12.2011 wherein apart from relying upon the letters dated 8.8.2011, 8.9.2011, 13.10.2011, 20.11.2011, 28.11.2011, 5.12.2011 and 12.12.2011 the assessee as an illustration has made reference to a certificate course conducted by the trust for the duration 01st December to 23rd December 2011 which was held for unemployed youth and participants who were stated to be from different parts of India as well as from abroad including girl participants come to the centre to meet them and canteen staff had been instructed not to stop them from taking snacks to the centre to meet them and canteen staff had been instructed not to stop them

from taking snacks and lunch if they so want, keeping in mind the fact that the location of the trust was not close to the commercial areas where the guardians of these girls visiting them could have gone. The mere affording of such a courtesy does not lead to the conclusion that the trust was operating on commercial lines. In the courtesy so afforded if the lady Inspector accompanied by two tax advisors were allowed to have lunch/snacks without requiring them to show any identification in no way detracts from the merits of the case. On a consideration of the facts. Evidences, material and arguments advanced by the parties before the Bench, we do not find any infirmity arrived at by the CIT(A) in the impugned order which warrants our interference. We have taken into consideration the decisions relied upon by the AO and find no fault in the conclusion of the CIT(A) who has held the judgment of Jalandhar Development Authority to be inapplicable on facts as the said authority was engaged in selling land after development could not prove its objects to be charitable. Similar was the position for Punjab Urban Planning & Development Authority who was found to be functioning on commercial lines. In the case of Indian Chamber of Commerce, the surplus was available for distribution which is not a fact in the present case. The judgment rendered in the case of MCD vs. Children Book Trust was also not applicable as it was rendered interpreting Municipal Corporation of Delhi Act for the purpose of house tax.

6.5 Accordingly on account of the arguments detailed reasoning on facts and law discussed at length in the earlier part of this order, we find no good reason to interfere with the finding arrived at in the impugned order. Being satisfied by the reasoning and finding of the CIT(A), Ground No. 1 of the Revenue is rejected.”

5.2.5 Since the facts of the case are similar to those for assessment year 2009-10 as also assessment year 2011-12 wherein on identical facts and following the order for assessment year 2009-10, exemption has been allowed by the Hon'ble ITAT and the same had been upheld by the Hon'ble Delhi High Court:

“The Assessing Officer (AO) felt that since the assessee were engaged in providing commercial activity, the proviso to Section 2(15) was attracted. The ITAT ruled on the basis of this Court's judgments in India Trade Promotion Organization vs. DGIT 2015 (374) ITR 333 and Institution of Chartered Accounts vs. DGIT(E) 2013 (358) ITR 91 (Del) that the mere circumstance of collection of such amounts did not result in the assessee losing their essential character of being established for charitable purposes.

We are of the opinion that the ITAT's decision is sound in law and facts. No substantial question of law arises. The appeals are accordingly dismissed.”

5.2.6 In view of the discussion above and respectfully following the decision of the Hon'ble Delhi High Court and the decision of the Hon'ble ITAT in appellant's own case, the Assessing Officer is directed to allow exemption under section 11 to the assessee with all consequential benefits. Grounds of appeal nos. 2 to 6 are allowed.”

6. Aggrieved by the relief granted by the CIT(A) the Revenue preferred appeal before the Tribunal.

7. When the matter was called for hearing the Ld. Counsel for the assessee at the outset submitted that the controversy involved is no longer *res-integra*. The issue is squarely covered in favour of the assessee in its own case by the earlier years order of the Tribunal in several years as referred to by the CIT(A) in para 5.2.3

of its order. The Ld. Counsel thus, submitted that no interference with the order of the CIT(A) is called for in the circumstances.

8. The Ld. DR for the Revenue Shri Kumar Padampani Bora, on the other hand, submitted that the receipt by the trust in the instant case are commercial in nature and does not arise out of charitable activities *per se* and therefore, the action of the AO cannot be faulted. The Ld. DR thus, submitted that the relief granted by the CIT(A) is opposed to the basic scheme envisaged in the Act for charitable activities.

9. We have carefully considered the rival submissions as pointed out on behalf of the assessee. The issue is squarely covered in favour of the assessee. On a broader reckoning, it was held by the coordinate bench that the aforesaid income of the trust is incidental to attainment of the main objects of the trust that is to establish, maintain and conduct one or more National or International Youth Centers in India for the benefit of foreign students and youth delegations as well as individuals visiting India which activity has been recognized as charitable activity and the registration has been granted to the assessee by the Income Tax Department.

10. The issue having been decided in favour of the assessee in identical facts situation in the earlier years, we do not see any reason to depart there from. We thus, see no merit in the appeal of the Revenue.

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

12. The appeal in ITA No. 6408/Del/2018 concerning AY 2014-15 also involves similar controversy in parity with the reasoning adopted in the earlier paragraphs. The appeal of the Revenue in this case also is *devoid* of any merit. We, thus, decline to interfere.

13. In the result, both the captioned appeals of the Revenue are dismissed.

This Order pronounced in Open Court on 07/12/2021

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER
Delhi: Dated 07/12/2021

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

KAVITA ARORA, SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI /
DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order,

ASSISTANT REGISTRAR
ITAT, Delhi