

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. Saktijit Dey, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 6261/Del/2018 : Asstt. Year : 2009-10

Apparel Exports Promotion Council, A-223, Okhla Industrial Area, Phase-I, New Delhi	Vs	ACIT(E), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACA5150G		

Assessee by : Sh. Aditi Gupta, CA

Revenue by : Sh. Satpal Gulati, CIT DR

Date of Hearing: 19.01.2022

Date of Pronouncement: 28.01.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-40, New Delhi dated 05.07.2018.

2. Following grounds have been raised by the assessee:

"1 (a) That the learned CIT(A) erred in law and on facts in denying the refund of taxes amounting to Rs. 3,93,59,590 by misinterpreting the proviso (b) to section 240 of the Act.

(b) That in this connection, the learned CIT(A) erred in law and on facts by ignoring the original appeal effect order under section 250/143(3) of the Act dated 04.03.2013 passed by Asstt. Director of Income Tax (E), Investigation Circle - 1, Delhi wherein income was determined at NIL and relying on the subsequent infructuous appeal effect order u/s

250/143(3) of the Act dated 23.11.2016 without giving credence to the fact that the Hon'ble Delhi High Court has allowed exemption under section 11 of the Act to the appellant."

3. The assessee filed return of income on 30.09.2009 declaring an income of Rs.5,86,76,420/-. The same was assessed u/s 143(3) of the Income Tax Act, 1961 vide order dated. 30.12.2011 assessing total income at Rs.11,01,14,409/-. Subsequently, on receipt of the order of Id. CIT(A) dated 30.11.2012 an order has been passed u/s 143(3) determining the total income at Rs.5,86,76,420/-. Vide order dated 04.03.2013, the ADIT(E) passed an order determining the assessed income at Rs. "NIL".

4. The Id. CIT(A) vide order dated 05.07.2018 held that as per the order of the Hon'ble Jurisdictional High Court in assessee's own case in ITA No. 816/2016 C.M. APP 43263 & 264/2016 order dated 22.11.2016, the assessee is eligible for exemption u/s 11 of the Act.

5. Consequent to the order of the Hon'ble High Court/CIT(A), the assessee is eligible to claim the income as exempt u/s 11 and not liable to pay any tax. It is the function of the sovereign authority and the official involved that due taxes have to be collected and any tax which has been paid over and above of the tax payable is liable to be refunded. While holding that the assessee is exempted from tax, at the same time keeping the amounts paid by the assessee is antithesis. Non-adherence to this principles, would lead to a situation of making the order of the Hon'ble Jurisdictional High Court *otiose*. In the result, the appeal of the assessee is allowed.

6. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 28/01/2022.

Sd/-

(Saktijit Dey)
Judicial Member

Dated: 28/01/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR