

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.6828/DEL/2014
Assessment Year 2009-10

M/s. Khalsa Montessori Senior Secondary School, Near Exhibition Ground, Bulandshahar.	vs.	DCIT, Circle-Bulandshahar
TAN/PAN: AAAAK2826P		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Ms. Anupama Singla, Sr.DR		
Date of hearing:	30	05	2022
Date of pronouncement:	07	06	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals), Meerut ('CIT(A)' in short) dated 31.10.2014 arising from the assessment order dated 28.03.2013 passed by the Assessing Officer (AO) under Section 143(3) r.w. Section 147 of the Income Tax Act, 1961 (the Act) concerning AY 2009-10.

2. Briefly stated, the assessee is a society registered under Societies Registration Act, 1860 engaged in imparting of education activities. The society is registered under Section 12A of the Act. The assessee filed its return of income declaring total income of Rs.32,63,419/- and claimed exemption under Section 11 and 12 of the Act. While framing the assessment, the Assessing

Officer made certain additions and disallowances and assessed the income at Rs.86,73,170/- and denied the exemption thereon under Sections 11 and 12 of the Act as also under Section 10(23C)(iiiad) of the Act. The income so assessed was charged to tax on maximum marginal rate.

3. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) has dealt with grievance of the assessee as under:

3. Decision on grounds of appeal Nos. 1&2:

The appellant is a society registered under the Societies Registration Act and is also registered u/s 12A of the IT Act 1961. For the assessment year 2009-10 the appellant did not file its return under section 139(1) of the IT Act. Subsequently, notice under section 148 was issued to the appellant requiring it to find its return of income. Finally, the appellant filed its return of income on 20.9.2012. In the said return, the appellant had shown a gross total income of Rs. 32,63,419/- which was however claimed as exempt under section 10 and 12A of the IT Act 1961. In the grounds of appeal the appellant has not raised the issue of exemption under section 10, so no comments are being made on this point although the assessing officer has clearly demonstrated in the assessment order that the appellant is not entitled for exemption under section 10.

3.2 *The AO in his assessment order had quoted extracts from the assessment order of the immediately preceding assessment year, that is, assessment year 2008-09. In the assessment year 2008-09, the AO had demonstrated that the excess of income over expenditure was more than 15% in the case of the appellant and therefore it was not entitled for exemption under section 11 of the IT Act 1961. Since the facts and circumstances are similar in the*

assessment year 2009-10 also the AO came to a conclusion that the income of the appellant is not exempt under section 11 of the IT Act 1961.

3.3 During the course of appeal proceeding, the AR of the appellant stated in his written submission firstly that merely because of the fact that the appellant had quoted the wrong section that is section 12 A instead of section 11 the AO should not have denied the exemption to the appellant and secondly that AO should not have denied the exemption by considering the facts of previous assessment years as each assessment year should be independently considered.

3.4 I have gone through the assessment order as well as the written submission of the AR. First of all, it is obvious that the appellant had not filed its return of income on or before the due date prescribed under section 139(1) and therefore in view of section 139(4A) the appellant was not entitled for exemption u/s 11. Secondly, even on facts it is obvious that the surplus of income over expenditure in the case of the appellant is more than 15% and therefore it is not entitled for exemption under section 11 of the IT Act 1961. On the basis of above facts, I am of an opinion that the AO has rightly denied exemption under section 11 to the appellant. The ground of appeal Nos. 1&2 are therefore dismissed.

4. Deciding decision on grounds of appeal No.3:

This ground relates to addition of Rs. 24,61,996/- on the ground that the accrued interest on fixed deposit receipts was-not declared as income from other sources by the appellant. The gist of submission of the AR on this point is that the appellant is maintaining its books of accounts on cash basis and therefore the interest income will be taken into account-in the year in which the

FDRs are matured. I have considered the rival submissions as above. Even if the appellant is maintaining its books of account on cash basis, as per the norms of accounting, interest income has to be accounted for on accrual basis and not on receipt basis, although the business income may be accounted for on cash or receipt basis. I have therefore come to a conclusion that the assessing officer has rightly added this amount to the total income of the appellant for the assessment year 2009-10.

5. Decision on grounds of appeal No.4:

This ground relates to disallowing depreciation of Rs. 18,79,013/- on fixed assets. During the course of assessment proceedings the AO asked the appellant that since it has claimed exemption in respect of assets in earlier years the depreciation on the same should be disallowed. In its response, the appellant had submitted that fixed assets has never been claimed against revenue and therefore no part of depreciation can be disallowed. During the course of appeal proceedings, the AR of the appellant had more or less repeated the same arguments.

5.2 I have considered the rival submissions. It seems that the AO is taking a contradictory stand on this point. The AO has discussed in detail in his assessment order that income of the appellant is not exempt either under the provision of section 10 or section 11. In the concluding line of the assessment order the AO has mentioned that he is assessing the income of the appellant as income from business under section 28 of the IT Act 1961. In this situation if according to the AO the income of the appellant is simple business income then it is entitled for depreciation on the fixed assets owned and used by it for its business during the concerned previous year. The assessing officer has tossed aside the arguments of the AR by simply writing that the explanation is not

satisfactory and the assessee has failed to furnish evidence in this regard. The AO had nowhere mentioned in his order as to what evidence was required to be furnished by the appellant on this matter. The AO has not established that the capital assets on which depreciation has been claimed have not been owned and used for the purpose of business by the appellant in the concerned previous year. On the basis of above facts I have come to a conclusion that the appellant is entitled to depreciation if its income is considered to be assessed as normal business income. The grounds of appeal number four is accordingly allowed and addition of Rs. 18,79,013/- is deleted.

6. Grounds of appeal No.5:

This ground relates to the fact that while computing tax on the total income of the appellant the AO did not allow the benefit of basic exemption. The AO is directed to consider the claim of the appellant as per the relevant provision of law and as per rate of taxation prescribed for Assessing Officer during the concerned A.Y. The ground of appeal number five is considered allowed for statistical purposes.”

4. Aggrieved by the denial of relief by the CIT(A), the assessee preferred appeal before the CIT(A).

5. When the matter was called for hearing, none attended on behalf of the assessee. It is noticed from the case records that several opportunities were given to the assessee in the matter without any avail. Accordingly, the matter was proceeded ex-parte in the absence of the assessee.

6. On perusal of the first appellate order, the CIT(A) has observed that the assessee has not filed its return of income before

the date prescribed under Section 139(1) and therefore in view of Section 139(4A), the effect of Sections 11 and 12 cannot be given in the case of Assessee herein. It was further noticed that the surplus of income over expenditure exceeds 15%. In other words 85% of the income derived from charitable activity has not been allegedly applied for charitable objects and thus the assessee is not entitled to relief available under Sections 11 and 12 of the Act.

7. In the absence of any rebuttal of such allegations, no interference with the findings of the CIT(A) is called for. The CIT(A) has given findings on merits which are self explanatory and in the absence of relevant facts to dislodge the factual finding, we are not inclined to interfere with such findings in *ex-parte* proceedings. Consequently, we decline to interfere with the order of the CIT(A).

8. In the result, the appeal of the assessee is dismissed *ex-parte*.

Order pronounced in the open Court on 07/06/2022.

Sd/-
[SAKTIJIT DEY]
JUDICIAL MEMBER

DATED: /06/2022

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER