IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं/.I.T.A Nos.356, 358 to 362/Del/2021
निर्धारणवर्ष/Assessment Years: 2012-13, 13-14,15-16 to 2018-19

DCIT, Central Circle-15, Room No. 245, ARA Centre, Jhandewalan Extn., New Delhi.	बनाम Vs.	G.R. Goenka Education Society Sector-B, Pockets 8 & 9, Vasant Kunj, New Delhi.
		PAN No. AAATG0617M
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

राजस्वकीओरसे /Revenue by	Shri Amit Goel, CA
निर्धारितीकीओरसे /Assessee by	Shri Surender Pal, CIT (DR)

सुनवाईकीतारीख/ Date of hearing:	08.08.2022
उद्घोषणाकीतारीख/Pronouncement on	29.08.2022

आदेश /O R D E R

PER C.N. PRASAD, J.M.

All these appeals are filed by the Revenue against different orders of the Ld. Commissioner of Income Tax (Appeals)-26, New Delhi dated 17.08.2020 and 29.12.2020. In all these appeals the Revenue challenged the orders of the Ld. CIT(Appeals) in allowing the exemption u/s 11 to the Assessee Education Society.

2. At the outset, the Ld. Counsel for the assessee submits that in so far as the appeals in ITA Nos. 356, 358 and 359/Del/2021 filed for the assessment years 2012-13, 2013-14 and 2015-16 are concerned the

Revenue effect is less than Rs.50 lacs and in view of the Circular No. 3/18 dated 11.07.2018 issued by CBDT the appeals are not maintainable.

3. The Ld. Counsel for the assessee further submits that even otherwise on merits the issue in all these appeals is decided in favour of the assessee by the Tribunal for the AY 2009-10 in ITA No. 3572/Del/2013 dated 02.02.2017 and this order of the Tribunal was also affirmed by the Hon'ble Delhi High Court in ITA No. 871/Del/2017 dated 30.10.2017 by dismissing the appeal filed by the Revenue. The Ld. Counsel further submits that the Tribunal also decided the issue in favour of the assessee for the assessment years 2005-06, 2010-11 to 2012-13 and 2014-15 and the orders of the Tribunal are placed on record.

4. The Ld. DR fairly submits that the issue in appeal i.e. whether the Assessee Society is entitled for exemption u/s 11/12 or not was decided in favour of the assessee by various orders of the Tribunal as well as the Hon'ble High Court in assessee's own case.

5. We have heard the rival submissions, perused the orders of the authorities below and the decisions of the Tribunal and the Hon'ble High Court in assessee's own case.

6. On perusal of the orders of the Tribunal and the Hon'ble High Court, we noticed that the issue as to whether the Assessee Education Society violated the provisions of section 13(1)(c) thereby denying the exemption u/s 11 & 12 came up for consideration in assessee's own case

for the AY 2009-10 and the Tribunal in ITA No. 3572/Del/2013 dated 02.02.2017 upheld the order of the Ld. CIT(Appeals) in holding that there is no violation u/s 13(1)(c) of the Act and the assessee is entitled for exemption u/s 11 and 12 of the Act. While holding so the coordinate bench of the Tribunal observed as under:

> *"11. On careful consideration of above rival submissions and careful perusal of the record before the Tribunal, inter alia, impugned order, assessment order, paper book of the assessee spread over 13 pages and respectful consideration of the ratio of the decision cited at bar by the parties, we are of the view that undisputedly, the registration granted to the assessee u/s 12A of the Act has not been cancelled or withdrawn by the DIT(E) or any other competent authority thus it is in force till date.*
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> *12. We further point out that the Division Bench of the Hon'ble High Court of Delhi in the order dated 29.05.2009 has vacated that stay order granted by the Ld. Single Judge and permitted Goenka Institute of Education and research to use the name "Goenka Public School" with respect to the schools daring pendency of the suit subject to directions in para 28 of said judgment.*
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> *13. On specific queries from the bench neither the Ld. AR nor the Ld. DR could assist the Tribunal about the final decision in this case of Trade Mark dispute between the Goenka Institute of Education and Research and Shri Anjani Kumar Goenka (A.K. Goenka) thus we safely presume that the final verdicts in this case is still awaited and in absence of any other final verdict, the Ld. CIT(A) was correct in holding*

that Mr. A.K. Goenka is the owner of the Trade Mark "G.D. Goenka" and thus there is no violation of section 13(1)(c) and 13(3) of the Act.

13.1 Before we part with this issue we observe that in the assessment dated 29.05.2009 para 31 the Hon'ble High Court permitted to use the name "Goenka Public School" to the appellant i.e. Goenka Institute of Education & Research but there is no whisper about Trade Mark "G.D. Goenka" as alleged by the AO for holding violation of section 13(1) or 13(3) of the Act. We also note that even the AO has, in para 5.0(i) of the assessment order, has noted that the G.D. Goenka is the Trade Mark owned by Shri Anjani Kumar Goenka then giving franchisee by him on the same name to other entities or institutions, who in turn giving royalty cannot be taken as valid basis for alleging violation of sections 13(1) or 13(3) of the Act against the assessee.

14. We have also noted that the AO has allowed exemption u/s 11 of the Act to assessee for AY 2007-08 & 2008-09 in the assessment orders passed u/s 143(3) of the Act thus without any sustainable allegation regarding profit motive and violation of section 13(3) of the Act. We further observe that the AO/Ld. DR could not controverted the fact that the application of income by the assessee by way of expenditure as per Income & Expenditure and capital expenditure for purchase of fixed assets is more than the amount of income and if depreciation is excluded from expenditure then the surplus available will be Rs.13,66,460/- which is very less then due amount of Rs.3,04,55,325/- being 15% of total receipts thus allegation of profit motive cannot be alleged

against the assessee for denying benefit of exemption of section 11 of the Act.

15. At this juncture, we may also point out that the CBDT Circular No. 11/2008 dated 19.12.2008 has manifested that the relief of the poor, education and medical relief will not be hit by the newly inserted proviso to section 2(15) of the Act. We, therefore, are of the opinion that on the above noted factual matrix of the extant case regarding financial activities and application of income/funds by the assessee we decline to accept contention of the AO that the activities of the assessee are commercial in nature and with profit motive. Our above noted conclusion also gets strong support from the decisions of Hon'ble Supreme Court in the case of Adjantar Educational Institution vs. ACIT (supra) and Queens' Educational Society vs. CIT (supra). The AO also alleged that the interest free advances to the Parent society of school i.e. G.R. Goenka Education Society as at the same time it had an outstanding liability of Rs.6.33 crores in the shape of Bank loan taken @ 12.5% per annum interest and it created a deficit in the accounts to create a scenario for charging high fee from the student. On this allegation we are of the view that when these funds have finally reached to Shree Balkrishna Education and Social Welfare Society for construction of school building wherein 600 students of the assessee standing in the rooms constructed as temporary structure on the area intended for playground were to be shifted. We also observe that beside above noted fact that the AO and Ld. DR could not controvert the fact that the parent society transferred the funds to Shri Balkrishna Society which was merged with the assessee society on 26.04.2011

vide order no. RFS/S-2494/68 by the order of the Registrar of societies. In the above given situation, the interest free funds transferred to Shri Balkrishna Society (thought the parents society) having similar charitable objects cannot be taken as valid basis for alleging violation of section 13(3) of the Act and for denying exemption u/s 11 of the Act to the assessee. The ratio of decision of Hon'ble High Court of Delhi in the case of ACME (supra) also gives strong support to the claim of the assessee.

16. On the basis of foregoing discussion, we reach to the logical conclusion that the denial of exemption u/s 11 of the Act by the AO was merely based on the wrong and incorrect appreciation of facts thus the same was rightly demolished by the CIT(A). The First Appellate Authority granted relief to the assessee by taking into consideration right aspects of the case and which is also supported by ratio of the decision of Hon'ble Supreme Court and CBDT Circular No.11/2008 (supra). We are unable to see any ambiguity or perversity or any other valid reason to interfere with the same. Accordingly, ground nos. 1 to 4 of the appellant-Revenue being devoid of merits are dismissed."

7. We also observed that the Hon'ble Delhi High Court in its order dated 30.10.2017 in ITA No. 871/Del/2017 dismissed the appeal of the Revenue and affirmed the order of the Tribunal holding as under:

"2. The findings of the Tribunal, we notice, are that the essential objects of the respondent – assessee continue to be the same i.e. providing education to schools. The Revenue's reliance on Aditanar Educational Institution vs. Additional

Commissioner of Income Tax, (1997) 224 ITR 310 (SC), is of no avail. The ITAT had considered that judgment and analyzed the facts of this case in the light of both the previous judgments as well as the later ruling in Queen's Educational Society vs. CIT (2015) 372 ITR 699, 716 (SC).

3. The Court is of the opinion that there is no merit in the Revenue's appeal; objects for the respondent – assessee remained unaltered. The extent of fees charged by it ipso facto cannot be the basis to conclude that the purpose for which it was set up had changed.

4. The other ground urged was that the goodwill and monetary value of the trade mark, which arose in the course of the respondent's activities, ought to have accrued to it rather than the owner. This, it is stated, amounted to a diversion u/s 13(3) of the Act. The Court is of the opinion that the ITAT's reasoning on this aspect too is merited. Besides, the use of a trade mark per se does not confer an advantage upon the licensee or authorized user – under section 40(2) of the Trade Marks Act, 1999 the benefit of such use accrues to the owner. This aspect too has been considered by a Division Bench of this Court and later affirmed in Formula One World Championship Ltd. vs. CIT (2017) 390 ITR 199 (Delhi).
For the above reasons, there is no merit in this appeal; it is accordingly dismissed."

8. We also noticed that the Tribunal for the assessment years 2005-06, 2010-11 and 2011-12 in ITA No. 4133, 4134 and 4135/Del/2015 dated 04.07.2018, for AY 2012-13 and for AY 2014-15 in ITA No. 3598/Del/2018

dated 07.09.2021 in ITA No. 5043/Del/2015 dated 23.03.2018 decided identical issue in favour of the assessee. Facts being identical respectfully following the above decisions, we uphold the order of the Ld. CIT(Appeals) in all these appeals and reject the grounds raised by the Revenue.

9. In the result, all the appeals of the Revenue are dismissed.

Order pronounced in the open court on 29/08/2022

Sd/-	Sd/-
(G.S. PANNU)	**(C.N. PRASAD)**
PRESIDENT	**JUDICIAL MEMBER**

Dated:29 .08.2022

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi