

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.1401/Del./2020
(ASSESSMENT YEAR : 2014-15)**

**ITA No.1402/Del./2020
(ASSESSMENT YEAR : 2016-17)**

DCIT, Exemption Circle, vs. Bharat Sushamachar Samiti,
Ghaziabad. PO-Kulhan, Sahastradhara Road,
Dehradun – 248 001 (Uttarakhand)

(PAN : AAABB0034D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri George Koshi, CA
REVENUE BY : Shri Kanav Bali, Sr. DR

Date of Hearing : 21.11.2022
Date of Order : 23.11.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These appeals by the assessee are directed against the order of the
1d. CIT (Appeals), Dehradun dated 28.01.2020 for the assessment years
2014-15 & 2016-17.

2. The common ground of appeal taken by the assessee in both the
appeals read as under :-

“Whether on the facts or in law the CIT (A) was justified in allowing
benefit of exemption u/s 11 of the IT Act to the assessee while

activities carried out by the society during the instant assessment year were not found to be covered by any limb of 'charitable purpose' as defined in section 2 (15) of the IT Act, 1961."

3. For the sake of reference, we are referring ITA No.1401/Del/2020 for AY 2014-15.

4. Brief facts of the case are that assessee is a Society registered under the Societies Act as well as under Section 12AA of the Act. It carries out object of education. It has schools in Uttarakhand and Western UP. The ld. Assessing Officer noted the return filed by the assessee on 26.09.2014 declaring 'NIL' income for the assessment year 2014-15 claiming exemption under Section 11 of the Income-tax Act, 1961 (for short 'the Act'). The case of the assessee was selected for scrutiny as limited scrutiny because the receipt of the assessee from foreign donation more than Rs.1 crore. The ld. AO examined the object and the activities of the trust. He examined the annual reports and held that the activities of the trust were carried on for benefit of a particular community and, therefore, it is not carrying on its activity for any charitable purposes as defined under Section 2(15) of the Act. Therefore, according to him, assessee is not entitled to exemption under Section 11 of the Act. Therefore, he considered the total receipt of the assessee at Rs.8,76,86,336/- reduced this by the expenditure incurred by the assessee at Rs.9,77,61,588/- and determined a loss of Rs.2,91,68,000/- as per order

dated 05.12.2016. Such order was passed under Section 143(3) of the Act. The assessee aggrieved with that order preferred an appeal before the Id. CIT (Appeals) wherein he followed the Id. CIT (A), Dehradun's order for AY 2009-10, 2010-11, 2011-12 & 2012-13 in assessee's own case and allowed the appeal of the assessee as under :-

“15. I have considered the facts and circumstances of the case, the observations of the assessing officer and the replies furnished by the appellant assessee. I have also gone through the judgements relied upon' by the assessee to substantiate its contentions. In view of that, the cases discussed as under.

16. On a perusal of the assessment order, it is noticed that the AO has attempted to trace out the history of assessee society from official website of Good News for India and based, his findings on the premise that assessee society runs schools with the motive to evangelize. However, there is no material or data on record to prove that the assessee society under the garb of running school and colleges applied for affiliation with ICSE and UGC has converted Indians into Christianity, particularly, where from the aims and objects of the assessee society, it is apparently clear that it is imparting education and providing help to the orphans without any discrimination on the basis of religion, caste and creed. The assessee society has to be judged according to the rules and regulations under which it was set up in India and whether its activities have been in compliance with the rules and regulations laid out in the Memorandum of Association on the basis of which it was granted registration and exemption under the provisions of the Income Tax Act. The aims and the objectives of the society do not show that the society was created to provide the benefit for any particular community. Furthermore, it is observed from the syllabus of the various school run by the assessee society that the students are being imparted a secular education within the meaning of education as defined by the Hon'ble Supreme Court in the case of Sale Trustee, Lok Shikshan Trust vs. CIT(1975) 101 ITR 235.

17. As far as question of having "Theology" as, a subject in the school and college curriculum is concerned, imparting religious education along with our recognized education is part of the Indian heritage and any society or trust cannot be barred from claiming

exemption u/s 11 of the Act merely because of the fact that it is imparting Theological courses to its students. Many institutions being run by different minorities and religious trust in India are invariably imparting religious education along with recognized curriculum to make the students better Indian. It is also noticed that the New Theological College is imparting education in Theology as per the syllabus of the Senate of Serampore College (University) which is a University set up under the cabin ACT-IV of 1918 and which has been recognized under section 2 (f) the UGC Act 1956 by the Government. It is also noticed that the assessee society does not carry out Bible translation which is done by an organization known as Wycliffe Bible translators. Furthermore, it is observed that the society has not established any Churches or Missionaries that could be used to propagate Christianity.

18. Therefore, irrespective of the views as stated on the website Good News for India, the assessee society has neither been set up for the purposes of serving a particular religious community, nor have its activities been directed towards furtherance of a particular religion or a particular religious community. It is pertinent to mention here that the assessee society has quite effectively rebutted the allegations that various expenses were made for the sole benefit of the Christian community.

19. Now the only question that remains to be replied is whether the application of income towards funding the activities of the NTC qualifies as education within the meaning of section 2 (15) of the Income Tax Act or whether it amounts to application of income for the benefit of a particular religious community. As already pointed out, The New Theological College (NTC) is affiliated to Serampore College, which is recognized by the UGC. It is conferring formal degrees for theology as per the syllabus laid down by the Senate. Whether an institution teaching theology can claim to be imparting education within the meaning of section 2 (15) of the Act that would enable it to claim exemption under the provisions of Income Tax Act, reliance can be placed on the judgement of the Hon'ble High Court of Kerala in the case of CIT vs St. Mary's Seminary, 348 ITR 69. In this case, the assessee which was a seminary teaching students for priesthood, claimed additional and alternative exemption u/s 10 (23C) (iiiad) of the I.T. Act. The Hon'ble High Court held that the term education enjoys wide connotation covering all kind of coaching and training carried on in a systematic manner leading to personality development of individual. It held that religious training in the seminaries are education and seminary is an educational institution. Therefore, it allowed the assessee benefit of exemption

u/s 10 (23C) (iiiad) of the Act. Recently the Hon'ble Supreme Court in the case of CIT vs Dawoodi Bohra Jamat (2014) 364 ITR 361 favoured exemption u/s 11 to be given to the organization. The facts of this case were that the assessee's application for registration u/s 12A was rejected by the CIT(A) holding that as the object and purpose of the trust was confined only to a particular religious community, the same would attract the provisions of section 13 (1)(b). In this case, the Hon'ble Supreme Court held that the objects of the trust were not indicative of a wholly religious purpose but were collectively indicative of both charitable and religious purposes. It held that while some of the objects provided for activities were completely religious in nature and restricted to specific community, other objects which trace the source to the Holy Kuran did not restrict activities of the trust to religious obligations or benefit of members of anyone community. The Hon'ble Supreme Court further held that since the objects of the trust exhibited dual tenor of religious and charitable purposes and the charitable activities are not exclusively meant for a particular religious community, the provisions of section 13 (1) (b) of the I. T. Act are not applicable and the assessee trust is entitled to claim exemption u/s 11 of the Income Tax Act.

20. What flows from these above discussed judgements is that imparting of education in theology, of the nature given in the New Theological College, is very much an education within the meaning of education as defined by the Hon'ble Supreme Court in the case of Sole Trustee LokShikshan Trust and which would entitle an institution to claim exemption under the beneficial provisions of the Income Tax Act. It also flows that merely because a society or trust draws its inspiration for certain charitable activities from religious tenets, as long as charitable activities of the society are not confined to the benefit of any particular community, it is entitled to exemption u/s 11 of the Income Tax Act. In the present case of the assessee, while the donors to the society may have been giving to it in the belief that they were propagating and promoting Christianity, the society itself has confined its activities to the aims and objectives laid down in the Memorandum of Association in as much as in Theology can be described as vocational training and the school, run by it, impart a secular education. Accordingly, merely because it bears its activities on the basis of a religious calling, there is no reason to hold that section 13 (1) (b) of the Income Tax Act would be attracted to it. Therefore, in my considered opinion, the assessee society is eligible to claim exemption u/s 11 of the Income Tax Act.

21. On identical facts and the issue, the Ld. CIT (Appeals), Dehradun has allowed the appeals for the AY 2009-10, 2010-11, 2011-12 & 2012-13 in favour of the assessee society. In further appeal, the Hon'ble ITAT Delhi has dismissed the appeal of Income Tax department in appeal no.235/Del/2015 and appeal no.236/Del/2015 upholding the CIT (A)'s appeal order allowing exemption to the appellant for the AY 2009-10 and 2011-12 on the same facts."

5. Against this order, the Revenue is in appeal before us. We have heard both the parties and perused the records.

6. The ld. DR vehemently supported the order of the ld. Assessing Officer.

6. The ld. AR submitted that the orders of the ld. CIT (Appeals) which was relied by the ld. CIT (Appeals) for deciding the present appeal travelled to the ITAT and as per order dated 16.03.2018 the order of the ld. CIT (Appeals) was upheld. Therefore, the issue is squarely covered in favour of the assessee.

7. We have carefully considered the rival contentions and perused the orders of the lower authorities. In assessee's own case on identical facts and circumstances for assessment years 2009-10 and 2011-12 the co-ordinate bench in ITA. Nos. 235 and 236 (Del) of 2015 decided this issue on 16.03.2018. The co-ordinate bench in para Nos. 8 to 15 decided the issue holding that assessee Society is eligible for exemption under Section 11 of the Act. Thus, the orders of the ld. CIT (Appeals) were upheld. Further, ITAT, following the coordinate Bench order for AYs

2009-10 & 2011-12, has also upheld the Id. CIT (A)'s order in ITA No.5317/Del/2017 for AY 2012-13 vide order dated 15.03.2021. The Id. DR could not show us any reason that why we should differ from the issue already decided by the co-ordinate bench when same facts and circumstances prevailed. In view of this, respectfully following the decision of the co-ordinate bench in assessee's own case for assessment years 2009-10, 2011-12 & 2012-13, we dismiss the appeal of the Revenue.

8. Our above order applies mutatis mutandis to both the appeals.
9. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on this 23rd day of November, 2022.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Dated the 23rd day of November, 2022
TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A), Dehradun.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.