

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

I.T.A. Nos.303 to 306/Asr/2017: A.Ys.: 2007-08 to 2010-11

I.T.A. No.581/Asr/2015: A.Ys.: 2008-09

S.A .Nos. 08 to 11/Asr/2022: A.Ys. 2007-08 to 2010-11

M/s Punjab Institute of Medical Sciences, Garha Road, Jalandhar. [PAN: AAABP0193P] (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle-III, Jalandhar. (Respondent)
---	------------	---

Appellant by	Sh.Vipul Arora, CA.
Respondent by	Sh. HitendraBhauraojiNinawe, CIT. DR

Date of Hearing	21.12.2022
Date of Pronouncement	31.01.2023

ORDER

Per: Bench:

The batch of appeals of the assessee were filed against the order of the Id. Commissioner of Income Tax (Appeals)-2, Jalandhar, [in brevity the 'CIT (A)'] for

A.Ys. 2007-08 to 2010-11, order passed u/s 250 (6) of the Income Tax Act 1961, (in brevity the Act). It was stated at the outset that, the relevant factual backdrop as well as the issues involved in all the cases **I.T.A. Nos.303 to 306/Asr/2017** are identical. The common issue is related to the addition by disallowing u/s 11 of the Act. Only the **ITA No. 581/Asr/2015** for A.Y. 2008-09 has a different issue related to disallowance of expenses. The Assessment Orders were framed by the Id. DCIT, Circle-III, Jalandhar u/s 143(3)/147 of the Act. Except ITA No. 581/Asr/2015 is framed u/s 143(3) of the Act. With the request of both assessee and revenue ITA No. 303/Asr/2017 for A.Y. 2007-08 is taken as a lead case.

2. Brief facts of the cases are that for ITA 303 to 306/Asr/2017 are reopened u/s 148 of the Act & assessments were completed u/s 143(3)/147. The issue is common for all cases that is rejection of exemption u/s 11 in connection with withdrawal of registration u/s 12A of the Act. The assessee is established under the Society Registration Act, 1860 on dated 10th October, 1994 and it was granted registration u/s 12A(a) of the Act w.e.f. dated 10.10.1994. The Id. CIT had withdrawn the registration u/s 12AA w.e.f. assessment year 2004-05 by an order dated 23.12.2013.

Aggrieved assessee had challenged the order before ITAT, Amritsar Bench. The ITAT by the order, bearing ITA No. 740/Asr/2013, date of order 29.09.2015 had restored the registration of the society u/s 12AA. During the withdrawal of registration, the assessing authority had reopened the assessment years by persuasion of notice u/s 148 of the Act, had treated the assessee as an AOP and had disallowed the claim u/s 11. The assessee was denied the benefit claim u/s 11 of the Act. In ITA No. 581/Asr/2015 for A.Y. 2008-09 only the expenses are disallowed amount of Rs.4,75,269/- depreciation disallowed Rs.6744 and Rs.9189 and further adhoc disallowance Rs.10,000/- was made out of entertainment expenses. Against the order of the Id. AO, assessee had filed an appeal before the Id. CIT(A). But the Id. CIT(A) had accepted the observation of the Id. AO and upheld the assessment order. Being aggrieved assessee filed an appeal before us.

ITA No-304-306/Asr/2017

3. The Id. Counsel for assessee has filed the written submissions which are kept in the record. First, the legal ground was adjudicated related to lead case. The Id.

counsel invited our attention in the order of the ITAT, Amritsar Bench bearing **ITA No. 740/Asr/2013 order dated 29.09.2015** held that:

“6. We have heard the rival contentions of both the parties and perused the material available on the record. The ld CIT-II, Jalandhar passed order U/s 12AA of the Act on 24/10/2013 w.e.f. A.Y. 2004-05 but in Section 12AA(3), the amendment was made by the Finance Act, 2010, which was effective prospectively as clarified by the CBDT as well as various ITATs. The case laws relied by the AR of the assessee also support the case of the assessee, therefore, from A.Y. 2004-05, the cancellation is out of jurisdiction. The Hon’ble Delhi High Court in the case of Director of Income Tax (Exemption) Vs. Mool Chand Khairati Ram Trust (2011)339 ITR 622 (Delhi) has held that power of cancellation of registration obtained U/s 12A came to be incorporated by way of amendment introduced in Section 12AA(3) by the Finance Act, 2010 w.e.f. 1st June, 2010. The Director of the Income Tax was, therefore, no justified in cancelling the registration U/s 12AA(3) w.e.f. December 2002-03 vide his order dated 30th June, 2009. Similar view has also held by the various ITATs as referred

*above, therefore, we set aside the order of the Id CIT-II, Jalandhar.
Hence, this appeal of the assessee is allowed.*

7. In the result, the appeal of the assessee is allowed.”

3.1 The Id. counsel further argued that the disallowance of claim U/s 11 in lieu of rejection of registration was agitated before the Coordinate Bench of the ITAT, Amritsar Bench, in **ITA No. 485/Asr/2014 for A.Y. 2011-12** order dated 18.03.2016 previously. The issue is already covered in the favour of the assessee. The relevant part of order of ITAT is reproduced as under:

“We find that the Hon’ble Tribunal vide order dated 29.09.2015 has cancelled the order of CIT by which he had cancelled the registration u/s 12A(a) of the Act, therefore, the basis on which the exemption u/s 11 has been denied does not survive. In view of the above, we are in agreement with argument of learned AR that after restoration of registration by Hon,ble Tribual, the assessee is eligible for exemption u/s 11.

8. In view of the above, the appeal filed by assessee is allowed.”

3.2 As per argument of the counsel, the assessment was completed by treating the assessee-trust as unregistered trust and disallowance of claim was made u/s 11

of the Act. In argument of ITA No. 581/Asr/2015, the ld. counsel placed that the addition was made by the ld. AO total amount of Rs.5,01,200/- on account of car repaired and maintenance expenses Rs.475269/-, depreciation amount of Rs.6744/- and Rs.9189/- and ad hoc disallowance of entertainment expenses Rs.10,000/- has no basis and without finding any proper lacuna in the books of accounts of assessee.

4. The ld. CIT DR vehemently argued and relied on the order of the ld. CIT(A). The specific para 4.8 order of the ld. CIT(A) is extracted as below:

“4.8 I have also gone through the contentions of the appellant on the issue of validity of the initiation of reassessment proceedings in view of the fact that the only basis of reopening was on account of cancellation of registration under section 12AA of the IT act. It is stated by the appellant that subsequently this registration has been restored back by the honourable ITAT and therefore, the action of the AO in reopening of the assessment cannot be sustained. I find that this

contention of the appellant is not correct as the reasons recorded by the AO also refer to the order passed by the honourable ITAT Amritsar bench in the case of the appellant for AY 2006 - 07, wherein it has been categorically held that the assessee trust is not engaged in the charitable activities and therefore the claim of exemption under section 11 of the IT Act was denied. This finding of the Hon'ble ITAT still holds good and appeal filed by the appellant is pending before the honourable Punjab and Haryana High Court. Thus, considering all these factors. I hold that there is no merit in the contentions of the appellant on this issue."

“4.8 The contention of the appellant that there has been a change in the reasons recorded by the AO and two sets of the same have been provided to him has been categorically denied to by the AO in his remand report. I have gone through the copies of the same which were filed by the appellant in the course of present' proceedings and find that AO has also stated in the report filed that that the reasons have been recorded on 28. 01. 2014, which are placed on record at page is number 21-24 and on 25- 28. There is a typographical error in the amounts noted at page number 21 and 25. The amount of Rs.3,50,02,163/- has been mentioned instead of Rs. 14,75,25,704. It is further stated that it is a clerical mistake on the part of the AO and the same was duly rectified and the reasons for the difference in the two amounts has also been explained in detail.”

5. We heard the rival submission relied on the documents available in the record. The registration was cancelled by the Id. CIT u/s 12AA of the Act. The registration was restored by the order of the ITAT, Amritsar Bench. After the order of the ITAT, the assessee is registered U/s 12AA and eligible to claim deduction u/s 11 r.w.s. 12A of the Act. The assessee was eligible for the benefit of section 11

of the Act. In no reason, the benefit can be denied by the department. The Id. CIT(A) in the order has observed that the revenue appeal is pending before the Hon'ble Punjab & Haryana High Court against the order of the ITAT, Amritsar. But till the revenue has not able to submit any outcome of the appeal, filed before the Hon'ble High Court. We fully relied on the order of our Coordinate bench, bearing ITA No. 485/Asr/2014 for A.Y. 2011-12, *supra*. The assessee is eligible to get benefit of Section 11 of the Act. The Id CIT-Dr was unable to bring any contrary fact against the submission of the assessee. In our considered view the order of the Id. CIT(A) is quashed. The ground of the appeal of assessee bearing ITA No-303/Asr/2017 is allowed. The said order *mutatis mutandis* applicable for ITA No-304-306/Asr/2017. We consider the factual ground in favour of assessee. So, the legal grounds are remained only for academic purpose.

ITA No.581/Asr/2015

6. In this case, we find that there is no specific lacuna was found in the assessee's claim. The Id. AO added back only on basis of the general observation. The expenses are disallowed amount of Rs.4,75,269/- depreciation

disallowed Rs.6744 and Rs.9189 and further ad hoc disallowance Rs.10,000/- was made out of entertainment expenses.

Going by the nature of expenses such as claim of depreciation, entertainment expenses, it is prima facie not very clear whether these expenses can be claimed as revenues expenses and allowable under sections 30 to 37 of the Act in relation to Trust, registered U/s 12AA of the Act. Since there is absence of any findings of the lower authorities, we deem it appropriate to set-aside the same to the file of the Id. CIT(A) who shall examine the aforesaid contentions so raised besides examining the matter from the perspective of allowability in case of Trust and genuineness of expenses. Further, the assessee should get reasonable opportunity of hearing for filing the evidence in relation to its claim. In the result, the ITA No. 581/Asr/2015 for A.Y. 2008-09 is allowed for statistical purposes.

7. When we decide the appeals in limine, the stay applications bearing **S.A. Nos.08 to 11/Asr/2022 for A.Ys. 2007-08 to 2010-11** are dismissed as infructuous.

8. In the result, the appeals of assessee **ITA Nos.303-306/Asr/2017** are allowed. The appeal of assessee **ITA No- 581/Asr/2015** is allowed for statistical purpose.

Order pronounced in the open court on 31.01.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By Order