

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'B' NEW DELHI]**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 5392/DEL/2019 (A.Y. 2010-11)

DCIT, Central Circle, Ghaziabad. (APPELLANT)	Vs.	Society for Educational Excellence, Campus-1, 19 th KM Stone, Delhi-Hapur Bye Pass Road, NH-24, Vijay Nagar, Ghaziabad - 201 002. PAN No. AACTS0015K (RESPONDENT)
--	-----	--

Assessee by :	Shri P. C. Yadav, Adv.; & Shri Morh Mukut Yadav, Advocate;
Department by:	Shri T. James Singson, [CIT] - D. R.;

Date of Hearing	15.02.2023
Date of Pronouncement	21.02.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the Revenue against the order dated 29.03.2019 of the ld. Commissioner of Income Tax (Appeals)-IV (hereinafter referred to CIT (Appeals) Kanpur, for assessment year 2010-11.

2. The Revenue has raised the following substantive grounds of appeal :-

“1 On facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made in order U/S 153A by denying exemption U/S 11 to the extent of Rs. 1,72,07,968/- (Excluding depreciation) without going into merit and merely relying upon ITAT order dated 19.03.2018 on earlier asstt. Order U/S 143(3), against which the revenue is in process of filing appeal after obtaining a certified copy of the ITAT order.

2 On facts and circumstances of the case and in law, the Ld. CIT(A) erred in merely following ITAT order rendered earlier without appreciating that even if the assessee was required to maintain hostel/transport facilities towards fulfillment of its objective of providing education as incidental activity, the maintenance of separate books of accounts for such activity was still required to claim exemption U/S U/S 11 r/w 11 (4A).

3 Without prejudice, on facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that in addition to denying exemption U/S 11 to the extent of Rs.1,72,07,968/- the AO had also disallowed the expenses to the tune of Rs.1,76,31,774/-out the total expenses of Rs.3,47,63,455/- (excluding depreciation on grounds that the expenses to this extent were non verifiable in absence of separate books and vouchers being maintained, against which no specific grounds were raised by assessee either before CIT(A) during appeal against order u/s 153A or during appeal filed earlier to the ITAT against order 143(3) nor any finding was given by ITAT on allowability of the said expenses and therefore the finding of the AO that the expenses to the extent of 1,76,31,774/- were not

incurred for the purposes of the objects of the trust had become conclusive, thereby rendering such activities as not wholly and exclusively incidental to the main activity and accordingly the fulfillment of provisions of section 11 (4A) was mandatory for claiming deduction u/s 11 in respect of surplus from receipts from running hostel/transport facilities.

4. *Further without prejudice, on facts & circumstances of the case and in law, the Ld. CIT(A) erred in relying upon the ITAT order without appreciating that in absence of any specific ground having been raised by assessee on the disallowance of expenses claimed for hostel/transport activities in the earlier appeal filed to the ITAT against order u/s 143(3), the finding of the AO that the part of receipts from hostel/transport activities were not utilized for the purposes of the objects of the trust had become conclusive and therefore exemption u/s 11 (1) was not available even otherwise in respect of surplus from receipts from running hostel/transport facilities and reliance on impugned ITAT order was therefore misplaced.”*

3. Brief facts of the case are that, a search and seizure operation conducted on the premises of the assessee, the notice u/s 153A was issued to the assessee. In response, the assessee filed its return declaring of 'NIL' income. Later on, the notices u/s 143(2) and 143(1) of the Act were also issued and the A.O. completed the assessment at Rs.2,72,79,769/- by rejecting the claim of the exemption u/s 11 of the Act.

4. Aggrieved by the assessment order, the assessee has preferred an appeal before the Ld.CIT(A). The Ld.CIT(A) vide order dated 29/03/2019, allowed the appeal on the ground that Hon'ble ITAT has granted the benefit of Section 11

of the Act to the appellant Trust. Therefore, the disallowance of exemption of Rs. 2,72,79,769/- u/s 11 of the Act has been deleted and allowed the appeal.

5. As against the order of the Ld.CIT(A), the Department is in appeal on the grounds mentioned above. Though the Ld. DR has relied on the order of the A.O., but did not dispute the fact that the Co-ordinate Bench of the Tribunal in assessee's own case in ITA No. 6957, 6960 & 3606/Del/2017 (Assessment Years 2008-09, 2009-10 & 2010-11) has granted the benefit of Section 11 of the Act to the assessee trust.

6. Per contra, the Ld. AR relied on the order of the Ld.CIT(A) and also brought to our notice to the order of the Tribunal in ITA No. 6957, 6960 & 3606/Del/2017.

7. We have heard the parties perused the material available on record and gave our thoughtful consideration.

8. During the assessment proceedings, the A.O. completed the assumption at Rs. 2,72,79,769/- by rejecting the claim of exemption u/s 11 of the Act. the issue of allowability u/s 11 of the Act to the assessee trust has been decided by the Coordinate bench in ITA No. 6957, 6960 & 3606/Del/2017 dated 19/03/2018 in favour of the assessee which reads as under:-

“26. We have carefully considered the rival contentions and also perused the orders of the lower authorities. The assessee is a society running an engineering college in the name and style of M/s. Academy of Business and Engineering Sciences, assessee is affiliated with all India Council for Technical Education (AICTE). It is also undisputed that assessee is carrying on the educational activities and running certain colleges etc. During the year it is also undisputed that assessee has earned gross receipt of Rs. 16.71

crores on account of educational activities whereas assessee is also running a hostel for the students who are studying in the educational institutes of the assessee. The assessee has also earned hostel receipts of Rs. 3.02 crores. The issue involved here is that whether the hostel activities carried on by the assessee are business activities and therefore, the provisions of section 11 (4A) of the Act are applicable so, assessee should maintain separate books of accounts. Otherwise, it loses exemption to that extent u/s 11 and 12 of the Act. section 11 (4A) of the Act provides that provision of section 110 to (3A) shall not apply in relation to any ' income of the trust being profits and gains of the business, unless the businesses, incidental to the attainment of the objectives of the trust and separate books of accounts are maintained in respect of such business. Therefore, if the assessee trust is carrying on any business and if such business is not incidental to the attainment of the objective of the trust then, separate books of account with, respect to such business is required to be maintained. The identical issue arose in case of Krishna Charitable Society Vs. Addl CIT in ITA No. 4639/Del/2015 for AY 2011-12 wherein,, in para No. 11 wherein, it is held that transport and hostel facility surplus cannot be considered as business income of the society as these activities are incidental to the main object of the assessee society of education as under

"11. We have carefully considered the rival contentions and perused the orders of the lower authorities and other judicial pronouncement placed before us. In the grounds No. 1-3 assessee is contesting that addition made by the Ld. assessing officer treating hostel places provided to college student as business of the society and text the

alleged surplus of Rs. 9887873/- as business income of the appellant. It was not the case of the revenue that assessee has rented out these hostels to the students who are not parted education in the above institutes. It was also not the case of revenue that assessee is primarily engaged in the business of providing hostel facilities to the students. The above issue is no more res Integra in view of: the decision of the Hon'ble Karnataka High Court in CIT versus Karnataka lingayat education: society in ITA No. 5004/2012 dated 15/10/2014 wherein it has been held that providing hostel to the students/staff working for the society's incidental to achieve the object of providing education, namely the object of the society. In view of this we are of the opinion that providing of hostel facilities and transport facilities to the student and staff member of the educational Institute cannot be considered as business activity but is subservient to the object of educational activities performed by the society. We are also supported by our view by the decision, of the Hon'ble Allahabad High Court in IIT versus state of UP, (1976) 38 STC 428 (All) wherein question arose in Indian Institute of Technology v. State of U.P. (1976) 38 STC 428 STC (All) with respect to the visitors' hostel maintained by the Indian Institute of Technology where lodging and boarding facilities were provided to persons who would come to the Institute In connection with education and the academic activities of the Institute. It was observed that the statutory obligation of maintenance of the hostel, which involved supply, and sale of food was an integral part of the objects of the Institute nor could the running of the hostel be treated as the principal activity of the Institute. The Institute could not be held to be doing business. Further meals being supplied in a hostel to the scholars, visitors, guest faculty etc. cannot be exigible to sales

tax where main activity is academics as held in Scholars home Senior Secondary School 42 VST 530. Further, the reliance placed by the lower authorities on the decision of the Hon'ble Madras High Court in case of DC1T versus Wellington charitable trust is also misplaced because in that case, the only activity of that particular trust was renting out of the property and not education. We are also not averse to considering the latest legal developments too where in the recently introduced new legislation of Goods and service tax it is provided that no GST would be chargeable on the hostel fees etc recovered from the Students , faculties and other staff for lodging and boarding as they are engaged in education activities . Therefore we reverse the finding of the lower authorities and held that transport and hostel facilities surplus cannot be considered as business income of the assessee society which is mainly engaged in business activities and these activities are subservient to the main object of education of the trust. In the result 1 - 3 of the appeal of the assessee are allowed."

27. *In the present case also, it is not the case of the revenue that hostel is rented out to outsider or the transport facility is also provided to the outsider. Furthermore, the Hon'ble Karnataka High Court in Karnataka Lingayat Education Society in ITA No. 5004/2013 dated 15.10.2014 has held that providing the hostel to the students and the staff working for the society is incidental to achieve the object of providing education and i.e. the object of the society. Therefore, in view of the above decision of the Hon'ble Karnataka High Court as well as the decision of coordinate bench in ITA No. 4639/061/2015 we are of the view that hostel and transport activities of the assessee trust are not in the nature of*

business. Further, the activity of the hostel and transport is also incidental to the attainment of the main object of the trust of the education. Therefore, the provisions of section 11 (4A) of the Act does not apply to the assessee.

28. Now coming to the various decisions relied upon by the revenue, the first decision was with respect to the Dayananda Puspadevi Charitable Trust Vs. Addl CIT dated 21.09.2016. In that particular case the assessee trust was running a dental college and also provided hostel facilities on fee basis. The Id Assessing Officer treated the hostel fees at higher side in comparing the market price and therefore, applying the provisions of section 11 (4A), as he did not maintain separate books of accounts, the exemption was denied. The above decision is rendered by the strength of single member whereas the decision relied upon by the Id AR is of division bench and therefore, has more binding strength. Furthermore, in para No. 8 of that it is accepted that hostel activity is incidental to the attainment of the object of the trust; Therefore, the decision even after referring the decision of the Hon'ble Karnataka High Court it was so held. As decision of division bench, held otherwise, this decision cannot be relied upon.

29. The next decision relied upon in case of Young Women's Christian Association of Madras Vs. JDIT 41 Taxmann.com 142 the assessee was carrying on advancement any other object of general utility running orphanage, old age homes etc. The dominant part of the income-was from running a working women hostel. Such hostel activities were not found to be incidental to the main object of the trust. Therefore, the facts of the case are distinguishable.

30. *The third decision relied upon was with respect to. CIT Vs. Mehta Charitable Prajnalaya Trust 357 1TR 560 where the trust was created for the object for education and where the separate business activity was carried out which was not incidental to the main object of the trust.*

31. *In view of this the decisions relied upon by the revenue are distinguishable on the facts.*

32. *In view of this we are of the view that the hostel, mess facility and transport facility etc carried out by the society are incidental to the main object of the assessee trust of education and therefore, provisions of section 11 (4A) of the Act do not apply to the assessee as it cannot be said that by running the hostels or transport facility for student its educational activities is a separate business altogether. In view of this ground No. 1 to 3 of the appeal of the assessee are allowed and consequently, the Id AO is directed to grant the assessee benefit of section 11 and 12 of the Income Tax Act with respect to the all income of the trust including hostel and transportation receipts.*

33. *Ground No. 2 of the appeal is with respect to the claim of the depreciation disallowed by the Id AO of Rs. 29502605/- as assessee has already claimed the whole cost of the assets as application of income. Therefore, according to the Id Assessing Officer it amounts to double deduction. The above issue has already been decided by Hon'ble Supreme Court in case of CIT Vs. Rajasthan and Gujarati Charitable Foundation in Civil Appeal NO. 7186/2014 dated 13.12.2017 wherein it has been held that up to the assessment year*

2015-16 the assessee is entitled to claim the cost of acquisition of fixed assets as application of income and further depreciation thereon in subsequent years. In view of this we direct the Id Assessing Officer to delete the disallowance of Rs. 29502605/- on account of depreciation. Consequently, we reverse the finding of the Id CIT(A) and allow ground No. 4 of the appeal.

34. In the: result appeal of the assessee for Assessment Year 2010-11 in ITA NO. 3706/Del/2015 is allowed.”

9. Thus, it is not in dispute that the Coordinate Bench of the Tribunal has granted the benefit of Section 11 of the Act to the assessee trust. Therefore, the action of the Ld.CIT(A) in relying on the order of the assessee and deleting the disallowance of exemption of Rs. 2,72,79,769/- u/s 11 of the Act requires no interference. Therefore, we do not find merit in the grounds of appeal of the Revenue.

10. In the result, the appeal of the Department is dismissed.

Order pronounced in the open court on : **21/02/2023**.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER
Dated : 21/02/2023

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

*R.N, Sr. PS

Copy forwarded to :-

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

ASSISTANT REGISTRAR
ITAT NEW DELHI