

**THE INCOME TAX APPELLATE TRIBUNAL  
DELHIBENCH 'B', NEW DELHI**

**Before Smt. Diva Singh, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 626/Del/2020 : Asstt. Year: 2016-17**

DCIT(E), Circle-1(1), New Delhi-110002	Vs.	Guru Gobind Singh Indraprastha University, Sector-16C, Dwarka, New Delhi-110078
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAJJI0015R</b>		

**Assessee by : Sh. Deepak Suneja, CA**

**Revenue by : Sh. Ram Krishan Meena, Sr. DR**

**Date of Hearing: 05.04.2023**

**Date of Pronouncement: 11.04.2023**

**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the revenue against the order of the Id CIT(A)-40, Delhi dated 28.11.2019.

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

*"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the provisions related to gratuity and leave encashment as provisions are a mere estimate of the liabilities by the assessee and in no way can be treated as application of income."*

**Provision for gratuity and provision for leave encashment**

3. The Assessing Officer disallowed provision for gratuity and provision for leave encashment amounting to Rs. 95,00,000/- and Rs. 70,00,000/- respectively as application of income since the said amounts represented unascertainable liability. Before

the Id. CIT(A), the assessee has submitted that the provisions for gratuity and leave encashment have been made on the basis of a report and actuarial calculations as regards provisions which would be required to be made in respect of liability on account of employee benefits. It was submitted that as per the Accounting Standard notified by the Government, it was incumbent upon the assessee to make provisions for all known liabilities. The assessee has relied on the decision of the Hon'ble Supreme Court in the case of Bharat Earth Movers vs. CIT 112 Taxmann 61 and the Hon'ble Delhi High Court in the case of CIT vs. Insilco Limited in ITA 873/2008.

4. The Id. CIT(A) held that the contention of the assessee an actuarial valuation report with respect to gratuity and leave encashment was available with the assessee but could not be produced as it was not sought for production before the AO.

5. Heard the arguments of both the parties and perused the material available on record.

6. As per the Accounting Standard on accounting for retirement benefits, it is mandatory to make provisions of all accrued retirement benefits to employees. The assessee is liable to provide gratuity and leave encashment to its employees. In the case of CIT vs. Birla Janhit Trust [208 ITR 372(Cal)] the Hon'ble Court have held that expenditure on salaries and miscellaneous expenses for purpose of carrying out the purpose of the trust can be considered as application of income for charitable purposes. The Courts have held that a liability on the assessee having been imported, the liability would be an accrued liability and would not convert into a conditional one

merely because the liability was to be discharged at a future date.

7. The question which needs to be looked at is whether provisions made, in this case provision for gratuity and leave encashment, are allowable as application of income. The Hon'ble Delhi Court, in the case of DIT (E) vs. NASSCOM (345 ITR 362 (DEL)] have observed that under the commercial principles it has always been recognized that a provision, reasonably made for a loss or an outgoing, can be deducted. There is nothing brought on record to show that the provision was not made bona fide. Similarly, in the case of CIT vs. Birla Janhit Trust (208 ITR 372) (Cal.), the Hon'ble Court has held that expenditure on salaries and miscellaneous expenses for purpose of carrying out the purpose of the trust can be considered as application of income for charitable purposes. Further, the income of charitable organizations has to be computed on commercial principles. Accounting standards mandate that provision be made for retirement benefits. Hence, it can be said that any provision which is reasonably made is to be allowed while computing the income available to the trust for application to charitable purposes in India in accordance with section 11(1)(a).

8. Reliance is being placed on the judgment of Hon'ble High Court in the case of CIT vs. Trustees of H.E.H. the Nizam's Charitable Trust (1981) 131 ITR 497 (AP) it has been held that it was not necessary that the money should have been actually 'spent for being treated as application. It would not be correct to equate the word 'applied' with the word 'spent' and therefore even the funds which have been allocated for the purposes will

be deemed to have been applied. The amounts debited to the income and expenditure account but which are not actually disbursed are shown as liabilities in the balance sheet. These facts and circumstances would constitute application of funds for charitable purposes within the meaning of section 11(1)(a).

9. In view of the discussion above, it is held that provision for gratuity and leave encashment are allowable as application of income. The decision of the Id. CIT(A) is hereby affirmed.

10. In the result, the appeal of the Revenue is dismissed.  
Order Pronounced in the Open Court on 11/04/2023.

Sd/-

**(Diva Singh)**  
**Judicial Member**

**Dated: 11/04/2023**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**