

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.263 & 264/Ind/2017
(Assessment Years:2012-13 & 2013-14)

DCIT -2(1) Bhopal	Vs.	M/s. H.K. Kalchuri Education Trust 31, Shyamla Hills Bhopal
(Appellant / Revenue)		(Respondent/ Appellant)
PAN: AAATH 3738 E		

ITA No.265 & 266/Ind/2017
(Assessment Years:2012-13 & 2013-14)

DCIT -2(1) Bhopal	Vs.	M/s. Hai Hay Kshtriya Education Society 31, Shyamla Hills Bhopal
(Appellant / Revenue)		(Respondent/ Appellant)
PAN: AAAAH1557N		

ITA No.267 & 268/Ind/2017
(Assessment Years:2012-13 & 2013-14)

DCIT -2(1) Bhopal	Vs.	M/s. Jain Narayan Shiksha Samiti 31, Shyamla Hills Bhopal
(Appellant / Revenue)		(Respondent/ Appellant)
PAN: AAAAJ2542F		

ITA No.335 & 336/Ind/2017
(Assessment Years:2012-13 & 2013-14)

DCIT -2(1) Bhopal	vs.	M/s. Rishiraj Memorial Education and Welfare Society 31, Shyamla Hills Bhopal
(Appellant / Revenue)		(Respondent/ Appellant)
PAN: AAAAR5568F		
Revenue by	Shri P.K. Mishra, CIT-DR	
Respondent by	Shri Hitesh Chimnani & Yash Kukreja, ARs	
Date of Hearing	19.07.2023	
Date of Pronouncement	21.07.2023	

ORDER

Per Bench:

These eights (8) appeals by Revenue of four assesseees (respondent) are directed against the four separate orders (two in each case) of Commissioner of Income Tax(Appeal), for Assessment Year 2012-13 & 2013-14. These four set of two appeals of the four connected assesseees involve common issue and arising from identical facts therefore, all these appeals are clubbed together for the purpose of hearing and disposed of by this consolidated order.

2. The revenue has raised identical grounds of appeal in all these appeals except the quantum of addition which varies from assessee to assessee and year to year. The grounds of appeal raised in ITANo.263/Ind/2017 are reproduced as under:

“1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in holding status of assessee as AOP for A.Y. 2012-13 and 2013-14 by relying upon appellate orders of Hon'ble ITAT, Indore Bench, Indore in assessee's own case.

2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in holding that the activities of the assessee are charitable in nature and the deficit shown in the income and expenditure account be computed after allowing deduction u/s 11 by granting exemption u/s 11, 12 and 13 of the IT Act, 1961, by relying upon appellate orders of Hon'ble ITAT, Indore Bench, Indore in assessee's own case.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) grossly erred in her findings that the activities of the assessee were charitable within the meaning of section 2015) and allowing the deductions/exemptions u/s 11 claimed by the assessee in the return.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the property/income of the assessee trust were not used for the benefit of interested persons as stipulated u/s 13(3) and, therefore, the assessee was entitled for exemption w/s 11 of the I.T. Act.

5. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in holding that the societies/ trusts/entities to whom loans/advances were given by the assessee did not attract the provisions of section 13(1)(c)(ii) r.w.s. 13(2)(a)/13(2)(h) of the IT Act and, hence the assessee was eligible for benefits contemplated u/s 11 and 12 of the IT Act.

6. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that vehicles were not used for personal purposes by trustees and, therefore, the assessee was eligible for exemption u/s 11 & 12 of the IT Act.

7. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in giving exemption u/s 11 and 12 of the IT Act, 1961 though the vehicles were used by the members for the personal purpose.

8. On the facts and circumstances of the case and in law, the Id. CIT(A) erred in allowing donation of Rs. 11,87,857/- for A.Y. 2012-13,

9. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in allowing deduction as application of income acquisition of fixed assets.

10. On the facts and circumstances of the case and in law, the ld. IT(A) erred in allowing of set off of deficit of earlier year against the income of current year.

3. The only effective and common issue arises in these appeals of the revenue is whether in the facts and circumstances of the case the Ld. CIT(A) is justified in holding that the activities of the assesses are charitable in nature and the income of the assessee are to be computed after allowing the exemption u/s 11 and 12 of the Act and thereby deleted the additions made by the AO by treating the activities of the assessee as in the nature of business. Earlier the assesseees have filed a declaration in form- 8 and claimed that the question of law arises in all these 8 appeals of revenue for A.Ys.2012-13 & 2013-14 in respect of these four assesseees is identical with question of law arising in these assesseees own cases i.e. appeal filed by the revenue u/s 260A of the Act before the Hon'ble High Court and assesseees agree to apply the final decision of the Hon'ble High Court in the appeals filed by the revenue in respect of four assesseees for assessment year 2011-12 in ITANos.77 to 80 of 2017. The Tribunal directed the AO to file his comments on the declaration of the assessee in form 8 as to whether the claim of the assessee that the question of law arising from the appeals pending before the Tribunal is identical to the question of law in the appeals filed by the revenue before the Hon'ble High Court for the assessment year 2011-12 is correct or not. The AO vide order dated 12th July 2013 has not disputed the correctness of the claim of the assessee and annexed the question of law approved by the Pr. CIT for filing the appeals.

4. Ongoing through the question of law as approved by the Pr. CIT in each case we find that the same is identical to the question of law involved in these appeals as well as the question of law formulated by the Hon'ble High Court in the appeals in ITANo.77 to 80 of 2017 for A.Y.2011-12. For sake of completeness we reproduced the question of law formulated by the Hon'ble High Court at the time of admitting the appeals by the revenue for A.Y.2011-12 as under:

“Appeal is admitted for final hearing on the following substantial question of law:

"Whether in the facts and circumstances of the case, was the learned ITAT justified in holding that all the activities of the assessee was charitable activities and accordingly, it directed that the A.O. has recalculated the surplus/deficit of all these years in question granting exemption under Sections 11, 12 and 13 of the Income Tax Act?"

5. It is pertinent to note that this issue was considered and decided by this Tribunal in assessee's own case of assessment year 2011-12 vide order dated 17.01.2017 in ITANo. 455 to 458 of 2016 as under:

"5. We have considered the rival submissions of both the parties and gone through the material available on the file. We find that in the present appeals, the AO has practically repeated all the observations of his earlier orders u/s 153A/153C without bringing any evidence or corroboration against the assessee, treated the assessee as business organisation and disallowed the claim of the assessee u/s 11 and assessed the total income as business income. We find that the Id. CIT(A), in all the four appellate orders in present appeals, has simply reproduced the earlier findings and decisions of his predecessor delivered against the search assessment orders u/s 153A/153C which have been subsequently reversed by the ITAT, Indore in two orders, as stated earlier. While doing so, the CIT(A) has also not brought on record any evidence or corroboration against the assessee in support of the impugned agreements having been implemented and for treating the assessee as business organisation and for disallowing the claim of the assessee u/s 11 on various grounds. In our view, such findings of CIT(A) cannot be accepted and are rejected in view of our earlier above decisions in search cases and in view of our decision in the subsequent paragraphs of this order.

5.1 We find that the facts of present appeal in hand for A.Y. 2011-12 are exactly similar to the facts of the search assessment orders for all above four assessee's, without any change in the circumstances of the case. We find that the AO during the subject year also has not brought on record any evidence or corroboration against the assessee in support of the impugned agreements having been implemented and for treating the assessee as business organisation, which was inescapable. Hence, in our considered view, we find ourselves in agreement with the contentions of the Id. AR that all the issues are squarely covered in favour of assessee by the above two orders of ITAT vide appeal no. ITA 389/Ind/2014 dt. 17.5.2016 of 12AA and vide appeal no. IT(SS)A 273,274 & 275/Ind/2013 dt. 17.5.2016 of quantum order, as the AO has simply repeated all the observations of his earlier order, without proving anything against the assessee to support his case. Copies of the aforesaid two orders of Indore Bench have been filed before us. Before proceeding further, we hold that since no such impugned agreements were found in case of Jai Narain Shiksha Samiti and Hai Hay Kshatriya Education Society, hence no adverse view or analogy could be drawn in case of the assessee of these agreements as held by Indore Bench of Tribunal at pg. 83 on last para of 12AA order, as done by AO and CIT(A) the present case. We also find that similar observations and findings have

been given by the AO in all the above four assessment orders. HK Kalchuri Education Trust being the leading case, we have taken facts from HK Kalchuri Education Trust. Hence, consolidated order is passed by us covering all the issues and our issue-wise decision shall apply to all the four assesses, as above. The issue-wise additions made by AO and our decision, as also covered by our above two earlier orders, are tabulated below.

Observations and findings of AO	Our findings
<p>Assessee society runs the educational institutions as business entity for the purpose of earning and sharing profits and not as charitable organization. Agreements for sharing profits were found during search on 23.7.2009 were Implemented and it supports above view) Rights in the societies/trust running educational institutions are being purchased and sold. Hence, assessee is not eligible for exemption u/s 11/12 of the Act.</p>	<p>Allegation that the educational institutions are run by the assessee as partnership firms for sole purpose of earning and sharing profit is found wrong, baseless, unproved and without any corroborative evidence.</p> <p>2. Receipts/surplus have been utilized wholly and exclusively towards objects of the institution and nothing adverse was found by AO.</p> <p>3. Sharing or siphoning of the receipts/ surplus money of assessee-trust /society by office bearers/ trustees was only possible by inflating, that too exorbitantly, the capital as well as revenue expenditure. But no such evidence was brought by AO and no such allegation was made by him.</p> <p>4. Despite scrutiny assessments done. u/s 143 (3) after verifying in detail the books of accounts, there is no such assertion or claim of Revenue of having inflated capital or revenue expenditure. That in itself proves beyond doubt that the allegations of the Revenue are totally fallacious, unsubstantiated, wrong conjectural only.</p> <p>5. Huge surplus shown by assessee on year to year basis shows bona fides of the assessee. In case of siphoning out, there was no need to show surplus in each year.</p> <p>6. No evidence of profit sharing by trustees/members was found in search or brought on record by AO in subject year.</p> <p>7. No corroborative evidence of implementation of agreement was found in search or brought out by AO in subject year.</p> <p>8. Entire funds property of the assessee is lying in its name and not in the name of trustees/members.</p> <p>9. No allegation or evidence regarding diversion of</p>

money from assessee to trustees/members was there by the deptt., as stated by assessee, since inception of institution.

10. There was no adverse report or comment on functioning of assessee by AICTE.

11. Assessee institution in not party tothe impugned agreements and hence no adverse view could be taken against assessee which is an independent identity from itstrustees/members.

12. In case of any misapplication of funds or mismanagement, action could lie against the person responsible but it can not be viewed against the assessee which is charitable organization.

13. Regarding payment of Rs. 15,83,87,434/- out of agreed amount of Rs 17 crores/- as per a letter found in search, this payment was made through cheques to societies regd.u/s 12A, due to dispute among trustees /office bearers to continue to run the charitable entities. The rationale and circumstances behind this payment explained by the assessee were not controverted or disproved by Deptt. The subject payment of Rs. 15,83,87,434 cannot be treated as payment made for purchase and sale of society.

14. No iota of corroborative evidence was found in search or brought on record by AO to support their allegations of implementation of impugned agreements. For this purpose, it was incumbent upon AO to have conducted post search investigation/inquiry by summoning the concerned parties and to bring on record clinching evidence to prove their allegations but it was not done despite clear cut denial with regard to subject agreement by assessee and office bearer.

15. Burden was very heavy on AO to conclusively prove by cogent evidence that subject agreement was in fact acted upon and that the trustees/members have shared surplus of the institution and so also to ensure that trustees/members are: brought to tax for such shared profits/surplus. But, nothing of the sort was done by him and the observations made and conclusions drawn by him were made only on the basis of presumption, conjectures and surmises only. Also, nothing was taxed in the hands of concerned trustees/members for such alleged shared profits.

	<p>16. Assessee is hence a charitable organization and its activities were genuine and in accordance with its objects as required by the law and is eligible for exemption u/s 11 r.w sec. 12&13.</p> <p>17. It is nowhere provided in the by-laws that at the time of dissolution of Trust/society the funds will vest in the family of the trustees/office- bearers.</p> <p>18. Subject agreements dealt with by AO were not found in case of Jai Narayan Shiksha Samiti and in Hai Hay Kshetriya Education Society and hence no adverse analogy could be drawn in these cases of these agreements.</p> <p>19. Therefore, considering that all the incomes as stated above have to be assessed as income from charitable activities, AO is directed to recalculate the surplus/deficit granting exemption u/s 11, 12 & 13 in respect of all above five assessees.</p>
<p>Advances have been given to various other societies/entities under the same management. It is violation of sec. 13</p>	<p>There is no bar in advancing interest free advances to such charitable trust/societies registered u/s 12A as per the decision of Hon'ble MP High Court in the case of CIT vis RKDF Education Society in ITA no. 151/Ind/2010 dated 01/08/2013.</p>
<p>Assessee is generating huge surplus from its educational activities, every year. This proves that the assessee Society is operating like a business venture and carrying out commercial activities in the guise of charitable activities so as to claim benefit of exemption under the Income Tax Act. The assessee society is thus running only with the motive of earning profits and not for charitable purposes and hence its activities can not be said to be for objects of Society and can not said to be genuine as well. Hence assessee is not eligible for deduction/exemption u/s 10 or 11/12 of IT Act. Hence surplus in the income and expenditure account is treated as business income</p>	<p>The issue of generation of surplus vis-à- vis charitable has been set at rest by Hon'ble Supreme Court in the case of Queens Educational Society vs CIT [2015] 372 ITR 699 (SC) holding that where a surplus was made by educational institution which was ploughed back for educational purposes, said institutions was held to be existed solely for educational purposes and not for purpose of profit.</p>
<p>Donation is debited in the income</p>	<p>Since we have treated the assessee as charitable</p>

<p><i>and expenditure account. The said expenditure is gratuitous in nature. It is not for purpose of business of assessee and hence not allowed as deduction</i></p>	<p><i>organisation eligible exemption u/s 11, hence in our view addition made by AO in AY. 2007-08 to 2010-11 are not correct because donation has been given towards charitable purposes only</i></p>
<p><i>Vehicles being property fincome of the Society have been used for the benefit of interested person as provided u/s 13(3) of the LT. Act 1961 and therefore the assessee has not produced log book of vehicles. Society is not entitled for any deduction u/s 11 of the LT. Act 1961.</i></p>	<p><i>Colleges of the societies are situated almost 10-12 Kms from the main city area in far flung areas regular connectivity with them is possible only with the help of various vehicles. Maintenance of log book is not practicable for use of vehicles of the assessee society. CIT(A) has not commented on the above justification given by the assessee. He rather rested his conclusion on the basis that no vehicle is owned by Chouksey family and they are man of repute requiring use of vehicle. We agree with the contentions of the assessee that the Trustees/office bearers were expected to commute on day-to-day basis to various Govt agencies, banks and other places scattered all over the vast city of Bhopal and assessee is expected to extend such minimum facilities to its trustees Therefore, in our view this can not be said that the trustees have been provided with excessive amenities violating provisions of sec. 13.</i></p>

In view of above, we hold that our findings and observations given in above two decisions of Bench in Appeal no. ITA 389/Ind/2014 and others dt. 17.5.2016 (12A order) and Appeal no. IT(SS)A 273,274 & 275/Ind/2013 and others dt. 17.5.2016 (Quantum order) squarely apply in favour of assessee and the present four appeals are fully covered by the above decisions of Indore Bench of Tribunal, more particularly set out in the above table. The AO and Id. CIT(A) are also not found justified in their findings that the property/income of the trust have been used for the benefit of interested persons as provided u/s 13(3). No violation of sec. 13 is found from the facts of the cases, as stated above in all four cases. Therefore, ail the above four assessees are treated as charitable organisation and not business organisation and are eligible for exemptions/benefits u/s 11, 12 and 13 of the Income Tax Act. The AO is directed to allow the exemptions/benefits u/s 11, 12 and 13 to all the four assessees and re-compute accordingly.

6. A ground was also taken for allowing investment in capital assets as application of income for computing exemption u/s 11. Since we have held that assessee is a charitable organisation eligible for exemption u/s 11, the AO is directed to allow investment in capital assets as application of income.

7. Another ground raised by the assessee regarding set off of deficit of earlier year against income of the current year as application of income, is also allowed in view of the decision of Honble jurisdictional MP High Court

in the case of CIT vs. Gujrati Samaj (2012) 349 ITR 559(MP). AO is directed to allow the same accordingly.”

6. The revenue challenged the order of this tribunal dated 17.11.2017 for A.Y.2011-12 before the Hon'ble High Court wherein the Hon'ble High Court has formulated the substantial question of law as reproduced above. Therefore, it is apparent that the question of law in the appeals before this tribunal for A.Ys.2012-13 and 2013-14 is common and identical to the question of law as formulated by the Hon'ble High Court in the appeals filed by the revenue for A.Y.2011-12. Accordingly, we admit the claim of the assessee and dispose of all these 8 appeals filed by the revenue with directions to AO to apply the final decision of the Hon'ble High Court in the appeals in ITANo.77 to 80 of 2017 and these four assesses shall have no right to question the application of the final decision of the Hon'ble High Court in respect of the cases for A.Y.2012-13 & 2013-14. In case the question of law as formulated by the Hon'ble High Court is not finally decided in the appeals for A.Y.2011-12 the parties shall have liberty to take appropriate steps and get these appeals revived if need arises.

7. In the result, appeals of the revenue are disposed of in the above terms as per section 158A of the Act.

The Order is pronounced in the open court on 21.07.2023.

Sd/-

(B.M. BIYANI)
Accountant Member

Indore, 21.07.2023

Patel/Sr. PS

Sd/-

(VIJAY PAL RAO)
Judicial Member

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore