

IN THE INCOME TAX APPELLATE TRIBUNAL
“RANCHI BENCH, RANCHI
VIRTUAL HEARING AT KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री मनीष बोरड, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Dr. Manish Borad, Accountant Member

I.T.A No.122/Ran/2019
Assessment year: 2014-15

DCIT, Exemption Circle, Ranchi.....Appellant

vs.

M/s Jamshedpur Diocesan Education Society.....Respondent
Bishop's House, Golmuri,
Jamshedpur-831003.
[PAN: AAATJ8652K]

Appearances by:

Shri Yogesh Agarwal, AR, appeared on behalf of the appellant.

Shri Pranob Kr. Koley, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : May 22, 2023

Date of pronouncing the order : July 10, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the revenue against the order dated 26.11.2018 of the Commissioner of Income Tax (Appeals), Jamshedpur (hereinafter referred to as the 'CIT(A)') passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The revenue is aggrieved by the action of the CIT(A) in allowing the deduction u/s 11 of the Act to the assessee-society which was deducted by the Assessing Officer observing that the assessee-society was carrying out its educational activities on profit motive basis.

3. The assessee-society i.e. M/s Jamsedpur Diocesan Education Society is a society engaged in running of educational institutions. The society is registered vide Registration No.943/2010-11 by the Director

General of Registration, Ranchi, Jharkhand. The assessee is registered as a charitable society u/s 12A/12AA of the Act vide order dated 28.09.2007 of the Commissioner of Income Tax, Jamshedpur communicated by Memo No.CIT/Tech/07-08/3193-95 dated 28.09.2007. During the assessment proceedings, the Assessing Officer noted that during the year the assessee had shown total receipts of Rs.2197,64,186/-, whereas, the assessee-society had expended only Rs.1914,92,635/- resulting into a income over expenditure of Rs.2,82,71,551/-. From the above, the Assessing Officer observed that the assessee-society had not been carrying out educational activities on charity basis but it was carrying out educational activity on profit motive basis. He, therefore, denied the exemptions to the assessee-society u/s 11 of the Act and treated the income over expenditure amounting to Rs.2,82,71,551/- as income of the assessee for the assessment year 2014-15.

4. In appeal, the ld.CIT(A), however, deleted the additions so made by the Assessing Officer, observing as under:

“3.5. After having considered the material on record I find that the only activity of the appellant is running various schools, i.e. education. It is also the object of the appellant-assessee society (trust). Some amount of fees charged from the students is a regular feature in any education society. Excessive and high fee charged by any society that automatically excludes a very large portion of the population from availing the benefit/service the society is offering will amount to commercial activity.

That is as per the circular No. 11/2008 of CBDT because if activity in the nature of medical relief and education is carried on in such a manner that it excludes the largest portion of the population then it cannot remain a charitable activity as the term ‘charitable’ means helping others who find it difficult to adequately help themselves due to their circumstances, mainly their economic conditions. However, in this case the average fees charged, per student per month, ranges from Rs. 40/- (minimum) to Rs. 1,428/-

(maximum) for the sixteen schools directly run by the society-trust as well as four other schools supported by the society-trust. By no stretch of imagination the fees can be said to be excessive or having the character of commercial activity. Therefore, AO's order is unsustainable on this issue. Hence, his action of assessing the society as an AOP is treated as null and void. He is directed to treat the status of the appellant society as a trust, duly registered u/s 12AA of the Act with all benefits as per section 11 of the Act.

3.6 As held above the society is involved in charitable activities by providing education to children. No society can perform any charitable activities without acquiring fund for its object related expenditure. The appellant society does not get any aid either from Government or from any other organisation. The society manages its funds by charging fees from the students. The fees are very nominal, as per the chart, which was produced during the appellant proceedings. I have verified from the material on record that they actually had expenditure of Rs. 22,16,76,303/- against income of Rs. 22,71,91,608/-. It shows that the appellant society had applied more than 97% of its income for the purpose of charitable activities and fulfilled the requirement of section 11 of the Act. Therefore, the addition of Rs. 2,82,71,551/- is deleted. The ground on this issue is allowed.”

5. A perusal of the above observation of the CIT(A) would reveal that the ld. CIT(A) has categorically noted that the Assessing Officer's observation that the assessee had income of Rs.2,82,71,551/- over expenditure was factually wrong. The Assessing Officer had taken the income and expenditure figures from profit and loss account, whereas, the actual application of the income from charitable activities was Rs.22,16,76,303/- against income of Rs.22,71,91,608/-. The ld. CIT(A) has noted that in fact the assessee had applied more than 97% of its income on charitable activities. Even otherwise, the ld. CIT(A) has given categorical findings from the facts of the file that the fees taken by the assessee from the students was not excessive and that the assessee was involved in education which was recognised as charitable activity u/s 2(15) of the Act.

6. After hearing the ld. representatives of the parties, we do not find any infirmity in the order of the CIT(A) and the same is upheld.

7. In the result, the appeal of the Revenue is, hereby, dismissed.

Kolkata, the 10th July, 2023.

Sd/-

[डॉक्टर मनीष बोराड /**Dr. Manish Borad**]
लेखा सदस्य /**Accountant Member**

Sd/-

[संजय गर्ग /**Sanjay Garg**]
न्यायिक सदस्य /**Judicial Member**

Dated: 10.07.2023.

RS

Copy of the order forwarded to:

1. DCIT, Exemption Circle, Ranchi
2. M/s Jamshedpur Diocesan Education Society
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches