

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'H': NEW DELHI)
BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND

SH. YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No. 2027/Del/2021, A.Y. 2010-11

ITA No. 2028/Del/2021, A.Y. 2011-12

Sardar Bahadur Sardar Balwant Singh Technical & Scientific Education Society, C/o Girish Aneja CA, 796, Sector-13, Urban Estate, Karnal Haryana-132001 PAN : AAABS0957L	Vs.	ACIT, Circle, Karnal
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ITA No. 2029/Del/2021, A.Y. 2012-13

ITA No. 2030/Del/2021, A.Y. 2013-14

Sardar Bahadur Sardar Balwant Singh Technical & Scientific Education Society, C/o Girish Aneja CA, 796, Sector-13, Urban Estate, Karnal Haryana-132001 PAN : AAABS0957L	Vs.	ITO, Exemption, Ambala
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Assessee by	Shri Girish Aneja, CA
Revenue by	Ms. Sapna Bhatia, CIT-DR

Date of Hearing	06/11/2023
Date of Pronouncement	08/11/2023

ORDER

PER YOGESH KUMAR U.S., JM:

All these appeals by the Assessee are filed against the order of Learned Commissioner of Income Tax (Appeals)-Karnal ["Ld. CIT(A)", for short], dated 28/02/2020 for Assessment Year 2010-11, to 2013-14 Respectively.

2. The common grounds taken by the Assessee in all these appeals accept variance of figure which are as under:-

“1. That on the facts and circumstances of the case, the Ld. CIT Appeals has erred in law and on facts in not appreciating the order dated 31.07.2013 of the Hon’ble ITAT, New Delhi Bench “G” in ITA no. 5274/Del/2012 for the A.Y. 2009-10 in the case of the Assessee.

2. That on the facts and circumstances of the case, the order of the AO in assessing income of the assessee @ Rs. 16,88,040/- is bad in law and the Ld. CIT(Appeals) has further erred in confirming the same.

3. That the A.O. has erred in law and on facts by mechanically following the action of the Ld. CCIT Panchkula in denying the benefit of CBDT Circular No: 7/2010 to the assessee, ignoring the binding and benevolent nature of the CBDT Circulars and the Ld. CIT(Appeals) has further erred in not appreciating the contention of the assessee.

4. That the Appellant craves to add, amend or delete any ground(s) of appeal before or during the hearing of the appeal.”

3. The above appeals are filed by the Assessee challenging the orders of the Commissioner of Income Tax (appeals) dated 28/02/2020 for the Assessment Year 2010-11 to 2013-14 in respect of SBS Balwant Singh Technical & Education Society and for the Assessment Year 2012-13 & 2013-14 in respect of S.D. Education Society, wherein the Ld. CIT(A) has dismissed the Appeals filed by the Assessee.

4. There is a delay of 53 days in filing the above captioned appeals and the applications for condonation of delay have been filed in all the Appeals by the Assessee on the ground of Covid19 Situations and took shelter under order of the Hon'ble Supreme Court in *Suo-moto* Writ Petition (Civil) No. 3/2020 in RE: cognizance for extension of limitation dated 23/03/2020.

For the reasons stated in the applications for condonation of delay, the delay of 53 days in filing the present appeals are condoned.

5. At the outset, the Assessee's Representative submitted that in the similar circumstances in the case of S.D. Education Society Vs. ACIT in ITA No. 5276/Del/2012 (A.Y 2009-10) and in the case of SBS Balwant Technical and Scientific Education Society Vs. ACIT for Assessment Year 2009-10, the Co-ordinate Bench of the Tribunal vide order dated 31/07/2013 set aside the order of the CIT(A) and remanded to the file of the A.O. with a direction to decide the issue afresh based on the outcome of the application for Exemption. The Ld. Counsel submitted that in the Assessee's own case (Supra) the identical issue has been decided by the Tribunal by remanding the matter to the file of the A.O. for fresh consideration, therefore, prayed for remanding the matter to the A.O. The Ld. Departmental Representative did not dispute the above factual aspects, however, placed reliance on the orders of the Lower Authorities.

6. We have gone through the order dated 31/07/2013 passed by the Coordinate Bench of the Tribunal in Assessee's own case for Assessment Year 2009-10 in ITA No. 5276/Del/2012 and 5274/Del/2012 respectively and found that the similar facts and circumstances the identical issue has been remanded to the file of the A.O. with a direction to decide the same after the outcome of fate of application of exemption is decided. The relevant portion of the order read as under:-

“4. Having gone through the order dated 30.4.2013 of the Tribunal in the case of Dayal Singh College vs. ACIT (Supra), we find that under similar facts and circumstances an identical issue has been set aside and restored to the file of the AO with direction to decide the same after outcome of the fate of assessee’s application for exemption sought u/s 10(23C)(Vi) of the Act. The facts in brief are that the assessee is a registered trust / society. Earlier it was eligible for exemption u/s 10(22) of the Act. Thereafter consequent to introduction of section 10(23C) of the Act also the exemption was granted u/s 10(23C) (vi) of the Act. In the case of S.D. Education Society the Ld. CCIT Panchkula granted exemption u/s 10(23C) (vi) of the Act per order dated 26.3.2008. An application to give effect of the CBDT circular No. 7/2010 dated 27.10.2010 to the exemption order dated 26.3.2008 was moved on 25.11.2010 before the CCIT Panchkula seeking a formal rectification order modifying the period of validity to asstt. year 2007-08 onwards. The same was refused by the Ld. CCIT, Panchkula against which the appellant moved Hon’ble P & H High Court vide writ petition. The Hon’ble High Court was pleased to quash the order of the Ld. CCIT whereby he had refused and directed the Ld. CCIT to pass fresh order in accordance with the law as laid down by the Hon’ble P & H High Court in the case of Pinegrove International Trust. The Ld. CCIT however in the fresh proceedings also without appreciating the CBDT circular and the pine grove judgment refused the application for exemption against which assessee is before the Hon’ble P & H High Court which has been admitted. Meanwhile the department has moved to the Hon’ble Supreme Court against the Pinegrove International Trust judgment and other connected cases including the assessee’s writ petition by way of SLP. Department SLP is still pending and no stay of any kind therein has been granted by Hon’ble Supreme Court. In view of these facts it has been prayed by the that as on today the assessee’s writ petitions before Hon’ble P & H High Court and department SLP before the Hon’ble Supreme Court remains pending.

The outcome of these proceedings will decide the fundamental question about grant of exemption. Since the present assessment has been framed on the basis that Ld. CCIT has refused the assessee's application for extension of exemption ends of just will meet after the assessment in question is set aside back to the file of the AO to decide the same after the issue about assesee's application for the exemption is decided. Similar are the facts and prayer in the case of SBS Balwant Singh Technical & scientific Educational Society. We thus respectfully following the decision of the Tribunal under similar facts and circumstances on an identical issue in the case of Dayal Singh College Trust Society vs. ACIT (supra) set aside and restore the matter back to the file of the AO with direction to decide the same after the outcome of fate of application for exemption is decided.

In the result appeals preferred by the assessees are allowed for statistical purposes."

7. Considering the fact that in Assessee's own case, the Co-ordinate Bench of the Tribunal has restored the similar issue to the file of the A.O., following the principle of consistency we remand the issue involved in the present Appeal to the file of the A.O. with a direction to decide the same in accordance with law based on the outcome of the application for Exemption.

8. In the result, Appeals preferred by the Assessee's are partly allowed for statistical purpose.

Order pronounced in the open court on 08th November, 2023.

Sd/-
(DR. B.R.R.KUMAR)
ACCOUNTANT MEMBER

Date:- 08.11.2023

Binita/R.N, Sr.P.S

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

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI