

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
MS MADHUMITA ROY, JUDICIAL MEMBER**

**ITA Nos. 3934 & 3935/Del/2018
(Assessment Years: 2013-14 & 2014-15)**

Lingaya's Society, C/o. M/s. RRA Taxindia, D-28, South Extension, Part-1, New Delhi (Appellant) PAN:AAAAL3893L	Vs. ACIT(Exemption), Circle-1(1), New Delhi (Respondent)
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**ITA No. 4899/Del/2018
(Assessment Years:2014-15)**

DCIT(Exemption), Circle-1(1), New Delhi (Appellant) PAN:AAAAL3893L	Vs. Lingaya's Society, C/o. M/s. RRA Taxindia, D-28, South Extension, Part-1, New Delhi (Respondent)
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Assessee by :	None
Revenue by :	Shri Anshul, Sr. DR

Date of Hearing	27/05/2024
Date of pronouncement	12/06/2024

O R D E R

PER S. RIFAUH RAHMAN, A. M.:

1. These are the appeals filed by the Assessee and revenue against the order of Learned Commissioner of Income Tax (Appeals)-40, New Delhi ["Ld. CIT(A)", for short], dated 27.04.2018 for Assessment Years 2013-14 and 2014-15.

2. Identical issues are involved in both the appeals and hence they are taken up together and disposed off by this common order for the sake of convenience. We first take up the appeal for AY 2014-15.

3. None appeared on behalf of the assessee despite issuance of notice. We observe from the record that the case was fixed for hearing from 28.02.2022 and afterwards '10' to hearings were posted. In all the above date of hearings, none appeared even after several RPAD notices were issued. There is absolutely no response from the assessee's side. Hence we proceed to dispose off this appeal with the assistance of the Ld. DR and based on materials available on record.

4. Brief facts of the case are that, the assessee is a society which is registered with the Registrar of societies vide registration dated 06.10.2008 as Lingaya's University Society. It was also registered u/s 12A vide order dated 25.04.2011. The name of the society was change to Lingaya's Society vide amended certificate of registration dated 28.05.2010 and another order under section 12A in the name of Lingaya's Society was issued vide order dated 25.04.2011. The society is engaged in running school and conducting courses in engineering, management studies etc at Faridabad and the over-all activities carried out by the assessee during the accounting period were found to fall within the ambit of charitable purpose as per the definition in section 2(15) and hence, the benefit of exemption of income under the provisions of sections 11 and 12 was allowed to the assessee. The assessee filed its return of income was filed on 30.09.2014 declaring Nil income. The case was selected for scrutiny and notice under section 143(2) was issued on 24.09.2015. During the year under consideration, addition to development fund amounting to Rs. 2,58,87,250/- was shown. During the assessment proceedings, the assessee was asked to provide source of fund, purpose and

utilization of this fund. The assessee stated that the amount received had been directly taken in to the general fund and does not form part of the income. The Assessing Officer noted that the assessee had only accumulated the fund and no expenditure or utilization against the same had been done during the year. It was held that as per the provisions of sections 11 and 12, all the receipts collected from the students in whatever form are to be considered as income of the trust/society and that the development fund, or any fund for a specific purpose, so collected should be specifically incurred for the purpose for which it was collected. It was also noted that if it remained unutilized, then the same should be included in the receipts as per the Act as these would not form part of the corpus. Hence, development fund of Rs. 2,58,87,250/- was added to the total receipts of the assessee society.

5. Aggrieved, the assessee preferred an appeal before the Id CIT(A) and the Ld. CIT(A) partly allowed the appeal by observing as under:-

"4.2 Grounds of appeal nos. 3 and 4 challenge the addition of Rs. 2,58,87,250/- on account of addition to development fund by the treating as non-corpus funds.

4.2.1 The Assessing Officer treated the development fund as receipts of the assessee by holding that all the receipts are to be treated as income if not utilised and included them in the regular income of the trust for the purpose of application to the extent of 85%. The appellant has submitted that the said amount was collected as per the extant guidelines of the Ministry of Human Resource Development and notification of the Haryana Government, Law and Legislative Department as per which development fee could be collected and utilized for laying and up-gradation of infrastructure; betterment and growth of the institution and special amenities to the students. Hence it was claimed that the development fund is capital in nature. It has also been contended that the said receipts have been considered as corpus funds within the meaning of section 11(1)(d).

4.2.2 I have considered the assessment order and the submissions of the appellant. As regards the contention of the appellant that similar receipts have been considered as capital receipts in the past, it is to be noted that it

is settled law that the principle of res judicata is not applicable to proceedings under the Income Tax Act. In the case under consideration there is nothing in the assessment orders in the past which shows that the matter was examined.

4.2.3 With regard to development fund received which is in accordance with the guidelines issued by the Ministry of Human Resource Development and Government of Haryana, the issue is not whether such receipts would be revenue or capital in nature. For the purpose of not considering the receipts as income of the society it is to be seen whether such receipts can be considered as corpus donations which are exempt under section 11(1)(d). Hence it needs to be seen whether receipts on account of development fund can be considered as corpus donations for the purpose of section 11(1)(d). As regards corpus donations, what is exempt under section 11(1)(d) is income in the form of voluntary contributions made with a specific direction that they shall form a part of the corpus. Hence what is to be decided first is whether receipts on account of development fund are voluntary or not and not whether such receipts are revenue or capital in nature. As per the submission of the appellant, development fund is collected as a part of the fees. It is obvious that if the said amount is a part of the fee and if then same is not paid, the student will not be admitted to the institution. Hence, this fund collected cannot be considered to be a voluntary contribution and to that extent cannot be considered to be a voluntary contribution with specific direction that it will form a part of the corpus and hence cannot be considered for purposes of section 11(1)(d).

4.2.4 In view of the discussion above, there is no infirmity in the order of the Assessing Officer in considering the receipts on account of development fund as income of the assessee society under section 11(1)(a). Grounds of appeal nos. 3 and 4 are dismissed.

4.3 Grounds of appeal nos. 5 and 6 challenge the disallowance of 10% of academic expenses and maintenance charges, amounting to Rs. 75,53,226/- as application of income. 4.3.1 The Assessing Officer has disallowed 10% of expenses under the head academic expenses and maintenance charges since the assessee could not submit some bills and vouchers pertaining to these heads.

4.3.2 I have considered the assessment order and also the submissions made by the appellant. It is seen that there is no allegation that the amounts have been spent for purposes which are other than for meeting the objectives of the trust or are not for charitable purposes. Further, the reason cited by the Assessing Officer is that complete bills and vouchers have not been produced. In the absence of any allegation or any specific instances of incurring expenditure which is not for meeting the objectives of the trust,

the addition made cannot be sustained. Accordingly, the impugned addition is deleted. Grounds of appeal nos. 5 and 6 are allowed.

4.4 Grounds of appeal nos. 7 and 8 challenges the disallowance of depreciation as application of income.

4.4.1 I have considered the order of the Assessing Officer and the submissions of the appellant. Charitable trusts or institutions are governed by the provisions of sections 11, 12, 12A, 12AA and 13 under Chapter III of the Income-tax Act. These sections constitute a complete code governing the grant, cancellation or withdrawal of registration, providing exemption of income and also conditions subject to which a charitable trust or institution is required to function in order to be eligible for exemption. Section 11(1)(a) provides for exemption to the extent income derived from the property held under trust is applied for charitable purposes. Subject to fulfillment of conditions laid down in section 11, exemption is available in respect of income irrespective of whether the expenditure incurred is revenue or capital in nature. Hence, exemption is available even when the income is applied for acquiring a capital asset. In view of this, charitable institutions were considered to be not eligible for depreciation.

4.4.2 There are many conflicting judgments of various Hon'ble High Courts, including that of the jurisdictional High Court, both in favour and against allowability of depreciation. The Hon'ble Delhi High Court, in the case of Director of Income Tax (Exemption) vs. Charanjiv Charitable Trust [2014] 267 CTR 305, have held that if the cost of the asset has been allowed as deduction by way of application of income, then depreciation on the same asset cannot be allowed in computation of income of the trust (Para 30). In a subsequent decision, the Hon'ble Delhi High Court, in the case of DIT(Exemption) vs. Indraprastha Cancer Society in ITA No. 240, 348, 406, 463 & 464/2014 vide the order dated 18.11.2014, have held that the assessee is eligible for depreciation in the case of charitable or religious institution also. However, recently in the case of Commissioner of Income-tax-III, Pune vs. Rajasthan and Gujarati Charitable Foundation, Poona in Civil Appeal No. 7186/2014 vide order dated 13/12/2017, the Hon'ble Supreme Court have held that depreciation is allowable in case of charitable institutions. In view of this, the claim of depreciation of the appellant is allowed. Grounds of appeal nos. 7 and 8 are allowed.

4.5 Ground of appeal no. 9 challenges the addition of Rs. 5,00,000/- by treating as application for non charitable purposes,

4.5.1 The Assessing Officer, on the basis of the survey report, noted that funds from society had been used to meet expenses related to the mining operations of Shri Vir Bhadra Singh group/ related parties and reliance was also placed on the survey documents, copy of which was handed over to

A.R. of the assessee during the assessment proceedings. The appellant has noted that the amount of Rs. 5,00,000/- was transferred by the society vide NEFT/RTGS on 17.12.2013 against which the payment was made through cash withdrawal of Rs. 4,20,000/- on 07.01.2014. The appellant in this regard has merely submitted that the Assessing Officer is not justified in making the impugned addition

4.5.2 I have considered the assessment order and the submissions of appellate proceedings. No submissions along with supporting/ corroborating evidence have been made in support of the contention that the addition made is not justified. In view of this, the addition made is upheld. Ground of appeal no. 9 is dismissed.

4.6 Ground of appeal no. 10 challenges the addition of Rs. 2,90,000/- on account of out of books donation received.

4.6.1 The Assessing Officer relying on the survey report noted that cash donations were received. The Assessing Officer also noted from the list of students furnished by the assessee, one Shri Fatem Gill having No. 13/CE/048 was actually present in the document seized during the survey. The appellant on the other hand has simply stated that the assessee has not received any donation as alleged by the Assessing Officer.

4.6.2 I have considered the assessment order and the submissions of the appellant. It is seen from the assessment order that the impugned addition on account of cash donation which is not disclosed in books of accounts has been made by comparing the list of students furnished by the assessee during assessment proceedings and the document seized during the course of the survey proceeding wherein one name was found in common in both the trusts. During the course of appellate proceedings no evidence has been brought on record in support of the contention that no donation was received outside the books of account. In view of the facts as highlighted by the Assessing Officer in the assessment order, the addition made is upheld. Ground of appeal no. 10 is dismissed.

4.7 Ground of appeal no. 11 challenges the addition of Rs. 5,87,708/- on account of sale of fixed assets.

4.7.1 The Assessing Officer has not given any reason for making the said addition in the assessment order. The appellant has submitted that the addition made in this regard was not warranted when sufficient evidence was made available to the Assessing Officer for establishing the genuineness of the sale.

4.7.2 I have considered the assessment order and the submissions of the appellant. From the income and expenditure account it is seen that the said

income has not been included in the receipts from students and others which, as per schedule 8 includes academic fees and other non operating income. The said amount on account of sale of fixed assets is seen from the depreciation chart of fixed assets (Page no. 25 of the paper book). It is also seen from the copy of computation of income that the said amount has not been included while computing the taxable income. Amount received on sale of fixed assets would be taxable in the hands of the appellant since all receipts on account of income derived from property held under trust is to be considered under the provisions of section 11. In the case of assets which are property held under trust, if the provisions of section 11(1A) are not applied, the receipts have to be considered under section 11(1)(a). From the copy of the return of income it is seen that no exemption has been claimed under section 11(1A), in respect of deemed short term capital gain on depreciable assets. Hence, there is no infirmity in the order of the Assessing Officer in making the said addition. Hence, ground of appeal no. 11 is dismissed.

4.8 Ground of appeal no. 12 challenges the not allowing of repayment of loan amounting to Rs. 10,00,31,714/- as application of income.

4.8.1 I have considered the assessment order and the submissions of the appellant. No reasoning has been given by the Assessing Officer for not allowing re-payment of loan as application of income. The Assessing Officer has allowed capital expenditure amounting to Rs. 3,60,39,822/- as application of income. From the schedule pertaining to fixed assets submitted that the appellant it is seen that the said sum is on account of addition made to fixed assets. On going through the return of income, a copy of which has been filed at Pages 2-14 of the paper book, it is seen that the column pertaining to application of income for charitable or religious purposes in India, during the previous year- capital account (repayment of loan), an amount of Rs. 10,00,31,714/- has been claimed.

4.8.2 As per circular no. 100 dated 24.01.1973, repayment of loan originally taken to fulfill one of the objects of the trust will amount to application of income for charitable or religious purposes. In the case of CIT vs. Maharana of Mewar Charitable Foundation [(1987) 164 ITR 139 (Raj.)], the Hon'ble Court referred with approval to the said circular which has expressed the view that repayment of the loan if taken for fulfillment of charitable purposes will be treated as application for purpose of section 11(1).

4.8.3 In view of the discussion above and in view of the fact that the said amount has been claimed in the return of income, the Assessing Officer is directed to allow the amount of Rs 10,00,31,714/- on account of repayment of loan as application of income. Since the amount of capital expenditure amounting to Rs. 3,60,39,822/- on account of acquisition of fixed assets has

not been claimed as application as per the return of income, the same cannot be allowed as such. Ground of appeal no, 12 is allowed.

4.9 Ground of appeal no. 13 states that the appellant craves the right to add, modify, amend or delete any of the grounds of appeal at or before the time of hearing and all the above grounds are without prejudice to each other. Since no such option has been exercised during the appellate proceedings, this ground of appeal is academic in nature and is considered to be a dismissed ground for statistical purposes.

5. In the end result, the appeal is PARTLY ALLOWED."

6. Aggrieved with the above order, the assessee and revenue are in appeal before us raising following grounds before us:-

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.2,58,87,250/- on account of development fund by treating it as non-corporate u/s 1(1)(a) and that too without considering the submissions of assessee and in violation of principles of natural justice.

2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in making addition of Rs.2,58,87,250/- on account of development fund by treating it as non-corporate u/s 11(1)(a) is bad in law and against the facts and circumstances of the case.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.5,00,000/- by treating it as application for non charitable purpose.

*4. That having regard to the facts and circumstances of the case, L * dCIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.2,90,000/- on account of alleged donation received.*

5. That having regard to the facts and circumstances of the case Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making addition of Rs.5,87,708/- on account of sale of fixed assets.

*6. That having regard to the facts and circumstances of the case, L * dCIT(A) has erred in law and on facts in not allowing capital expenditure amounting to Rs * 0.3 * 0.6 * 0.39, 822 / (- o) * n account of acquisition of fixed assets as application of income."*

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

"(i) Whether on the facts and in circumstances of the case and in law, Ld. CIT(A) has erred in allowing academic expenses ignoring that in absence of supporting bills and vouchers, cannot be ascertained where such expenses were actually incurred by the assessee during the year or not and the same remained unverified.

(ii) Where on the facts and in circumstances of the case and in law, Ld. CIT(A) has erred in allowing repayment of loan as application of income ignoring that the same was not claimed as per the computation of income submitted by the assessee during the assessment proceedings.

(iii) The appellant craves leave to add, to alter or amend any grounds of appeal raised above at the time of hearing."

8. The Ld. DR brought to our notice the findings of the lower authorities and submitted that he relies on them.

9. Considered the submissions of the Ld. DR and based on the material placed on record, we observe that Ld. CIT(A) has considered the observation of the AO in the assessment order and submissions of the assessee. He decided the issue fairly on the basis of merits. Therefore, we do not find any infirmity in the order of the Ld. CIT(A) and accordingly, the grounds raised by the assessee are dismissed.

10. In view of identical facts prevailing in Asst Year 2013-14, the decision rendered by us hereinabove for Asst Year 2014-15 shall apply mutatis mutandis for Asst Year 2013-14 also except with variance in figures.

11. In the result, both the appeals of the assessee are dismissed.

12. Considered the submissions of the Ld. DR and materials placed on record. The grounds raised by the department against the relief given by the Ld. CIT(A). Since, there is no representation from the assessee's side, we do

not see any reason to hold the issue against the revenue. Therefore, the appeal filed by the revenue is allowed at this stage.

13. In the result, both the appeals of the assessee are dismissed and the appeal of the revenue is allowed.

Order pronounced in the open court on 12/06/2024.

-Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

-Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Dated: 12/06/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi