

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, DELHI**

**BEFORE MS.MADHUMITA ROY, JUDICIAL MEMBER &
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No. 2916/Del/2019
(Assessment Year 2010-11)**

The Delhi Building and Others Construction Workers Welfare Board 5, Sham Nath Marg, O/o Labour Commissioner, Govt. Of NCT, Delhi – 110054	Vs.	ACIT(E), Circle- 2(1) Civic Centre, New Delhi – 110002
स्थायीलेखासं. / जीआइआरसं. / PAN/GIR No: AAAJT1846R		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Sh. T. James Singson

Date of Hearing	15.07.2024
Date of Pronouncement	06.08.2024

O R D E R

PER MADHUMITA ROY, JM:

The instant appeal filed by the assessee is directed against the order dated 31.01.2019 passed by the CIT(A)-40 Delhi, under Section 147 r.w.s 143(3) of the Income Tax Act, 1961 (hereinafter

referred to as 'the Act') arising out of the order dated 19.12.2017 passed by the ACIT for Assessment Year 2010-11.

2. At the time of hearing of the instant appeal none appeared on behalf of the assessee. Past records also reveal that the assessee never been represented before us whenever matter was called by the Bench. Hence, we have decided to proceed with the matter ex-parte on the presumption that the assessee is not interested to proceed with the matter.

3. The brief fact leading to the case is this that in view of the AIR/NMS information showing financial activities for Financial Year 2009-10 that the assessee received an income of Rs.559,13,669/- on which tax had been deducted at source but no return of income had been filed, notice under Section 148 of the Act dated 29.03.2017 was issued to the assessee whereupon the assessee filed return dated 27.10.2017 declaring nil income. The assessee is a society registered under Section 12A of the Act dated 23.03.2009. It was found that the assessee had transferred cess fees from its balance sheet to the income and expenditure account during the year of Rs.191,61,53,808/-. In response of the show cause issued to the assessee it was replied that the cess fees received by the board is capital receipt which is used for specific purposes i.e for the welfare of the construction worker as per Section 60 of Building and Other Construction Works, Act 1996. The same has shown in the balance sheet as a capital receipt for specific purpose. It was

held that the said amount has to be taken to the income and expenditure account and 80% of the said amount to be utilized in the year and thus added to the total income of the assessee by the Ld. AO.

4. Before the First Appellate Authority the case made out by the assessee is this that cess is collected by the Board is not an income; the cess is collected as per norms and Regulations as BOCW Act, 1996 and referred various provisions of the same Act and further contended that it is not an income within the meaning of Section 2(24) and therefore not chargeable to tax under Section 4 of the Act. It is submitted that the notice under Section 148 issued by the ITO(Exemption) is bad in law and is without jurisdiction. The CIT(A) after considering the case made out by the assessee further referred and order passed by the Coordinate Bench in assessee's own case for Assessment Year 2007-8 and 2008-09 in ITA No. 4280 and 2663/Del/2011 wherein the exemption under Section 11 have been denied since the assessee was not registered under Section 12A of the Act. The assessee was granted Registration under Section 12A only on 27.03.2009 i.e from Assessment Year 2009-10 onwards. Moreso, the issue as to whether the cess collected by the assessee in the Building and Other Construction Workers Welfare Cess Act is a tax and not income in the hands of the assessee Board so as to fall within the charging provisions as already been decided by the Coordinate Bench in ITA Nos. 4280 and 2663/Del/2011 for Assessment Years 2008-09 and 2007-08 in assessee's own case whereby and whereunder the exemption under Section 11 has been

denied as the assessee was not registered under Section 12A of the Act, the ld. CIT(A) dismissed the appeal with the following observations:

“4.15 As regards the issue raised which include whether cess collected by the assessee under the Building and Other Construction Workers Welfare cess Act is a tax and not income in the hands of the assessee Board so as to fall within the charging provisions, the said issue had come up for consideration before the Hon'ble IAT Delhi Bench in ITA Nos. 4280 and 2663/Del/2011 for assessment years 2008-09 and 2007-08 in appellant's own case In the said years exemption under section 11 had been denied since the assessee was not registered under section 12A. While deciding the matter the Hon'ble ITAT have held as under:

“7. Having gone through the above cited decisions, we find that in the cited decisions by the learned CIT(DR), the grievance of the assessee before Chandigarh Bench of the NAT in the case of the Punjab Building and Other Construction Welfare Board vs CIT (supra), was regarding allowability of registration of charitable trust to the assessee from the date of creation of the trust. It was held by the ITAT that the date of registration would be applicable as prescribed under the provisions of set 12AA of the Act and not from the date of creation of the trust in the hands of the assessee Again in the case of CIT vs. Gujarat Marry Time Board (supra), the Hon'ble Supreme Court has been pleased to hold that the assessee was not precluded from claiming exemption under sec 11(1) in the light of definition of words "charitable purposes as defined under sec 2(15), even if it had ceased to be a local authority under sec 10(20) of the 1.1. Act. The issue raised before the Hon'ble Punjab & Haryana High Court in the case of CIT vs. M/s Haryana Building & Other Construction Works Welfare Board (supra) relied upon by the learned CIT (DR) was as to whether on the facts and circumstances of the case the 17 AT was justified in directing the CII to grant registration to the assessee despite the fact that there was no application of funds towards charitable purpose by the assessee? The Hon'ble High Court approved the order of the ITAT In the above cited case of CIT vs. Haryana Building & Ors Construction Works Welfare Board (supra) relied upon by the Learned CIT(DR), it has been noted by the Hon'ble High Court that the assessee was a statutory body constituted for advancing welfare of workers employed in construction activity which is an "object of general public utility under sec. 2(15) of the Act The Hon'ble High Court thereafter following the ratio laid down by the Hon'ble Supreme Court in the case of CIT vs Gujarat Mary Times Board (2007)- 295 ITR 561 (5C) has been pleased to hold the direction of the ITAT for grant of registration as fully justified with this finding that the assessee was a genuine charitable institution In the said decision, the Hon'ble High Court in para No 2 of the decision has also reproduced finding recorded by the ITAT regarding duties and objects as well as purposes for which the assessee board was

constituted We, therefore, respectfully following the decisions of Hon'ble Punjab & Haryana High Court in the case of CII vs. Haryana Building & Other Construction Works Welfare Board (supra) hold that the present appellant is a genuine charitable institution eligible for the grant of registration under ser 12A of the Act The contention of the assessee in the present case that it is collecting cess for the welfare of the labour, so, it does not comes under the ambit of Income-tax Act. 1961 for denial of the exemption under sec. 11/12 of the Act in absence of its registration under sec. 124/12AA of the Act does not survive Though, there is no dispute, as discussed above that the present assessee is very much eligible for getting registered under sec. 12A/12AA of the Income-tax Act. 1961 but in absence of such registration for the assessment years under consideration, the authorities below have rightly denied the exemption claimed under sex 11/12 of the Income tax Act, 1961 The action of the authorities below in this regard is fully covered by the decision of Hon'ble Punjab & Haryana High Court in the case of CII vs Haryana Building & Other Construction Work Welfare Board (supra), a similarly placed assessee in the State of Haryana. Since thus decision has been given in case of a similarly placed assessee and there is no other direct decision helpful to the assessee or the decision of Hon'ble jurisdictional Delhi High Court in the case of similarly placed assessee, we are bound to follow the above decision of Hon'ble Punjab & Haryana High Court. The issue is thus decided against the assessor as the same by implication does not survive in view of the above cited decision of Hon'ble Punjab & Haryana High Court. The grounds moolving the issue are accordingly rejected.

8. In result, the appeals are dismissed.”

41.6 As noted above, the Hon'ble ITAT had held that in absence of registration under section 12A, the authorities had rightly denied the claim of exemption under section 11. The assessee, is therefore entitled to exemption under section 11 and the Assessing Officer has rightly taxed the receipts which is income derived from property held under trust and has to be applied for the purposes for which the assessee was constituted.

4.1.7 It is a fact that the assessee was granted registration under section 12A vide order dated 27.03.2009 from assessment year 2009-10 onwards and hence, it falls in the definition of person for the purpose of Income Tax Act. The said amount cannot be considered as a grant as contended by the appellant since there is no time period in which the amount collected have to be spent These are also not in the nature of corpus donations which would be exempt under section 11 Hence, there is no infirmity in the action of the Assessing Officer in treating the amount collected as receipts for the year and taking the same into consideration for the purpose of computing the amount to be applied for charitable or religious purpose.”

5. Upon considering the order passed by the Id. CIT(A) we don't find any reason to interfere with the same for the reason already assigned by him relying upon the order passed by the Coordinate Bench in assessee's own case for Assessment Year 2007-08 and 2008-09 particularly, in the absence of any assistance rendered by the assessee before us, this appeal filed by the assessee is found to be devoid of any merit and thus dismissed.

4. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 06.08.2024

Sd/-

(Avdhesh Kumar Mishra)
ACCOUNTANT MEMBER

Sd/-

(Madhumita Roy)
JUDICIAL MEMBER

Dated 06.08.2024

PS: Rohit

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI