

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH KOLKATA  
BEFORE SHRI N.V.VASUDEVAN, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.1655/Kol/2014

(निर्धारण वर्ष / Assessment Year :2010-11)

DCIT. Central Circle-XXIII, Aayakar Bhavan Poorva, 110,Santi Pally, 5 <sup>th</sup> floor Kolkata-700107	Vs.	Narula Educational Trust 20,B.T.Road, Kolkata-700002
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AAATN4519P</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri G Mallikaarjuna, CIT-DR

राजस्व की ओर से /Revenue by : Shri Anil Kochar

सुनवाई की तारीख / Date of Hearing : 05/04/2017

घोषणा की तारीख/Date of Pronouncement 26/04/2017

**आदेश / O R D E R**

**Per Dr. Arjun Lal Saini, AM:**

The captioned appeal filed by the Revenue, is directed against an order passed by the Id. Commissioner of Income Tax (Appeals) Central-III Kolkata, in appeal No.33/CC-XXIII/CIT(A)/C-III/2013-14/Kolkata, dated 30.06.2014, which in turn arises out of an order passed by the Assessing officer under section 143(3) of the Income Tax Act,1961 ( hereinafter referred to as the 'Act'), dated 25.03.2013.

2. Brief facts qua the assessee are that the assessee trust filed its return of income on dated 31.09.2010 disclosing total income at Rs.Nil. The return of income of the assessee trust was processed under section 143(1) of the Act on dated 15.09.2011. Subsequently, the assessee's case was selected for scrutiny under section 143 (2) of the Act and the Assessing Officer had assessed the assessee trust in the status of AOP and benefit of exemption U/s 11 is denied. The Assessing officer

observed that Id Commissioner of Income Tax, Central-III, Kolkata by his order U/s 12AA(3) of the I.T.Act dated 22/06/2010 cancelled the registration of the Trust which the Trust enjoyed U/s 12AA(3) of the Act. The said order was quashed by ITAT Kolkata by its order dated 24.02.2012 thereby restoring the registration U/s 12A of the Act. However, the department has filed appeal U/s 260A against ITAT's said order before Hon`ble Calcutta High Court. Hence, in order to safeguard the interest of revenue in the situation if High Court gives judgement in Revenue`s favour, the Registration U/s 12A is still considered to be cancelled and the assessee is assessed in the status of AOP and benefit of exemption U/s 11 is denied. This way, the AO assessed the Trust in the status of Association of Person (AOP) and worked out the taxable income of the AOP at Rs.1,97,90,220/-.

3. Dissatisfied with the order of the Assessing Officer, the assessee trust filed an appeal before the Commissioner of Income Tax (Appeals) who has deleted the addition made by the Assessing Officer treating the status of assessee is that of Trust registered under section 12A of the Act. The Id CIT(A) observed that the action of the Assessing Officer was to safeguard the interest of the revenue, but at that point of time the order of the Hon`ble ITAT was in force therefore the status of the assessee is that of Trust registered U/s 12A of the Act.

4. Not being satisfied with the order of the Id CIT(A), the Revenue is in appeal before us. **The solitary grievance of the of the Revenue is that**

**Id CIT(A) erred in treating the assessee, as if , the assessee is a Trust registered under section 12A of the Act.**

5. The Id DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. However, the Id AR for the Assessee submitted before us that status of the assessee is that of Trust registered U/s 12A of the Act. The Id AR for the assessee also stated that this issue is squarely covered by the judgment of Hon`ble ITAT Kolkata in assessee`s own case in ITA No. 1531/K/2012, A.Y. 2009-10.

6. Since the issue is squarely covered in favour of the assessee, by the Judgment in assessee`s own case (supra), therefore, we are of the view that Id CIT(A) was thus justified in giving the impugned relief. We uphold his action and decline to interfere in the matter.

7. In the result, the appeal filed by the Revenue, is dismissed.

Order pronounced in the open court on this 26/04/2017.

**Sd/-**  
**(N.V. VASUDEVAN)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**  
**(DR. A.L.SAINI)**

लेखा सदस्य / ACCOUNTANT MEMBER

**कोलकाता /Kolkata; दिनांक Dated 26/04/2017**

प्रकाश मिश्रा/Prakash Mishra,Sr.PS.

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant- DCIT, CC-XXIII, Kolkata
2. प्रत्यर्थी / The Respondent.-Narula Educational Trust
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY  
ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक  
पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, कोलकाता / ITAT, Kolkata