

**IN THE INCOME TAX APPELLATE TRIBUNAL
Kolkata Bench, KOLKATA
(Bench- “C”)**

**BEFORE SHRI N. V. VASUDEVAN JUDICIAL MEMBER AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER,**

I.T. A.No. 1545 /Kol/2014
Assessment Years: 2010-11

DCIT, CC-XXIII, Kolkata	-Vs-	JIS Foundation
(Appellant)		<u>[PAN :AAAJI860A]</u> (Respondent)

For the Appellant/Revenue	Sri Rajat Kumar Kureel, JCIT, Sr. DR
For the Respondent/Assessee	Sri Anil Kochar, AR
Date of Hearing	30.03.2017
Date of Pronouncement	.2017

ORDER

Per M. BALAGANESH, AM

This is appeal filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-III, (hereinafter referred to as the “Id. CIT(A)”), Kolkata, dt. 29.05.2014, passed under section 250(6) of the Income Tax Act, 1961 (hereinafter referred to as the “Act”) relating to Assessment Year 2010-11.

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in granting exemption u/s 11 of the Act in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee filed its return of income for the Asst. Year 2010-11 on 30.9.2010 declaring total income of Rs Nil. The assessee

trust runs two engineering colleges, a polytechnic college and an Institute of Aviation and claimed exemption u/s 11 of the Act. The ld. AO observed as under:-

The ld. CIT by his order u/s 12AA(3) of the Act dated 22.6.2010 cancelled the registration of the Trust which it enjoyed u/s 12A of the Act . The said order was quashed by this Tribunal vide its order dated 24.2.2012 thereby restoring the registration u/s 12A of the Act. However, the department had filed appeal u/s 260A of the Act against the tribunal order before the Hon'ble Calcutta High Court. Hence in order to safeguard the interest of the 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 assessee is assessed in the status of Association of Persons (AOP) and benefit of exemption u/s 11 is denied.

Accordingly the ld. AO determined the excess of income over expenditure of educational trust as total income of the assessee in the sum of Rs. 2,69,44,900/-. The ld. CIT(A) observed that as on date, the cancellation of registration of the trust u/s 12AA(3) of the Act has been quashed by the Tribunal in ITA No. 1477 (Kol) of 2010 dated 24.2.2012 and registration u/s 12A of the Act is restored to the trust. Hence the assessee is entitled for exemption u/s 11 of the Act in view of the existence of registration u/s 12A of the Act. Aggrieved, the revenue is in appeal before us on the following grounds:-

*1. Whether, Ld. C.I.T.(A) was justified in dismissing the assessee's appeal by directing to allow exemption u/ s 11 of the IT Act to the assessee Trust, without considering the judgement given by the Hon'ble Bombay High Court in the case of *Sinhagad Technical Education Society vs. CIT(Central)*, (2012) 19 taxmann.com 136 (Bombay).*

2. Whether, Ld. C.I.T.(A) was justified in dismissing the assessee's appeal by directing to allow exemption u/ s 11 of the IT Act to the assessee Trust, without considering the amendment in sec. 12AA of the IT Act by the Finance Act of 2010, for cancellation of the Registration of a Trust or Institution where the activities of the Trust/ Institution are not genuine or are not being carried out in accordance with the objects thereof.

4. The Id. DR vehemently relied on the order of the Id. AO. In response to this, the Id. AR relied on the order of this tribunal for the Asst. Year 2009-10 in assessee's own case in ITA No. 1207/Kol/2012 dated 13.8.2014.

5. We have heard the rival submissions. We find that the tribunal had already quashed the order passed by the Id. CIT cancelling the registration u/s 12AA(3) of the Act. Against this order, the revenue had preferred further appeal before the Hon'ble Calcutta High Court and the same is pending. As on date, the assessee enjoys registration u/s 12A of the Act which fact is not disputed by the revenue in the assessment order. Hence there is no reason to deny the exemption u/s 11 of the Act. We also find that the revenue had not brought any material on record to prove that assessee had not complied with the provisions of section 11 read with section 13 of the Act. Hence we hold that the assessee is entitled for exemption u/s 11 of the Act for this Asst. year also. Accordingly, the grounds raised by the revenue are dismissed.

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the Court on _____ .2017.

[N. V. Vasudevan]
Judicial Member

[M. Balaganesh]
Accountant Member

Dated : _____ .2017
{SC SPS}

Copy of the order forwarded to:

- 1.Appellant/Assessee- JIS Foundation, 20 B.T. Road, Kolkata-700002.
- 2.Respondent –DCIT CC-XXIII, Kolkata.
- 3.CIT(A)- Kolkata.
- 4.CIT – , Kolkata.
- 5.CIT(DR), Kolkata Benches, Kolkata.

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9.	Date on which file goes to the AR			
10.	Date of dispatch of Order.			