

INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH “E”: NEW DELHI]
(THROUGH VIDEO CONFERENCING)

BEFOREMS. SUSHMA CHOWLA, VICE – PRESIDENT
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 1671/Del/2018
[AssessmentYear: 2013-14]

The Assistant Commissioner of Income Tax (Exemption) Circle : 2 (1), New Delhi.	Vs.	New Delhi Young Men’s Christian Association, Jai Singh Road, New Delhi – 110 001. PAN : AAATN1200H
(Appellant)		(Respondent)

Assessee by :	Shri S. Krishnan, Adv.;
Department by :	Ms. Rakhi Vimal, Sr. D.R.;
Date of Hearing	06/07/2020
Date of pronouncement	13/07/2020

ORDER

PER PRASHANT MAHARISHI, A. M. :

01. This appeal is filed by the by the Assistant Commissioner of Income Tax (Exemption), Circle 2(1), New Delhi, [the ld AO] against the order of Commissioner of Income Tax (Appeals)-40, New Delhi, [The Ld. CIT (A)] dated 22.12.2017 for Assessment Year 2013-14 raising following three effective grounds of appeal:-

“ 1. On the basis of facts and circumstances of the case and in law, whether the Ld. CIT(A) has erred in law in ignoring the fact that the assessee is not eligible for exemption u/s 11 & 12 of the I.T.Act,19611.

2. On the basis of facts and circumstances of the case and in law, whether the Ld. CIT(A) has erred in ignoring the fact that the assessee activities are not in charitable nature and activities falls under the last limb of section 2(15) and hit by the proviso to section 2(15) of the Income Tax Act.

3. On the basis of facts and circumstances of the case and in law, whether the Ld. CIT(A) has erred in referring to the decision of Hon'ble Delhi High Court in the case of NASSCOM, related to the issue of provision of doubtful debt which is neither emanating from grounds of appeal nor adjudicated nor applicable in the present case looking into the nature of additions made by the Assessing Officer. “

02. Brief facts of the case shows that assessee is a society registered under the Societies Registration Act, 1860 and under Section 12A of The Income Tax Act, 1961 (the Act) as per order dated 5.07.1974. The assessee Trust's basic aim is to promote spiritual, intellectual, physical and social interest of people especially youth within the territorial jurisdiction of association irrespective of their caste, color and creed and to co-operate and or to associate with any other association or body of persons having objects similar to the objects of the association.
03. Assessee filed its return of income declaring 'NIL' income on 14.09.2013 claiming exemption under Section 11 and 12 of the Act as association of persons carrying on charitable activities.
04. During the course of assessment proceedings, the ld. Assessing Officer found that the assessee is promoting a particular religion and thereby it is hit by the provisions of Section 13(1) (b) of the Act. He further held that the properties of the assessee society are held and controlled by another central trust and, therefore, provisions of Section 13(1) (d) of the Act hit it. He further held that assessee is generating continuous surplus from its various activities. It is carrying on recognized and un-recognized educational courses and income earned from un-recognized courses is huge and, therefore, he held that assessee's income from running of un-recognized educational courses are hit by proviso to Section 2(15) of the Act and are non-charitable in nature. He further held that assessee is providing hostel services to maximizing its profit. Its hostel services are 'home away from home' and it runs a full-fledged hotel in the guise of hostel services. In view of this, he held that assessee is not entitled to the benefit of Section 11 and 12 of the Act. While computing the total income he further disallowed provisions for

contingencies, leave encashment, bad and doubtful debts and provisions of gratuity holding that they are un-ascertained liability. Accordingly, he computed the total income of the assessee at Rs.8,98,66,875/- as per order under Section 143(3) of the Act dated 1March 2016.

05. Assessee aggrieved with the order of the Id. Assessing Officer preferred appeal before the Id. CIT (Appeals). The Id. CIT (Appeals) with respect to the denial of exemption under Section 11 and 12 of the Act held vide para No. 5 of his order as under:-

“5. Determination

5.1 Grounds of appeal nos. 1 and 2 challenge the denial of exemption under sections 11 and 12. Since these grounds of appeal are inter-linked, these are being adjudicated together.

5.1.1 The Assessing Officer denied exemption under sections 11 and 12 since the major activities of the assessee were held to fall under the last limb of section 2(15) and were hit by the proviso to section 2(15). It was also held that the assessee was hit by the provisions of sections 13(l)(b), 13(l)(d) and 13(8). The appellant had submitted that the assessee is a charitable reorganization and the activities have been the same as that in the past. Reliance has also been placed on the decision of the Hon'ble ITAT, Delhi in appellant's own case for assessment year 2012-13 in ITA No.4983/Del/2015.

5.1.2 I have considered the assessment order and the submissions of the appellant I have also referred to the orders of my Id. predecessor for assessment years 2009-10 (appeal no.197/2013-14), 2010-11 (appeal no.198/2013-14), 2011-12 (appeal no.537/2013-14) and 2012-13 (appeal no.407/2014-15) wherein on similar facts exemption has been allowed. I have also referred to the decision of the Hon'ble ITAT in appellant's own case for assessment year 2012-13 (supra) wherein on similar facts the Hon'ble ITAT have held as under:

"25. We have considered rival contentions and have gone through the impugned order, the Paper Book and also the case laivs which have been cited before us. We are of the view that the order of the CIT(A) is flawless and so the assessee has to succeed in this case. That is because the assessee Association, which is registered as a charitable entity u/s 12A of the Act, has carried out its activities in terms of the objectives as approved by the Department at the time of securing Section 12A registration. Nothing is brought on record by the Assessing Officer to

indicate that there has since been any change in the objectives or the Rules and Regulations of the Association or that the activities as undertaken during the year are not in conformity with the registration conditionalities. The Association has been held as a charitable entity in the past. The Assessing Officer has not brought any specific material on record to indicate any violation of either Section 13(l)(b) or section 13(l)(d) of the Act. It is true that the Association is running several educational courses some of which are recognized while some are not recognized. As to the unrecognized courses, we notice that there is nothing in the Act which prohibits the carrying on of any such course so long as it is educational. Charitable entities can rent out their idle premises to raise funds for charity. No objection can be taken to that action. As to the hostel facilities, the same as urged on behalf of the assessee is aligned to the objective of the Association to provide education. Nothing has been brought on record by the Assessing Officer to show that the hostel facilities are de hors the educational activities of the Association and are for commercial purpose. That being the case the provision of hostel facilities cannot in the facts of this case, be held to fall under the 4th limb of charity viz any other object for public utility. So long as hostel facility is aligned to education, no plausible objection can be raised as to the charitable nature of the activities. The amendment as made to the definition of charity by insertion of the proviso by the Finance Act, 2010 is thus of no consequence to the facts in the subject case.

*26. We notice that in the past similar objections have been taken in assessment by the respective Assessing Officers. In AY 1989-90 the Tribunal in the assessee's own case dismissed the departmental ground of appeal where it was alleged that the CIT(A) had erred in holding that the assessee was entitled to benefit u/s 11(1) of the Act read with Section 2(15) of the Act. In the AY 1990-91 the departmental appeal was again dismissed by the Tribunal where the ground raised was that the CIT (A) had erred in allowing the benefit of Section 11 of the Act by holding that the activities of the Society were charitable though the Assessing Officer had rightly applied the provisions of Section U(4)(A) of the Act by holding the same as business activity. In AY 1993-94 once again the departmental appeal was dismissed by the Tribunal where the point in issue was that the CIT(A) erred in allowing the benefit u/s 11 of the Act by holding that the activities of the Society were chargeable (sic) although the Assessing Officer had rightly applied the provisions of Section 11(4)(A) of the Act by holding the same as business activity. It seems that the CIT (A)'s first appeal order in AY 1992-93 became final where it was held by the CIT(A) that the Appellant was entitled to exemption u/s 11 of the Act and the provisions of Section 11 (4)(A) of the Act were not applicable to the case. There-after in AY 1997-98 the Assessing Officer himself in the assessment order dated 11.01.2000 conferred charitable status to the assessee by applying Section 11 of the Act. While fees may be charged and there may even be a surplus out of charitable activities, the principle that so long as the surplus funds are redeployed in charitable activities no objection can be taken as to the charitable pursuits is inexceptionable. This has been so held by the apex court in *Thiagarajar Charities vs. Addl CIT (1997) 225 ITR 1010 (SC)*.*

27. Further the Hon'ble Delhi High Court has ruled that the expression

charitable purpose as defined in Section 2(15) of the Act could not be construed literally and in absolute terms. The expression would take its colour and had to be considered in the context of Section 10(23C)(iv) of the Act. The court held that if in terms of the dominant and primary objectives of the Institution there was no desire to gain profits and the object was to promote trade and commerce not for itself but for the nation was to be construed as a charitable purpose. Thus, on a careful consideration of the entirety of the facts and the material on record and based on the history of the case and the existing precedents on this point, we have no hesitation in holding that the CIT (A) has rightly decided the issue in favour of the assessee Association by directing relief u/s 11 read with Section 12AA of the Act. Resultantly the appeal filed by the Department is dismissed."

5.1.3 Since the facts of the case are similar to those for assessment year 2013-14, respectfully following the decision of Hon'ble ITAT for assessment year 2012-13 in appellant's own case, the Assessing Officer is directed to allow exemption with all consequential benefits. As regards the disallowances made on account of provision for doubtful debts, provision for leave encashment and provision for gratuity, the Hon'ble Delhi Court, in the case of DIT (E) vs. NASSCOM [345 ITR 362 (DEL)] have observed as under:

"40. ...Be that as it may, under the commercial principles it has always been recognized that a provision, reasonably made for a loss or an outgoing, can be deducted from the income if there is apprehension that the debt might become bad. There is nothing brought on record to show that the provision was not made bona fide. In such a situation, the ratio of the decisions cited by us while dealing with the deductibility of the taxes paid under the VDIS will equally apply. We accordingly hold that while computing the income available to the trust for application to charitable purposes in India in accordance with section 11(1)(a) the provision for doubtful debts must be deducted... "

5.1.4 In view of the discussion above, grounds of appeal nos. 1 and 2 are allowed."

06. In fact, he followed the order of the Co-ordinate Bench in assessee's own case for Assessment Years 2009-10 to 2013-14 for holding that assessee is eligible for exemption u/s 11 & 12 of The Act.
07. With respect to disallowance on account of various provisions, he relying upon the decision of the Hon'ble Delhi High Court in *DIT (E) vs. NASSCOM [345 ITR 362 (DEL)]* deleted the same holding that the

provisions are bonafide and income is required to be computed on commercial principles where reasonable provisions are required to be deducted. Thus, Revenue aggrieved with the above order is in appeal before us.

08. Ground Nos. 1 and 2 of the appeal is with respect to the allowability of exemption under Section 11 and 12 to the assessee trust subject to the proviso to Section 2(15) of the Act.
09. The learned Senior Departmental Representative vehemently submitted that when the assessee has violated provisions of section 13(1) (b) of the Act and 13(1) (d), ld AO could not have allowed assessee benefit of section 11 & 12 of the Act. She extensively referred to the various observations of the ld. Assessing Officer. She also submitted that she relies on the decision of Young Women's Christian Association of Madras Vs. Jt. Director of Income Tax (2014) 41 taxmann.com 142 (Chennai – Trib.)
10. The learned Authorized Representative submitted that issue is squarely covered in favour of the assessee by the orders of the Co-ordinate benches in assessee's own case for Assessment Year 2009-10 to Assessment Year 2012-13, copies of which are placed on record. He further submitted that all these orders of the Co-ordinate Benches were also challenged by Revenue before the Hon'ble High Court and the appeals of the Revenue are dismissed. He also placed on record all those decisions. He submitted that in the order of the Co-ordinate Bench for Assessment Year 2012-13 all these issues with respect to alleged violation of sections 13(1) (b) and 13(1) (d) of the Act are considered. He submitted that the Co-ordinate Bench in its order considers the arguments of the Revenue for Assessment Year 2012-13 wherein Para No. 23 discusses these points. He, therefore, submitted that all the grounds in the appeal of the Revenue are covered against the Revenue.

11. We have carefully considered the rival contentions. The Co-ordinate Bench in Assessment Year 2012-13 vide order dated 20.11.2017 [ITA No 4983/Del/2015 & Co No 82/del/2016] held as under:-

“25. We have considered rival contentions and have gone through the impugned order, the Paper Book and also the case laws which have been cited before us. We are of the view that the order of the CIT(A) is flawless and so the assessee has to succeed in this case. That is because the assessee Association, which is registered as a charitable entity u/s [12A of the Act](#), has carried out its activities in terms of the objectives as approved by the Department at the time of securing [Section 12A](#) registration. Nothing is brought on record by the Assessing Officer to indicate that there has since been any change in the objectives or the Rules and Regulations of the Association or that the activities as undertaken during the year are not in conformity with the registration conditionalities. The Association has been held as a charitable entity in the past. The Assessing Officer has not brought any specific material on record to indicate any violation of either [Section 13\(1\)\(b\)](#) or [section 13\(1\)\(d\)](#) of the Act. It is true that the Association is running several educational courses some of which are recognized while some are not recognized. As to the unrecognized courses, we notice that there is nothing in the Act which prohibits the carrying on of any such course so long as it is educational. Charitable entities can rent out their idle premises to raise funds for charity. No objection can be taken to that action. As to the hostel facilities, the same as urged on behalf of the assessee is aligned to the objective of the Association to provide education. Nothing has been brought on record by the Assessing Officer to show that the hostel facilities are de hors the educational activities of the Association and are for commercial purpose. That being the case the provision of hostel facilities cannot in the facts of this case, be held to fall under the 4th limb of charity viz any other object of general public utility. So long as hostel facility is aligned to education, no plausible objection can be raised as to the charitable nature of the activities. The amendment as made to the definition of charity by insertion of the proviso by the [Finance Act](#), 2010 is thus of no consequence to the facts in the subject case.

26. We notice that in the past similar objections have been taken in assessment by the respective Assessing Officers. In AY 1989-90 the Tribunal in the assessee's own case dismissed the departmental ground of appeal where it was alleged that the CIT(A) had erred in holding that the assessee was entitled to benefit u/s 11(1) of the Act read with [Section 2\(15\)](#) of the Act. In the AY 1990-91 the departmental appeal was again dismissed by the Tribunal where the ground raised was that the CIT(A) had erred in allowing the benefit of [Section 11](#) of the Act by holding that the activities of the Society were charitable though the Assessing Officer had rightly applied the provisions of [Section 11\(4\)\(A\)](#) of the Act by

holding the same as business activity. In AY 1993-94 once again the departmental appeal was dismissed by the Tribunal where the point in issue was that the CIT(A) erred in allowing the benefit u/s 11 of the Act by holding that the activities of the Society were chargeable(sic) although the Assessing Officer had rightly applied the provisions of [Section 11\(4\)\(A\)](#) of the Act by holding the same as business activity. It seems that the CIT(A)'s first appeal order in AY 1992-93 became final where it was held by the CIT(A) that the Appellant was entitled to exemption u/s 11 of the Act and the provisions of [Section 11\(4\)\(A\)](#) of the Act were not applicable to the case. There-after in AY 1997-98 the Assessing Officer himself in the assessment order dated 11.01.2000 conferred charitable status to the assessee by applying [Section 11](#) of the Act. While fees may be charged and there may even to be a surplus out of charitable activities, the principle that so long as the surplus funds are redeployed in charitable activities no objection can be taken as to the charitable pursuits is inexceptionable. This has been so held by the apex court in [Thiagarajar Charities vs. Addl CIT](#) (1997) 225 ITR 1010 (SC).

27. Further the Hon'ble Delhi High Court has ruled that the expression charitable purpose as defined in [Section 2\(15\)](#) of the Act could not be construed literally and in absolute terms. The expression would take its colour and had to be considered in the context of [Section 10\(23C\)\(iv\)](#) of the Act. The court held that if in terms of the dominant and primary objectives of the Institution there was no desire to gain profits and the object was to promote trade and commerce not for itself but for the nation was to be construed as a charitable purpose. Thus, on a careful consideration of the entirety of the facts and the material on record and based on the history of the case and the existing precedents on this point, we have no hesitation in holding that the CIT(A) has rightly decided the issue in favour of the assessee Association by directing relief u/s 11 read with [Section 12AA](#) of the Act. Resultantly the appeal filed by the Department is dismissed.

28. As to the cross objection filed by the Assessee-Association no separate submissions were made. Consequently, the Departmental Appeal having been dismissed the cross objection stands disposed off pro-tanto.”

12. The Hon'ble High Court in ITA. 537 of 2018, ITA. 1131 of 2018 and ITA. 67 of 2019 have also upheld the above findings of the Coordinate Bench. The Hon'ble High Court dismissed the appeal of the Revenue.

13. In view of the decision of the Hon'ble High Court in assessee's own case, other decision cited by Id DR are not of any help, we hold that assessee is eligible for exemption under Section 11 and 12 of the Act and the activities of the assessee are not hit by proviso to Section 2(15) of the Act. The assessee trust's income is also required to be computed on the commercial basis. In view of this all the grounds of appeal filed by the Id. Assessing Officer are dismissed.
14. In the result, appeal of the Revenue is dismissed.
Order pronounced in the open court on : **13/07/2020**.

-Sd/-
(SUSHMA CHOWLA)
VICE – PRESIDENT

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 13/07/2020.

MEHTA

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT, New Delhi