

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B' NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT  
AND  
SHRI CHANDRAMOHAN GARG, JUDICIAL MEMBER

ITA NO. 3388, 3389, 3390, 3391, 3392, 3393/DEL/2011  
Assessment Years : 2003-04 to 2008-09

Delhi Nursing Council,  
AB College of Nursing Building,  
Lok Nayak Hospital,  
New Delhi-110002  
(PAN: AAAD2239H)  
(Appellant)

vs Income Tax Officer (E),  
Trust Ward-III,  
New Delhi-110092

(Respondent)

Appellant by: Mrs. Ruchika Jain  
Respondent by : Smt. Parwinder Kaur, Sr.DR

**ORDER**

**PER BENCH**

These appeals have been referred by the appellant against the consolidated order of CIT(A)-XXI, New Delhi dated 27.4.2011 in Appeal No. 52,53,54,55, 56 & 57/10-11 for AYs 2003-04 to 2008-09 respectively.

The appellant assessee has raised similar grounds in all above captioned appeals wherein except amount, the allegations and contents of ground no. 1 are same which read as under:-

*“1. Under the facts and circumstances of the case, the orders passed by the Ld. A.O. assessing income amounting to ----- in the hands of the assessee are injudicious and bad at law as the surplus generated by*

*the Council in this case is not income liable to tax under the Income Tax Act, 1961.*

*2. The Ld. assessing authority has grossly erred in passing assessment orders and assessing the surplus in the hands of the assessee as income under the Income Tax Act, 1961 ignoring the principal of mutuality.”*

2. Briefly stated the facts giving rise to these appeals are that the AO observed that the appellant assessee was granted registration u/s 12A of the Income Tax Act, 1961 (for short the Act) w.e.f. AY 2009-10. In para 9 of the assessment order dated 20.8.2010 for AY 2003-04, the AO observed that the assessee appellant was not granted registration u/s 12A of the Act as per record of the department. The AO further held that the assessee appellant did not respond or comply with the notice u/s 142(1) of the Act. Therefore, the AO invoked the provisions of section 144 and completed the assessment proceedings in all six assessment years *ex parte* by considering surplus amount as per audited accounts and capital expenditure minus depreciation as income of the appellant assessee.

3. Being aggrieved by the above assessment orders, the assessee preferred an appeal which was also dismissed by passing impugned consolidated order for all six years. Now, the empty handed appellant assessee is before this Tribunal with similar grounds in all six appeals as reproduced hereinabove.

4. We have heard arguments of both the parties and carefully perused the relevant material placed on record. Ld. AR reiterated submissions of the appellant before the CIT(A) and submitted that the assessee was not granted due opportunity of hearing by the AO and the assessment proceedings were completed *ex parte* u/s 144 of the Act without considering probable submissions and defense of the assessee. The AR further contended that the CIT(A) also dismissed appeals of the assessee by passing a cryptic and short order without assigning any reason for upholding the assessment orders. The AR also pointed out that the explanation of the assessee about mutuality and other relevant contentions and submissions were also not considered by the CIT(A) and CIT(A) passed impugned order in a slipshod and casual manner which does not adjudicate entire contention and submission of the assessee on all issues and grounds of controversy raised before the CIT(A) by the assessee appellant. Ld. DR responded that if it is found just and proper, then the revenue has no serious objection if the entire controversy is restored to the file of the AO for fresh adjudication.

5. On careful consideration of above submissions and careful perusal of relevant material placed on record, inter alia assessment orders and the impugned order, we clearly observe that the AO completed assessment on the back of the assessee *ex parte* without affording due opportunity of

hearing for the assessee. From bare reading of impugned order of the first appellate authority i.e. CIT(A), we also observe that the CIT(A) has passed a slipshod and cryptic order without giving any cogent and reasonable finding on the contentions and submissions of the assessee specially on the ground of mutuality. We also observe that the CIT(A) has also not given any finding on the submissions and evidence filed before him by the assessee appellant. Therefore, we are of the considered opinion that the assessee should be given due opportunity of hearing and his contentions, submissions and supporting evidence and documents should be examined and verified at the end of AO. In view of above, impugned order as well as assessment orders are set aside and the issue of assessment on all counts is restored to the file of AO with the direction that the AO shall pass a speaking assessment order for all six years by affording due opportunity of hearing for the assessee and without being prejudiced with the earlier observations and findings in the assessment orders and in the order of CIT(A). Accordingly, both the issues in all six appeals are deemed to be allowed for statistical purposes.

6. In the result, all six appeals of the assessee are allowed as indicated above.

Order pronounced in the open court on 8.8.2014.

Sd/-  
(G.D. AGRAWAL)  
VICE PRESIDENT

Sd/-  
(CHANDRAMOHAN GARG)  
JUDICIAL MEMBER

DT. 8<sup>th</sup> AUGUST 2014  
'GS'

Copy forwarded to:-

1. Appellant
2. Respondent
3. C.I.T.(A)
4. C.I.T. 5. DR

By Order

Asstt.Registrar