

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER

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| | I.T.A. No. 6439/DEL/2015 | |
| | A.Y. : 2010-11 | |
| INCOME TAX OFFICER (E), TRUST WARD-1(1), NEW DELHI | VS. | M/S ESCORTS CARDIAC DISEASE HOSPITAL SOCIETY, ESCORTS HEART INSTITUTE & RESEARCH CENTRAL OKHLA ROAD, NEW DELHI - 110 025 (PAN:- AAAAE0049G) |
| (ASSESSEE) | | (RESPONDENT) |

Revenue by : Sh. K. Hauthang, Sr. Dr.
Assessee by : Sh. R.M. Mehta, Adv.

ORDER

PER H.S. SIDHU : JM

The Revenue has filed this Appeal against the impugned Order dated 15.9.2015 of the Ld. CIT(A)-40, New Delhi relevant to assessment year 2010-11.

2. The grounds raised in this Appeal read as under:-

- i) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in*

allowing the benefit of section 11 & 12 of the Act ignoring the facts that receipt of sponsorship income from India and abroad are commercial receipts and therefore, assessee is hit by proviso to section 2(15) of the Act, 1961 during the year.

ii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that assessee is neither registered under FCRA nor permission been taken from RBI for receiving foreign funds into the Society under FEMA.

iii) On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that there is violation of section 11(1)(c) of the Act as the funds were been outside India and claimed as application of income though approval of RBI not obtained

as such transaction are covered under FEMA Act.

iv) The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.

3. The brief facts of the case are that the assessee is a society registered under Societies Registration Act, 1860 dated 02/12/1983 and is also registered u/s 12AA(1) of the Income Tax Act, 1961 (hereinafter referred as the "Act") dated 23/07/1984. The assessee also enjoys the benefit of section 80G of the Act for the period A.Y 2008-09 to 2011-12. The main object of the assessee is to build, maintain and run hospitals, dispensaries and laboratories for treatment of various ailments & diseases and to launch activities for relief of poor, education & other medical reliefs. For the first time in the A.Y 1995-96, the exemption u/s 11(1) of the Act was denied but the Ld. CIT(A) had allowed the appeal of the assessee and Tribunal had also confirmed the order of the Ld. CIT(A) in ITA NO. 522/Del/99 dated 13/11/2003 and Department did not file the appeal before the higher Court for the A.Y 1995-96. The AO had denied the exemption u/s 11(1) for the A.Ys. 1996-97, 1997-98 & 1998- by following the earlier year's order but the appeal of the

assessee was allowed by Tribunal. The department had filed the appeal before the Hon'ble High Court, but Hon'ble Delhi High Court had dismissed the appeal of the Department vide ITA Nos. 28/2006 & 29/2006 & 613/2005 all dated 24/01/2007. Thereafter, the Department filed the SLP before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court had dismissed the SLP of the Department. The exemption u/s 11(1) of the Act for the A.Y 2003-04, 2004-05 & 2005-06 was allowed to the assessee as a charitable society who is engaged in providing medical relief.

3.1 The AO has denied the exemption u/s 11(1) of the Act to the assessee for A.Y. 2010-11 by invoking the mischief of the Proviso of Section 2(15) mainly on the ground that the assessee is involved in trade commerce or business as the assessee receives the sponsorship receipt by conducting the seminars, vide order dated 26.3.2013 passed by the AO.

3.2 The assessee appealed against the order dated 26.3.2013 passed by the AO and submitted that the assessee is a charitable institution is eligible for exemption u/s 11(1) of the Act as the assessee fully involved in the field medical to build, maintain and run hospitals, dispensaries and laboratories for treatment of various ailments & diseases and to launch activities for relief of poor,

education & other medical reliefs and not involved in any trade commerce or business. It was the submission that mere receipt of fees or charges does not tantamount that the assessee is involved in any trade, commerce or business as held in the various cases in favour the assessee and the assessee also relied the case of India Trade Promotion Organisation vs. DGIT, 371 ITR 333 (Delhi High Court) 2013 wherein, it was held that mere receipt of fee or charge cannot be said that the assessee is involved in any trade, commerce or business and has accordingly allowed the relief to the ITPO case vide Para 58 and 59 of the order. As per the A.R. for the assessee the assessee is fully covered by the orders of Ld. CIT(A), order of the Tribunal dated 13/11/2003 and the orders of Hon'ble Delhi High Court dated 24/01/2007 and the Hon'ble Supreme Court who had also confirmed the order of the Hon'ble Delhi High Court. After considering the assessee's submissions, Ld. CIT(A) observed that the assessee is a charitable society and is involved in providing the medical facilities and spread the awareness to the public at large and is fall in the last category i.e. "advancement of any other object of general public utility". It was further observed that there is no proper justification for denying the exemption and the Proviso of section 2(15) is not attracted in this case and the case of the assessee is also covered by the orders of Ld. CIT(A), Tribunal,

Hon'ble Delhi High Court and Hon'ble Supreme Court and following the precedence and consistency and judicial discipline the AO was directed to allow the exemption u/s 11(1) of the Act with all the consequential benefits vide impugned order dated 15/9/2015. As regards addition of Rs. 9,76,031/- on account of non-deduction of tax is concerned, Ld. CIT(A) observed that as per the DTAA between India and USA was not liable to be taxed in India and AO has not made out any specific case and accordingly the addition made by the AO was deleted. Aggrieved with the order of the Ld. CIT(A), Revenue is in appeal before the Tribunal.

4. At the time of hearing, Ld. DR heavily relied upon the Order of the AO and reiterated the contents raised in the grounds of appeal and controvert the finding of the Ld. CIT(A). In support of his contention he filed a Paper Book containing pages 1-51 in which he has attached the brief written submissions; grounds of appeal and Form No. 36; CIT(A)'s order against 154; Rectification order u/s. 154; Ground of appeal and Form NO. 36; CIT(A)'s order; Assessment order; Notice u/s. 142(1) and Questionnaire; Notice u/s. 143(2) and Return of income. He submitted that AO noticed that assessee has received sponsorship fees amounting to Rs. 4,88,24,034/- from 20 private companies located in India and abroad for conducting a seminar called "India Live 2010" on

portentous cardio-vascular interventions and these sponsorship fees are not part of charity but as part of their business promotion. It was further submitted that assessee has shown Rs. 84,70,000/- as sponsorship receivable in the balance sheet and if sponsorship fees is a voluntary payment given for specific purpose, then its significance is only till time the event for which it is given happens, once the event is over, there is no purpose to receiving the sponsorship fees. It was further submitted that the expenses incurred for the seminar being Rs. 3.42 crore compared to the sponsorship fees of Rs. 4.88 cores which is much lesser than the sponsorship fees receiving, which shows that the assessee is involved in business activity for the purpose of making profit. Hence, he submitted that AO has rightly held that the sponsorship so received by the assessee is in the nature of commercial receipts and invoked the provisions of section 2(15) of the I.T. Act, 1961.

5. On the other hand, Ld. Counsel for the assessee has relied upon the order of the Ld. CIT(A) and stated that Ld. CIT(A) has allowed the appeal of the assessee by following the decision of the ITAT, Hon'ble Delhi High Court and the Hon'ble Supreme Court of India. In support of his contention, he filed a Paper Book pages 1 to 54 in which he has attached copy of short synopsis filed on 25.3.2015 before the Ld. CIT(A); ground wise submissions filed on

7.9.2015 before the Ld. CIT(A); copy of the assessment order for AY 2009-10; copy of the CIT(A)'s order for AY 2005-06; the AO's order for AY 2010-11 and the copy of Memorandum of Association detailing the aims and objects. He further submitted that AO had denied the exemption u/s 11(1) of the Act for the A.Ys. 1996-97, 1997-98 & 1998- by following the earlier year's order but the appeal of the assessee was allowed by Tribunal. The department had filed the appeal before the Hon'ble High Court but Hon'ble Delhi High Court had dismissed the appeal of the Department vide order dated 24/01/2007. Thereafter, the Department filed the SLP before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court had dismissed the SLP of the Department. The exemption u/s 11(1) of the Act for the A.Y 2003-04, 2004-05 & 2005- 06 was allowed to the assessee as a charitable society who is engaged in providing medical relief. In view of above, Ld. Counsel for the assessee requested that following the rule of consistency and judicial discipline, the Appeal of the Revenue may be dismissed by upholding the Ld. CIT(A)'s order.

6. We have heard both the parties and perused the records especially the impugned order. We find that AO had denied the exemption u/s 11(1) of the Act for the A.Ys. 1996-97, 1997-98 & 1998- by following the earlier year's order, but the appeal of the

assessee was allowed by Tribunal. The department had filed the appeal before the Hon'ble High Court who had dismissed the appeal of the Department vide ITA Nos. 28/2006 & 29/2006 & 613/2005 all dated 24/01/2007. Later, the Department filed the SLP before the Hon'ble Supreme Court of India against the order of the Hon'ble High Court and the Hon'ble Supreme Court of India had dismissed the SLP of the Department. Accordingly, the exemption u/s 11(1) of the Act for the A.Y 2003-04, 2004-05 & 2005- 06 was allowed to the assessee as a charitable society who is engaged in providing medical relief. We further find that the AO has denied the exemption u/s 11(1) of the Act to the assessee for A.Y. 2010-11 by invoking the mischief of the Proviso of Section 2(15) mainly on the ground that the assessee is involved in trade commerce or business as the assessee receives the sponsorship receipt by conducting the seminars vide the order of the AO. The assessee appealed against the orders of the AO before the Ld. CIT(A) and submitted that the assessee is a charitable institution is eligible for exemption u/s 11(1) of the Act as the assessee fully involved in the field medical to build, maintain and run hospitals, dispensaries and laboratories for treatment of various ailments & diseases and to launch activities for relief of poor, education & other medical reliefs and not involved in any trade commerce or business. We find force in the

submissions of the AR's that the mere receipt of fees or charges does not tantamount that the assessee is involved in any trade, commerce or business as held in the various cases in favour the assessee on which the assessee also relied viz. India Trade Promotion Organisation vs. DGIT, 371 ITR 333 (Delhi High Court) 2013 wherein, it was held that mere receipt of fee or charge cannot be said that the assessee is involved in any trade, commerce or business and has accordingly allowed the relief to the ITPO case vide Para 58 and 59 of the order. We further find considerable cogency in the findings of the Ld. CIT(A) that the assessee is a charitable society and is involved in providing the medical facilities and spread the awareness to the public at large and is fall in the last category i.e. "advancement of any other object of general public utility". However, on perusing the material on record, there is there is no proper justification for denying the exemption and the Proviso of section 2(15) is not attracted in this case and therefore, the assessee's case is fully covered by the orders of Ld. CIT(A), order of the Tribunal dated 13/11/2003 and the orders of Hon'ble Delhi High Court dated 24/01/2007 and the Hon'ble Supreme Court who had also confirmed the order of the Hon'ble Delhi High Court. Therefore, respectfully following the precedence as aforesaid and by following the rule of consistency the Ld. CIT(A) has rightly directed

the AO to allow the exemption u/s 11(1) of the Act with all the consequential benefits vide order dated 15/9/2015, which does not need any interference on our part, hence, we uphold the order of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue.

7. As regards disallowance of Rs. 9,76,031/- for non deduction of tax to the assessee on the ground that the assessee has paid as honorarium to the doctors coming from abroad and its cannot be considered as an application of income in India for charitable purposes and made the addition vide the assessment order dated 26.3.2013. Ld. DR relied upon the order of the AO on this issue and stated that AO has rightly observed that the assessee had paid honorarium of Rs. 9,76,031/- to the professional / doctors who attended the seminars. The payment was made outside India through banking channels despite the assessee society has not obtained the approval of the RBI and such transaction is covered under the FEMA Act, which is violation of provisions of section 11(1)© of the I.T. Act, 1961. Hence, he submitted that the AO has rightly disallowed the honorarium paid to the tune of Rs. 9,76,031/- outside India. He further submitted that Ld. CIT(A) has wrongly observed that in view of the DTAA between India and USA such honorarium was not liable to be taxed in India and payment of

honorarium to some of the doctors coming from abroad does not tantamount to application of income for a charitable purposes outside India as held by the AO. In support of his arguments, Ld. DR relied upon the decision of the Hon'ble Delhi High Court in the case of DIT(E) vs. National Association of Software and Services Companies by referring to the judgment of Bench of three Judges of Hon'ble Apex Court in HEH Nizam's Religious Endowment Trust vs. Commissioner of Income Tax (1966) 59 ITR 582 cited by the AO in his order vide para 3.2.

7.1 On the other hand, Ld. Counsel for the assessee submitted that Section 11© is not attracted since the charitable activities were carried out in India i.e. conducting the seminar and the honarium was paid as per law which required the certificate of an Accountant for making the remittance.

7.2 We have heard both the parties and perused the records especially the impugned order and the written submission and the documentary evidences filed by both the parties and the case laws cited by the Ld. AR for the assessee on the issue in dispute. We find that assessee is not running any hospital towards which this expense has been incurred. The assessee just conducted a seminar for the benefit of its parent body i.e. Escorts Hospital, which is a

private company. The expense has been incurred outside India and therefore, it is a violation of Section 11(1)(c) and the above transaction is covered under the FEMA Act, for which the approval of the RBI is essential. Since assessee is remitting funds outside India and claiming it as application of income, which is violation of section 11(1)(c), hence, the amount of Rs. 9,76,031/- was rightly disallowed by the AO and accordingly, assessment was rightly completed at income of Rs. 10,10,88,303/- vide order dated 26.3.2013. The case laws cited by the Ld. AR for the assessee are on different set of facts, hence, are not applicable in the present case. However, the case law cited by the Ld. DR of the Hon'ble Delhi High Court in the case of DIT(E) vs. National Association of Software and Services Companies by referring to the judgment of Bench of three Judges of Hon'ble Apex Court in HEH Nizam's Religious Endowment Trust vs. Commissioner of Income Tax (1966) 59 ITR 582 is directly applicable on the present issue in which the Hon'ble Court has laid down the law that "*the State did not like to forgo the revenue in favour of charity outside the country' held income applied outside India cannot be considered as application of income of the trust in India for charitable purposes.*"

7.3 In the background of the aforesaid discussions and respectfully following the precedents, as referred above, we set aside the order

of the Ld.CIT(A) on the issue in dispute and accordingly allow the ground raised by the Revenue.

8. In the result, the appeal filed by the Revenue stands partly allowed.

Order pronounced on 05/10/2018.

Sd/-

**[ANADEE NATH MISSHRA]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 05/10/2018

SRBHATNAGAR

Copy forwarded to: -

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches