

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI
(Through Video Conferencing)**

**BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.6084/Del/2016
(ASSESSMENT YEAR 2011-12)**

Dy. CIT (Exemptions) Circle-2(1), New Delhi.	Vs.	The Delhi Public School Society, F-Block, East of Kailash, New Delhi-110065. PAN -AAATT 0740J
(Appellant)		(Respondent)

Revenue By	Sh. H.K.Choudhary, (CIT-DR)
Assessee By	Sh. Nirbhay Mehta, Adv.

ORDER

PER ANADEE NATH MISSHRA, AM:

This appeal is preferred by the Revenue against order dated 28.09.2016 passed by the Learned Commissioner of Income Tax (Appeals)-36, New Delhi {CIT(A)} for Assessment Year 2011-12. The grounds of appeal are as under:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law & fact by ignoring that the receipts are on account of franchisee fee and the same are in the nature of business income within the meaning of provisions of sub-section 4A of section 11 of the Act. The assessee failed to maintain separate books of accounts as per sub section 12A of section 2 of the I.T. Act.

2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law in allowing the claim of carry forward of losses disregarding the fact that set-off and carry forward of losses are dealt with by the provisions of section 70 to 74 of the Income Tax Act.*

3. *The Ld. CIT(A) has erred in law & fact that allowing depreciation of fixed assets is tantamount double deduction as the expenditure on fixed assets is already allowed.*

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

(B) At the time of hearing before us, the Ld. Counsel for assessee submitted that the disputed issues in this case are covered in favour of the assessee’s own case. The Ld. Counsel of the assessee further submitted that, in identical facts, in assessee’s own case, the Co-ordinate Bench of ITAT, Delhi has already taken a view, on the disputed issues, in favour of the assessee vide order dated 08.08.2019 in ITA No. 2761/Del/2017 for Assessment Year 2013-14. The Learned Commissioner of Income Tax (Departmental Representative) [“Ld. CIT(DR), for short] appearing for Revenue accepted that all the issues in disputed were covered in favour of the assessee by the aforesaid order dated 08.08.2019 of Co-ordinate Bench of Income Tax Appellate Tribunal (“ITAT”, for short), Delhi, in

which, in identical facts, the disputed issues were decided in favour of the assessee. The relevant portion of the aforesaid order dated 08.08.2019 of Co-ordinate Bench of the ITAT, Delhi in assessee's own is reproduced below:

"(A) This appeal by Revenue is filed against the order of Learned Commissioner of Income Tax (Appeals)-40, Delhi, ["Ld. CIT(A)", for short], dated 27.02.2017 for Assessment Year 2013-14. The grounds of appeal are as under:

- i. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law & fact by ignoring the fact that the receipt are on account of franchisee fees and same are in the nature of business income within the meaning of provisions of sub-section 4A of the Section 11 of the I.T. Act. The assessee failed to maintain separate books of accounts as per Sub section 12A of the Section 2 of the I.T. Act.*
- ii. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law allowing the claim of carry forward of losses disregarding the fact that set-off and carry forward of losses are delete with by the provisions of section 70 to 74 of the Income Tax Act.*
- iii. On the facts and in the circumstances of the case and in laws, the Ld. CIT(A) has erred in law & fact that allowing depreciation on fixed assets in tantamount to double deduction as the expenditure on fixed asset is already allowed.*
- iv. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing. "*

(B) During appellate proceedings in Income Tax Appellate Tribunal ("ITAT", for short), copies of the following orders were filed from assessee's side:

- I. ITAT order dated 20/04/2005 for AY 2001-02 in the case of The Delhi Public School Society v. DCIT(E) ITA No. 4571/D/2004.*
- II. ITAT order dated 23/05/2019 for AY 2012-13 in the case of DCIT(E) v. The Delhi Public School Society ITA No. 4887/D/2016.*
- III. Director of Income tax (E) v. Delhi Public School Society High Court of Delhi 92 taxmann.com 132*
- IV. Director of Income tax (E) v. Delhi Public School Society Supreme Court of India 100 taxmann.com 80.*
- V. Commissioner of Income tax -III v. Rajasthan & Gujarati Charitable Foundation Poona Supreme Court of India 89 taxmann.com 127*
- VI. Director of Income tax v. Raghuvanshi Charitable Trust High Court of Delhi 197 taxman 170"*

(B.1) At the time of hearing before us, the Ld. Authorized Representative ("AR", for short) of the assessee submitted that all the disputed issues are covered in favour of the assessee by the aforesaid judicial precedents. The Ld. AR of the assessee further submitted that, in identical facts, in assessee's own case, the Co-ordinate Bench of ITAT, Delhi has already taken a view, on the disputed issues, in favour of the assessee vide aforesaid order dated 23.05.2019. The Ld. CIT(DR) appearing for Revenue accepted that all the issues in dispute were covered in favour of the assessee by the aforesaid judicial precedents, in which, in identical facts, the disputed issues were decided in favour of the assessee.

(B.1.1) Relevant portion of the aforesaid order dated 20.04.2005 of Co-ordinate Bench of ITAT, Delhi in ITA No. 4571/Del/2004 in assessee's own case i.e. The Delhi Public School Society vs. DCIT(E) is reproduced as under:

13. The provisions of Section 10(23-C)(vi), refers to "any income" and is therefore larger in scope than the provisions of Section 11 of the Act. It

not the case of the AO that the Assessee did not exist solely for educational purposes. The prescribed authority before issue of notification will be the sole judge on the question whether the assessee exists solely for educational purposes and that it does not exist for profit. The Revenue authorities seems to have proceeded by framing a question whether the activity of running satellite schools on a license basis charging a fee amounted to carrying on a business or not. This was not the right line of enquiry. Even a proviso u/s.10(23C)(vi) permits an institution referred to in the main section to carry on business. The said proviso reads as follows.

Provided also that nothing contained in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) shall apply in relation to any income of the fund or trust or institution or any university or other educational institution or any hospital or other medical institution, being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of accounts are maintained by it in respect of such business:

14. The real question for determination is therefore whether the educational institution exists solely for the purpose of education and not for the purpose of profit. In this regard we have also perused the copy of the notification dt 8.7.04 issued by the Director General of Income Tax Exemption, New Delhi. The assessee has been duly approved as an Educational Institution for the purpose of sub. Clause (vi) of Clause 23C of Sec. 10 of the I.T Act. As already stated, any income of an educational institution notified u/s 10 (23C)(vi) is exempt. In view of the

...ation referred to above, there can be no question of bringing to t
... amounts received from the collaborators school by terming the sa
... receipts as business income. We also find that one of the objects of th
... assessee is to establish progressive schools or other education
... institutions in Delhi or outside Delhi. Perusal of the agreement unde
... which satellite schools were being set up by the assessee, also shows
... that apart from allowing the satellite schools to use the name of Delh
... Publish School and its Logo and Moto, the assessee also undertakes
... rendering of several services. These services include imparting o
... education and providing the necessary staff to impart education. By no
... stretch of imagination can it be said that the purpose sought to be
... achieved through this agreement for establishing satellite schools is not
... educational. Apart from the above, the prescribed authority having
... satisfied itself that the assessee exists for educational purposes and not
... for the purpose of profit, has thought it fit to approve the assessee for the
... purpose of applicability of provisions of sec. 10(23C)(vi) of the Act. The
... Hon'ble AP High Court in the case of Governing Body of Rangaraya
... Medical College Vs ITO reported in 117 ITR 284 (AP) had an occasion to
... consider the meaning of the expression, "for the purposes of profit", in
... the context of the applicability of exemption provisions. The Hon'ble
... High Court had held that where a society exists for educational
... purposes but some surplus arises from the societies operations, it cannot
... be said that the institution was run for the purposes of profit so long as

person or individual was entitled to any portion of the said profit and the said profit was utilized for the purposes and for the promotion of the objects of the institution. In the present case, it is not the complaint of the AO that the receipts from satellite schools had been utilized for distribution to any individual. So long as no person or individual is entitled to any portion of the profit, the profit can be said to be used only for the purposes of promotion of the objects of the institution. A useful reference can also be made to the case of ACIT vs Thanti Trust reported in 247 ITR 785 (SC). The Hon'ble Supreme Court laid down that a public charitable trust which holds a business, as a part of its corpus may carry on business. Even without the business being the part of the corpus of the trust it may carry on business. So long as the business carried on is in the course accomplishing the primary purposes of the trust and the income from such business is utilized for the purpose of achieving the objects of the trust or institution., the requirement of sections 11 are satisfied. The Hon'ble High court of Delhi in the case of CIT vs Delhi Kannada Education Society reported in 246 ITR 731 also held that if the income is from an educational institution, which exists solely for educational purposes and not for the purpose of profit then that income would be entitled to exemption, so long as the income is directly relatable to educational activity. We have already pointed out as to how the assessee had complied with all the various conditions that have been mentioned in the notification by the prescribed Authority u/s 10(23C)(vi)

the Act. For the reasons given above, we are of the view that provisions of sec. 11(4A) of the Act were not applicable in the present case.

15. With regard to the separate books of account, it is seen that the assessee had maintained a separate account under the heading "Secretary's office". In this account, the receipts towards reimbursement to the society for common expenses from various schools with which it had entered into agreement to provide services have been duly incorporated. A complete set of accounts of the society had also been furnished before the AO. Apart from the above, The Chandigarh Bench of the Tribunal in the case of *ITV vs Trilok Tirath Vidyavati Chuttani Charitable Trust* has held that the purposes of maintaining separate books of account is only to enable the AO to find out true income and also whether the assessee fulfills the conditions laid down u/s 11 for exemption and also whether running of such undertakings is for profit motive or incidental to the object to the trust. The Bench held that it is not mandatory and non-maintenance of separate books of account shall not prove fatal to the claim of the assessee for exemption u/s 11. As already observed, a separate set of books of accounts were maintained by the assessee showing the receipts towards reimbursement of the expenses from the various other schools.

In view of the above, we are of the view that revenue authorities are not justified in bringing to tax the amount received by the assessee from the satellite schools. The addition is therefore directed to be deleted.

17. In view of the aforesaid decisions, the other grounds of appeal by the assessee do not call for any adjudication as it is held that the income of the assessee is held to be exempt u/s 10(23C)(vi) of the Act. For the reasons given above, the appeal of the assessee is allowed.

(B.1.2) The relevant portion of the aforesaid order dated 23.05.2019 of Co-ordinate Bench of ITAT, Delhi in assessee's own case in DCIT(E) vs. The Delhi Public School Society in ITA No. 4887/Del/2016 is reproduced as under:

"The aforesaid appeal has been filed by the assessee against the impugned order dated 01.06.2016, passed by Ld. Commissioner of Income Tax (Appeals)-XL, New Delhi for the quantum of assessment passed u/s. 143(3) for the Assessment Year 2012-13 on the following grounds of appeal.

- 1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law & fact by ignoring the fact that the receipts are on account of franchisee fees and same are in the nature of business income within the meaning of provisions of sub-section 4A of the Section 11 of the IT Act. The assessee failed to maintain separate books of accounts as per Sub-Section 12A of the section 2 of the I.T. Act.*
- 2. On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in allowing the depreciation amounting of Rs. 11,52,34,406/- as in a case where the capital expenditure has been treated to have been applied for the object of the trust, allowance of deduction on account of depreciation will amount to double deduction.*
- 3. On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in allowing the deficit of earlier assessment, as there is no provision for set off of losses u/s 11, 12 and 13 of the income tax act, 1961.*
- 4. On the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in allowing the claim of carry forward of losses disregarding the facts that the setoff and carry forward of losses are dealt with by the provisions of section 70,71,72,73 &74 of the Income Tax Act."*

2. At the outset, the Id. AR stated that the impugned issues raised in this appeal are squarely covered in favour of the assessee and against the Revenue by the decision of the Co-ordinate bench in assessee's own case in 6627/Del/2015 for A.Y. 2010-11 vide order dated 29th November, 2017.

3. *The Id. DR, other than supporting the findings of the Assessing Officer, could not bring any distinguishing decision in favour of the Revenue*

4. *After considering the impugned orders and the issues raised in the present appeal, we find that similar issues were involved in the earlier years and were considered by the co-ordinate bench. The relevant observation reads as under:
"Ground No. 1*

4. *This ground has been raised by revenue against the addition that has been deleted in respect of franchisee fees received by assessee from different satellite schools which are running under the name and logo of assessee, having different management than assessee society.*

4.1 *It is seen from various orders placed in the paper book for the various assessment years in assessee's own case passed by this Tribunal that this issue now stands settled in favour of assessee and against revenue. It is also observed that Ld. CIT(A) followed the binding decision of this Tribunal in assessee's own case for the previous assessment years. In view of above, we do not find any infirmity in the order passed by Id. CIT(A) and the ground raised by Revenue stands dismissed. "*

5. *Respectfully following the aforesaid precedence, which is also applicable in this ground of the Revenue is dismissed.*

6. *In ground no. 2 in ITA No. 6627/Del/2015 (supra), the relevant findings given qua ground no. 2 & 3 of appeal have been given in paragraph 5 which reads as under:*

"5. This ground has been raised by revenue, as Ld. CIT (A) allowed deduction on account of depreciation. The Ld. AO was of the opinion that assessee was a trust and it was deriving income from depreciable assets. As assessee took into account depreciation on those assets while computing income of trust, Ld.AO held that depreciation could not be taken into account because full capital expenditure has been allowed in the year of acquisition of the assets. The Ld. DR placed reliance upon the decision of Hon'ble Delhi High Court in the case of DIT vs. Chiranjiv Charitable Trust reported in 223 Taxmann.com 71.

5.1. *On the contrary assessee placed reliance upon a subsequent decision of Hon'ble Delhi High Court in the case of CIT vs. Indraprastha Cancer Society reported in 53 Taxmann.com 463.*

5.2. *We have perused the submissions advanced by both the sides in the light of the decisions relied upon by them.*

5.3. *It is observed that order passed by this Tribunal in assessee's own case for assessment year 2009-10 in ITA No. 4081/del/2012 placed at page 68 of the paper book dealt with this issue as under:*

"10. Furthermore, we note the Hon'ble Jurisdictional High Court decision in the case of DIT vs. Vishwa Jagriti Mission in ITA no. 140/2012 vide order dated 29.3.2012. In this case the Ld.CIT(A) on the basis of the order passed by the -. Ld.DIT(E) accepted assessee's claim for exemption u/s 11. As regards the claim of depreciation on fixed assets utilized for charitable objects of the trust, he accepted assessee's claim. The tribunal confirmed the decision of Ld.CIT(A) on appeal. On appeal the Jurisdictional High Court has held as under.

"There is no dispute that the assessee has been granted registration u/s 12AA

and, therefore, it was entitled to exemption of its income u/s 11. The only question is whether the income of the assessee should be computed on commercial principles and in doing so whether depreciation on fixed assets utilized for the charitable purposes should be allowed. On this issue, there seems to be a consensus of judicial thinking.

Having regard, to the consensus of judicial opinion, we are not inclined to admit the appeal and frame any substantial question of law. There does not appear to be any contrary view plausible on the question raised before us and at any rate no judgement taking a contrary view has been brought to our notice. "

7. *Thus, respectfully, following the same, ground no.2 is dismissed.*

8. *In grounds no.3 & 4 in ITA No.6627/Del/2015 (supra), the relevant findings given qua grounds no.4 & 5 of that appeal at paragraph 6.2 read as under:*

6.2.1 *Ld. AR at the outset submitted that the issue stands covered by this Tribunal in ITA No. 4081/Del/2012 for assessment year 2009-10. This Tribunal dealt with this issue as under:*

"16. We have heard the rival contentions in light of the material produced and precedent relied upon. Ld. Counsel of the assessee submitted that the issue is covered in favour of the assessee by the decision of the Hon'ble jurisdictional High Court in the case of Raghuvanshi Charitable Trust (Supra). The Ld. Departmental Representative could not produce any decision contrary in this regard.

17. *Hence, upon careful consideration, we find that the Hon'ble jurisdictional High Court in the case of D.I.T. vs. Raghuvanshi Charitable Trust (Supra) has held as under (Heads notes only):-*

"Section 11 of the Income Tax Act, 1961 - Charitable or religious trust - Exemption of income from property held under - Whether a trust can be allowed to carry forward deficit of current year and to set off same against income of subsequent years - Held, yes - Whether adjustment of deficit of current year against income of subsequent year would amount to application of income of trust for charitable purposes in subsequent year within meaning of section 11(1)(a) - Held, yes."

18. *In view of the aforesaid exposition by the Hon'ble Jurisdictional High Court, we find that there is no infirmity in the order of the Ld. Commissioner of Income Tax (A), accordingly, we uphold the same. In the result, the issue raised by the Revenue stands dismissed. 6.3 Respectfully following the same we do not find any infirmity in the order of the Ld. CIT(A)."*

9. *In view of the above and respectfully following the same, grounds no. 3 & 4 are dismissed."*

(B.2) *In the case of aforesaid precedent of DIT(E) vs. Delhi Public School Society [2018] 92 taxmann.com 132 (Delhi), it was held by Hon'ble High Court of Delhi in assessee's own case that the assessee society was maintaining schools in furtherance of educational purpose and that also qualified as charitable purpose under section 2(15) and, therefore, assessee society fulfilled requirements to qualify for exemption under section 10(23C)(vi). In the case of DIT(E) vs. Delhi Public School Society[2018] 100*

taxmann.com 80(SC), a special leave petition of Revenue against the aforesaid order of Hon'ble Delhi High Court was dismissed by Hon'ble Supreme Court.

(B.2.1) In the case of CIT vs. Rajasthan & Gujarati Charitable Foundation Poona [2018] 89 taxmann.com 127 (SC), it was held by Hon'ble Supreme Court that in the case of charitable institution registered under section 12A, even though expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes under section 11(1)(a), yet depreciation would be allowed on assets so purchased.

(B.2.2) In the case of DIT vs. Raghuvanshi Charitable Trust [2011] 197 Taxman 170 (Delhi), it was held by Hon'ble Delhi High Court that a trust can be allowed to carry forward deficit of current year and to set off same against income of subsequent years. It was further held by Hon'ble Delhi High court in this case that adjustment of deficit of current year against income of subsequent year would amount to application of income of trust for charitable purposes in subsequent year within meaning of section 11(1)(a).

*(C) We have heard both sides. We have perused the materials available on record. We have also considered the judicial precedents brought to our notice. At the time of hearing before us, both sides have agreed that the issues in dispute are covered in favour of the assessee by the aforesaid judicial precedents mentioned in foregoing paragraphs (B) and sub paragraphs (B.1), (B.1.1), (B.1.2), (B.2), (B.2.1) and (B.2.2). The **first** ground of appeal is dismissed accordingly and the issue is decided in favour of the assessee, respectfully following the precedents referred to in the foregoing paragraphs (B.1.1), (B.1.2), and (B.2) of this order. Further, respectfully following the aforesaid precedents referred to in foregoing paragraphs (B.1.2) and (B.2.2) of this order, the **second** ground of appeals is dismissed and the disputed issue is decided in favour of the assessee. Furthermore, respectfully following the aforesaid precedents referred to in foregoing paragraphs (B.1.2) and (B.2.1) of this order, **third** ground of appeal is dismissed, and the disputed issue is decided in favour of the assessee."*

(C) We have heard both sides. We have perused the materials available on record. We have also considered the judicial precedent brought to our notice. At the time of hearing before us, both sides have agreed that the issues in dispute in this appeal are covered in favour of the assessee by the aforesaid order dated 08.08.2019 of Co-ordinate Bench of ITAT in assessee's own case. Neither side has brought any facts and circumstances of this year on any of the

issues in dispute to distinguish from the facts and circumstances of Assessment Year 2013-14 to which the aforesaid order dated 08.08.2019 pertains. In view of the foregoing, we decide all the issues in dispute in this appeal; in favour of the assessee and against Revenue. All the grounds of appeal are dismissed.

(D) In the result, this appeal is dismissed.

Order was already pronounced in the open Court orally on 25/01/2021 in the presence of representatives of both sides; after conclusion of hearing. Written order pronounced in open court on 28/01/2021.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(ANADEE NATHMISSHRA)
ACCOUNTANT MEMBER

Dated: 28/01/2021

PK/PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	