

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHIBEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBERI.T.A. No. 4440/DEL/2015 (A.Y 2010-11)(THROUGH VIDEO CONFERENCING)

Durga Charitable Society Goodwill Building, G. T. Road, Mohan Nagar Ghaziabad AAATD0730C (APPELLANT)	Vs	JCIT Range-2 Ghaziabad (RESPONDENT)
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Appellant by	Sh. Amal Sinha, Adv
Respondent by	Sh. Prakash Dubey, Sr. DR

Date of Hearing	30.06.2021
Date of Pronouncement	22.07.2021

ORDERPER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 16/02/2015 passed by CIT(A)-Muzaffarnagar, for assessment year 2010-11.

2. The grounds of appeal are as under:-

1. "Whereas Ld. Commissioner (Appeal) erred in law as also in facts and circumstances of the case to confirm the addition of Rs. 3,92,25,432/- made by the JCIT, Range-2 Ghaziabad by assessing hostel surplus as business income of the assessee, completely ignoring the fact that the assessee is an educational society providing education by running various educational institutes and hostel facility is provided to the students as per ACITE norms and it is an inseparable and integral part of the main purpose of society for

which it has been established i.e. to provide education to the students, which is not a business activity.

2. Whereas Ld. Commissioner (Appeal) erred in law as also in facts and circumstances of the case to confirm the findings of the AO which are largely based on the information given on a website, which is totally irrelevant to the facts and circumstances of the case of the assessee. It is clear from the extract quoted by the AO that the said website talks of privately run PGs (Paying Guest Hostels) in the Ghaziabad area and not relate to the hostel facilities provided to its students by the colleges.

3. Whereas Ld. Commissioner (Appeal) erred in law as also in facts and circumstances of the case to confirm the addition of Rs. 3,92,25,432/- made by the AO to unjustifiably and arbitrarily invoke provisions of section 11(4A) of the I.T. Act, 1961 in the case of the assessee

3. The assessee Society is duly registered under Society Registration Act, 1860. The Society has been granted registration u/s 12AA of the Income Tax Act, 1961 vide order dated 15/6/1995. The Society has also been granted exemption u/s 80G of the Act vide order dated 18/6/2010 for the period from 1/4/2010. The Society is running various educational institutions. The return of income was filed on 17/8/2010 for Assessment Year 2010-11 declaring NIL income. The Assessing Officer made assessment of surplus of Hostel as business income u/s 114(A) of the Act and disallowed hostel expenses amounting to Rs. 3,92,25,432/- and made addition under the head income from business and profession.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee is a Charitable Society registered u/s 12AA of the Act and u/s 80G. The original assessment order was completed u/s 133(3) of the Act vide order dated 7/3/2013. The assessee

runs various Educational Institutions, Colleges and various courses are maintained by the assessee which are govern by Rules and Regulations, All India Counsel for Technical Education (AICTE), Gautam Budh Technical University(GBTU), apart from Running Educational Institutes, Medical Colleges and Charitable Hospitals. The assessee is also maintaining hostel from the in house student which is an integral part/integral activity for the functionality of Educational Institute. The Ld. AR submitted that if any surplus is generated, the same is applied for running and maintaining various charitable activities carried on by assessee society to which the Assessing Officer has wrongly treated running and maintain hostel activity as incidental and business activity. There was no surplus in consolidation of the Institute, receipts and expenditure, hostel activity maintain by an Educational Institute under statutory requirement is an integral activity. As per list of University Grant Commission (UGC) it has more than 600 Universities and out of those Universities, we are enclosing here with. Details of Hostel facilities enumerated by each U. P University on their web sites which clearly indicates that Hostel activity is not a incidental or ancillary activity or business activity but an integral activity required to required to regularize the functionality of Educational Institute. Therefore, it was because of the aforesaid guidelines, the assessee society was obliged to maintain hostel and assessee has fulfilled the requirement of imparting formal education by a systematic instructions. The Ld. AR relied upon the CBDT Circular No. 11/2008. The Ld. AR relied upon the following decisions:-

i) Krishna Charitable Society vs. Addl. CIT, Range-1, Ghaziabad (ITA N. 4639/Del/2015)

ii) Society for Educational Excellence vs. DCIT (ITA No. 6957,6960 & 3606/Del/2017)

iii) Dy. DIT vs. The Young Women's Christian Association of India (ITA No. 2408/Del/2013)

- iv) Dehradun Public School vs. Addl. CIT (2017) 167 ITD 305
- v) Adarsh Public School vs. JCIT (2018) 169 ITD 255
- vi) Hamdard Laboratories India vs. Assistant Director of Income Tax (Exemption) (2015) 379 ITR 393

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. There is delay of 32 days in filing the present appeal which was explained by the Ld. AR at the time of hearing, the same is genuine, hence the delay is condoned. The assessee is a Society running Educational Institutes, Medical Colleges and Charitable Hospitals which is affiliated with All India Council for Technical Education. It is also undisputed that assessee is carrying educational activity and running various Colleges especially Medical Colleges and Charitable Hospitals. The income from charitable activities declared by the assessee was NIL and the assessee earned gross receipt of Rs. 61,62,60,476/- on account of educational activity whereas the assessee is also running hostels for the students as per the UGC Guidelines which is an ancillary activity. In case of Krishna Charitable Society vs. Addl. CIT in ITA No. 4639/Del/2015 for AY 2011-12 dated 15.09.2017, the Tribunal held as under:

“11. We have carefully considered the rival contentions and perused the orders of the lower authorities and other judicial pronouncement placed before us. In the grounds no. 1 - 3 assessee is contesting that addition made by the Ld. AO treating hostel places provided to college student as business of the society and text the alleged surplus of Rs. 98,87,873/- as business income of the assessee. It was not the case of the revenue that assessee has rented out these hostels to the students who are not parted education in the above institutes. It was also not the case of revenue that assessee is primarily engaged in the business of providing hostel facilities to the students. The above issue is no more res Integra in view of the decision of the Hon'ble Karnataka High Court in CIT vs. Karnataka Lingayat Education Society in ITA No. 5004/2012 dated 15/10/2014 wherein it has been held that providing hostel to the students/staff working for the society's incidental to achieve the object of providing education, namely the object of the society. In view of this

we are of the opinion that providing of hostel facilities and transport facilities to the student and staff member of the educational Institute cannot be considered as business activity but is subservient to the object of educational activities performed by the society. We are also supported by our view by the decision of the Hon'ble Allahabad High Court in IT vs. State of UP (1976) 38 STC 428 (All) wherein question arose in Indian Institute of Technology vs. State of UP (1976) 38 STC 428 (All) with respect to the visitors' hostel maintained by the Indian Institute of Technology where lodging and boarding facilities were provided to persons who would come to the Institute in connection with education and the academic activities of the Institute. It was observed that the statutory obligation of maintenance of the hostel, which involved supply, and sale of food was an integral part of the objects of the Institute nor could the running of the hostel be treated as the principal activity of the Institute. The Institute could not be held to be doing business. Further means being supplied in a hostel to the scholars, visitors, guest faculty etc. cannot be eligible to sales tax where main activity is academics as held in scholars home Senior Secondary School 42 VST 530. Further, the reliance placed by the lower authorities on the decision of the Hon'ble Madras High Court in case of DCIT vs. Wellington Charitable Trust is also misplaced because in that case, the only activity of that particular trust was renting out of the property and not education. We are also not averse to considering the latest legal developments too where in the recently introduced new legislation of Goods and service tax it is provided that no GST would be chargeable on the hostel fees etc. recovered from the students, faculties and other staff for lodging and boarding as they are engaged in education activities. Therefore, we reverse the finding of the lower authorities and held that transport and hostel facilities surplus cannot be considered as business income of the assessee society which is mainly engaged in business activities and these activities are subservient to the main object of education of the trust."

In the absence of any evidence to show that the hostel facilities were provided to anybody other than students and staff of the trust, the hostel facilities provided by the educational institution shall be construed to be the intrinsic part of the 'educational activities' of the assessee and they cannot be considered different than activities of the society of 'education'. Thus, the addition amounting to Rs. 3,92,25,432/- made by the Assessing Officer and sustained by the CIT(A) is not correct. The CIT(A) and the Assessing Officer failed to consider that the hostel facility is incidental to achieve the object of providing education as per object of the trust and hence comes under the charitable purpose which is exempt under Section 11 of the Income Tax Act, 1961. Thus, the appeal of the assessee is allowed.

8. In result, appeal of the assessee is allowed.

Order pronounced in the Open Court on this

22nd Day of July, 2021.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 22/07/2021

R. Naheed *

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI