

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

I.T.A. No. 6526/Del/2013

A.Y. : 2010-11

Dy. Director of Income Tax(E), vs. The Institute of Chartered
Trust Circle-IV, New Delhi
Room No. 2409, 24th floor,
Block E-2, Pratyaksh Kar
Bhawan,
Civil Centre, JL Nehru Marg,
New Delhi

(Appellant)

Accountants of India,
PB-7100, ICAI Bhawan, IP
Estate, New Delhi – 110 002
(PAN : AAAAT7798M)

(Respondent)

Asseessee by
Department by

: Sh. Rajesh Jain, CA
: Ms. Paramita M. Biswas,
CIT(DR)

ORDER

PER H.S. SIDHU : JM

This appeal by the Revenue is directed against the order of the Ld. Commissioner of Income Tax (Appeals) dated 12.9.2013 pertaining to assessment year 2010-11.

2. The following issues have been raised by the Revenue:-

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring that the assessee's predominant objectives are to conduct examinations for the candidates for Chartered Accountants and to regulate its members and it does not provide any Scholastic education, therefore, its activities do not fall within the category of education covered by the definition of the expression 'charitable purpose' which is second limb of the section 2(15) of the Income Tax Act, 1961.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law as Hon'ble Supreme Court in the case of Sole Trusty, Lok Shikshana Trust vs. Commissioner of Income tax (1975) 10 ITR 234 (SC) has defined word 'education' and observed that the sense in which the word "education" has been used in section 2(15), is the systematic instruction, schooling or training given to young in preparation for the work of life. The word

"education" has not been used in that wide and extended sense according to which every acquisition of further knowledge constitutes education.

3. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in ignoring that the assessee's activity falls under the category of 'Advancement of any other object of general public utility' and first proviso to section 2(15) is early applicable on it as 'income-from coaching class' was explicitly business receipt in nature.

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

3. In this case Assessing Officer has observed that the assessee is established by the Act of Parliament of ICAI Act of 1949 and the assessee comes under the Ministry of Corporate Affairs. The assessee is registered u/s. 12A of the Income Tax Act, 1961 (hereinafter referred the Act) and has been claiming

exemption u/s. 11 of the Act which has been denied by the Assessing Officer mainly on the ground that the assessee is involved in commercial activities as the assessee receives coaching fees from the students of CA while giving coaching to the CA students. He further held that assessee's case falls under the category of General Public Utility and proviso to section 2(15) of the Act is clearly applicable in this case. Accordingly, exemption u/s. 11 & 12 of the Act is denied to the assessee society and its income is computed as normal AOP. The Assessing Officer assessed the income of the assessee at Rs. 12305.37 lacs vide his order dated 21/3/2013 passed u/s. 143(3) of the I.T. Act, 1961.

4. Against the aforesaid order of the AO, assessee appealed before the CIT(A), who vide his impugned order dated 12.9.2013 has allowed the appeal of the Assessee.

5. Aggrieved with the order of the Ld. CIT(A) dated 12.9.2013, Revenue is in appeal before the Tribunal.

6. Ld. DR relied upon the order of the Assessing Officer and reiterated the contentions raised in the grounds of appeal and requested that Appeal filed by the Revenue may be allowed by setting aside the order of the Ld. CIT(A), because the activities of the assessee-society does not fall within the category of education covered by the definition of the expression 'charitable purpose'. However, she submitted that the assessee's activity falls under the category of "Advancement of any other object of general public utility". Ld. DR has further stated that Department has filed an appeal against the order of the Hon'ble High Court which has been followed by the Ld. CIT(A) in the impugned order while allowing the Appeal of Assessee before the Hon'ble Supreme Court which is still pending, therefore, she requested that the decision of the Tribunal may be kept in abeyance till the outcome of the Hon'ble Supreme Court.

7. On the other hand, Ld. Authorised Representative of the Assessee has stated that the main activities of the assessee-society are to enroll CA students, to provide study material, to conduct classes, to conduct examination, to award degree of CA and other courses, to regular the profession of CA and to issue accounting standards etc. The coaching classes are conducted for

the benefit of the CA students to make them professionally efficient and the coaching classes are integral part of imparting education and its activities come under the definition of education u/s. 2(15) of the Act. It was further submitted that the exemption to the assessee was denied earlier on the ground that the assessee is involved in commercial activities but the exemption has been granted to the assessee for the assessment years 2005-06, 2006-07, 2007-08 by the Ld. CIT(A) and the Tribunal and the High Court. Hence, the present issues in dispute is squarely covered by the various decisions of the Tribunal, Hon'ble High Court and the Hon'ble Supreme Court of India. To support his contention, he filed the Paper Book containing pages 1 to 96 having the copies of the following judicial decisions:-

1. Dismissal of Department SLP by Hon'ble Supreme Court of India in the matter of DDIT and Ors. Vs. ICAI and Ors dated 27.1.2014.

2. Judgment of the Hon'ble Delhi High Court in the matter of ICAI and Anr. Vs. DGIT and Ors. Dated 4.7.2013.
3. Judgment of the Hon'ble High Court in the matter of DIT (E) vs. ICAI dated 11.5.2012.
4. ITAT order dated 18.10.2010 for the AY 2005-06 in ITA No. 1853/Del/2010 titled as ICAI vs. DIT(E).
5. ITAT order dated 09.1.2012 for the AY 2006-07 in ITA No. 1384/Del/2010 titled as ADIT(E) vs. ICAI.
6. ITAT order dated 16.6.2011 for AY 2007-08 in ITA No. 1930/Del/2011 titled as ADIT(E) vs. ICAI.
7. ITAT order dated 17.4.2014 for AY 2009-10 in ITA No. 2088/Del/2013 titled as DDIT(E) vs. ICAI.
8. We have heard both the parties and perused the records, especially the impugned order and the case laws cited therein and also by the Ld. Counsel of the Assessee, as aforesaid. We find

that the request of the Ld. DR for keeping in abeyance the Tribunal order is not tenable, because she was unable to produce the copy of any Stay Order granted by the Hon'ble Supreme Court of India, in the SLP Appeal filed by the Revenue, as stated by her. Hence, under the circumstances, we reject the said request of the Ld. DR and proceed further to adjudicate the issue in dispute on merit.

8.1 We find that the Ld. CIT(A) has elaborately discussed the issue in dispute in his impugned order dated 12.9.2013 vide para no. 2.2 to 3 at page no. 3 to 4. The relevant portion of his finding is reproduced as under:-

"2.2 I have considered the order of the AO and the submissions of the assessee and I find the considerable merit in the submissions of the assessee that the case of the assessee is fully covered in favour of the assessee by the orders of the Ld. CIT(A), Hon'ble Tribunal and Hon'ble High Court allowing exemption to the assessee u/s 11 and holding that the assessee is an

educational institution. There was a similar issue of denial of exemption u/s 11 and my predecessor after examining the issue has allowed exemption u/s 11 for the assessment years 2006-07, 2007-08 & 2009-10. The Ld. CIT (A) had allowed exemption to the assessee for the assessment year 2007-08 which has been also allowed by the Hon'ble Tribunal vide the order dated 16/06/2011 in ITA No. 1930IDel/2011 and the departmental appeal has been dismissed. The DIT(E) had denied exemption to the assessee in the proceedings u/s 263 for the A.Y 2005-06 but the Hon'ble Tribunal has cancelled the order of the DIT(E) vide the order dated 18/10/2010 in ITA No. 1853/Del/2010. The department had filed appeal against the order of the Hon'ble Tribunal but the Hon'ble High Court has dismissed the departmental appeal vide the order dated 19/9/2011 in ITA No. 869/2011. The Hon'ble Delhi High Court in the order dated 4/7/2013 has also directed the DGIT(E) to grant

exemption to the assessee u/s 10(23C)(iv) holding that the assessee is an educational institution. The AO is also aware that the case of the assessee is covered in favour of the assessee but has not allowed exemption to the assessee and the ground the department has not accepted these orders and the department is in appeal in the Hon'ble Supreme Court vide Para 43 of the assessment order. After considering all the facts and circumstances of the, case I am of the view that the case of the assessee is fully covered in favour of the assessee by the assessee's own case of earlier years by the orders of the Ld. CIT(A), Hon'ble Tribunal and Hon'ble High Court and as such respectfully following the above orders the appeal of the assessee is allowed and the AO is directed to allow exemption to the assessee.

3. In the result, the appeal of the assessee is allowed."

8.2 After going through the aforesaid findings, we are of the considered opinion that the issue in dispute is squarely covered by the various decisions of the ITAT, Hon'ble High Court and the Hon'ble Supreme Court of India in assessee's own in preceding assessment years. For the sake of clarity, we are discussing here-in-below the ITAT, Delhi Bench decision dated 17.4.2014 passed in ITA No. 2088/Del/2013 for the preceding assessment year i.e. 2009-10, titled Dy. Director of Income Tax (E) vs. The Institute of Chartered Accountants in which the exactly similar issues have been dealt with and the Appeal has been decided against the Revenue and in favour of the Assessee. The relevant portion i.e. para no. 2 to 7 at pages 1 to 8 of the aforesaid order of the Tribunal dated 17.4.2014 is reproduced as under:-

"2. Ground no.3 of the revenue is general in nature which needs no adjudication. Remaining grounds of the revenue reads as under:-

"1. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in ignoring that the

assessee's predominant objectives are to conduct examinations for the candidates for the Chartered Accountants and to regulate its members and it does not provide any scholastic education, therefore, its activities do not fall within the category of education covered by the definition of the expression 'charitable purpose' which is second limb of the section 2(15) of the I.T. Act, 1961.

2. On the facts and in the circumstances of the case, the Id. CIT(A) has erred in ignoring the judgment of Hon'ble Supreme Court in the case of Sole Trusty, Lok Shikshana Trust vs. Commissioner of Income Tax (1975) 10 ITR 234(C) wherein the Hon'ble Apex Court has defined the word 'education' and observed that the sense in which the word 'education' has been used in section 2(15), is the systematic instruction, schooling or training given to young in preparation for the work of life. The word 'education' has not been used in

section 2(15), is the systematic instruction, schooling or training given to young in preparation for the work of life. The word 'education' has not been used in that wide and extended sense according to which every acquisition of further knowledge constitutes education."

3. We have heard rival arguments of both the parties and carefully perused the record placed before us. During the arguments, assessee's representative submitted copies of the decisions of ITAT Delhi 'H' Bench in assessee's own case i.e. ITA No. 1930/D/2011 dated 16.6.2011 for AY 2007-08, copy of the judgment of Hon'ble High Court of Delhi dated 04.07.2013 in assessee's own case by which writ petitions of the assessee for AY from 2006-07 to 2011-12 have been allowed by setting aside impugned orders of Director General Income Tax (Exemption) dated 13.04.2012 and 28.9.2012 with a direction to DGIT(E) to recognize the petitioner/assessee as eligible u/s 10(23)(c)(iv) of the Income Tax Act, 1961(for short the Act) for charitable

purposes, having regard to its object and importance, subject to the petitioner/assessee complying with the other provisions of the Act. The AR also submitted a copy of the orders of Hon'ble Supreme Court of India in Special Leave to Appeal (Civil) No. CC792/2014 dated 27.01.2014 by which Special Leave Petition of the department against the order of the judgment of Hon'ble High Court of Delhi dated 04.07.2013 (supra) have been dismissed. Ld. DR submitted that the Commissioner of Income Tax(A) has erred in ignoring that the assessee's predominant objectives are to conduct examination for the CAs and to regulate its members and it does not provide any scholastic education, thus, its activities do not fall within the category of education covered by the definition of the expression "charitable purposes" which is the second limb of section 2(15) of the Act.

4. The DR further pointed out that the Commissioner of Income Tax(A) has erred in not taking cognizance of the decision of Hon'ble Supreme Court in the case of sole

trustee, Loka Shikshana Trust vs Commissioner of Income Tax (1975) 101 ITR 234 (SC) wherein the Hon'ble Apex Court has defined the word "Education" and observed that the meaning of the word "Education" has been defined and used in section 2(15) of the Act and as per this provision, the systematic instruction, schooling or training given to the young is preparation for the work of life is education. The DR further pointed out that the word 'education' has not been used in that wide and extended sense and, accordingly, any other acquisition of further knowledge constitutes education.

5. Replying to the above, the AR pointed out para 4 to 8 of the order of ITAT 'H' Bench in ITA No. 1930/D/2011 (supra) wherein dismissing the appeal of the revenue, it has been held that the assessee institute is an educational institute, hence its income will be exempt u/s 11 as education falls within the meaning of charitable purposes u/s 2(15) of the Act. The relevant operative observations and findings part of this order read as under:-

"4. Upon assessee's appeal Ld. Commissioner of Income Tax (Appeals), referred to his own appellate order for A.Y. 2006-07 as under:-

"I have considered the submissions made by the Ld. Authorised Representative of the appellant institution visa-vis finding of the Assessing Officer made out in the assessment order in respect of holding the income of coaching classes as an activity of business. The main emphasis of the Assessing Officer in arriving to conclusion that income of the appellant Institute from coaching classes is an activity of business, is the figure of earning from coaching classes as reflected by him in the table prepared in the assessment order giving detailed of gross income of coaching, expenditure incurred in coaching and net earning from coaching classes from assessment year 2002-03 to assessment year 2008-09 and his remark that the appellant Institute is earning huge income over the

years like any businessman earn from the activities of business. However, on the other side the Ld. Authorised Representative of the appellant emphasized that the conducting of coaching classes through Regional Councils, the appellant Institute, following its main purpose and objective of giving training to the future Chartered Accountants, for which it has been enacted by the Parliament and further emphasizing that CBDT while granting Notification u/s 10(23C)(iv) of the Act to the appellant Institute was well aware about the component of its income reflected in Annual accounts filed with the application for applying for exemption of income u/s. 10(23C)(iv) of the Act consistently to the assessment year 2005-06, and therefore the objection of the Assessing Officer in this respect is misconceived, even on the Principle of Doctrine of Consistency enunciated by Hon'ble Supreme Court in the case of Radhaswamy Satsang (cited

supra). Pursing the Chartered Accountants regulations, annual accounts of the appellant Institute and written arguments of the Ld. Authorised Representative and judicial precedents brought to my notice on the issue involved, I am inclined to accept the argument of the Id. counsel that income of coaching classes of the appellant Institute is not an activity of business as alleged by the Assessing Officer in the assessment order, but the said income has arisen from the ancillary activity arisen from the main objects for which it has been enacted by the Parliament and further accepted as such by Central Board of Direct Taxes year to year, while notifying it for the purpose of Section 10(23C)(iv) of the Act. The observation of the Assessing Officer that the appellant Institute is earning huge income over the years and this surplus income is earned in a systematic and organized way, the way in which business activities are carried out is also

misconceived as merely because profit has resulted from the activity of imparting education would not change the character of the Institution. The Hon'ble Supreme Court in the case of Surat Art Silk Cloth Manufactures Association and Hon'ble Delhi High Court in the very recent judgement in the case of sister concern of the appellant Institute ICAI Accounting Research Foundation reported at 321 ITR 73 held that the mere fact of generating income, while carrying out the ancillary objects for achieving the main objects, would not per se change the character of the assessee till the surplus received qua these activities are utilized for advancement of the objectives for which the assessee has been established. Hence, ground no. 6 is allowed in favour of the appellant."

The Ld. Commissioner of Income Tax (Appeals) further took note that Hon'ble ITAT, Delhi Bench in ITA No. 1853/Del/2010 also held that:

"The institute as such merely it is receiving coaching fee from students for imparting education, cannot be said to have been carrying on the business and accordingly it is not required to maintain separate books of accounts as alleged by DIT(E). The income of the coaching classes earned by the assessee institute is within its objects and its regulations and further these activities are educational activity within the definition of section 2(15) of the Income Tax Act, 1961, and consequently therefore cannot be activity of business for which separate books of accounts are required to be maintained. The order of the DIT(E) is therefore not sustainable as the income of the institute is exempt not only u/s 10(23C)(iv) but also under section 11. The Institute is an educational institute and hence its income will also be exempt u/s. 11 as education falls within the meaning of charitable purpose under section 2(15) of the Act."

5. Against the above order, the revenue is in appeal before us.

6. Ld. counsel of the assessee submitted that the issue is covered in favour of the assessee by the decision of this tribunal in assessee's own case in ITA No. 1853/Del/2010 for A.Y. 2005-06. In this regard, ld. counsel of the assessee referred para 15 of the above said order which reads as under:-

"15. The Institute as such merely it is receiving coaching fee from students for imparting education, cannot be said to have been carrying on business and accordingly it is not required to maintain separate books of accounts as alleged by DIT(E). The income of the coaching classes earned by the assessee institute is within its objects and its Regulations and further these activities are educational activity within the definition of section 2(15) of the Income Tax Act, 1961, and consequently therefore cannot be activity of business

for which separate books of accounts are required to be maintained. The order of the Id.DIT(E) is therefore, not sustainable as the income of the Institute is exempt not only u/s 10(23C)(iv) but also under section 11. The institute is an educational institute and hence its income will also be exempt under section 11 as education falls within the meaning of charitable purpose under section 2(15) of the Act.”

7. In light of the above, Id. counsel of the assessee contended that this issue stands covered in favour of the assessee by the decision of this tribunal as above.

7.1 Ld. Departmental Representative could not controvert this proposition. He fairly agreed that this issue stands covered by the said tribunal order.

8. Accordingly, in the background of the aforesaid discussion and precedent, we do not find any infirmity or illegality in the order of the Ld. Commissioner of

Income Tax (Appeals), hence, we uphold the same.”

6. In the light of above, Id. AR submitted that the sole issue agitated by the revenue in this appeal stands covered in favour of the assessee by above decision of this Tribunal. Ld. DR could not substantially controvert this proposition and has fairly agreed that this issue stands covered by the said Tribunal order in favour of the assessee and against the revenue. Accordingly, on the basis of discussion and earlier order of this Tribunal as reproduced hereinabove and respectfully following the same as an order of Coordinate Bench of this Tribunal as a precedent, we do not find any infirmity, illegality or any other valid reason to interfere with the impugned order of the Commissioner of Income Tax(A). Hence, we uphold the same. Accordingly, both the grounds of the revenue being devoid of merits are dismissed.

7. In the result, the appeal of the revenue is dismissed.”

9. Respectfully following the precedents of the Coordinate Benches of the Tribunal, decisions of the Hon'ble High Court of

Delhi and the Hon'ble Supreme Court of India delivered in the preceding assessment years in assessee's own, as discussed above, we do not find any infirmity, illegality or any other valid reason to interfere with the well reasoned order passed by the Ld. CIT(A), hence, we uphold the same and dismiss the Appeal filed by the Revenue.

10. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on 02/06/2016.

Sd/-
[O.P. KANT]
ACCOUNTANT MEMBER

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 02/06/2016
 SRBHATNAGAR

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar,
 ITAT, Delhi Benches