

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "A", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER**

**ITA No. 1446/Hyd/2016
Assessment Year: 2012-13**

M/s International School of Hyderabad, Hyderabad. PAN – AAABI0034J	vs.	The Income Tax Officer, Exemptions-2, Hyderabad.
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(Appellant)

(Respondent)

Assessee by :	Shri S. Raghunathan
Revenue by :	Smt. Suman Malik

Date of hearing :	26-04-2017
Date of pronouncement :	03-05-2017

ORDER

PER B. RAMAKOTAIAH, AM

This is an appeal by Assessee against the order of CIT(A)-9, Hyderabad dated 18-05-2015, on the issue of not granting the relief u/s 11 of the IT Act.

2. Briefly stated, International School of Hyderabad (ISH) is a nonprofit educational institution sponsored and managed by The International Crops Research Institute for the Semi-Arid Tropics (ICRISAT). ISH was granted registration u/s 12AA of the Act w.e.f 01-04-2004. This institute was established by the approval of Department of Agricultural Research and education and subsequently by Min of External Affairs, to run the institution on the basis

of International / British System of education. Assessee mainly admits the students of Foreign employees working in the institute and can admit up to five students per class of Indian employees. For the A.Y 2011-12, A.O noticed that Assessee is not eligible for deduction u/s 11 of the IT Act on two reasons (i) that it exceeded the number of Indian students permitted in each class, in violation of the approval granted by Min of External Affairs and also collected donations more than the fee permitted and violated the orders of the Hon'ble Supreme Court with reference to collection of donations (The decision of Hon'ble Supreme Court in the case of Islamic Academy of Education and another Vs State of Karnataka and TMA PIA foundation and others Vs State of Karnataka). The matter was carried to Ld. CIT(A) in that year.

3. Ld. CIT(A) did not agree with the A.O's contentions on the issue of admitting more students than permitted by approval of Min of External Affairs. Ld. CIT(A) held that reasoning of A.O is not justified. The order of Ld. CIT(A) on this issue is as under:

"14. I have considered the facts on record and the submissions of the AR. Though the letter from DARE specified that admissions to the school will be open only to the children of non-Indian members of the institute, this condition was modified by the MEA letter which permitted admission of children of Indian nationality subject to certain limits. The AR has submitted that the list of students of the school had been submitted to MEA every year (in accordance with the letter from DARE) and the MEA had not raised any objections with regard to the student mix. In view of the fact that the controlling Ministry had no objection to the student mix, the objection

of the AO to the practice of admitting Indian students is held to be not justified.”

3.1 However on the issue of collecting sum of Rs. 1,75,000/- per year from the students as capital fee, Ld. CIT(A) upheld the action of A.O and held that Assessee is not entitled to exemption of u/s 11 of the IT Act. This matter was carried to the ITAT by Assessee. The ITAT in ITA No. 1715/Hyd/2014 has clearly noted that the issue of capitation fee was only one which required adjudication, as other reasons has not been found sustainable by CIT(A). The order of ITAT in that year with reference to the issue of admitting excess students thus has become final, as revenue has not appealed on that. This fact is also clearly noted by the ITAT in para 11 as under:

“11. We have considered the submissions of the parties and perused the materials on record as well as the orders of the Revenue authorities. We have also carefully applied our mind to the decisions placed before us. As can be seen, though, the A.O denied exemption u/s 11 to the assessee on various reasons including the charging of capitation fee, the Ld. CIT(A) has not found any of the reasons sustainable except the one relating to collection of capitation fee. As the Department is not in appeal, we are not required to go into other reasons mentioned by the AO for denying benefit u/s 11. Thus, the only issue which requires consideration is whether the denial of exemption u/s 11 of the Act to the assessee on the allegation of charging capitation fee over and above the fee prescribed under the Act is sustainable.....”

3.2 There after, the ITAT went on to examine the issue and the matter was restored to the file of A.O to examine whether there was any fees fixed for Assessee, so that the collection of donation can be considered as

violation. In the consequential order passed by A.O for A.Y 2011-12, A.O gave a finding that there is no prescribed fee for admission of student in the school and accordingly AO has accepted the assessee contentions. Surprisingly, even though the other issue of violation of Min. of External Affairs' approval by admitting more students than permitted was accepted by Revenue, A.O, in the consequential order, however, again denied the disallowance u/s 11 of the IT Act on that reason. In the year under consideration also, A.O has taken the both the issues. In the appeal, Ld. CIT(A) while accepting that the collection of donation is not in violation of the approvals/provisions, following the direction given by the ITAT in the earlier year and the consequential order of A.O in that year. Ld. CIT(A), without noticing the predecessor order on the issue, confirmed the disallowance u/s 11 of the IT Act by stating as under:

"7. In view of the above consequential order passed u/s. 143(3) r.w.s 254 dated 30.03.2016, for A.Y. 2011-12, wherein the AO has examined the issue, the AO is directed to allow exemption u/s 11 of the IT Act. However, the AO may verify the number of Indian students per class, as laid down by the ministry of external affairs and if the number exceeds the permitted limit, then the same may be brought to tax."

4. Assessee's only grievance in the appeal is with reference to the issue of student mix, so as to deny the exemption u/s 11 of the IT Act. The grounds raised by Assessee in impugned assessment year are as under:

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in not following the position

settled by the order of the Ld. CIT(A) dated 27 the August 2014 for the AY 2011-12 in the Appellant's own case by directing the AO to verify the student mix as per Department of Agricultural Research and Education / Ministry of External Affairs guidelines and bring to tax the capital fee in cases where the number of Indian students exceed the permitted limits.

2. Without prejudice to Ground No. 1, on the facts and circumstances of the case, the Ld. CIT(A) erred in holding that the Appellant did not follow the terms and conditions laid down by DARE / MEA without considering the fact that the School has regularly been submitting all the required information in the prescribed format to the MEA and there has never been any query raised by the MEA so far on the submissions made."

5. Ld. Counsel while submitting that the consequential order of the A.Y 2011-12 is pending adjudication before Ld. CIT(A), however submitted that the issue of admitting more students than the permitted number has been adjudicated by Ld. CIT(A) in favour of Assessee in A.Y 2011-12 and Revenue has not come in appeal. Therefore, the action of A.O in the consequential order for that year is not correct. Further, it was submitted Ld. CIT(A) wrongly relied on the consequential order of the earlier year, when her predecessor has not sustained the reasoning, in an earlier order in Assessee's own case. He also referred to the order of the ITAT that the only issue agitated was with reference to the capitation fee collected and since there is no prescribed fee for admission of student in the school by any authority, the decision of Hon'ble Supreme Court with reference to capitation fee in Engineering and Medical Colleges does not apply to the school being run by Assessee. It was submitted that Assessee deserve relief.

6. Ld. DR, however relied on the order of the ITAT to submit that the issue was set aside to the A.O to examine all the issues as per provisions of law and accordingly A.O has again re-agitated this issue in the constitutional order and supported the orders of AO/CIT(A).

7. We have considered the rival contentions and perused the orders of CIT(A) and ITAT in earlier years. It was admitted that A.O originally has taken up two issues while denying the benefit u/s 11 of the IT Act. One was that Assessee admitted more students than permitted in some classes. The other issue is that Assessee collected capitation fee while admitting the students. On both the issues the Assessee had agitated before CIT(A) in earlier year and CIT(A) in the orders dated 27-08-2014 has clearly held that when the controlling Ministry has no objection to the student mix, the objection of A.O. to the practice of admitting Indian students is held to be not justified. On this finding of the Ld. CIT(A), there is no appeal before the ITAT. As already stated earlier and extracted above, the only issue for adjudication before the ITAT in A.Y 2011-12 was the issue of collection of capitation fee, which was restored to A.O to examine a fresh whether there is any prescribed fee under any regulations. The A.O in consequential order however accepted that there is no prescribed fee and accordingly that issue was held in favour of Assessee. On both the issues the matter has been crystallised, one by order of CIT(A) and other by the

order of the ITAT, after due examination by AO in the consequential. We are surprised that the Ld.CIT(A) upheld the order of A.O on the issue of admission of Indian students over and above the prescribed limits, without noticing the order of her predecessor, which was accepted by Revenue in that year. Since this issue was already crystallised by the order of CIT(A) in earlier year, We are of the opinion that A.O was precluded in making that as an issue in the Assessing Order in this year. Ld. CIT(A) should have followed the predecessor order on the issue, rather than relying the consequential order passed by A.O on wrong appreciation of facts. Since, this issue is no longer required to be adjudicated, as it was crystallised in earlier year in favour of Assessee, we have no hesitation in setting aside the order of A.O and CIT(A) on this issue and allow the grounds of Assessee.

8. In the result, appeal filed by Assessee is allowed.

Pronounced in the open court on 03rd May, 2017.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Hyderabad, Dated: 03rd May, 2017.

KRK

- 1 International School of Hyderabad, ICRISAT Campus,
Patancheru, Hyderabad – 502324.
- 2 The ITO (Exemptions), Ward-2, Hyderabad.
- 3 CIT (A)-9, Hyderabad.
- 4 CIT(Exemptions), Hyderabad.
- 5 The DR, ITAT Hyderabad
- 6 Guard File