

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH ' A ' NEW DLEHI**

**BEFORE SHRI G.D. AGRAWAL, PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.3593/Del/2015
Assessment Year: 2010-11**

**Delhi Public School Ghaziabad ,
Society, 315/274, Westend Marg,
MB Road, Saidulajab,
Near ITDC Delhi Haat, New Delhi.
(PAN: AAAAD9571A)**

vs

**Asstt. Commissioner of Income-tax,
Range-1, CGO Complex-1,
New Delhi.**

(Appellant)

(Respondent)

Appellant by: Shri S. Krishnan, Advocate

Respondent by: Shri Ravikant Gupta, Sr. DR

Date of Hearing: 03.05.2018

Date of Pronouncement: 08.05.2018

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 02.03.2015 in Appeal No 98/13-14/GZN/63 for the assessment year 2010-11 passed by the learned Commissioner of Income-tax (Appeals), Muzaffarnagar (for short hereinafter called as "the learned CIT(A)'), the assessee preferred this appeal.

2. Assessee is running a school and providing transport facility for its student for which separate fees charged. During the scrutiny of the return of income of the assessee for the assessment year 2010-11, Ld. AO disallowed a sum of rupees 1,73,20,960/-in relation to the activity of the assessee running the school buses, on the premises that the said activity amounts to a business in view of the proviso to Section 2 (15) of the Act, as such the assessee is not entitled for exemption under section 11 (4A) of the Act. To reach this conclusion, Ld. AO noted that surpluses generated from running of transport business, the surplus generated is not distributed to the students nor was reduced from the fee of the next year, the institution can run without the transport facility, the education fee structure is different from transport fee structure etc. He also disallowed the claim of the assessee on account of depreciation by placing reliance on the decision of the Hon'ble Apex court in the case of Escorts Ltd versus union of India and the decision of the Hon'ble Kerala High Court in the case of Lissie Medical Institutions.

3. Challenging the said addition in the assessment order, assessee preferred an appeal before the CIT(A). Ld. CIT(A) formulated the following four questions for answering the core issue involved in this matter: –

- (i) Whether running transport by an educational institution is covered under the definition of education u/s 2(15) of the IT Act,
- (ii) If the above activity is not covered under the had education whether it is a charitable activity u/s 2(15) of the IT Act,
- (iii) If the activity is commercial whether the same is incidental to the running of the school; and
- (iv) If it is incidental whether separate books of accounts are mandatory as provided in section 11(4A) of the IT Act.

4. On these questions CIT(A) found that the fee charged from the students is on commercial basis and not on charitable basis, as such the assessee is engaged

in commercial activity and cannot be termed as education as covered under section 2 (15) of the Act; transport running for the children of school is not advancement of general public utility; the assessee is not charging as per market rate but has charged more from the students which shows the commercial motive of the assessee and not a charitable one as claimed by them; and that the assessee is not entitled for exemption under section 11(4A) of the act.

5. Aggrieved by the impugned order, assessee preferred this appeal before us stating that the income from transport activities is an integral part of educational activity of school which cannot be separated from the educational activity and the schooling in this particular case, as such, the activity of running school buses clearly falls within the meaning of the word 'education' within the meaning of Section 2(15) of the Act.

6. Submissions on behalf of the assessee are fourfold, namely, that the activity of running school buses is intrinsic part of the activity of running a school; the dominant objective of the assessee in running the buses is to facilitate the activity of education as such on application of the dominant object to test, the activity of running the school bus falls within the ambit of section 2(15) of the Act; the authorities below went wrong in their reasoning that education is not part of charitable activity anymore and such an approach is misconceived one; and lastly, inasmuch as the assessee is registered under section 10(23-C) which is parallel exemption mechanism and provisions of section 11(4A) cannot override the same.

7. It is the submission on behalf of the revenue that by running the school buses the assessee is generating surplus which is not being distributed to the

students nor is reducible from the fee for the next year and inasmuch as the institution can run without the basic transport facility, the assessee has been running the buses for the purpose of a income which is in no way connected with providing the education. He vehemently relied upon the orders of the authorities below.

8. We have gone through the record in the light of the submissions on either side. At page No.4 of the assessment order, Ld. AO recorded that the assessee society has charged Rs.3,00,42,296/- towards transport fee which is included in the income and expenditure account and corresponding expenses was debited to Rs.3,09,33,029/-for providing transport facility to students. There is no dispute that the assessee has been running 37 school buses. Ld. AO allowed the salary of 7 drivers. The contention of the assessee that 37 buses cannot be run by 7 drivers goes uncontradicted. Further AO did not bring on record as to the use of the vehicles for any other purpose than the conveyance of the children and further its repair and periodical maintenance. It is not the case of the revenue also that the assessee has been deriving any income from the use of these vehicles other than collecting the fees from the students for their transport facility. It is, therefore, clear that the material on record suggests that all the buses are being used only for providing facility to the students and staff that also only for transport to and from the school to the respective houses of the children in the given routes.

9. Ld. AR brought to our notice the guidelines and the bylaws which regulate the running of school buses issued from time to time by CBSE and NCPCR manual of safety standards in schools with reference to the staff, attendants, duty of school by way of a bus officer etc.

10. It is, therefore, clear that the entire dispute in this matter revolves around the question whether or not the activity of running school buses exclusively for the facility of the students and staff, is an intrinsic part of the activity of running a school. Such a question is no longer *res Integra*. In the case of Krishna Charitable Society Vs. Addl CIT in ITA No. 4639/Del/2015 for AY 2011-12 dated 15.09.2017, a similar question had arisen. Vide para No.11, a coordinate bench of this Tribunal held that transport and hostel facility surplus cannot be considered as business income of the society as these activities are incidental to the main object of the assessee society of education. Relevant observations on this aspect are 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. assessing officer treating hostel places provided to college student as business of the society and text the alleged surplus of Rs. 9887873/- as business income of the appellant. 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 versus 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 IIT versus state of UP, (1976) 38 STC 428 (All) wherein question arose in Indian Institute of Technology v. State of U.P. (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 meals being supplied in a hostel to the scholars, visitors, guest faculty etc. can not be exigible 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 versus 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.

11. In Kanha Charitable Trust Vs. ACIT ITA Nos.3297 & 5987/Del/2015, while placing reliance on its earlier decision in the case of Krishna Charitable Society Vs. ACIT it was held that in the absence of any clinching evidence to show that the hostel facilities and transport facilities were provided to anybody other than students and staff of the trust. The transport and 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'. The hostel and transport facilities are incidental to achieve the object of providing education as per object of the trust.

12. Further, in Mallikarjun School Society vs.CCIT (2018) 90 taxmann.com 160 (Uttarakhand), the Hon'ble High Court held that an educational institution will not cease to be one existing solely for educational purposes since the object is not to make profit and the decisive or as a test as observed by the Hon'ble Apex court is whether on an overall view of the matter the object is to make profit and one

should bear in mind the distinction between the corpus, the objects and the powers of the concerned entity.

13. In the present case also, it is not the case of the revenue that the transport facility is also provided to the outsider. Hon'ble Karnataka High Court in the case of Karnataka Lingayat Education Society in ITA No. 5004/2012 dated 15.10.2014 has held that providing the hostel to the students and the staff working for the society is incidental to achieve the object of providing education and i.e. the object of the society. Therefore, in view of the above decision of the Hon'ble Karnataka High Court as well as the decision of a coordinate bench of this Tribunal in ITA No. 4639/Del/2015, we are of the view that the transport activities of the assessee trust are not in the nature of business, inasmuch as the transport is also incidental to the attainment of the main object of the trust of the education. Therefore, the provisions of Section 11(4A) of the Act do not apply to the assessee. With this view of the matter, we allow the grounds of appeal.

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

Order pronounced in the Open Court on 8th May, 2018.

Sd/-

(G.D. AGRAWAL)
PRESIDENT

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 8th May, 2018
'VJ'

Copy forwarded to:

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

By order

Asstt. Registrar