IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.2607/Del/2013
Assessment Year: 2006-07

Income-tax Officer (E), Trust Ward-IV, New Delhi.	vs	M/s Indraprashta Cancer Society and Research Centre, Q-5A, Jangpura Extension, New Delhi. PAN: AAATI0440C

ITA No.2816/Del/2013
Assessment Year: 2006-07

M/s Indraprashta Cancer Society and Research Centre, Q-5A, Jangpura Extension, New Delhi. PAN: AAATI0440C	vs	Income-tax Officer (E), Trust Ward-IV, New Delhi.
Appellant		Respondent

Assessee by	**Shri Shailender Bajaj, CA**
	Shri R.R. Maurya, Advocate
Revenue by	**SMT. Sushma Singh, CIT DR**

Date of Hearing **19.3.2019**
Date of Pronouncement **28.3.2019**

ORDER

PER K. NARASIMHA CHARY, JM

These are crossed appeals filed both by Revenue and the assessee challenging the order dated 1.2.2013 in Appeal No.240/269/08-09

passed by the Learned Commissioner of Income-tax(Appeals)-XXI, New Delhi {"CIT(A)"} for Assessment Year 2006-07.

2. Brief facts of the case are that the Indraprastha Cancer Society & Research Centre is registered u/s 12A(a) of the Income-tax Act, 1961 ("the Act") vide No.DIT(Exemption)/1994-95/601/45/28 dated 8.5.1995. The society is also notified u/s 10(23C)(via) vide notification No.44/2004 dated 18.8.2004 for the AYs 2004-05 to 2006-07. The aims and objects, as stated in the MOA, is to study and undertake scientific research on all aspects of disease of cancer and in particular to investigate its incidence, prevalence, distribution, causes, symptoms and to promote its cure to cooperate and coordinate with agencies, organizations, hospitals, institutes that are engaged in fighting cancer etc. The society is running a hospital under the name and style of Rajiv Gandhi Cancer Institute and Research Centre at Rohini, Delhi. The objects of the society are charitable within the meaning of Section 2(15) of the Act.

3. For the AY 2006-07, they have filed their return on 31.10.2006 showing nil income. Learned AO, however, completed the assessment by order dated 29.12.2008 u/s 143(3) of the Act by making several additions including Rs.1,29,14,393/- on account of the earmarked funds received during the year taken to balance sheet, Rs.2,16,662/- on account of the amount received on sale of assets, Rs.2,14,310/- by disallowing the loss claimed on sale of assets, Rs.5,23,96,752/- by disallowing the depreciation on the assets purchased towards the application of the funds, Rs.6,09,13,176/- by disallowing the provisions made by the

assessee towards the leave encashment and gratuity and Rs.2,11,68,423/- by disallowing the advances paid as application of income.

4. In appeal, learned CIT(A) deleted the addition of Rs.5,23,96,722/- added by disallowing the claim for depreciation, Rs.2,14,310/- added by disallowing the loss on sale of assets; Rs.6,09,12,196/- added by disallowing the provisions made towards gratuity, leave encashment and cancer care schemes and Rs.2,11,68,423/- the advances disallowed, against which the revenue preferred ITA No.2607/Del/2013 and confirmed the addition of Rs.1,29,14,392/- added on account of the earmarked funds received by the assessee against which the assessee preferred ITA No.2816/Del/2013.

5. Ground Nos. 1 & 2 of revenue's appeal is in respect of the disallowance of depreciation on the assets purchased by the assessee by application of funds. Learned CIT(A) deleted the same by following the decision of the Hon'ble jurisdictional High Court in the case of Vishwa Jagriti Mission, 73 DTR (Del)195. In assessee's own case also, Hon'ble jurisdictional High Court in DIT vs Indraprastha Cancer Society, ITA No.240/2014 order dated 18.11.2014 considered the question whether after claiming deduction in respect of the cost of the assets u/s 35(1) of the Act, assessee again claimed deduction on account of depreciation in respect of the same asset. Hon'ble jurisdictional High Court held the issue in favour of the assessee. In view of the binding precedent of the jurisdictional High Court in assessee's own case, we do not find any unreasonableness in the order of the ld. CIT(A). We, therefore, confirm the order of the ld. CIT(A) and dismiss Ground Nos. 1 & 2.

6. Ground No.3 relates to the deletion of Rs.2,14,310/- added by disallowing the loss on sale of assets. Plea of the assessee is that the assets were sold at a price lesser than the WDV of the assets and when the depreciation is allowed following the commercial principle, there is no bar to consider the loss and the learned AO committed error in taking the sale proceeds as income and ignoring the loss. On this aspect, learned CIT(A) considered the plea of the assessee and satisfied that the assessee could demonstrate that the income u/s 11 had to be determined on commercial principles. We are also of the considered opinion that the income u/s 11 has to be determined on commercial principles and to determine the same, the losses arising on sale of assets of the society shall be considered. Therefore, the capital loss of Rs.2,14,310/- has to be considered while calculating the income of the assessee. With this view of the matter, we uphold the finding of the ld. CIT(A) on this ground and dismiss Ground No.3.

7. Now coming to Ground No.4 relating to the deletion of Rs.6,09,12,176/- added by disallowing the provisions relating to the gratuity, leave encashment and cancer care scheme, on a careful consideration of the material produced before us by way of paper book-II vide page nos. 1 to 17, we are satisfied that such a provision was made on scientific basis inasmuch as the explanation of the assessee is that the employees accrue a right of gratuity on their continuous service for five years and the society has to pay them the gratuity as and when they retire, so also the leave encashment, which are ascertain amounts but the time of payment is unknown and, therefore, as a prudent employer, the assessee has to make provision for payment of such ascertained amounts but at an unascertained time.

8. Further, learned CIT(A) drew strength from the judgment of the Hon'ble jurisdictional High Court in the case of DIT(E) vs NASSCOM, 345 ITR 362 wherein it was held that the income available for charitable purpose to be computed in accordance with commercial principles, provision for bad and doubtful debts could be created, and observed that the ratio of this judgment applies to this case also as the provisions has been made to meet the ascertained liability likely to be incurred during the course of carrying out its object. This reasoning given by the learned CIT(A) does not appear to be suffering from any illegality or irregularity. We, therefore, find that such a finding of the ld. CIT(A) could be upheld and ground no.4 has to be dismissed.

9. Now coming to Ground No.5 relating to the deletion of Rs.2,11,68,423/- added by disallowing the advance amount paid by the assessee for purchase of assets like machinery, learned AO disallowed the same of Rs.2,11,68,423/-. The impugned order shows that though this plea is taken by way of ground no.4, ld. CIT(A) did not dealt with this aspect specifically but vide para 6 at page 25 of his order stated that this also related to depreciation. However, as a matter of fact, this ground is not covered.

10. It is the submission of the learned AR that it is the practice of the assessee that whenever the advances are paid to the vendors, in the year when the machinery is supplied and the expenditure is booked, only the balance amount is taken cognizance and not the entire amount. This is an aspect which requires verification at the end of the learned AO as to whether the expenditure is booked for the entire expenditure or only for the balance amount of the cost of the machinery. We, therefore, set aside

this issue to the file of the learned AO to verify whether the advance amount is excluded from the cost of the machinery or the capital assets in the year in which the expenditure is taken cognizance of and if the advance amount is excluded while booking the expenditure to allow this advance amount for this year. Ground No.5 is, therefore, allowed for statistical purposes.

11. Now coming to the appeal of the assessee, the sole ground taken is in respect of the addition made on account of the earmarked funds received by the assessee. The assessment order shows that during the year the assessee received a sum of Rs.1,29,14,392/- as earmarked funds from eight entities. Out of these eight entities, in so far as the funds received from RGCON, IAEA and Rajiv Gandhi Cancer Institute are concerned, we can understand that these funds were provided to the assessee with an obligation to spend them for a specific purpose. However, there is no material to substantiate the submissions made by the assessee before the learned AO that the other funds are also earmarked funds or the assessee has under any obligation as internally or externally to set these funds apart for a specified purpose.

12. Learned AR submitted that in respect of the receipt or spending of the alleged earmarked funds, there is evidence available with the assessee in the shape of resolutions or correspondence creating such obligation to spend the amount in a specific way. According to the learned AR by way of resolutions, the assessee society decided to spend these funds for a particular purpose but no such material is forthcoming before us. Learned AR voluntarily offered to produce such evidence before us but we are of the considered opinion that mere production of

such material will not ipso facto amount to proof of the claim of the assessee. Factual verification is necessary in respect of such material which could conveniently be done only at the end of the AO.

13. We are, therefore, of the considered opinion that in the interest of justice, this issue has to be set aside to the file of the learned AO and it is for the assessee to prove their claim with reference to any material available in their custody. Learned AO will cause the factual verification in respect of any such material to be produced by the assessee and to take a fresh view at the matter. This is more particularly in view of the fact that according to the assessee, learned AO allowed these funds quite for a long term both priorand alsosubsequent years. We direct the assessee to produce the material before the AO and to substantiate their claim. We, therefore, allow this ground for statistical purposes.

14. In the result, whereas appeal of the revenue is partly allowed, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 28th March, 2019.

Sd/-	sd/-
(N.K. BILLAIYA)	**(K. NARASIMHA CHARY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 28th March, 2019
VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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