

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

BEFORE MS. SUSHMA CHOWLA, JUDICIAL MEMBER, AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 641/DEL/2017 [A.Y 2012-13]

The A.C.I.T [E]  
Circle 1(1)  
New Delhi

Vs. Indraprastha Cancer Society &  
Research Center  
C/o Rajiv Gandhi Cancer Institute  
D - 18, Sector 5, Rohini  
New Delhi

PAN: AAATI 0440 C

(Applicant)

(Respondent)

Assessee By : Shri Shailender K. Bajaj  
Department By : Shri A.K. Saroha, CIT- DR

Date of Hearing : 18.12.2019  
Date of Pronouncement : 23.12.2019

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER,**

With this appeal, the Revenue has challenged the correctness of the order of the Commissioner of Income Tax [Appeals] - 40, New Delhi dated 17.11.2016 pertaining to assessment year 2012-13.

2. The substantive grievances of the Revenue read as under:

"1. On the facts & circumstances of the case and in law, Ld CIT(A) has erred in ignoring the fact the assesses like charitable or religious institutions are governed by almost the separate or independent provisions of section 11,12,12, 12AA &13 and these provisions are independent code in itself in Chapter III of the Income Tax Act, 1961. The income and expenditure is computed on the basis of application of income for charitable or religious purposes and the deduction is allowed of the entire expenditure including the capital expenditure for purchase and deduction is allowed of the entire expenditure including the capital expenditure for purchase of capital assets u/s 11(1).

2. On the facts & circumstances of the case and in law, Ld CIT(A) has erred in ignoring the fact the Sections 28 to 44 of the I.T. Act which are related to business activities are not applicable in the case of charitable organization and hence, provisions on account of bad and doubtful debts are not deductible.

3. On the facts & circumstances of the case and in law, Ld. CIT(A) has erred in ignoring the fact the Sections 45 to 58 of the I.T. Act which are related to business activities are not applicable in the case of charitable organization and hence, claim regarding loss on sale of fixed assets is not allowable as application of income."

3. Briefly stated, the facts of the case are that the assessee society is registered u/s 12A of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] since 01.04.2007 and is also granted exemption u/s 10(23)(via) of the Act. The assessee society is also notified u/s 35(1)(ii) of the Act. The assessee society is engaged in running a hospital in the name of Rajiv Gandhi Cancer Institute & Research Centre at Rohini, Delhi. The activities of the assessee society are covered within the meaning of "Charitable Purpose" as defined u/s 2(15) of the Act.

4. During the course of scrutiny proceedings for the year under consideration, the Assessing Officer noticed that the assessee has claimed depreciation of Rs. 10.62 crores as application of income out of total application of income of Rs. 1,43,10,87,160/-. The Assessing Officer was

of the opinion that the benefit of application of fund has already been claimed when the fixed assets were acquired. Therefore, allowance of depreciation would amount to double deduction and, accordingly, denied the claim of depreciation.

5. Proceeding further, the Assessing Officer noticed that the assessee has claimed provision for doubtful debts of Rs. 20.11 lakhs and bad debts of Rs. 9.91 lakhs. The Assessing Officer was of the opinion that bad debts actually written off have to be considered while determining the income u/s 11 of the Act.

6. After considering the submissions made by the assessee, the Assessing Officer was of the opinion that the assessee has not clarified the circumstances and efforts made to realize the debts. Further, provisions of sections 28 to 44 of the Act, which are related to business activities are not applicable in the case of charitable organizations. The Assessing Officer, accordingly, disallowed the provision of doubtful debt of Rs. 20.11 lakhs and bad debt of Rs. 9.91 lakhs.

7. Proceeding still further, the Assessing Officer noticed that the assessee has claimed loss on sale of fixed assets of Rs. 20.40 lakhs while computing the income. The assessee was asked to justify its claim.

8. In its reply, the assessee stated that the loss on sale of fixed asset has been claimed by the society while computing the income on commercial principals and filed details of loss of sale of fixed assets. The Assessing Officer again stated that provisions of sections 28 to 44 of the Act which are related to business activities and sections 45 to 55 of the Act which are related to capital gain are not applicable in the case of charitable organizations. Accordingly, the Assessing Officer disallowed the claim of loss of Rs. 20.40 lakhs.

9. The assessee carried the matter before the ld. CIT(A) and reiterated its claim of allowability.

10. After considering the facts and submissions, the ld. CIT(A) found that his predecessor, in Assessment Year 2006-07, has deleted the additions made by the Assessing Officer and following the findings of his predecessor, deleted all the additions made by the Assessing Officer.

7. Before us, the ld. DR strongly supported the findings of the Assessing Officer.

8. Per contra, the ld. counsel for the assessee furnished copies of order of the co-ordinate bench in assessee's own case for Assessment Years 2006-07, 2009-10 and 2010-11. It is the say of the ld. counsel for the assessee that all these issues have been decided by the Tribunal in favour of the assessee and against the Revenue.

9. The ld. DR could not bring any distinguishing decision in favour of the Revenue.

10. We have carefully perused the orders of the authorities below. We have also gone through the decisions of the co-ordinate bench. In so far as the claim of depreciation is concerned, the Tribunal in ITA No. 2555/DEL/2015 for Assessment Year 2010-11 had considered a similar disallowance. The issues before the co-ordinate bench were as under:

*"1. That on the facts and circumstances of the case the Ld. CIT (A) - XXI has erred both in facts and in law while sustaining the disallowance, made by the assessing officer, of depreciation of Rs. 6,52,45,727/- for the purposes of computing income of the appellant society under [section 11](#) of the Income Tax Act.*

*2. That the Ld. CIT (A) has erred both in facts and in law by sustaining the disallowance made by the assessing officer of provision for bad debts of Rs.12,74,419/- claimed while determining the income of the society on commercial principles of the appellant society under [section 11](#) of the Act.*

*3. That the Ld. CIT(A) erred both in facts and in law while sustaining the disallowance , made by the assessing officer , of the loss on sale of capital assets of Rs. 6,92,232/- while determining the income of the appellant society under [section 11](#) of the Act.*

*4. That the order passed by the Ld. CIT(A) - XXI is bad in law and against the facts of the case.*

*5. That the appellant craves leave to add , delete or amend any of the ground of appeal on or before the disposal of the present appeal."*

11. The relevant findings of the co-ordinate bench read as under:

*"5. We have heard the rival submissions and also perused material on record. Although, the Ld. Sr. D.R. has argued vehemently against the two issues under challenge, she was not able to negate the fact that the issue of depreciation is squarely covered in favour of the assessee in assessee's own case by the judgement of Hon'ble Delhi High Court in case of DIT(E) vs. Indraprastha Cancer Society (supra). In the said judgement the Hon'ble Delhi High Court has duly noted that insertion of Sub-Section (6) to [Section 11](#) of the Act has been inserted w.e.f. 01st April, 2015 only and, therefore, the legal position would undergo a change and will be applicable w.e.f. 1st April, 2015 only and will not be applicable to earlier Assessment Years. Since the present appeal before us pertains to the A.Y. 2010-11, the issue stands covered in favour of the assessee by the judgement of Hon'ble Delhi High Court in assessee's own case as aforesaid. Thus, we have no hesitation in allowing ground no.1 of assessee's appeal. 5.1 Coming to ground no.2, we find that this issue is also covered in favour of assessee by the judgement of Hon'ble Delhi High Court in the case of*



*DIT(E) vs. National Association of Software and Services Companies (supra). The relevant portion of the judgement, as contained in paragraph 40 of the said judgement, is being reproduced for a ready reference.*

*"40. As regards the provision for bad and doubtful debts, the question again is whether in computing the income of the trust on commercial principles, the provision can be deducted or where the deduction can be allowed only in accordance with the provisions of Section 36(i)(vii) read with Section 36(2)(i) of the Act. We have already held that the income of the trust available for application to charitable purposes in India should be computed not in accordance with the strict provisions of the [Income Tax Act](#) but should be computed in ITA No.2555/Del/2015 A.Y.:2010-11 [Indraprastha Cancer Society and Research Centre vs. ITO\(Exemptions\)](#) accordance with commercial principles and it is on this footing that the payment of [Income Tax Act](#) under the VDIS was treated as a deduction and as proper application of the income of the trust. The same line of reasoning holds good for*

*the provision for bad and doubtful debts. Even under the computation provision of the Act such a provision was considered allowable up to and including the assessment year 1988-89 and it was only from the assessment year 1989-90 that the Act required that a mere provision would not be allowable as a deduction and the actual writing off of the debt was a necessary pre-condition. Be that as it may, under the commercial principles it has always been recognized that a provision, reasonably made for a loss or an outgoing, can be deducted from the income if there is apprehension that the debt might become bad. There is nothing brought on record to show that the provision was not made bonafide. In such a situation, the ratio of the decisions cited by us while dealing with the deductibility of the taxes paid under the VDIS will equally apply. We accordingly hold that while computing the income available to the trust for application to charitable purposes in India in accordance with [Section 11\(1\)\(a\)](#) the provision for doubtful debts must be deducted. Accordingly, we frame the following substantial question of law and*

*answer the same in the affirmative in favour of the assessee and against the Revenue: -*

*"Whether the Tribunal was right in law in holding that the provision for doubtful debts must be deducted from the ITA No.2555/Del/2015 A.Y.:2010-11 Indraprastha Cancer Society and Research Centre vs. ITO(Exemptions) income of the trust on commercial principles, for the purposes of [Section 11\(1\)\(a\)](#) of the Act?"*

*5.2 In view of the ratio of judgement of Hon'ble Delhi High Court as reproduced in the preceding paragraph, it is our considered opinion that this issue also is decided in favour of the assessee. Accordingly we allow ground no.2 of assessee's appeal. 5.3 As the Ld.AR has submitted that ground no.3 is not being pressed in view of huge accumulated losses, the same is dismissed as 'not pressed'.*

*5.4 Ground nos. 4 and 5 are general in nature and hence the same are not being adjudicated upon."*

12. In ITA No. 2607/DEL/2013, the issues under consideration were decided as under:

*"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 Id. CIT(A). We, therefore, confirm the order of the Id. 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 Id. CIT(A) on this ground and dismiss Ground No.3."*

13. Respectfully following the findings of the co-ordinate bench, the grounds raised by the Revenue stand dismissed.

14. In the result, the appeal of the Revenue *in* ITA No. 641/DEL/2017 is dismissed.

The order is pronounced in the open court on 23.12.2019.

Sd/-

[SUSHMA CHOWLA]  
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]  
ACCOUNTANT MEMBER

Dated: 23<sup>rd</sup> December, 2019

VL/

Copy forwarded to:

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

Asst. Registrar,  
ITAT, New Delhi

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Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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