

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

(Through Video Conferencing)

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA Nos.2350 & 2351/DEL/2017
[Assessment Years: 2005-06 & 2006-07]**

M/s Bhai Hospital Trust, 54, Janpath, Connaught Place, New Delhi-110001	Vs.	Income Tax Officer (Exemption), Trust Ward-III, New Delhi
PAN-AAATB0492M		
Assessee		Revenue

Assessee by	Sh. V.P. Gupta, Adv. Sh. Anunav Kumar, Adv.
Revenue by	Sh. V.K. Kataria, Sr. DR

Date of Hearing	08.09.2021
Date of Pronouncement	25.10.2021

ORDER

PER KUL BHARAT, JM

These two appeals by the assessee against the separate orders of the Ld. CIT(A)-21, New Delhi, dated 16.01.2017 pertaining to Assessment Years 2005-06 and 2006-07. Since, identical grounds have been raised in these appeals. Therefore, these appeals were taken up for hearing together and are being disposed of by way of consolidated order.

2. First, we take up the assessee's appeal in **ITA No.2350/Del/2017** pertaining to **Assessment Year 2005-06**.

The assessee has raised following grounds of appeal:-

1. *"That the CIT(A) erred in passing the Order dated 16th January, 2017 without properly appreciating the facts and contentions of the appellant and also without adjudicating each of the grounds raised by the appellant in the appeal.*
2. *That the CIT(A) erred in not appreciating that the AO. had wrongly issued Notice u/s 148 of the Act without proper application of mind for reopening of the assessment u/s 147 of the Act for assessment year under appeal on the basis that the Registration u/s 12A of the Act was cancelled by Director of Income Tax (Exemption) vide Order dated 19th July, 2011 from inception, whereas neither the DIT(E) had the power to cancel the registration from inception nor this could be a reason for reopening the assessment u/s 147 of the Act.*
3. *That the CIT(A) erred in not considering the contentions of the appellant and the legal position that the appellant had not violated provisions of any of the sections of the Income Tax Act and, accordingly, its income was duly exempt u/s 10(23C)(iii)(a) of the Income Tax Act and there was no escapement of income warranting the re-opening of the assessment.*
4. *That the CIT(A) also erred in not appreciating that the appellant Trust was established in 1979 and has been carrying on charitable activities since then and has been regularly filing its returns of income and claiming Exemption*

u/s 10(22A)/ 10(23C)(iiia) of the Income Tax Act and the case of the appellant was also examined by the AO. from time to time and no violation was found and, therefore, a view could not be taken in respect of Assessment Year 2005-06 in re-assessment proceedings that its income was taxable.

5. That the CIT(A) erred in upholding the Order of Assessment passed by the AO. without appreciating that the appellant was duly entitled for exemption of its income u/s 10(23C)(iiia) and/or Sections 11 and 12 of the Income Tax Act.

6. That the CIT(A) also erred in not considering the contentions of the appellant that the AO has made certain incorrect and irrelevant observations in the Order of Assessment, particularly, to the effect that the appellant was not carrying on charitable activities in accordance with its objects.

7. That the Order passed by the CIT(A) upholding the Order of Assessment passed by the AO is bad in law.

8. That the CIT(A) also erred in not adjudicating the ground raised by the appellant that penalty proceedings u/s 271(1)(c) of the Act were wrongly initiated by the AO.”

3. The facts giving rise to the present appeal are that the assessee filed return of income 01.02.2007 at NIL after claiming the benefit of exemption u/s 10(23C)(iiia) of the Income Tax Act, 1961 (hereinafter referred to ‘the Act’). It is noted by the Assessing Officer that registration granted u/s 12A of the Act was cancelled

since inception vide order dated 19.07.2011 passed by DIT(E), Delhi, therefore, the assessment of the assessee was reopened by issuing notice u/s 148 of the Act on 30.03.2012. Against the reopening, the assessee filed its objection, however, objection of the assessee was rejected and the Assessing Officer proceeded to frame the assessment. Thereby, the Assessing Officer assessed the income at Rs.15,93,257/- against NIL income as declared by the assessee.

4. Aggrieved against this, the assessee filed appeal before the Ld. CIT(A), who after considering the submissions of the assessee, sustained the addition and dismissed the appeal of the assessee.

5. Aggrieved against this, the assessee is in appeal before this Tribunal.

6. The Ld. Counsel for the assessee submitted that the reason for reopening of the assessee was stated to be withdrawal of exemption as provided u/s 12A of the Act, since the registration of the trust u/s 12AA was canceled by the Ld. Pr. CIT. He contended that the Tribunal in ITA No.4147/Del/2011 restored the registration as granted u/s 12AA of the Act vide its order dated 18.06.2021. Therefore, the basis for reopening of the

assessment is no more in existence and hence he prayed that the impugned addition made by the Assessing Officer and sustained by the Ld. CIT(A) may be deleted.

7. On the contrary, Ld. Sr. DR opposed the submissions and supported the orders of the authorities below.

8. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below. It is not disputed by the Revenue that the assessment was reopened on solitary ground that the registration u/s 12AA of the Act as granted to the assessee was cancelled since inception. The issue of validity of cancellation of registration came up to the stage of the Tribunal. It is found that the Tribunal in ITA No.4147/Del/2011 was pleased to set-aside the impugned order whereby the registration of the assessee trust u/s 12AA of the Act was cancelled since inception, however, the Tribunal restored the Registration granted u/s 12AA of the Act. The Revenue could not controvert the fact that the sole ground of re-opening of assessment was that the Registration granted u/s 12A of the Act had been cancelled since inception, therefore, the assessee was not eligible for the benefit of sections 11 & 12 of the Act. Under the undisputed fact that the basis of reopening of the

assessment now no more exists. Therefore, the assessment framed on the basis of such ground cannot be sustained. We, therefore, set-aside the assessment order and direct the Assessing Officer to delete the addition and grant benefit of exemption as provided under law. The grounds raised in the present appeal are allowed in terms indicated hereinabove.

9. Now, we take up **ITA No. 2351/Del/2017** pertaining to **Assessment Year 2006-07** of the assessee.

10. The facts and grounds are identical in this year as well in ITA No.2350/Del/2017 relating to Assessment Year 2005-06.

11. Ld. representatives of the parties have adopted the same arguments as were addressed in ITA No.2350/Del/2017 (Assessment Year 2005-06) [supra].

12. We have considered the rival submissions of the parties and also perused the material available on record. Since there is no change into facts and circumstances has been pointed, we therefore, taking the consistent view, the grounds raised in this appeal are also allowed. Our finding in ITA No.2350/Del/2017 for Assessment Year 2005-06 would apply *mutatis mutandi* to the identical grounds raised in this year [i.e. Assessment Year 2006-

07] as well. The grounds raised by the assessee in this appeal are allowed.

13. In the result, both appeals filed by the assessee are allowed.

Order was pronounced in the open court on 25th October, 2021.

Sd/-

**[G.S. PANNU]
PRESIDENT**

Delhi; Dated: 25/10/2021.

Shekhar / Amit Kumar

Sd/-

**[KUL BHARAT]
JUDICIAL MEMBER**

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi