IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

ITA No.4271/Mum/2015
(A.Y.:2011-12)

The Income Tax Officer (E) 2 (3), Room No.513, Piramal Chambers, Lalbaug, Parel, Mumbai 12	Vs.	St. Joseph Technical School, Premier Automobile Road, Kurla(West), Mumbai 400070
PAN: AACTS 0971 N		
Appellant	..	**Respondent**

Appellant by	..	**Shri K. L. Kanak, Sr. DR**
Respondent by	..	**Shri Ashok Gokani, AR**

Date of hearing	..	**18-08-2016**
Date of pronouncement	..	**18-08-2016**

O R D E R

***PER MAHAVIR SINGH, JM*:**

This appeal by the revenue is arising out of order of CIT (A)-1, Mumbai in Appeal No. CIT (A)-1/IT/E-1(4)/2014-15 dated 23-04-2015. Assessment was framed by ITO (E) 1(1), Mumbai for the assessment year 2011-12 u/s 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act') vide his order dated 06th March, 2014.

2. The only issue in this appeal of the Revenue is against the order of the CIT (A) allowing exemption u/s 11(5) of the Act treating the educational activity being the courses conducted by the assessee such as welding, allied trades, draughtsman course, workshop skill etc. The revenue has also raised the issue regarding violation of Section 11(5) read with Section 13(2) (a) of the Act being interest free funds advanced to Don Bosco Institute of Technology as interest free advance amounting to Rs.2.69 Crores.

3. At the outset, the learned Counsel for the assessee filed a copy of the Tribunal's Order in assessment year 2009-10 in ITA No.5973/Mum/2013 dated 17-06-2015 in assessee's own case wherein the issue was decided by observing in Para 13 and 14 of the order as under:-

"13. We have heard the rival submissions and carefully peruse d the record. The main claim of the Revenue is essentially on two counts, i.e. (i) assessee advanced some amount to Don Bosco Institute out of accumulated income set apart for application, in terms of section 11(2) of the Act, which is in violation of the provisions of section 11(5) of the Act, and (ii) assessee let out its premises partly to Jet Airways and others and the income earned therefrom is assessable to tax as business income. On the other hand, the case of the assessee is that the activity of leasing out property was for advancement of the object of general public utility; assessee was engaged in imparting vocational training and the institute was recognised by NCVT. The property was let out for no other purpose than for giving technical training. Jet Airways and others to whom the premises were let out was also engaged in imparting technical training and the assessee had also earned income by participating in the training programmes conducted by them in the form of offering the services to the lessee. In fact the agreement with Tata Sky clearly stipulates that the income should be applied solely towards promotion of the object of the society. Similarly, Jet Airways sought the expertise for conducting programmes for their employees and staff and assessee charged for imparting such training. The staff and trainees of Jet Airways will have access to the play ground and other amenities available to all students. Leave licence agreement with Ekbote Auto Consultant was to conduct repairing and servicing of cars as well as providing hands - on practical training in automobile repairs to the students of the assessee free of cost. Training timings are to be observed strictly as per normal schooling. In the case of DIT vs. Sahu Jain Trust 56 DTR 402 (Calcutta) it was observed that exemption under section 11 cannot be denied on the ground that the trust had let out property for efficient utilisation of its assets. The CBDT in its circular dated 19th December, 2008 clarified by mentioning that the newly inserted proviso to section 2(15) will not apply where the purpose of a trust or institution is Education, even if it incidentally involves carrying on of commercial activities. In the case of Samudra Institute of Maritime vs. DDIT (ITA No. 5760/Mum/2010) ITAT "H" Bench, Mumbai, vide its order dated 30.11.2011, observed that even if the courses are not approved but if the intention of the assessee was to give technical training, exemption under section 11 cannot be denied. In other words, as long as the trust is imparting education as per the object of the trust, income earned by such trust should be allowed the benefit of exemption under section 11 of the Act. Having regard to the case law cited before us we are of the view that so long as the assessee has let out the property for efficient utilisation of its assets with a larger purpose of imparting technical training in the said campus, assessee can be said to be carrying on a charitable activity and income therefrom is exempt from tax.

14. This leaves us with the issue of the amount given to Don Bosco Institute without charging any interest for a short period. The case of the assessee is that the decision of the Hon'ble Delhi High Court in the case of Alarippu (supra) was wrongly applied by the

> *Tax Authorities since it is in favour of the assessee and against the Revenue. The case of the AO as well as the CIT(A) was that the assessee has not complied with the provisions of section 11(5) of the Act since the money is not invested or deposited in the forms or modes specified in Section 11(5) whereas the case of the assessee is that no part of the income is applied or invested by way of advances to Don Bosco Institute and on identical issue the Hon'ble Delhi High Court, in the case of Acme Educational Society 326 ITR 146, observed that interest free loan given by the assessee society to another society with identical object cannot be treated as "investment" or "deposit" in which event there is no violation of section 13(1)(d) r.w.s. 11(5) of the Act. The case of the assessee herein is that both the assessees have similar objects and were registered under section 12A of the Act and interest free loan was returned subsequently. The claim of the assessee is not disputed by the learned D.R. Having regard to the circumstances of the case and in the light of the decision of the Hon'ble Delhi High Court, we are of the view that the amount advanced by the assessee to Don Bosco Institute is not covered by section 11(5) of the Act and even on that count the claim of exemption could not have been denied to the assessee. Under these circumstances we are of the view that the plea taken before us by the assessee merits acceptance and we direct the AO to grant exemption under section 11 of the Act on the income earned by the assessee, including lease rent, etc.".*

The learned Counsel for the assessee also filed a copy of the registration certificate as registered u/s 12A of the Act dated 26-02-1977 bearing registration No.INS/10294. When confronted, the learned DR conceded to the fact that this registration has not been withdrawn till date and the same is very much in force. The learned DR also conceded to the fact that this issue is covered by the Tribunal's order for assessment year 2009-10 in assessee's own case cited supra.

4. I have heard both the sides and gone through the facts and circumstances of the case. I find that the Tribunal in assessment year 2009-10 has considered both the issues i.e. educational activity like welding, allied trades, draughtsman course, workshop skill etc. and treated the same as educational activity as per the object of the assessee Trust. The Tribunal has also considered the issue of interest free advance given to Don Bosco Institute of Technology and held that there is no violation of provisions of section 11(5) of the Act for the reasons that the said Institute is also engaged in educational activity. I find that the issue is squarely covered in favour of the assessee and hence, I confirm the order of the CIT (A) allowing the claim of the assessee.

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 18/08/2016.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 18/8/2016
Lakshmikanta Deka/Sr.PS

<u>Copy of the Order forwarded to</u>:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI

		Date	Initial	
	Dictation pad attached with the Draft Order	Yes		
1.	Draft dictated on	18/8/16		Sr.PS
2.	Draft placed before author	18/8/16		Sr.PS
3.	Draft proposed & placed before the second member	-		JM
4.	Draft discussed/approved by Second Member.	-		
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS
6.	Kept for pronouncement on	-		Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			