

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E' NEW DELHI  
BEFORE Mr. BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
Mr. WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No. 126/Del/2016  
Assessment Year: 2011-12**

DCIT (E) Circle-1(1), E- 2 Block, Pratyaksh Kar Bhawan Dr. Shyama Prasad Mukharjee Civic Centre, New Delhi	<b>Vs.</b>	DLF Qutab Enclave Complex Medical Charitable Trust, 9 <sup>th</sup> Floor, DLF Centre, Sansad Marg, New Delhi 110001  <b>PAN : AAATD0852D</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by	Smt. Shefali Swaroop, CIT DR
Respondent by	Sh. R.S. Singhvi, CA
Date of hearing	07.03.2018
Date of pronouncement	09 09.03.2018

**ORDER**

**PER WASEEM AHMED, AM.:**

The Revenue has raised the following grounds of appeal:-

- 1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A), has erred in allowing the exemption u/s 11 & 12 of the Act to the assessee disregarding the fact that the benefit of Section 11 & 12 can be denied while registration u/s 12A is still in force, in case it is established that the assessee is not doing any charitable work and is engaged in business.*
- 2. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.*

2. The only issue raised by the Revenue in this appeal is that the learned CIT(A) erred in allowing the exemption to the assessee under Section 11 & 12 of the Act.

3. Briefly stated the facts, are that, the assessee in the present case is a trust and engaged in the activity of providing medical facilities. The trust was created on 7<sup>th</sup> December, 1987 with the main object to provide medical facilities through the construction of building and running & maintaining of hospitals / Nursing Homes / Health Centers either at its own or through other trust, societies or institution etc. Subsequently, the assessee was granted certificate of registration under Section 12A of the Act by the Commissioner of Income Tax (Exemption) vide order no. CIT-VI / TE (207) / 88 / 1391 dated 27<sup>th</sup> December, 1988. Similarly, the assessee was also granted registration certificate under Section 80G(5)(vi) of the Act by the DIT (Exemption) vide order dated 25.11.2008. The registration certificate under Section 80G(5)(vi) was applicable from assessment year 2009-10 onwards and the same is valid till it is cancelled.

4. The trust was created under the legal obligation imposed by the Haryana Government in connection with the allotment of land to DLF Limited (formerly known as DLF Universal Limited). It was directed by the Haryana Government to provide the medical facilities to the residents of DLF Qutab Enclave Complex. Thus the trust was settled by DLF Limited to provide the medical facilities as directed above.

5. DLF Limited has transferred six numbers of plots / sites to the assessee for providing medical facilities. The plots were provided by DLF Limited free of cost.

6. The assessee started constructing a hospital in DLF Qutab Enclave Complex, Gurgaon and incurred a sum of Rs. 22,13,27,044/- till 31<sup>st</sup> March, 2011.

7. The assessee during the year also sold piece of land to M/s OSL Health Care Private Limited for Rs. 47,69,97,000/- vide conveyance deed dated 29.3.2011. The assessee in respect of such sale has declared a capital gain of Rs. 43,64,88,732/- only.

8. The assessee has also let out of its office space to DLF Limited and accordingly rental income was shown the income tax return. The AO during the assessment proceedings observed that the assessee is not engaged in any charitable activity though it was established in the year 1987. The AO also observed that the assessee is engaged in the commercial activity by developing the plots and selling the same to the outside parties on commercial basis.

The AO further observed that the assessee has violated the provisions of Section 13 (3) by giving its office spaces to the settler of the trust being the specified person. As per the AO, the office spaces were rented out to M/s DLF Limited at a price less than the prevailing market rate. Therefore, there is a violation of the provisions of Section 13(3) of the

Act. Accordingly, the assessee was show caused vide notice dated 28.2.2014 by the AO to justify the above stated facts. The assessee, in compliance thereto submitted that the trustees of the trust have been duly authorized in terms of the Clause 3 and 5 of the trust deed to sale the immovable property for medical facilities. Thus the act of sale of the property is incidental to the attainment of its main objective in pursuance to sub Clause XVII of Clause 7 of the trust deed.

9. Similarly, it was contended that no benefit has been extended to the persons specified under Section 13(3) of the Act. The rent was charged from the persons specified under Section 13(3) of the Act by the assessee more than the prevailing rate.

10. The assessee also submitted that it has incurred a total cost of Rs. 22,13,27,044/- till 31<sup>st</sup> March, 2011 on the construction of the hospital. All the activities carried out by the assessee are in pursuance to the objects permitted in the trust deed and there was no alternation / modification in its object clause since the inception of the trust. However, the AO disregarded the contention of the assessee by observing that the assessee is not carrying out any charitable activity and accordingly, the exemption claimed by the assessee under section 11 & 12 of the Act was denied to the assessee.

11. Aggrieved assessee preferred an appeal to learned CIT(A). The assessee before the learned CIT(A) submitted that the assessee has been claiming exemption under Section 11 and 12 of the Act since the inception

of the trust and it was not denied till date except in the assessment years pertaining to 1991, 1992-93, 1994-95, 1996-97, 1997-98 and 2002-03. But subsequently it was allowed by the higher appellate authorities including the Honorable Delhi High Court in the own case of the assessee.

12. All the activities were carried out by the assessee in terms of its object as specified in the trust deed dated 7<sup>th</sup> December, 1987. As per the object clause, the land was given to the outsiders for medical activities on the payment of normal lease charges to various entities / societies which created infrastructure where more than 16,000/- patients and more than 15,000/- patients are getting medical facilities in a year.

13. The certificate granted under Section 12A of the Act by the Commissioner of Income Tax (Exemption) vide order dated 27.12.1988 is still valid and the same has not been withdrawn. Therefore, there is no question of denying the exemption granted under Section 11 of the Act in the given facts and circumstances.

14. The condition specified in first and second proviso to Section 2(15) of the Act as inserted by the Finance Act, 2008 with effect from assessment year 2009-10 are not applicable to the instant case as the activities of the society relates to the medical relief. The CBDT in its Circular No. 11/2008 dated 19<sup>th</sup> December, 2008 has clarified that the proviso to Section 2(15) of the Act will not be applied where the purpose of the trust or institution is to provide relief to the poor, education or medical relief. As such, the proviso

to Section 215 of the Act is applicable to the activities pertaining to the advancement of any other object of general public utility. The learned CIT(A), after considering the submissions of the assessee granted exemption under Section 11 and 12 to the trust by observing as under:-

***Decision:-*** I have perused and considered the Assessment Order u/s 143(3), the observations of the Assessing Officer therein, arguments and submissions during appellate proceedings as well as in writing filed by the AR, facts of the case and provisions of law.

At the outset, it is imperative to state the primary object of trust, though at the cost of repetition, as under:

***"3. The Trustees may construct the buildings required for the provision of medical facilities themselves and run the hospitals/nursing homes/health centres themselves or have it done through other persons, trust, societies or institutions by giving the plots or any one or more of them or buildings constructed thereon on lease or by outright transfer or in any other manner and on such terms and conditions as they may consider appropriate"***

.....

***"5. The income of the Trust from whatever source derived shall be applied or accumulated for future application solely for the purpose of promoting medical facilities and all its assets shall also be held for the same object"***

It is now to be analysed and considered, whether the activities of the trust have been within the above defined parameters. In this context, it is imperative to mention and note that at no time after the original trust Deed was formulated and registration granted u/s 12A in the year 1988, the objects of the trust have been neither altered nor amended nor substituted. It is also an admitted fact on record that the activities of the trust as stated above, have been tested at various judicial forum including High Court of Delhi and have successfully stood the test of appeal, as stated herein above.

I have perused the Trust deed and have no hesitation in agreeing with the appellant and in stating that clause clearly gives the power to the Trustee for leasing/sale of the medical sites to other persons, trusts, societies or institution for providing medical facilities to the persons residing in DLF City, Gurgaon.

It is observed that the main reason for the Assessing Officer to conclude that the appellant was not carrying out the charitable activity, was that it was not running itself any hospital, etc. However, as explained by the Appellant's AR that giving the sites on lease is one of the main object of the Trust (As per Clause 3 of Trust Deed). The investment in property/sites and giving the same on rent/lease was authorized by the terms of trust deed registered U/s 12A of

*the Act. More over whether the institution was engaged in charitable activities is to be seen not on the basis of sources of its income or receipts but the manner in which the income is applied. The income of the trust is being accumulated as permitted by law only for the object specified in the trust deed.*

*It is to be noted that the Ld. Assessing Officer has also conveniently ignored the fact that in the earlier years the appellant was denied benefit of Section 11 & 12 but in appeal the matter was decided in favour of the appellant by the judicial Authorities. In fact, as early as in the A. Y. 1990-91, this issue was agitated by the Department till the High Court of Delhi, who rejected the departmental appeal and, thereafter, no further appeal was filed by the Department. In other words, the issue of benefit of Section 11 & 12 to the appellant reached finality in the A. Y. 1990-91 itself. (emphasis supplied).*

*I agree with the appellants assertion that in CBDT Circular No. 11/2008 dated 19-12-2008, it has been observed that First and Second proviso of sub-section (15) of Section 2 of the Act and are not applicable to the appellant Medical Trust as the amendment has to be looked in its right perspective. The proviso is applicable only to an institution, which is providing charitable services in the field of the advancement of any other object of general public utility. The CBDT has clarified the position vide board circular no -11/2008 dated 19-12-2008-that the amendment made by Finance Act 2008 will not apply in respect of first three limbs of section 2(15), i.e., where the purpose of the trust or institution is relief of the poor, education or medical relief it will constitute 'charitable purpose' even if it incidentally involves the carrying on of commercial activities.*

*I agree with the appellant's submission that the judicial decision relied upon by the Ld. Assessing Officer, do not on facts apply to the appellant's case. On the other hand, the judicial decision relied upon by the appellant i.e.*

- i. Addl. CIT vs. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1 (SC)*
- ii. Sole Trustee, Laka Shikshana Trust vs. CIT [1975] 101 ITR 234 (SC).*
- iii. American Hotel & Lodging Association, Educational Institute v. CBDT [2008] 301 ITR 86 (SC).*
- iv. CIT vs. Andhra Chamber of Commerce, (1964) 55 ITR 722, 729 (SC)*

*make it abundantly clear that income derived by Appellant Trust from any sources, is utilized or accumulated for carrying out the object of the trust of charitable activities, exemption U/s 11 & 12 cannot be denied to the appellant's Trust. Consequently, on facts, in law and deriving support from the judicial decisions (Supra), I have no hesitation in direction the Assessing Officer to allow the appellant Trust the benefit of exemption U/s 11 & 12 of the Act."*

15. Being aggrieved by the order of the learned CIT(A), Revenue is in second appeal before us.

The learned DR before us submitted that the activities of the trust are not charitable in nature therefore the benefit of exemption under Section 11

cannot be given to it. The learned DR in support of his claim relied on the order of Honøble Delhi Tribunal in the case of Devki Devi Foundation vs. DIT (Exemption) reported in 56 taxmann.com 56.

On the other hand, the learned AR before us submitted that there was no change in the object clause of the trust since inception and the registration certificates under Section 12A / 80G of the Act were given on the same basis. The learned AR also submitted that similar issue in the group case of assessee in the case of DCIT (E) vs. Qutab Enclave Complex Educational Charitable Trust pertaining to the assessment year 2011-12 has been decided by the Honøble ITAT in ITA No. 6615/Del/2015 in its favour vide order dated 21.9.2017 which is placed in Paper book filed by AR at pages 1 to 43.

16. The learned AR also submitted that the activities of the trust charitable in nature have also not been disputed by the Honøble Delhi High Court in the own case of the assessee pertaining to the assessment year 1994-95 reported in 248 ITR 41. The relevant extract of the order is reproduced as under :

*“The position is clear from section 11(5) (iii) that deposit in any account with the scheduled bank is also relatable to the forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) . Explanation to sub-section (5) indicates what is encompassed by the expression 'scheduled bank'. The view of the Assessing Officer seemed to be that deposit in a time deposit did not constitute a capital asset. The expression "capital asset" is defined in section 2(14) . It means property of any kind held by an assessee. Certain categories of assets have been specifically excluded from the meaning of 'capital asset'. Deposits in scheduled banks are not one of these enumerated categories excluded from the meaning of 'capital asset' as given in section 2(14) . Investment for a fixed term in a scheduled bank fulfils the conditions provided in section 11(1A) as fixed term deposit is a capital asset. That being*

*the position, the Commissioner (Appeals) and the Tribunal were justified in their conclusions. Hence, no question of law, much less a substantial question of law, required to be adjudicated. The appeal, being without merit, was dismissed.”*

The learned AR in support of assessee's claim also relied on the judgment of Hon'ble Delhi High Court in the case of DIT(E) vs. Abul Kalam Azad Awakening in ITA No. 80/2013 vide order dated 20.6.2013 wherein it was held as under:-

*“We are of the view that the Tribunal had correctly appreciated the law and has come to the conclusion that the respondent assessee was entitled under Section 11(5)(x) to invest in immovable property out of the funds which were surplus with it. The Tribunal has also concluded that there was no evidence on the part of the department that the assessee had applied the rent received from the commercial property for non-charitable purpose. That being the case, the registration under Section 12A could not have been cancelled. We do not find any substantial question of law which arises for our consideration.”*

17. The learned AR vehemently supported the orders of the learned CIT(A).

18. We have heard the rival contentions and perused the materials available on record. In the instant case, the benefit claimed by the assessee under Section 11 / 12 of the Act was denied by the AO on the ground that the activities of the trust were not chargeable in nature.

18.1 It is undisputed fact that there was no change in the object clause of the trust since its inception. On the basis of same objects Clauses, the trust was granted registration under Section 12A / 80G of the Act. The assessee during the year has sold its plots no. 1202, 1203 and 1204 admeasuring 5.692 Acres to M/s OSL Health Care Private Limited for an amount of Rs. 47,69,97,000/-. On perusal of the balance-sheet enclosed at pages 42 of the paper book as on 31<sup>st</sup> March, 2011, it was observed that the amount of sale

consideration was deposited in saving bank account and term deposited for Rs. 58,11,71,654/- which is an eligible investment as per Section 11(5) of the Act. Thus, there remains no doubt that the fund was not used other than the charitable purposes. The activities of the society have also not been challenged as non-charitable before the Honøble Delhi High Court in the own case of the assessee reported in 248 ITR 41. The relevant extract of the order has been reproduced in the preceding paragraph.

18.2 The facts of the case law referred by the learned DR are distinguishable from the present case as in that case the land was allotted by the State Government whereas in the instant case, the land was allotted by DLF Limited thus in our considered view, the principles laid down by the Honøble Delhi Bench in the case of *Devki Devi Foundation (Supra)* are not applicable to the present facts of the case.

18.3 It was also observed that the Honøble ITAT in the own case of the assessee has allowed the exemption under Section 11 / 12 of the Act in ITA No. 808/Del/2007 pertaining to the assessment year 2002-03, the relevant extract of the order is reproduced below:-

*“We have heard both the parties and gone through the material available on record. The trust was created for the purpose of providing medical facilities by way of construction of hospitals / dispensaries for the residents of DLF City. The assessee had been accumulating the income for the purpose of construction of hospital and some amount has been applied towards the construction of hospital. This fact has been specifically noted by the ld. CIT(Appeals). Hon’ble Delhi High Court in assessee’s own case for assessment year 1994-95 reported as 248 ITR 41 (Del). on accumulation of funds for the objects of the trust has held that the Tribunal was right in allowing exemption to the trust. Since the issue is covered by the decision of Hon’ble Delhi High Court, respectfully*

*following the decision of the jurisdictional High Court, it is held that the assessee is entitled to exemption under section 11 of the Act.”*

21. We also note that the Honøble ITAT in the group case of the assessee has decided the issue in favour of assessee in the identical facts and circumstances in ITA No. 57/Del/2013 in the case of ITO vs. DLF Qutub Enclave Complex Educational Charitable Trust vide order dated 20-8-2014.

The relevant extract of the order is reproduced below:-

*“We find that this issue before us is no longer res-i tegra. The co-ordinate Bench in the case of the assessee for assessment year 1994-95 has held that the assessee is entitled to exemption u/s 11 & 12 of the Act. It was held that letting out the school building was aimed at providing assistance in imparting education, which is undisputably for a charitable object. It was held there as under:-*

*In view of the above decision, the assessee trust was justified in letting out the school building to the other educational trust and, therefore, it can be said that the leasing activity as well as the income earned through such activity was in furtherance of the objects and ideals of the trust. The leasing activity was also aimed at providing assistance in imparting educational which was undisputedly a charitable object. Thus, the finds of the Id CIT(A) are to be upheld from the this view point also.*

*There is another aspect of the matter. As pointed out by the Id. counsel for the assessee, the accumulation was allowed under section 11(2) to the assessee in earlier years and in subsequent years which is evident from the chart filed by the assessee for assessment years 1990-2: 1998-99. On the basis of this chart, the argument of assessee’s counsel as that as per the rule of consistency also, the claim of the assessee deserves to be allowed. In the case of Director of Income Tax vs. lovely Bal Shiksha Parishad reported in 266 ITR 349, following the decision of apex Court in the case, of Radhasoami Satsang vs. CIT 193 ITR 321, it was held that if there was no change in the nature of activities and the assessee was granted exemption under section 10(22) of the Income Tax Act not only in respect of earlier years but subsequent years also, the assessee was entitled to claim exemption in assessment year under consideration i.e. assessment year 1991-92. In view of title of consistency also, the benefit of section 11 should be allowed to the assessee as it was being allowed in earlier years and as the same has also been allowed in subsequent assessment years. In view of the above, we do not find force in the grounds of appeal taken by the revenue and reject the same.*

*In the result, the appeal of the revenue is dismissed.*

*The aforesaid view was reiterated in the case of the assessee for 2002-03 by an order dated 10th July 2009 and it was held as under:-*

*We have heard both the parties. We find that this issue is covered by the decision of ITAT in assessee's own case for assessment year 1994-95 in ITA No. 1386/Del of 1998 dated 28<sup>th</sup> July, 2006 wherein it has been held that the assessee trust was justified letting out the school building to other educational trust and, therefore, it can be said that leasing activity as well as income earned through such activity was in furtherance of objects and ideals of the trust. The leasing activity was also aimed at providing assistance imparting education, which undisputedly a charitable object. It was also noted by the Bedi the accumulation was allowed under section 11 (2) to the assessee in earlier years and in subsequent years. Therefore, the assessee was entitled for benefit of section 11 of the Act. Since the issue is covered by the decision of ITAT in assessee's own case respectfully following the same it is held that the assessee is entitled for exemption u/s 11 of the Act."*

*In the light of the above decision of the coordinate bench in assessee's own case and since the Revenue was unable to bring to our notice any change in facts and circumstances in the case on hand, we respectfully follow the order of the coordinate bench and uphold the order of the ld. CIT(A) allowing the claim of exemption u/s 11 and 12 of the Act."*

22. In view of the above, we hold that the activities of the trust are carried out in accordance with objects mentioned in the trust deed and accordingly there is no violation under the provisions of Section 11 / 12 of the Act of the Act. Hence, the assessee is entitled for exemption under Section 11 / 12 of the Act. Thus, the grounds of appeal of the Revenue are dismissed.

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

(Order pronounced in the open on 09.03.2018.)

**Sd/-**  
**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

*Dt. 09.03.2018*  
*SH*

Copy forwarded to:

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

ASSISTANT REGISTRAR,  
ITAT NEW DELHI

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		Date	
1.	Draft dictated on		PS
2.	Draft placed before author	3.2018	PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	3.2018	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	3.2018	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.		

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