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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 1485/2010

DIRECTOR OF INCOME TAX (EXEMPTIONS) Appellant
Through: Mr. Abhishek Maratha, Advocate

versus

DELHI INTERNATIONAL FOOTBALL LEAGUE Respondent
Through: None

AND

+ ITA 1489/2010

DIRECTOR OF INCOME TAX (EXEMPTIONS) Appellant
Through: Mr. Abhishek Maratha, Advocate

versus

DELHI INTERNATIONAL FOOTBALL LEAGUE Respondent
Through: None

% Date of Decision : 24th September, 2010

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

J U D G M E N T

MANMOHAN, J

1. Present appeals have been filed under Section 260A of Income Tax Act, 1961 (for brevity “Act”) challenging the common order dated

12th March, 2010 passed by the Income Tax Appellate Tribunal (in short “Tribunal”) in ITA Nos. 3940 & 3941/Del/2009.

2. Mr. Abhishek Maratha, learned counsel for the Revenue submitted that the Tribunal was not justified in directing the Director of Income Tax (Exemptions) to grant registration to the respondent-assessee under Section 12AA of the Act especially when the respondent-assessee was carrying on business activity by earning profit by charging Rs. 2,500/- and Rs. 2,800/- per child for rendering its services. According to Mr. Maratha, this amounted to a business activity in accordance with proviso to Section 2(15) of the Act. In this connection, Mr. Maratha strongly relied upon a judgment of the Madhya Pradesh High Court in the case of *Commissioner of Income – Tax v. Madhya Pradesh Anaj Tilhan Vyapari Mahasangh, (1988) 171 ITR 677 (MP)*.

3. However, upon a perusal of the appeal papers, we find that the Tribunal in its appellate order has clearly recorded the following findings:-

- (i) The aim and object of the respondent-assessee is to promote the game of football and to carry out other activities of public importance which are of general public utility and charitable in nature.
- (ii) Fees have been accepted from participating children only for recoupment of cost for imparting training for playing football. The fees were received by the respondent-assessee for its existence and for development of the facilities for the children to play football.

(iii) There was nothing on record which suggested that this fee was collected for making any profit.

(iv) There was no complaint by either the parents or the children that they had been forced to pay fees or give donation. Further, the Director of Income Tax (Exemptions) had not conducted any independent inquiry from the donora.

4. In fact, ***Madhya Pradesh Anaj Tilhan Vyapari Mahasangh*** (supra), referred to by Mr. Maratha, stipulates that the test to be applied is whether the predominant object of the activity involved is to subserve the charitable purpose or to earn profit. In fact, the relevant observations of the Madhya Pradesh High Court in the said case are reproduced hereinbelow:

“The aforesaid findings are apparently findings of fact based on an appraisal of the material on record and on these findings the law laid down by the Supreme Court in Additional CIT v. Surat Art Silk Cloth Manufacturers Association [1980]121 ITR 1 is squarely applicable. It was held that the true meaning of the words "not involving the carrying on of any activity for profit" used in section 2(15) of the Act is that when the purpose of a trust or institution is the advancement of an object of general public utility, it is that object of general public utility and not its accomplishment or carrying out which must not involve the carrying on of any activity for profit. So long as the purpose does not involve the carrying on of any activity for profit, the requirement of the definition would be met and it is immaterial how the monies for achieving or implementing such purpose are found, whether by carrying on an activity for profit or not. It was further pointed out, "the test which has, therefore, now to be applied is whether the predominant object of the activity involved in carrying out the object of general public utility is to sub-serve the charitable purpose or to earn profit. Where profit-making is the predominant object of the activity, the purpose though an object of general public utility, would cease to be a charitable

purpose. But where the predominant object of the activity is to carry out the charitable purpose and not to earn profit it would not lose its character of a charitable purpose merely because some profit arises from the activity. The exclusionary clause does not require that the activity must be carried on in such a manner that it does not result in any profit." It would indeed be difficult for persons in charge of a trust or institution to so carry on the activity that the expenditure balances the income and there is no resulting profit. That would not only be difficult of practical realisation, but would also reflect an unsound principle of management."

5. Consequently, we are of the view that in the present facts, the Tribunal has applied the correct test and reached the correct conclusion. Accordingly, present appeals, being bereft of merit, are dismissed *in limine* but with no order as to costs.

MANMOHAN, J

CHIEF JUSTICE

SEPTEMBER 24, 2010
Js/ng