

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 13.01.2015

+ W.P.(C) 5635/2014

ST. STEPHENS HOSPITAL SOCIETY

... Petitioner

versus

THE DEPUTY COMMISSIONER OF INCOME TAX .. Respondent

Advocates who appeared in this case:

For the Petitioner : Ms Surekha Raman

For the Respondent : Mr N.P. Sahni with Mr Nitin Gulati.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the order dated 02.06.2014 passed by the Deputy Commissioner of Income-tax, Circle 51 (1), New Delhi, whereby the application for lower deduction certificate under section 197 of the Income-tax Act, 1961 for the Financial Year 2014-15 has been rejected. The rejection order reads as under:-

“OFFICE OF THE
DEPUTY COMMISSIONER OF INCOME TAX
CIRLCE 51(1),
Aayakar Bhawan, Laxmi Nagar, New Delhi.
Tel. 011-22447347

To

The Principal Officer,
M/s Stephens Hospital Society
Tis Hazari Delhi- 110054

Sir,

Sub: Issue of lower deduction certificate of Tax u/s 197 of the
IT Act, 1961 for FY 2014-15- reg.

Please refer to your pending application in the above
context.

In this regard, it is informed that having regard to the
provisions contained in section 197 of the Income Tax Act,
1961 read with rule 28AA of the Income Tax Rule, 1962 vis-à-
vis and overall facts of your case, it has not been found to be
justified to issue certificate u/s 197(1) to you for the FY 2014-
15. Therefore, the application filed in Form No. 13 is rejected.

Yours faithfully,
(Amit Mohan Mittal)

Deputy Commissioner of Income Tax.
Circle 51(1), New Delhi.”

It is evident from the above that the provision which was considered by
the Deputy Commissioner of Income-tax was section 197 of the Income
Tax Act, 1961 read with Rule 28AA of the Income Tax Rules, 1962.

2. The learned counsel for the petitioner submitted that Rule 28AA
would not apply and it is Rule 28AB which would be applicable. This is
so because the petitioner is a trust wholly for charitable purposes. The

learned counsel for the petitioner also states that the petitioner has exemption under sections 11, 12 and 10(23C)(vi) of the said Act.

3. We have heard the counsel for the parties. We agree with the submissions made by the learned counsel for the petitioner that Rule 28AA which would generally apply would not apply in the present case because the petitioner's case is covered under the specific instances provided under Rule 28AB. Therefore, the consideration which was given by the Deputy Commissioner of Income-tax under section 28AA was under a wrong provision. The parameters which have to be examined under Rule 28AA and the parameters under Rule 28AB are entirely different. The result is that the application of the petitioner has been examined under parameters which were not applicable to the petitioner and therefore the rejection based thereupon would be liable to be set aside.

4. Consequently, we set aside the impugned order of rejection and remit the matter to the concerned DCIT for consideration afresh under Rule 28AB after giving an opportunity of hearing to the petitioner/representative of the petitioner. Since the Financial Year is coming to a close, we direct that the application under section 197 read with Rule 28AB be dealt with expeditiously.

5. In the first instance, the petitioner shall appear before the concerned DCIT on 19.01.2015 at 11.30 a.m. The order disposing of the application shall be passed within two weeks thereafter.

6. The writ petition is allowed as above.
7. Dasti under the signature of the Court Master.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

JANUARY 13,2015
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