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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2098 OF 2016

DSP HMK Holdings Pvt.Ltd. ..Petitioner
Versus
Deputy Commissioner of Income-tax,
2(1)(1), Mumbai & Ors. ..Respondents

Mr.Madhur Agarwal with Mr.B.D. Damodar I/b. Kanga & Co. for Petitioner.
Mr.Sursh Kumar with Ms.Samiksha Kanani for Respondents.

CORAM: M. S. SANKLECHA &
S.C. GUPTE, JJ.

DATE : 21 SEPTEMBER 2016

<u>P.C.</u> :

At the joint request of the Counsel, the petition itself is taken up for final disposal.

2. The petition challenges an order/ communication dated 24 February 2016 passed by the Assessing Officer referring the Petitioner's transaction to the Transfer Pricing Officer (T.P.O.). The impugned communication dated 24 February 2016 is in respect of Assessment Year 2013-14 holding that the Petitioner's donation to a charitable trust would be “specified domestic transaction” covered by Section 92BA of the Income Tax Act, 1961 (Act). This is on the basis that Section 92BA includes “any transaction referred to in Section 80A” of the Act.

3. It is an agreed position between the parties that the two petitions, being Writ Petition Nos.1424/2016 and 1573/2016, filed by

Petitioner's sister companies challenging an identical order dated 24 February 2016 were allowed by way of remand to the Assessing Officer, by an order dated 10 August 2016. We find that impugned order dated 24 February 2014 is without any reasons in support of its conclusion, just as the order dated 24 February 2016 in the earlier petitions by the sister companies.

4. Therefore, it is an agreed position that the facts and circumstances in the present case are identical to those in the writ petitions filed by the sister companies, as referred to above and in respect of which the order dated 10 August 2016 was passed. Therefore, for the reasons indicated therein, the present writ petition is also disposed of by setting aside the impugned order dated 24 February 2016 and restoring the issue to the Assessing Officer to pass a fresh order on his notice dated 1 February 2016. The notice dated 1 February 2016 called upon the Petitioner to respond his *prima facie* view that a donation made to a charitable trust would be a transaction covered by Section 92BA of the Act and would warrant a reference to the T.P.O.

5. However, as the period to make a reference to the T.P.O. would have in the normal course expired on 31 March 2016, the period commencing from 24 February 2016 till today would be excluded to compute the period of limitation.

6. It is made clear that the Assessing Officer will apply his mind independently while disposing of the show cause notice dated 1 February 2016 and will not be influenced in any manner by the order dated 10 August 2016 and the order passed today. We also make it clear that we

have not examined the merits of the respective contentions and have set aside the order only because it was without any reasons in support.

7. The petition is disposed of in the above terms. No order as to costs.

(S.C. GUPTE, J.) **(M. S. SANKLECHA, J.)**