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

R-219

\+ **ITA 598/2004**

DIRECTOR OF INCOME TAX (EXEMPTION) ..... Appellant

Through: Mr. Dileep Shivpuri, Senior Standing counsel with Mr. Sanjay Kumar, Junior standing counsel.

versus

SIR SOBHA SINGH PUBLIC CHARITABLE TRUST ..... Respondent

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **31.05.2016**

1. The appeal was admitted on 8th October 2004 and the following question was framed for consideration:

> "Whether the Tribunal was correct in law in allowing the benefit of Section 11 of the Income Tax Act, 1961 to the Assessee although the Assessee had violated the provisions of Sections 13 (1) (d), 13 (2) (d) and 13 (2) (1) of the Income Tax Act, 1961 read with Section 11 (5) of the Income Tax Act, 1961?"

2. The appeal was directed to be listed along with connected ITA No. 145 of 2000.

3. The order dated 26th September 2013 in the connected ITA No. 145 of 2000 reads as under:

"1. This appeal by the Revenue, which pertains to Assessment Year 1990-91, was admitted for hearing vide order dated 8th February 2001 on the following substantial question of law:

Whether on the facts and in the circumstances of the case Tribunal was correct in law in allowing exemption under Section 11 of the Income Tax Act, 1961 to the Assessee?

2. The Appellants were given liberty to file cyclostyled paper books within three months containing all documents on which they rely, including order(s) in the case of the Assessee or in the case any other Assessee, which has been followed. Cyclostyled paper books have not been filed.

3. We have gone through the order passed by the Assessing Officer. It is benefit of necessary details and particulars on the basis of which the question of law mentioned above can be adjudicated. The Assessing Officer has recorded that while processing of application under Section 11(3A) of the Income Tax Act, 1961, it was noticed that the Respondent-Assessee had accumulated a major part of their income during the Assessment Years 1982-83 to 1990-91. He has indicated that the said amount was Rs. 16,46,284 and the accumulation should have been utilized by 31st March 1989. The order also records the Assessee had filed an application under Section 11 (3A) of the Act and the same was pending consideration. Fate of the said application is unknown.

4. The order passed by the Assessing Officer was reversed by the Commissioner of Income Tax (Appeals) relying upon orders passed by the Income Tax Appellate Tribunal for Assessment Years 1977-78, 1978-79, 1979-80 and orders of the Commissioner of Income Tax (Appeals) relating to Assessment Years 1987-88 to 1989-90. The Tribunal has affirmed the said position again relying upon their earlier orders. The earlier orders have not been placed on record.

5. In view of the aforesaid position and in absence of details/facts, it is not possible for us to answer the substantial question of law. The question is, therefore, left unanswered and the appeal is dismissed for

non-prosecution."

4. In that view of the matter, the question framed in this appeal is, therefore, left unanswered and this appeal too is dismissed for non-prosecution.

S. MURALIDHAR, J

VIBHU BAKHRU, J

MAY 31, 2016/*Rm*