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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 2303/2001 & CM 3997/2001

Reserved on : March 9, 2016

Decision on : March 23, 2016

WULAR TRUST

..... Appellant

Through: Mr Kailash Vasdev, Senior Advocate
with Ms Bindu Saxena, Ms Aparajita Swarup, Mr
K.K. Patra and Mr Dhruv Saxena, Advocates.

versus

**ADDITIONAL DIRECTOR OF WEALTH TAX
(EXEMP.) AND ORS.**

..... Respondents

Through: Mr Ashok K. Manchanda, Senior
Standing Counsel for Income Tax Department.

With

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W.P.(C) 2304/2001 & CM 3998/2001

TISTA TRUST

..... Appellant

Through: Mr Kailash Vasdev, Senior Advocate
with Ms Bindu Saxena, Ms Aparajita Swarup, Mr
K.K. Patra and Mr Dhruv Saxena, Advocates.

Versus

**ADDITIONAL DIRECTOR OF WEALTH TAX
(EXEMP.) AND ORS.**

..... Respondents

Through: Mr Ashok K. Manchanda, Senior
Standing Counsel for Income Tax Department.

With

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W.P.(C) 2305/2001

SAHYADRI TRUST

..... Appellant

Through: Mr Kailash Vasdev, Senior Advocate
with Ms Bindu Saxena, Ms Aparajita Swarup, Mr
K.K. Patra and Mr Dhruv Saxena, Advocates.

versus

ADDITIONAL DIRECTOR OF WEALTH TAX
(EXEMP.) AND ORS.

..... Respondents

Through: Mr Ashok K. Manchanda, Senior
Standing Counsel for Income Tax Department.

With

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W.P.(C) 2306/2001

HIMALAYA TRUST

..... Appellant

Through: Mr Kailash Vasdev, Senior Advocate
with Ms Bindu Saxena, Ms Aparajita Swarup, Mr
K.K. Patra and Mr Dhruv Saxena, Advocates.

Versus

ADDITIONAL DIRECTOR OF WEALTH TAX
(EXEMP.) AND ORS.

..... Respondents

Through: Mr Ashok K. Manchanda, Senior
Standing Counsel with Mr Dileep Shivpuri, Senior
Standing Counsel and Mr Zoheb Hussain, Junior
Standing Counsel for Income Tax Department.

With

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W.P.(C) 2307/2001 & CM 4001/2001

VINDHYA TRUST

..... Appellant

Through: Mr Kailash Vasdev, Senior Advocate
with Ms Bindu Saxena, Ms Aparajita Swarup, Mr
K.K. Patra and Mr Dhruv Saxena, Advocates.

Versus

ADDITIONAL DIRECTOR OF WEALTH TAX
(EXEMP.) AND ORS.

..... Respondents

Through: Mr Ashok K. Manchanda, Senior
Standing Counsel for Income Tax Department.

With

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W.P.(C) 2308/2001 & CM 4002/2001

VIHAR TRUST

..... Appellant

Through: Mr Kailash Vasdev, Senior Advocate
with Ms Bindu Saxena, Ms Aparajita Swarup, Mr
K.K. Patra and Mr Dhruv Saxena, Advocates.

Versus

ADDITIONAL DIRECTOR OF WEALTH TAX
(EXEMP.) AND ORS

..... Respondents

Through: Mr Ashok K. Manchanda, Senior
Standing Counsel with Mr Dileep Shivpuri, Senior
Standing Counsel and Mr Zoheb Hussain, Junior
Standing Counsel for Income Tax Department.

With

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W.P.(C) 2309/2001 & CM 4003/2001

TULSI TRUST

..... Appellant

Through: Mr Kailash Vasdev, Senior Advocate

with Ms Bindu Saxena, Ms Aparajita Swarup, Mr
K.K. Patra and Mr Dhruv Saxena, Advocates.

Versus

ADDITIONAL DIRECTOR OF WEALTH TAX
(EXEMP.) AND ORS.

..... Respondents

Through: Mr Ashok K. Manchanda, Senior
Standing Counsel for Income Tax Department.

With

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W.P.(C) 2310/2001

VAITARNA TRUST

..... Appellant

Through: Mr Kailash Vasdev, Senior Advocate
with Ms Bindu Saxena, Ms Aparajita Swarup, Mr
K.K. Patra and Mr Dhruv Saxena, Advocates.

Versus

ADDITIONAL DIRECTOR OF WEALTH TAX
(EXEMP.) AND ORS.

..... Respondents

Through: Mr Ashok K. Manchanda, Senior
Standing Counsel for Income Tax Department.

With

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W.P.(C) 2311/2001

DAL TRUST

..... Appellant

Through: Mr Kailash Vasdev, Senior Advocate
with Ms Bindu Saxena, Ms Aparajita Swarup, Mr
K.K. Patra and Mr Dhruv Saxena, Advocates.

versus

ADDITIONAL DIRECTOR OF WEALTH TAX
(EXEMP.) AND ORS.

..... Respondents

Through: Mr Ashok K. Manchanda, Senior
Standing Counsel for Income Tax Department.

With

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W.P.(C) 2312/2001

PAWAI TRUST

..... Appellant

Through: Mr Kailash Vasdev, Senior Advocate
with Ms Bindu Saxena, Ms Aparajita Swarup, Mr
K.K. Patra and Mr Dhruv Saxena, Advocates.

versus

ADDITIONAL DIRECTOR OF WEALTH TAX
(EXEMP.) AND ORS.

..... Respondents

Through: Mr Ashok K. Manchanda, Senior
Standing Counsel with Mr Dileep Shivpuri, Senior
Standing Counsel and Mr Zoheb Hussain, Junior
Standing Counsel for Income Tax Department.

With

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W.P.(C) 2313/2001

TANSA TRUST

..... Appellant

Through: Mr Kailash Vasdev, Senior Advocate
with Ms Bindu Saxena, Ms Aparajita Swarup, Mr
K.K. Patra and Mr Dhruv Saxena, Advocates.

versus

ADDITIONAL DIRECTOR OF WEALTH TAX
(EXEMP.) AND ORS.

..... Respondents

Through: Mr Ashok K. Manchanda, Senior
Standing Counsel for Income Tax Department.

AND

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W.P.(C) 2314/2001

GOPURI TRUST

..... Appellant

Through: Mr Kailash Vasdev, Senior Advocate
with Ms Bindu Saxena, Ms Aparajita Swarup, Mr
K.K. Patra and Mr Dhruv Saxena, Advocates.

versus

**ADDITIONAL DIRECTOR OF WEALTH TAX
(EXEMP.) AND ORS.**

..... Respondents

Through: Mr Ashok K. Manchanda, Senior
Standing Counsel for Income Tax Department.

**CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU**

J U D G M E N T
23.03.2016

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Dr.S. Muralidhar, J.:

1. The Petitioners, which are public charitable trusts, are aggrieved by the orders dated 30th November 1993 and 28th April 2000 issued by the Additional Director of Wealth Tax (Exemption) [Respondent No. 1] and the Central Board of Direct Taxes ('CBDT') [Respondent No. 2] respectively, treating the wealth tax returns filed by the Petitioners as invalid and rejecting the Petitioners' application under Section 10 (2) (b) of the Wealth Tax Act, 1957 ('WT Act') for claim of refund of the wealth tax payment on the ground that Petitioners were not entitled to exemption.

2. The facts in all these petitions are more or less similar. Illustratively, the facts in Writ Petition (Civil) 2303 of 2001 are discussed in detail.

3. The Petitioner in W.P. (C) No. 2303 of 2001, Wular Trust, was formed on 12th November 1987. It obtained registration as a charitable trust under Section 12A (a) of the Income Tax Act, 1961 ('IT Act') on 21st March 1988. The Petitioner-Trust was holding shares of Bajaj Auto Limited ('BAL') as on 31st March 1991. In terms of Section 11 (5) of the IT Act read with Section 13 (1) (d) of the IT Act, the shares held by the charitable trusts were required to be invested in conformity or modes that had been specified in Section 11 (5) of the IT Act, failing which, the exemption provided to the charitable trusts from payment of income tax would be forfeited.

4. A new clause (iia) was inserted by the Finance (No. 2) Act, 1991 in the proviso to Section 13 (1) (d) of the IT Act with retrospective effect from 1st April 1983 which stated that where an asset other than an investment or deposit mentioned in Section 11 (5) is held by the trust or institution, such asset is required to be disinvested after the expiry of one year from the end of the previous year in which such asset is acquired or 31st March 1992, whichever is later. This outer time limit within which such disinvestment was to take place was subsequently extended to 31st March 1993.

5. The Petitioner filed its return of income on 28th June 1991 under the IT Act, i.e., on the date prior to the aforementioned amendment brought in by the Finance (No. 2) Act 1991 by which Clause 2 (iia) was introduced to proviso to Section 13 (1) (d) of the IT Act. Therefore, the Petitioner did not

claim the exemption under Section 11 of the IT Act in the return filed by it for the Assessment Year ('AY') 1991-92.

6. It is stated that the Petitioner was also required to file its return of net wealth for AY 1991-92 by 30th June 1991. However, by notification dated 19th June 1991, the time limit prescribed for filing such return under Section 139 of the IT Act was extended upto 31st October 1991. Accordingly, the due date for filing the wealth tax return under Section 14 (1) of the WT Act for AY 1991-92 stood extended upto 31st October 1991.

7. The Petitioner states that in view of the amendment in Section 13 (1) (d) of the IT Act, it filed a revised return of income on 18th January 1992 claiming exemption under Section 11 of the IT Act. The Petitioner further states that it was under the *bonafide* belief that it was entitled to exemption under Section 5 (1) (i) of the WT Act upto the time limit prescribed for making reinvestment under the IT Act, i.e., upto 31st March 1993. Therefore, the Petitioner did not file its return of wealth tax for the AY 1991-92 on or before the due date, i.e., 31st October 1991.

8. The Petitioner claimed that it was subsequently advised that consequent to the amendment by which Clause 2 (iia) was inserted in the proviso under Section 13 (1) (d) with retrospective effect from 1st April 1983, it could not presume to be exempt from having to pay wealth tax in terms of Section 5 (1) (i) of the WT Act unless it was granted exemption under Section 11 of the IT Act. Consequently, by way of abundant caution, the Petitioner belatedly filed its return of wealth for the AY 1991-92 under protest on 26th

November 1993 disclosing its total wealth at Rs. 1,81,24,600. The Petitioner paid self-assessment tax, including interest for late filing of return, in the sum of Rs. 5,43,692. In the said return, the Petitioner claimed that it was entitled to exemption under Section 5 (1) (i) of WT Act.

9. By an order dated 30th November 1993, which is impugned in the present writ petition, the Additional Director of Wealth Tax (Exemption) [Respondent No. 1] informed the Petitioner that the return of wealth tax filed by the Petitioner was time barred and accordingly treated as invalid.

10. By letters dated 20th November 1993 and 19th June 1996 the Petitioner requested Respondent No. 1 to regularize the assessment proceeding for the AY 1991-92 by issuing notice under Section 17 of the WT Act or to refund the wealth tax of Rs. 5,43,692 paid by it under protest. A reminder was sent on 10th June 1997.

11. Having failed to receive any response from Respondent No. 1, the Petitioner on 17th April 1998 filed a petition before the CBDT [Respondent No. 2] under Section 10 (2) (b) of WT Act requesting the CBDT thereby to issue suitable instructions or directions to Respondent No. 1 to grant refund of wealth tax paid by it.

12. Meanwhile, the income tax return filed by the Petitioner was picked up for scrutiny by the Assessing Officer ('AO') who rejected the claim made by the Petitioner, for AY 1991-92, under Section 11 (1) (ii) of the IT Act. After the Commissioner of Income Tax (Appeals) ['CIT (A)'] rejected the

Petitioner's appeal, the Petitioner filed a further appeal before the Income Tax Appellate Tribunal ('ITAT'). By an order dated 19th November 1997 in the appeal by Wular Trust, which is common to the appeals of other similarly situated sister trusts of the Petitioner, i.e., the other Petitioners herein, the ITAT allowed the appeals holding that since the Petitioner had time up to 31st March 1993 to disinvest the shares held by it, the benefit under Section 11 (1) (d) of the IT Act could not be denied to it for AY 1991-92

13. It is stated that on 10th November 1998 the CBDT addressed a letter to Respondent No. 1 to appraise it of the status of the issue concerning the Petitioner's claim for exemption under Section 11 of the IT Act. A copy of this letter was marked to the Petitioner. The Petitioner states that it was thereafter surprised to receive a communication dated 28th April 2000 (which is also challenged in this writ petition) whereby the CBDT rejected the application filed by the Petitioner under Section 10 (2) (b) of the WT Act.

14. The case of the Petitioner is that Respondent No. 1, Additional Director of Wealth Tax (Exemption), ought to have regularized the wealth tax proceedings and passed an assessment order. Alternately, it is submitted that if according to Respondent No. 1, the said return of wealth tax was invalid, then the Petitioner was entitled to refund of the tax paid under protest. The impugned order dated 28th April 2000 is challenged on the ground of violation of the principles of natural justice.

15. Elaborating on the above submissions, Mr. Kailash Vasdev, learned Senior counsel appearing for the Petitioner, submitted that at the time of filing of the income tax return on 28th June 1991, the Petitioner did not have the benefit of the amendment made to Section 13 (1) (d) by the Finance (No. 2) Act 1991. Therefore, in the said income tax return, the Petitioner did not claim any exemption under Section 11 of the IT Act. In terms of the amendment, the asset held by the Petitioner namely shares of BAL was required to be disinvested before 31st March 1992. This meant that on the due date for filing the income tax return, i.e., 31st October 1991, the Petitioner was ineligible to exemption under Section 11 of the IT Act. Later when the wealth tax return was filed on 26th November 1993 for AY 1991-92 claiming exemption in terms of the amendment to Section 11 of the IT Act.

16. Mr. Vasdev placed reliance on the order dated 20th November 2001 of the ITAT for the AY 1990-91 which in turn upheld the order dated 29th December 2000 of the CIT (A). By the said order, the CIT(A) had reversed the order of the AO which denied the Petitioner's claim for exemption under Section 11 of the IT Act. Likewise, by order dated 27th January 2005 the ITAT had dismissed the Revenue's appeal for the AY 1991-92. Mr. Vasdev also referred to the order of the ITAT in respect of the wealth tax return for the AY 1992-93 which followed the decision of the Madras High Court in ***Commissioner of Income Tax v. Kumudam Endowments (2000) 242 ITR 159 (Mad)***. In short, his submission is that there is no violation of Section 13 (1) (d) of the IT Act as the Petitioner was permitted to hold shares in BAL up to 31st March 1993. The mere fact that the wealth tax return for AY

1991-92 was filed belatedly did not, according to him, entitle the Department to retain the wealth tax paid by the Petitioner under protest. Reliance was placed on the decision of the Bombay High Court in ***Balmukand Acharya v. Deputy Commissioner of Income Tax (2009) 310 ITR 310 (Bom)*** and the decisions of the Supreme Court in ***CIT v. Shelly Products (2003) 261 ITR 367 (SC)*** and ***M/s. Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II (2015) 324 ELT 641 (SC)***.

17. Countering the above submissions, Mr. Ashok Manchanda, learned Senior standing counsel for the Revenue at the outset protested against the misleading statements made in the petition regarding the Petitioner's failure to disinvest the shares held by it before 31st March 1993. In particular Mr. Manchanda drew the attention of the Court to para 5 (N) of the counter affidavit dated 16th October 2001 in Writ Petition (Civil) No. 2305 of 2001 where it was categorically averred that the Assessee had not disinvested the assets which were in the prohibited modes by 31st March 1993. Mr. Manchanda referred to the rejoinder of the Petitioner wherein there was no denial of the aforementioned averment.

18. The thrust of Mr. Manchanda's submission was that the payment of Rs. 5,44,412 as self-assessment tax and the time of filing of the wealth tax return on 26th November 1993 was a voluntary act. Therefore, the filing of the wealth tax return under protest was to no avail. The fact remained that on the date of filing of the return, the deadline for disinvestment of the shares had crossed and therefore, by no stretch of imagination could the claim for exemption under Section 11 of the Act be sustained. Therefore, the question

of the Petitioner being issued refund of the aforementioned amount simply did not arise. Mr. Manchanda submitted that the earlier orders of the ITAT dated 20th November 2001, 23rd May 2001 and 27th January 2005 were based on the misleading statements and misrepresentation of the facts by the Petitioner and therefore, could not constitute a binding precedent.

19. Having considered the above submissions, it appears to the Court that the Petitioner is not entitled to any reliefs as claimed in the petition. Under the Finance (No. 2) Act of 1991, an amendment was brought about in Section 13 (1) (d) of the IT Act whereby clause (iia) was inserted in the proviso with retrospective effect from 1st April 1983 which provided that for a charitable trust to retain its exemption under Section 11 (5) of the IT Act, it was required to disinvest its shares/assets, after the expiry of one year from the end of the previous year in which such asset is acquired or 31st March 1992, whichever was later. This was later extended till 31st March 1993. It was in view of the above amendment that the Petitioner filed its revised return on 18th January 1992 under the IT Act claiming exemption under Section 11 of the IT Act.

20. However, for the reasons best known to it, the Petitioner did not file a wealth tax return. The Respondent is right in contending that there was no valid reason given by the Petitioner in not filing the wealth tax return within the stipulated time when it had filed its income tax return on 28th June 1991 and a revised return on 18th January 1992.

21. The other fact that has not been disputed by it is that the Petitioner filed

the wealth tax return belatedly on 26th November 1993 by way of self-assessment. The Petitioner was informed by a letter dated 30th November 1993 that the return was time barred. On the date of filing of wealth tax return, i.e., 26th November 1993, the Petitioner was fully well aware that the deadline for the disinvestment of the shares held by it had long crossed. Yet the Petitioner subsequently claimed that it was entitled to claim the refund of the amount as it had paid the self assessment tax only because as of 31st March 1991 it was entitled to retain the shares which were in the prohibited modes.

22. As rightly pointed out by Mr. Manchanda, learned Senior standing counsel for the Revenue, the conduct of the Petitioner in filing the wealth tax return belatedly and much after the date by which it was required to disinvest the shares held in the prohibited modes, and the fact that it did not do so, should disentitle it to any of the reliefs prayed for. On the date of filing of the wealth tax return, the Petitioner was fully aware that it did not comply with the essential conditions for claiming exemption. Therefore, it could not be heard to say that it must be refunded the wealth tax voluntarily paid by it.

23. In this context, the averment in para 5 (N) of the counter-affidavit filed by the Respondent in Writ Petition (Civil) No. 2305 of 2001 requires to be set out *in toto*:

“5 (N) On receiving this application CBDT called for the report from the concerned officer which was submitted in the case of Dal Trust vide letter dated 23rd October 1998. The Board also required the concerned officer to apprise it with respect to

finality of the issues concerned by way of appeal or otherwise. It is also to be pointed out here that the Board was constantly in touch with the concerned officer and called for the detailed report in all the 12 Trusts which was submitted vide letter dated 29th March 2000. The main amongst other grounds were that the Assessee had not disinvested the assets which are in the prohibited modes, by 31st March 1993 which is the latest date required under the law for disinvestments. It is also evident from the fact that last date of disinvestments was 31st March 1993 and the Assessee had filed the return of wealth on 26th November 1993 disclosing the net wealth at Rs. 1,81,48,100 along with the challan for payment of self-assessment tax Rs. 5,44,412. The appeals filed by the Department under the Income Tax Act as well as Wealth Tax Act are still pending.”

24. Significantly, in the rejoinder-affidavit filed by the Petitioner the reply to the above paragraph reads as under:

“N. In reply to contents of para 5 (N) of the counter affidavit, it is submitted that the appeal filed by Respondent No. 1 against the orders of CIT (Appeals) has been dismissed by the Hon’ble ITAT vide its orders dated 20th November 2001 (Annexure I), 27th January 2005 (Annexure 2) and 23rd May 2001 (Annexure 3) respectively. Under the circumstances, the Hon’ble Court may order the Respondents to refund the tax paid by the Petitioner along with interest accrued thereon.”

25. In other words there is no denial by the Petitioner that on the date of filing of the wealth tax return it had failed to comply with the essential conditions for claiming exemption.

26. This fact by itself distinguishes the decisions relied upon by the Petitioner in support of its plea and in particular the decision of the Madras High Court in *Commissioner of Income Tax v. Kumudam Endowments*

(*supra*) which was followed by the ITAT in its orders, referred to hereinabove, in respect of the income tax return filed by the Petitioner and even the wealth tax return subsequently filed for the AY 1992-93. It is plain that the ITAT overlooked the above factual aspects which disentitled the Petitioner to claim relief.

27. As already noticed, the Petitioners in the other writ petitions are also public charitable trusts formed in Delhi by trust deeds dated 12th November, 1987. The issues in the connected writ petitions are more or less similar to that of the Petitioner in WP (C) No. 2304/2001. The said trusts also filed wealth tax returns belatedly under protest on 26th November, 1993 by which time the deadline for disinvesting the shares held in the prohibited modes had expired. Admittedly as of the date of filing the said wealth tax returns, none of the Petitioners had complied with that essential condition. Consequently, none of them was entitled to seek exemption as claimed.

28. Consequently, the Court finds no merit in the writ petitions. They are dismissed with costs of Rs. 10,000 in each petition which will be paid by the Petitioners to the Department within four weeks from today.

S.MURALIDHAR, J

VIBHU BAKHRU, J

MARCH 23, 2016

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