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

+ **ITA 427/2016**

**COMMISSIONER OF INCOME TAX
(EXEMPTIONS)**

..... Appellant

Through: Mr. P. Roychaudhury, Sr. Standing Counsel
and Ms. Vibhooti Malhotra, Advocate.

versus

CHARANJIV CHARITABLE TRUST

..... Respondent

Through

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE NAJMI WAZIRI

ORDER

% **22.07.2016**

CM No. 25821/2016 (Condonation of delay in re-filing)

1. For the reasons stated in the application, the delay in re-filing the appeal is condoned. The application is allowed.

CM No. 25822/2016 (Condonation of delay in filing)

2. For the reasons stated in the application, the delay in filing the appeal is condoned. The application is allowed.

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3. This appeal by the Revenue is directed against the order dated 14th August, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 3295/Del/2011 for the Assessment Year ('AY') 2003-04.

4. The issue sought to be urged by the Revenue in the present appeal is whether the ITAT erred in law and facts in holding that the provisions of Section 68 of the Income Tax Act, 1961 could not be applied to anonymous donations and that they shall be considered as part of the total

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income for calculating application of income of the Assessee for charitable purposes.

5. The Respondent Assessee, which is a charitable trust filed a return of income for the AY in question and it was picked up for scrutiny. The assessment was completed under Section 143(3), on 31st March, 2005. Subsequently, the Director of Income Tax (Investigation) received information that the Assessee had received certain amounts by way of accommodation entries during the relevant AY and that such amounts were credited by the assessee in its bank accounts. A notice under Section 148 was thereafter issued on 27th March, 2009. During the course of re-assessment, the Assessing Officer ('AO') came to the conclusion that a total sum of Rs. 75 lakhs was received by the assessee from various donors, the genuineness and creditworthiness of both could not be established by the assessee. Consequently, the said sum was added back to the income of the assessee under Section 68 of the Act by order dated 31st December, 2009.

6. The CIT(A) partly allowed the appeal of the Assessee by the order dated 11th February, 2011. The CIT(A), in the first instance, concurred with the AO that the Assessee had failed to establish the genuineness of the donors, and therefore, upheld the addition of Rs. 75 lakhs. However, the CIT(A), while dealing with the grounds urged by the Assessee regarding application of the income during the year exceeding 85% of the total statutory limit required to be applied for charitable purposes, came to the factual conclusion that 85% of the total income, which included the sum of Rs. 75 lakhs, had in fact been applied. This was noted in the assessment order itself. Consequently, the CIT(A) held that the action of the AO in not treating the sum of Rs. 75 lakhs as part of the total income

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of the assessee for the purposes of considering the applicability of income was totally wrong and erroneous. In doing so, the CIT(A) relied upon the decision of this court in *Director of Income Tax (Exemption vs Raunaq Education Foundation (2007) 294 ITR 76*.

7. Against the order of the CIT(A), both the Assessee and the Revenue went in appeal before the ITAT. By the impugned order, the ITAT dismissed both the appeals. As far as the dismissal of the Assessee's appeal is concerned, it was on the reason that it had become academic since the ITAT was affirming the order of the CIT(A) regarding the applicability of the income.

8. Having heard the learned counsel for the Revenue, the court is unable to be persuaded to hold that the order of the ITAT suffers from any perversity and give rise to any substantial question of law arises from the impugned order. Having examined the order of the CIT(A) as well as the order of the AO, the ITAT has concluded that the Assessee did apply more than 85% of the total income for the charitable purposes during the financial year under consideration.

9. No substantial question of law arises. The appeal is dismissed.



S.MURALIDHAR, J



NAJMI WAZIRI, J

JULY 22, 2016

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