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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
\+ **ITA 484/2016**

COMMISSIONER OF INCOME TAX(E) ..... Appellant
Through: Mr. P. Roychaudhuri, Advocate

versus

TSURPHU LABRANG ..... Respondent
Through: Mr. M.S. Ganesh, Senior Advocate with Mr. G.K. Shukla, Advocate and Ms. Rukhsana Choudhury, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE NAJMI WAZIRI

ORDER

% **01.08.2016**

CM APPL. 27284/2016 (Delay)

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

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2. This is an appeal filed by the Revenue challenging the order dated 8th September, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 4941/Del/2011 for the Assessment Year 2011-12.

3. By the impugned order the ITAT has set aside the order of the Director of Income Tax (Exemptions) rejecting the Assessee's claim for its registration as a Trust under Section 12AA of the Income Tax Act, 1961 ('Act').

4. The question raised by the Revenue before the Court is as to whether the ITAT erred in holding that Assessee is eligible for grant of registration as a Trust under Section 12 A of the Act.

5. It was sought to be urged before the ITAT by the Revenue that there is a specific requirement of filing documents for creation of a Trust along with an application for grant of exemption. In the impugned order, the ITAT referred to Rule 17A (a) of the Income Tax Rules, 1962 which itself envisages the possibility of the Trust being created "otherwise than under an instrument" in which event it is sufficient if "the document evidencing the creation of the trust or the establishment of the institution, together with one copy thereof" is provided. The proviso to Rule 17A(a) permits the Commissioner to accept even a certified copy in lieu of the original if the instrument or document in original cannot conveniently be produced. It was rightly pointed out by the ITAT that it is therefore not essential that there must be an instrument evidencing the creation of a Trust.

6. The fact of the matter was that the Assessee claimed that it is an institution/trust created in the year 1159AD and no formal deed of trust was executed at that time. The 17th Karmapa, who is the supreme spiritual Head of Karma Kagyu lineage, made a declaration of Trust on stamp paper on 29th day of March, 2011 at Delhi setting out the entire history of the Trust along with aims, objects and purposes. Various provisions with regard to the management of the Trust and its properties and the maintenance of accounts etc. were also set out. It

was stated that the objects of the trust were wholly charitable and religious in nature. The ITAT has in its impugned order set out in some detail the contents of the said affidavit regarding the creation of the Trust in Central Tibet in 1159 AD and its objectives and activities over the years. The Court concurs with the ITAT that a formal deed of trust was not necessary for the grant of registration under Section 12A/12AA of the Act.

7. On the question whether the objects and purposes of the Trust were charitable thereby qualifying for registration, the ITAT has set out in its impugned order in detail, the objects of the Trust as declared in the affidavit filed by the 17th Karmapa. It concluded from reading of the various aims and objects that they were charitable in nature. It has been rightly pointed out by the ITAT that it is not necessary that present aims and objects of the Trust should be the same at the time of its establishment. As further rightly pointed out, the stage for examining if the income of the Trust was being applied for its objects would arise only when a return of income is filed by the Trust. The said issue would not affect the grant of registration.

8. The ITAT also examined whether the fact that the Trust was for the benefit of a particular community would debar it from exemption and registration under Sections 12AA/12A of the Act. The said question was, and in the view of this Court rightly, answered in the negative. In particular the Court concurs with the conclusion of the ITAT that "It is now well-settled that an object beneficial to a section of the public

is an object of general public utility. The intention of the institution/trust should be impersonal in nature and for a sufficiently defined and identifiable section of the public."

9. Lastly, the question was whether the fact that the 17th Karmapa who is the supreme head of the Trust was taking food and clothes and meeting his basic needs from the funds of the Trust resulted in a violation of Section 13 of the Act? The ITAT correctly held that "Section 13 does not debar the main whole-time trustee/trustees from meeting their basic needs from the funds of the institution/trust particularly when they are not deriving any monetary benefit from the institution/trust."

10. The impugned order dated 8th September 2015 of the ITAT is detailed and reasoned one and correctly analyses the relevant statutory provisions. The Court does not find any substantial question of law arising therefrom.

11. The appeal is dismissed.

S.MURALIDHAR, J

NAJMI WAZIRI, J

AUGUST 01, 2016/acm