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

\+ ITA 621/2016 & C.M.30448/2016

THE COMMISSIONER OF INCOME TAX-EXEMPTION

..... Appellant

Through: Mr.Ruchir Bhatia, Sr.Standing counsel with Mr.Puneet Rai, Jr.Standing Counsel

versus

AMATEUR ATHLETICS FEDERATION OF INDIA

..... Respondent

Through: None.

\+ ITA 622/2016 & C.M.30450-30451/2016

THE COMMISSIONER OF INCOME TAX-EXEMPTION

..... Appellant

Through: Mr.Ruchir Bhatia, Sr.Standing counsel with Mr.Puneet Rai, Jr.Standing Counsel

versus

AMATEUR ATHLETICS FEDERATION OF INDIA

..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% 17.10.2016

1. The revenue is aggrieved by the order of the ITAT in these two appeals under Section 260A of the Income Tax Act. The question of law urged is whether in view of the proviso to Section 2 (15) of the Act, the amount received by the assessee from M/s Proclam

disqualified it, from its eligibility to be treated as a charitable organisation.

2. The brief facts are that the assessee was recognised as a sports federation and is charitable organization promoting athletics and sports. For the relevant assessment years i.e. AY 2009-2010 and 2010-2011, the Assessing Officer disallowed the amounts received from M/s Proclam on the ground that the agreements were conditioned upon certain payments to be made to an Event Manager/Organisation. The AO was of the view that the assessee which was set up for the advancement of an object of general public utility was in effect rendering service "in relation to any trade, commerce or business" for a fee and therefore could not avail of the exemption claimed in view of the proviso to Section 2 (15), which was inserted with effect from 01.04.2009. The AO's decision was upset by the CIT (A). The revenue's appeal was rejected by the ITAT. Mr.Ruchir Bhatia, learned counsel for the revenue argues that both the CIT (A) and the ITAT overlooked the proviso to Section 2 (15) which excludes trusts and charitable organisations set up to advance objects of general public utility if they indulge in/or if it involves the carrying on of any activity in the form of trade or commerce or if it renders any service or activity, in relation to any trade or business. It was argued that the amounts received as sponsorship amounts/donations from M/s Proclam in reality depended on payments to the Event Manager stipulated by such donor. These, consequently had the effect of rendering a service for a fee. According to the counsel, the service rendered was organizing of the

event by the assessee. It is submitted that the effect of the amendment was completely overlooked by the tribunal and the lower authority i.e. CIT (A).

3. This court is of the opinion that there is an inherent fallacy in the revenue's arguments. It is premised upon the revenue's understanding that the athletics foundation i.e. the assessee, organised the athletic event at the behest of the sponsor. In fact, there is no finding to that effect. What the AO had to examine was whether in the light of arrangement with M/s Proclam i.e. especially the terms of the agreement, the athletics foundation was providing any services. The analysis in the AO's order nowhere shows that the assessee never organised such events in the past nor was it likely to do so in future. The AO proceeded with this assumption on the basis of the funding given to the assessee from M/s Proclam. In the absence of these specific findings, an understanding of the provisions is significant. Parliamentary intent of qualifying organisations set up with "other object" of general public utility and of stipulating that if such organisations or entities render service for a fee or indulge in trade, the proceeds of such activity are to be disqualified from treatment as charitable receipts is clear i.e. it is to ensure that trading activities are not directly or indirectly undertaken by charitable organisation. In the present case, there is no dispute that the assessee was set up with the object of promoting athletics in India; it organises events in furtherance of that object and is recognized by the Athletics Federation of India which is in fact the regulatory body for the promotion, control and regulation of athletics related sport federations

in India. Such being the case that it accepted sponsorship from M/s Proclam and received amount as donation that contain certain conditionality did not in any manner render the primary activities or dominant activity of the assessee to be one carrying on trade or rendering any service. Nor can this court accept the submission that the condition stipulated by M/s Proclam i.e. choosing a particular event manager and paying certain fee to such Event Manager disqualifying such receipts of the assessee for the particular year. Such interpretation in our opinion would make the provision stand on its head.

4. For the foregoing reasons, we are satisfied that no substantial question of law arises. Thus, appeals along with pending applications are accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

OCTOBER 17, 2016
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