

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

4.

+

ITA 101/2016

COMMISSIONER OF INCOME TAX

(EXEMPTION)

..... Appellant

Through: Mr Ashok K. Manchanda, Senior
Standing Counsel with Ms Vibhooti Malhotra,
Junior Standing Counsel and Mr Aamir Aziz,
Advocate.

versus

MONARCH EDUCATIONAL SOCIETY

..... Respondent

Through: Mr Salil Aggarwal and Mr Ravi Pratap
Mall, Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

%

03.02.2016

CM No.3025/2016

1. For the reasons stated in the application, the delay of 215 days in re-filing the application is condoned.

2. The application stands disposed of.

ITA 101/2016

3. This appeal by the Revenue is directed against an order dated 24th November, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in

ITA No.4989/Del/2011 for the Assessment Year ('AY') 2003-04.

4. The question sought to be urged by the Revenue is whether the ITAT was correct in quashing the notice issued under Section 148 of the Income Tax Act, 1961 ('Act') for reopening the assessment.

5. The reasons to believe recorded by the Assessing Officer ('AO') for issuance of the notice under Section 148 referred to accommodation entries totalling Rs. 16,61,000/- and stated that the said amount is not the income of the Assessee from property held under trust. It was also not in the nature of the voluntary contributions but was income from undisclosed sources.

6. However, in the course of the re-assessment proceedings, as is evident from the assessment order dated 10th December 2010 passed by the AO, the sum that was sought to be added to the income of the Assessee was not the aforementioned sum of Rs. 16,61,000/- but a sum of Rs. 26,10,000/- which according to the AO represented the unsecured loans that were unable to be explained by the Assessee. In other words, the addition sought to be made to the income of the Assessee was not based on the accommodation entries which formed the subject matter of the reasons to believe for issuance of the notice under Section 148 of the Act.

7. Against the order dated 2nd September 2011 of the CIT(A) dismissing the Assessee's appeal, the Assessee approached the ITAT which accepted the plea of the Assessee that the re-assessment order which sought to make an addition of sum of Rs. 26,10,000/- was unsustainable in law inasmuch as that did not form part of the reasons to believe recorded by the AO for reopening the assessment under Section 148 of the Act.

8. The issue urged by the Revenue stands covered in favour of the Assessee by the decision of this Court in *Ranbaxy Laboratories Ltd. v. CIT (2011) 336 ITR 136 (Del)* which has been followed in *CIT v. Software Consultants (2012) 341 ITR 240 (Delhi)*. In sum, if no addition is made on the basis of the reasons to believe recorded by the AO for reopening the assessment under Section 148 of the Act, resort cannot be had to Explanation 3 to Section 147 of the Act to make an addition on any other issue not included in the reasons to believe for reopening the assessment. No substantial question of law arises. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 03, 2016/MK