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

\+ ITA 807/2016 & CM Nos. 43249/2016 & 43250/2016

COMMISSIONER OF INCOME TAX-(E) ..... Appellant
Through: Ms. Vibhooti Malhotra, Adv.

versus

NATIONAL RIFILE ASSOCATION OF INDIA ..... Respondent
Through

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% 22.11.2016

1. The question of law sought to be urged by the Revenue is: Whether in the circumstances of the case the Income Tax Appellate Tribunal (ITAT) fell into error in overlooking the proviso to Section 2(15) added by Finance Act, 2008.

2. The assessee is a charitable organization established with the purpose of promoting rifle shooting by its members and advocacy for that purpose. The amounts received by it as sponsorship fee and handling charges were sought to be brought to tax on the ground that they amount to commercial activities and consequently fell within the mischief of the proviso to Section 2(15). Though the Assessing Officer (AO) accepted the Revenue's contention, the ITAT rejected it relying upon the several rulings, notably, ***Addl. Commissioner of Income Tax, Gujarat vs Surat Art Silk Cloth Manufacturers Association 121 ITR 1*** etc.

3. It is contended on behalf of the Revenue that the ITAT's decision is unsupportable given the plain text of the proviso to Section 2(15). Ms. Malhotra, the learned counsel relied upon the findings of the AO to say that the nature of the amounts generated and received by the assessee association should not be sought to be charitable having regard to the commercial nature of the services rendered by it. It was also highlighted that ***Surat Art Silk Cloth Manufacturers Association*** (supra) was decided in the absence of the proviso to Section 2(15).

4. This Court notices that the issue at hand has been decided in the judgment reported as ***India Trade Promotion Organisation vs Director General of Income Tax (2015) 371 ITR 333***. The Court had clearly ruled that the proviso was not designed to hit at those institutions which had advancement of objects of general utility at heart and were charity institutions but to remove masks from entities which were purely trade, commerce or business enterprises and to expose their true identity. Therefore, the Court deduced that the correct interpretation would be that the activity should be an exception from the charitable purpose of advancement of any other object of general public utility and that exception is limited to activities in the nature of trade, commerce and business. Therefore, if the dominant and prime objective of the institution established for charitable purpose is profit making whether its activities relate directly in the nature of trade, commerce or business or indirectly in rendering of any service in relation to any trade, commerce or business, then it would not be entitled to claim that its object is

charitable purpose.

5. Likewise, we notice that the earlier judgment dated 04.07.2013 in WP(C) 3147/2012, titled: ***The Institute of Chartered Accountants of India and Anr. vs Director General of Income Tax (Exemptions), Delhi & Ors.*** the Court had expounded on the meaning of business in the context of general charitable activity and concluded that any activity incidentally meant to promote the main charitable purpose but ipso-facto not constitute commerce and trade itself could not fall within the mischief of the proviso.

6. Having regard to these judgments, the Court is of the opinion that no substantial question of law arises and the impugned order of the ITAT does not require interference. The appeal is, accordingly, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

NOVEMBER 22, 2016/kk