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

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+ **ITA 501/2017**

COMMISSIONER OF INCOME TAX, (EXEMPTIONS) Appellant
Through: Mr Rahul Kaushik, Senior Standing
Counsel

versus

DHANPATMAL VIRMANI EDUCATION TRUST & MANAGEMENT
SOCIETY Respondent

Through: None

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE PRATHIBA M. SINGH

ORDER

% **26.07.2017**

CM 24201/2017 (exemption)

1. Allowed, subject to all just exceptions.

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2. The challenge in this appeal by the Revenue is to the order dated 30th November, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2988/Del/2016 for the Assessment Year ('AY') 2011-12.

3. The question urged is whether the ITAT was correct in holding that the order passed by the Commissioner Income Tax ('CIT') under Section 263 of the Income Tax Act, 1961 ('Act') was unsustainable in law.

4. In the impugned order, the ITAT has noted that the assessment of the Respondent-Assessee for the AY in question was completed under

Section 143(3) of the Act on 30th August, 2013 by accepting the returned income. The Assessee had been registered under Section 12A of the Act by order dated 3rd December, 1975. It was also granted certification under Section 80G (5) (vi) of the Act by an order dated 15th June, 2010 from AY 2009-10 onwards. The question that arose was whether for the purposes of Section 11 of the Act as it stood at the relevant time, the income of the Assessee should have been applied for charitable or religious purposes only in the year in which the income has arisen?

5. The CIT, in the order under Section 263 of the Act, while disagreeing with the findings of the Assessing Officer ('AO') on the issue, did not undertake any enquiry as such. The ITAT took note of the fact that the amendment to Section 11(6) was with effect from 1st April, 2015 and did not apply to the AY in question. Therefore the view taken by the AO was in accordance with law. It was held that there was no requirement under Section 11 (1) (a) prior to its amendment, that the income should have been applied for charitable or religious purposes only in the year in which the income had arisen. Following the dictum of the Supreme Court in ***Malabar Industrial Co. Ltd. v. CIT (2000) 243 ITR 83 (SC)***, the ITAT came to the conclusion that the CIT had merely taken a different view. This was insufficient for invoking the power under Section 263 of the Act.

6. Having heard the learned Senior Standing Counsel for the Revenue and having perused the orders of the AO, the CIT and the ITAT, the Court is of the view that the impugned order of the ITAT does not suffer from any legal

infirmity and no substantial question of law arises for consideration therefrom.

7. The appeal is accordingly dismissed, but in the circumstances, with no orders as to costs.

S. MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 26, 2017
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