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

+ ITA 871/2017 & CM Nos.37142-37143/2017

COMMISSIONER OF INCOME TAX (EXEMPTIONS)

..... Appellant

Through: Mr. Zoheb Hossain, Sr. Standing
Counsel for Revenue.

versus

G. R GOENKA EDUCATION SOCIETY Respondent

Through: Mr. Jayant Mehta with Mr. Kapil
Wadhwa, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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30.10.2017

1. The Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal (ITAT) contending that its impugned order is erroneous. It firstly urges that the cancellation of registration under Section 2(15) of the Income Tax Act, 1961 ("the Act") by the Commissioner of Income Tax, was justified. Here it is urged that although the activity which the assessee was performing, broadly answers the description of "education", the further fact that it charges extremely high rates of fee which, in fact, amounts to commercialization of education, means that it is providing services of general public utility and therefore falls in the last category under Section 2(15) of the Act.
2. The findings of the Tribunal, we notice, are that the essential objects of the respondent – assessee continue to be the same i.e. providing education to schools. The Revenue's reliance on *Aditanar Educational Institution v. Additional Commissioner of Income Tax*, (1997) 224 ITR 310 (SC), is of no

avail. The ITAT had considered that judgment and analyzed the facts of this case in the light of both the previous judgments as well as the later ruling in *Queen's Educational Society v. CIT* (2015) 372 ITR 699, 716 (SC).

3. The Court is of the opinion that there is no merit in the Revenue's appeal; objects for the respondent – assessee remained unaltered. The extent of fees charged by it *ipso facto* cannot be the basis to conclude that the purpose for which it was set up had changed.

4. The other ground urged was that the goodwill and monetary value of the trade mark, which arose in the course of the respondent's activities, ought to have accrued to it rather than the owner. This, it is stated, amounted to a diversion under Section 13(3) of the Act. The Court is of the opinion that the ITAT's reasoning on this aspect too is merited. Besides, the use of a trade mark *per se* does not confer an advantage upon the licensee or authorized user – under Section 40(2) of the Trade Marks Act, 1999 the benefit of such use accrues to the owner. This aspect too has been considered by a Division Bench of this Court and later affirmed in *Formula One World Championship Ltd. v. CIT*, [2017] 390 ITR 199 (Delhi).

For the above reasons, there is no merit in this appeal; it is accordingly dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

OCTOBER 30, 2017

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