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

\+ **ITA 147/2017 & CM Nos.5878-79/2017**

COMMISSIONER OF INCOME TAX (E) ..... Appellant
Through: Mr. P. Roy Chaudhuri, Advocate.

Versus

ANAND EDUCATION SOCIETY ..... Respondent
Through: Mr. Pranjal Srivastava, Advocate.

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

O R D E R

% 15.02.2017

CM No.5878/2017 (for exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed off.

ITA 147/2017 & CM No.5879/2017

3. The Revenue is aggrieved by the Tribunal's order in its appeal filed under Section 260A of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act'). It urges that the Income Tax Appellate Tribunal (for short 'Tribunal') fell into error in appreciating the true nature and scope of Section 13(3) of the Act.

4. The assessee is a Trust, which established and is managing "Lancers Convent School" at Prashant Vihar, Rohini, Delhi. Based upon a survey report, the assessment for Assessment Year 2009-10 was reopened. The Assessing Officer (AO) after taking a detailed analysis as to the expenses incurred by the assessee Trust was of the opinion that by virtue of Section

13(3) of the Act it could not claim the benefit of registration under Section 12A of the Act. The assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) [CIT (A)], who confirmed the AO's order. The Tribunal in its detailed order, after independent examination of the materials, granted relief. It is urged on behalf of the Revenue that the true nature and purport of Section 13(3) of the Act has been lost. Counsel highlighted that several relatives of the Trustees were occupying important decision making positions and their recruitment to such posts was made under dubious circumstances. Besides, these relatives are getting unusually high salaries and perks. In these circumstances, the AO's order was justified and ought not to have been interfered with.

5. This Court has considered the submissions. The ITAT – in our opinion – rightly concluded that the AO's decision, based by and large upon conjectures, is prejudiced. The extraordinary pay and privileges enjoyed by the employees related to the Trustees etc., were no more and no less, were recommended by the Pay Commission. No doubt, other employees were not beneficiaries of such pay scales; at the same time, that they could have a justifiable grievance did not mean that the payment made to those relatives to the Management was so unusual as to attract Section 13(3) of the Act. The Court also notices that the AO and CIT (A) relied upon some decisions of the other Benches of the Tribunals as well as of the Allahabad High Court. Those were cases where the Trustees themselves drew money or the Manager was given unsecured loans etc. In this case, the expenditure so analyzed was by way of salaries and other perks including mobile phone expense etc.

6. In the Court's opinion, the AO rather did the intrusive task of the censor, which is utterly unwarranted in the circumstances of the case. The Trustee concededly manages a private school and is, therefore, enjoys no more no less autonomy than other private schools in regard to recruitment of teachers (subject to such other provisions of law as may be done or legally tenable). It cannot be treated like a Government or a publically accountable institution having regard to the autonomy it enjoys.

7. In view of these facts, the Court is of the opinion that the impugned order does not call for any interference. No substantial question of law arises in the appeal. The appeal alongwith pending application is, therefore, dismissed.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

FEBRUARY 15, 2017
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