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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 807/2015

DELHI BUREAU OF TEXT BOOKS

..... Appellant

Through: Ms. Prem Lata Bansal, Senior Advocate
with Ms. Nidhi Raman and Ms. Isha Khanna,
Advocates along with Mr. Ashok Kumar,
Accounts Officer, DBTB

versus

DIRECTOR OF INCOME TAX (E)

..... Respondent

Through: Mr. Rahul Kaushik, Senior standing
counsel.

With

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ITA 810/2015

DELHI BUREAU OF TEXT BOOKS

..... Appellant

Through: Ms. Prem Lata Bansal, Senior Advocate
with Ms. Nidhi Raman and Ms. Isha Khanna,
Advocates along with Mr. Ashok Kumar,
Accounts Officer, DBTB

versus

DIRECTOR OF INCOME TAX (E)

..... Respondent

Through: Mr. Rahul Kaushik, Senior standing
counsel.

With

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ITA 811/2015 & CM 24170/2015

DELHI BUREAU OF TEXT BOOKS

..... Appellant

Through: Ms. Prem Lata Bansal, Senior Advocate
with Ms. Nidhi Raman and Ms. Isha Khanna,
Advocates along with Mr. Ashok Kumar,
Accounts Officer, DBTB

versus

DIRECTOR OF INCOME TAX (E) Respondent
Through: Mr. Rahul Kaushik, Senior standing
counsel.

And

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ITA 812/2015

DELHI BUREAU OF TEXT BOOKS Appellant
Through: Ms. Prem Lata Bansal, Senior Advocate
with Ms. Nidhi Raman and Ms. Isha Khanna,
Advocates along with Mr. Ashok Kumar,
Accounts Officer, DBTB

versus

DIRECTOR OF INCOME TAX (E) Respondent
Through: Mr. Rahul Kaushik, Senior standing
counsel.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE CHANDER SHEKHAR

ORDER
03.05.2017

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Dr. S. Muralidhar, J.

1. These four appeals by the Delhi Bureau of Text Books ('the Assessee') under Section 260-A of the Income Tax Act, 1961 ('Act') are directed against the common impugned order dated 23rd April 2015 passed by the

Income Tax Appellate Tribunal ('ITAT') in ITA Nos. 2362/Del/2010, 2363/Del/2010, 3796/Del/2011 and 56/Del/2013 for the Assessment Years ('AYs') 2006-07, 2007-08, 2008-09 and 2009-10 respectively.

Questions of law

2. While admitting these appeals on 16th December 2015 this Court framed the following questions of law:

(i) Whether ITAT was correct in law and on facts in setting aside the order passed by CIT (A) and thereby denying exemption to the Assessee under Sections 11 and 12 of the Income Tax Act?

(ii) Whether the ITAT was correct in law and on facts in holding that the activities carried out by the Assessee fall under the 4th limb i.e., "the advancement of any other object of General Public Utility" of the definition of the term "charitable purpose" under Section 2 (15) of the Act and not under the 2nd limb "education"?

(iii) Whether ITAT could re-examine the issue already decided by it vide order dated 30.09.1980 in favour of the Assessee for AY 1975-76 and 1976-77, without referring the same to the large Bench particularly when there is no change in the activities carried out by the Assessee throughout these years?

Background facts

3. The background facts are that the Assessee is a society registered under the Societies Registration Act, 1860. It was set up by the Ministry of Education, Government of India as well as by the Government of NCT of Delhi ('GNCTD'). It was registered on 28th March 1970. The Assessee was set up to ensure timely supply of prescribed text books at fair prices to school students and to improve the quality of primary and secondary school education in Delhi schools.

4. The Assessee was registered as charitable under Section 12A (a) of the Act by an order dated 27th December 1973. The Assessee is attached to the Directorate of Education, GNCTD. Its activities are administered by the Board of Directors ('BoD') comprising of seven officers of the Directorate of Education in an *ex-officio* capacity and two members nominated by the Lieutenant Governor of Delhi. The Director of Education is the Chairman of the Assessee Society.

5. The Assessee is engaged in printing and publication of text books for Class I to VIII of Government Schools, Municipal Corporation of Delhi ('MCD') schools, New Delhi Municipal Council ('NDMC') Schools and Delhi Cantonment Schools. The books are provided at subsidized rates by the Assessee. There is nominal profit to school students and wholesale dealers. The Assessee is also distributing free books, reading material and school bags to needy students.

6. Para 4 of the Memorandum of the Assessee Society sets out its aims and objectives and reads as under:

- 1) To aid and promote the advancement of education particularly elementary and secondary education through production of high quality text books and other instructional material such as teachers hand-books, work books etc.,
- 2) To arrange for printing, publishing, stocking and distribution of approved text books and other teaching learning materials,
- 3) To encourage through training or otherwise authors and writers of text books and other teaching material,

4) To undertake evaluation and research for improvement of curricula, text books and other instructional material,

5) To make available at subsidized cost or free of cost or in some other suitable manner text books and other learning material to the children of economically weak families and similarly to make teaching material and aid available to teachers at subsidized cost or free of cost or in other suitable manner so as to promote better teaching in Delhi Schools with the prior approval of Delhi Admin, and

6) To obtain manuscripts of subject text books prepared by the Text Book Branch of the Directorate of Education on such terms and conditions as may be determined by the Director of Education for printing, publishing and distribution in the Union Territory of Delhi.

7. Rule 17 of the Rules and Regulations governing the Assessee/Society states thus:

“(1) The income of the Society derived from the Government Loans or sale of books or other sources shall be applied only towards the promotions of its objectives and Society, as laid down under this “Memorandum of Association.”

Past tax history

8. The Assessee's income was exempt from tax under Section 11 of the Act during the AYs 1971-72 to 2005-06. When in AYs 1975-76 and 1976-77, the benefit of exemption from payment of income tax was denied by the concerned Assessing Officer ('AO'), the Assessee went in appeal before the Commissioner of Income Tax (Appeals) ['CIT (A)'] who allowed the appeal and restored the exemption. The Revenue's appeals against the said order were dismissed by the ITAT vide order dated 30th September 1980 in ITA Nos.1239/Del/1979 & 4448/Del/1979. Those orders of the ITAT for AYs 1975-76 and 1976-77 attained finality. The net result is that continuously

from AY 1971-72 to AY 2005-06 the Assessee has had the benefit of exemption from payment of income tax.

Order of the AO for the AYs in question

9. For AY 2006-07, the Assessee filed its return of income on 31st October 2007 declaring 'Nil' income claiming exemption under Sections 11 and 12 of the Act. The AO called upon the Assessee to explain why the activity of publication and sale/purchase of books should not be treated as business activity. Secondly, the Assessee was asked whether it was maintaining books of accounts as mandated by Section 11 (4A) of the Act. The approach of the AO was to consider the Assessee as a 'General Public Utility.' Referring to the decision of the Supreme Court in ***Sole Trustee Loka Shikshana Trust v. Commissioner of Income Tax (1975) 101 ITR 234 (SC)***, the AO observed that since the Assessee was earning huge profit margins of about 35.15%, the activity of publication and sale of books could not be said to be a 'charitable activity'. Accordingly, the AO treated the income from the sale and publication of books as taxable for each of the AYs in question.

Order of the CIT (A)

10. Aggrieved by the above order, the Assessee filed appeals before the CIT (A) who by order dated 31st March 2010 reversed the AO's decision. The CIT (A) noted that the AO had not returned a finding that the Assessee's activities were beyond the aims and objectives of the Society as per its Memorandum of Association & Rules. Once registration had been granted under Section 12 A of the Act, the AO could not re-examine the issue

whether what was being carried on by the Assessee was a charitable activity under Section 2 (15) of the Act. The CIT (A) referred to the decision in ***ACIT v. Surat City Gymkhana (2008) 300 ITR 214 (SC)***.

11. The CIT (A) further held that generation of income is no test in itself for determining the charitable nature of the activities. Earning of a surplus in working out the charitable purpose would not place the entity outside the purview of Section 2 (15) read with Sections 11 and 12 of the Act. The CIT (A) referred to the decisions in ***ACIT v. Surat Art Silk Cloth Manufacturers Association (1980) 2 SCC 31***, ***Aditanar Education Institution v. ACIT (1997) 3 SCC 346*** and ***ACIT v. Thanthi Trust (2001) 247 ITR 785 (SC)***.

12. For the subsequent AYs, the AO continued to deny the exemption by the assessment orders dated 26th November 2010, 15th December 2011 and 31st December 2008 for the AYs 2008-09, 2009-10, 2006-07. The CIT (A) by the corresponding orders dated 30th June 2011, 18th October 2012 and 22nd February 2010 allowed the Assessee's appeals and restored the exemption.

Impugned order of the ITAT

13. Aggrieved by the above orders of the CIT (A), the Revenue went in appeal before the ITAT which by a common order allowed the appeals. The impugned order of the ITAT may be summarised as under:

- (a) After perusing the income and expenditure statement for the AYs in question, the ITAT observed that the AO had rightly held that the activity of the Assessee was *prima facie* in the nature of a business

activity of sale and purchase of books. The books had been sold at a huge profit margin about 40% which showed that the Assessee was engaged in the activities of earning profit. Accordingly, it was held that the activities of the Assessee society are in the nature of business and not charitable purpose. The decisions in *Sole Trustee, Loka Shikshana Trust v. CIT* (*supra*) and *Oxford University Press v. Commissioner of Income Tax (2001) 247 ITR 658 (SC)* were referred to.

(b) Even if the registration is granted to the Assessee under Section 12 AA of the Act, the AO was not precluded from examining whether the Assessee complied with the requirement of Section 11 of the Act in every AY.

(c) The ITAT held that its earlier order dated 30th September 1980 for AYs 1975-76 and 1976-77 had not considered the income and expenditure statements filed by the Assessee for those AYs and other relevant evidence. It was observed that the facts on hand were different. It further held that the Assessee has not maintained separate books of accounts for its activities of sale and purchase of books for the AY in question and thus has violated the provisions of Section 11 (4A) of the Act. The Assessee had made accumulation in excess and “without specifying any purpose” and “was not wholly for the charitable purpose.” Reliance was placed on the decision of the Supreme Court in *Nachimuthu Industrial Association v. CIT (1999) 235 ITR 190 (SC)*.

Submissions on behalf of the Assessee

14. Ms. Prem Lata Bansal, learned Senior counsel for the Assessee, submitted that the ITAT erred in not appreciating the law governing the grant of exemption to a charitable institution as defined under Section 2 (15) read with Sections 11 (1) and 12 of the Act. Ms. Bansal submitted that in terms of the law explained in ***Sole Trustee, Loka Shikshana Trust v. CIT (supra)***, the Assessee's income was derived from activity that constituted 'charitable purpose' which included 'education'. Ms. Bansal submitted that the ITAT had erred in affirming the view of the AO that the income was from 'trade, commerce or business' and therefore, within the ambit of 'general public utility'. Ms. Bansal referred to the decision in ***Assam Text Book Production & Publication Corporation Limited v. CIT (2009) 319 ITR 317 (SC)*** which had reversed the view taken by the Gauhati High Court which, incidentally, was followed by the ITAT in the present case. Ms. Bansal also placed reliance on the decisions in ***CIT v. Rajasthan State Text Book Board (2000) 244 CTR 667 (Raj)***, ***Secondary Board of Education v. ITO (1972) 86 ITR 408 (Ori)***.

15. Referring to the decision of the Supreme Court in ***ACIT v. Surat City Jimkhana (supra)*** Ms. Bansal submitted that once the registration of a trust under Section 12 A of the IT Act is given the AO cannot thereafter make a further probe into the purposes of the entity. She also referred to the decision in ***Hiralal Bhagwati v. CIT (2000) 246 ITR 188 (Guj)***. Ms. Bansal pointed out that the legal position has been discussed extensively in ***Institution of Chartered Accountants of India v. Director General of Income Tax***

(Exemptions) (2012) 347 ITR 99 (Del) where the dominant function of the institution was examined in order to determine whether its earnings were for charitable purposes.

16. Finally, Ms. Bansal submitted that the rule of consistency should also apply. She pointed out that from AY 1974-75 till 2005-06, exemption has been granted to the Appellant and with absolutely no change of circumstances there was no occasion for a different approach to be taken for the AYs in question. She also placed reliance on the decisions of the Supreme Court in *CIT v. Excel Industries (2013) 262 CTR 261 (SC)* and *Radhasoami Satsang Saomi Bagh, Agra v. Commissioner of Income Tax (1992) 193 ITR 321 (SC)*

Submissions on behalf of the Revenue

17. Countering the above submissions, Mr. Rahul Kaushik, learned Senior standing counsel for the Revenue, sought to support the impugned order of the ITAT by pointing out that the level of profits earned by the Appellant during the AYs in question took its activity outside the ambit of a ‘charitable purpose’. He submitted that the ITAT was justified in negating the plea by relying on the decision in *Sole Trustee, Loka Shikshana Trust v. CIT (supra)*. While Mr. Kaushik was unable to dispute that the activity of the Appellant involved ‘education’, he maintained that the Appellant did not satisfy the requirement of the proviso under Section 2 (15) of the Act viz., that the activity should not be related to ‘trade, commerce or business’.

18. As regards the submission regarding the issue for grant of registration under Section 12A of the Act precluding the AO from re-examining the

question of eligibility of the Assessee to examine, Mr. Kaushik referred to the case law referred to by the ITAT and submitted that the AO was within his rights to again examine whether those conditions were satisfied in every one of the AYs in question.

19. Lastly, it was submitted by Mr. Kaushik that every AY was separate. Merely because in an earlier AY another point of view was expressed would not preclude the AO from re-visiting the issue if he found that the facts and circumstances warranted it. He placed reliance on the decisions in ***C.K. Gangadharan v. Commissioner of Income Tax, Cochin (2008) 8 SCC 739*** and ***Commissioner of Central Excise, Raipur v. Hira Cement (2006) 2 SCC 439***.

Is the Assessee engaged in the activity of 'education'?

20. The Court first considers the question of the interpretation placed on the word 'education' occurring in Section 2 (15) of the Act. The exclusive activity of the Assessee is the publication and printing of text books and their distribution to Government schools and schools of the MCD, NDMC, etc. This activity has continued uninterruptedly since the time of its inception, i.e., from AY 1971-72 onwards. The fact that the Assessee is a non-profit organisation is not in dispute. Its essential activities are administered by the BODs comprising of officers of the Government of India as well as GNCTD, in its *ex officio* capacity. The textbooks are provided by the Assessee to the students at subsidized rates. Even the textbooks books, reading materials and school bags are being distributed free to deserving students. The essential activity of the Assessee is

connected with 'education' and nothing else.

21. In *Sole Trustee, Loka Shikshana Trust v. CIT* (*supra*), the Supreme Court explained as under:

“The sense in which the word "education" has been used in section 2(15) is the systematic instruction, schooling or training given to the young in preparation for the work of life. It also connotes the whole course of scholastic instruction which a person has received. The word "education" has not been used in that wide and extended sense, according to which every acquisition of further knowledge constitutes education. According to this wide and extended sense, travelling is education, because as a result of travelling you acquire fresh knowledge. Likewise, if you read newspapers and magazines, see pictures, visit art galleries, museums and zoos, you thereby add to your knowledge. Again, when you grow up and have dealings with other people, some of whom are not straight you learn by experience and thus add to your knowledge of the ways of the world. If you are not careful, your wallet is liable to be stolen or you are liable to be cheated by some unscrupulous person. The thief who removes our wallet and the swindler who cheats you teach you a lesson and in the process make you wiser though poorer. If you visit a night club, you get acquainted with and add to your knowledge about some of the not much revealed realities and mysteries of life. All this in a way is education in the great school of life. But that is not the sense in which the word "education" is used in clause (15) of Section 2. What education connotes in that clause is the process of training and developing the knowledge, skill, mind and character of students by normal schooling.”

22. The preparation and distribution of text books certainly contributes to the process of training and development of the mind and the character of students. There does not have to be a physical school for an institution to be eligible for exemption. What is important is the activity. It has to be intrinsically connected to 'education'.

23.1 In *Assam State Text Book Production and Publication Corporation Limited v. CIT* (*supra*), the facts were more or less similar. There, the Assessee which was initially constituted as ‘Central Text Book Committee’ changed its name to the ‘Assam Text Book Committee’ with ten members nominated by the State Government. The Board was then converted into a corporation in 1972. The entire share capital of the corporation was owned by the Government of Assam.

23.2 There again, the AO sought to deny exemption on the ground that the Corporation was not an ‘educational institution’ under Section 10 (22) of the Act. According to the AO, during the relevant AYs, the Assessee “had income exclusively from publication and selling of text books to the students” and, therefore, the exemption was not available.

23.3 The High Court agreed with the AO and concluded that “the Assessee did not exist solely for educational purposes; that it did not solely impart education and that its income during the relevant assessment years was only from publishing and sale of text books.” The High Court construed this as ‘profit-earning activity’.

23.4 The Supreme Court disagreed with the High Court. It noted that “the aim of the said Corporation is to implement the State’s policy on education”. It took note of the fact that in the year 1975, the CBDT had granted exemption under Section 10 (22) of the Act to the Tamil Nadu Text Books Society, which had performed activity similar to the Assessee. The Supreme Court also referred to the decision in *Commissioner of Income Tax v.*

Rajasthan State Text Book Board (*supra*) as well as the decision of the Orissa High Court in ***Secondary Board of Education v. ITO*** (*supra*). It concurred with the approval of the following operative portion of the judgment in ***CIT v. Rajasthan State Text Book Board*** (*supra*):

"It is not disputed before us that the aims and objects of the Tamil Nadu Text Book Society and those of the Respondent-Assessee are almost identical. It is also not shown to us that the surplus amount, if any, of the Respondent-Assessee, is used for any other purpose or distributed to other members. The Commissioner of Income-tax (Appeals) as well as the Tribunal have noticed that even if some amount remains surplus, that is utilised only for the purposes of education. Thus, having regard to the concurrent findings of fact recorded by the Commissioner of Income-tax (Appeals) and the Tribunal and also taking note of the letter of the Central Board of Direct Taxes itself, it is not possible for us to say that the order of the Tribunal is erroneous in any way. In this way, no question of law arises for consideration much less a substantial question of law."

23.5 The Supreme Court in ***Assam State Text Book Production and Publication Corporation Limited v. CIT*** (*supra*) concluded as under:

"Following the judgement of the Rajasthan High Court, we are of the view that, in this case, the High Court, in its impugned judgement, has not considered the historical background in which the Corporation came to be constituted; secondly, the High Court ought to have considered the source of funding, the share-holding pattern and aspects, such as return on Investment; thirdly, it has not considered the letters issued by C.B.D.T. which are referred to in the judgement of the Rajasthan High Court granting benefit of exemption to various Board/Societies in the country under Section 10(22) of the Act; fourthly, it has failed to consider the judgements mentioned hereinabove; and lastly, it has failed to consider the letter of the Central Government dated 9th July, 1973, to the effect that all State-controlled Educational Committee(s)/Board(s) have been constituted to implement the educational policy of the State(s); consequently, they should be treated as educational institution."

24. In *Institute of Chartered Accountants of India v. DGIT (supra)*, the question that arose before this Court was whether the Petitioner-Institute could be denied exemption in view of the proviso to Section 2 (15) of the Act since it was engaged in activity of ‘advancement of any other object of general public utility.’ Although the Court held that the Petitioner could not be recognized as an educational institute, it accepted the plea that the Petitioner there was engaged in advancement of any other object of the general public utility. The Court concluded that merely because there was profit generated as a result of the activity it could not be concluded that the ‘institute’ should be disentitled to exemption. It was held that “a very narrow view had been taken that the Institute was holding coaching classes and that this amounted to business” and that therefore, ‘the question whether the Institute carried on business had not been examined with proper perspective.’”

25. In *Commissioner of Income Tax v. M.P. Raja Pathya Pustak Nigam (2009) 226 CTR 497 (MP)* the Madhya Pradesh High Court held as under:

“17. From a perusal of the aforesaid decisions, it is lucid that for the entitlement for getting exemption for the assessment year, it is required to see the activities of the Assessee. That is the acid test. If the income/profit is applied for non-educational purposes, it is decided only at the end of the financial year. It is to be seen whether the Assessee is engaged in any kind of educational activities. The authorities which we have referred to above have laid down the criteria under what circumstances an Assessee can claim exemption being involved in educational purposes and how the income is spent.”

26. In *Council for the Indian School Certificate Examinations v. Director*

General of Income-Tax (Exemptions) (2014) 362 ITR 436 (Del) the Court held the Council for the Indian School Certificate Examinations to be an educational institution and quashed the order which denied it exemption under Section 10 (23c) (vi) of the Act. It was reiterated as under:

“It is, therefore, clear that courts have laid emphasis on the activity undertaken, while construing or deciding whether or not a particular institution can be regarded as an educational institution. The courts have repeatedly held that the holding of classes is not mandatory for an institution to qualify and to be treated as an educational institution. If the activity undertaken and engaged is educational, it is sufficient.”

27. Reverting to the case on hand, the Court finds that what the ITAT has held in the impugned order is contrary to the settled law as explained in the above decisions. The ITAT came to the erroneous conclusion that merely because the Assessee had generated profits out of the activity of publishing and selling of school text books it ceased carrying on the activity of 'education.' The ITAT failed to address the issue in the background of the setting up of the Assessee, its control and management and the sources of its income and the pattern of its expenditure. The ITAT failed to notice that the surplus amount was again ploughed back into the main activity of 'education'. The question to be asked was whether the activity of the Assessee contributed to the training and development of the knowledge, skill, mind and character of students? In the considered view of the Court, the answer to that question had to be, in the facts and circumstances outlined above, in the affirmative.

28. The Court, accordingly, concludes that the ITAT was incorrect in setting aside the order passed by the CIT (A) and in denying exemption to the

Assessee under Section 11 and Section 12 of the Act. The ITAT erred in holding that the activities carried out by the Assessee fell under the 4th limb of Section 2 (15) of the Act, i.e., 'the advancement of any other object of general public utility' and that its activities were not solely for purpose of advancement of 'education'. Questions (i) and (ii) framed by the Court are, therefore, answered in the negative, i.e., in favour of the Assessee and against the Revenue.

Consistency

29. On the issue of consistency, the Court notes that in the present case, continuously from AYs 1971-72 till 2005-06, exemption had been granted to the Assessee under Sections 11 and 12 of the Act. When for AYs 1975-76 and 1976-77 the AO sought to take a different view, the ITAT reversed that view and the decision of the ITAT was not challenged further by the Revenue. Apart from the fact that the Assessee was earning more profits from its essential activity of education, there was no change in the circumstances concerning the said activity since AY 2005-06 to warrant a different approach in the AYs in question.

30. In ***Parashuram Pottery Works Ltd. v. Income Tax Officer (1977) 106 ITR 1 (SC)*** the Supreme Court explained the rule of consistency in tax matters as under:

"We are aware of the fact that strictly speaking *res judicata* does not apply to income-tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging

the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

"On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter - and if there was no change it was in support of the Assessee - we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income Tax in the earlier proceedings, a different and contradictory stand should have been taken."

31. In ***Radhasoami Satsang Saomi Bagh v. Commissioner of Income Tax*** (*supra*), the Supreme Court reiterated the above legal position. This time it quoted with approval the following extract from ***Hoystead v. Commissioner of Taxation 1926 AC 155 (PC)***:

"Parties are not permitted to begin fresh litigation because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle. Thirdly, the same principle, namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the Plaintiff and traversable by the Defendant, has not been traversed. In that case also a Defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."

32. Recently, in ***CIT v. Excel Industries*** (*supra*), the above legal position was reaffirmed by the Supreme Court. On the facts of that case it was held:

"31. It appears from the record that in several assessment years, the Revenue accepted the order of the Tribunal in favour of the Assessee and did not pursue the matter any further but in respect of some

assessment years the matter was taken up in appeal before the Bombay High Court but without any success. That being so, the Revenue cannot be allowed to flip-flop on the issue and it ought let the matter rest rather than spend the tax payers' money in pursuing litigation for the sake of it."

33. The decisions relied upon by Mr. Kaushik appear to have turned on their peculiar facts. The question that arose was whether merely because the Revenue did not file appeals against the decisions against it in some of the AYs, it could be precluded from challenging the decisions on the issue against it in the subsequent AYs. The facts here are stark, though. Having adopted a consistent stand for over 34 years, and with there being no change in the circumstances, there was no justification for the Revenue to take a different view in the matter only because it was possible to do so.

34. Question (iii) framed by the Court is also answered in the negative, i.e., in favour of the Assessee and against the Revenue.

35. The impugned common order dated 23rd April 2015 of the ITAT for the AYs 2006-07, 2007-08, 2008-09 and 2009-10 is hereby set aside. The appeals are allowed but, in the circumstances, with no orders as to costs. CM No. 24170/2015 in ITA No. 811/2015 is also disposed of.

S. MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 03, 2017/Rm