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

+ **ITA 691/2017**

COMMISSIONER OF INCOME TAX-(EXEMPTIONS),.. Appellant

Through: Mr. Zoheb Hossain, Sr. Standing
Counsel, with Mr. Deepak
Anand, Advocates for the Revenue

Versus

M/S.GS1 INDIA

..... Respondent

Through: Mr. Rishabh Sancheti, Ms. Padma
Priya & Mr. Anchit Bhandari,
Advocates

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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16.02.2018

The Revenue's appeal before this Court challenges an order of the ITAT.

It is urged that the sum of Rs. 9 crores received by the assessee taken for bar code licensing fee is essentially a commercial receipt and therefore liable to be treated as such for the relevant Assessment Year.

Concededly, the assessee is a charitable society and has got the protection of Section 2 (15) read with Section 10 (23)(C) of the Income Tax Act.

This Court notices that the bar code licensing activity carried on

by the assessee essentially hinges upon the public policy measure adopted by the Union Ministry of Commerce. Under somewhat similar circumstances - concerning the fee receipt for domain name registration, the Court has held that such receipts are not commercial (*Commissioner of Income Tax (Exemption) Vs. National Internet Exchange of India* (in ITA No. 521/2017 & CM No. 815/2018 decided on 09.01.2018).

The Court had then held as follows :-

“It is contended by the Revenue that the assessee provides services for which it charges users on a commercial basis and therefore, cannot fall within the charitable object, for which it was established. On the other hand, the assessee contends that the reasoning of the CIT(A) and the ITAT are sound and do not call for interference.

We notice that both the appellate authorities have concluded that the assessee’s objects are charitable; it provides basic services by way of domain name registration, for which, it charges subscription fee on annual basis and also collects connectivity charges. In addition, we notice that the assessee is the only nationally designated entity entitled to allocate domain names to its applicants who seek it in India. Apparently, it is also an affiliate national body of the ICAMM and authorized to assign “.in” registration and domain names in terms of Central Government’s letter dated 20.11.2004. In that sense, the assessee (though not a statutory body) is carrying on regulatory work. It’s case would therefore be a fortiori on a different footing than Chamber of Commerce, and other such trade bodies, set up not for profit basis but should have been held to be charitable organizations such as Bureau of Indian Standards, ICAI Accounting Research Foundation, etc. (Bureau of India Standards v. Director General of Income Tax (Exemption) 2012 TOIL 928 (Del); ICAI Accounting Research

Foundation v. Director General of Income Tax (Exemption) 321 ITR 73 (Del) }.

Having regard to these facts and the conclusions of the lower appellate authorities, no question of law arises. The appeal is therefore dismissed. “

This Court by its judgment in *GSI India Vs. Director General of Income Tax (Exemption) and Anr.*, (2014) 360 ITR 138 granted exemption under Section 2(15) read with Section 10(23C)(iv), observing as, follows :-

24. *“The petitioner does not cater to the lowest or marginalized section of the society, but Government, public sector and private sector manufacturers and traders. No fee is charged from users and beneficiaries like stockist, whole sellers, government department etc. while a nominal fee is only paid by the manufacturer or marketing agencies i.e. the first person who installs the coding system which is not at all exorbitant in view of the benefit and advantage which are overwhelming. Any one from any part of the world can access the database for identification of goods and services using global standard. The fee is fixed and not product specific or quantity related i.e. dependent upon quantum of production. Registration and annual fee entitles the person concerned to use GSI identification on all their products. Non levy of fee in such cases may have its own disadvantages and problems. Charging a nominal fee to use the coding system and to avail the advantages and benefits therein is neither reflective of business aptitude nor indicative of profit oriented intent.*

25. *Having applied the test mentioned above, including the criteria for determining whether the fee is commensurate and is being charged on commercial or business principles, we find that the petitioner fulfils the charitable activity test. It is apparent to us that Revenue has taken a contradictory stand as*

they have submitted and accepted that the petitioner carries on charitable activity under the residuary head “general public utility” but simultaneously regards the said activity as business. Thus the contention of the Revenue that the petitioner charges fee and, therefore, is carrying on business, has to be rejected. The intention behind the entire activity is philanthropic and not to recoup or reimburse in monetary terms what is given to the beneficiaries. Element of give and take is missing, but decisive element of bequeathing is present. In the absence of “profit motive” and charity being the primary and sole purpose behind the activities of the petitioner is perspicuously discernible and perceptible.

27. As observed above, fee charged and quantum of income earned can be indicative of the fact that the person is carrying on business or commerce and not charity, but we must keep in mind that charitable activities require operational/running expenses as well as capital expenses to be able to sustain and continue in long run. The petitioner has to be substantially self-sustaining in long-term and should not depend upon government, in other words taxpayers should not subsidize the said activities, which nevertheless are charitable and fall under the residuary clause “general public utility”. The impugned order does not refer to any statutory mandate that a charitable institution falling under the last clause should be wholly, substantially or in part must be funded by voluntary contributions. No such requirement has been pointed out or argued. A practical and pragmatic view is required when we examine the data, which should be analyzed objectively and a narrow and coloured view will be counter-productive and contrary to the language of Section 2 (15) of the Act. “

In the present case, activities of the assessee are similar; the bar code licensing fee received by the two cannot be characterized as commercial receipts and subject to tax treatment.

Following the judgment of *GSI India Vs. Director General of Income Tax (Exemption) and Anr. (supra)*., it is held that the ITAT's decision is correct in law and does not call for interference. No substantial question of law arises.

The appeal is dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 16, 2018/P