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

+ **ITA 976/2018**

Date of decision: 7th September, 2018

THE COMMISSIONER OF INCOME TAX - EXEMPTION

..... Appellant

Through: Mr. Ruchir Bhatia, Advocate

versus

SOCIETY FOR INDIAN AUTOMOBILE MANUFACTURES

..... Respondent

Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act'), in the case of Society for Indian Automobile Manufacturers('respondent/assesse') pertains to the Assessment Year 2011-12, impugns the order dated 9.4.2018 passed by the Income Tax Appellate Tribunal('Tribunal') in ITA No.6631/Del/2015.

2. The respondent/assesee is a society registered under Section 12A and enjoys exemption under Section 80G of the Act. It is an apex body for Indian automobile manufacturers and works for sustainable growth of the automobile industry in India, and focuses on protection of environment, pollution control, safety of automobile vehicle users etc.

3. The first issue raised in this appeal relates to addition of Rs. 1,89,50,318/- made by the Assessing Officer on account of un-utilized funds

as on 31st March, 2011, for overseeing the project- “A Model Inspection & Certification centre at Aniangaoon in Chhindwara, Madhya Pradesh” on behalf of the Ministry of Road Transport and Highways ('Ministry', for short).

4. The Assessing Officer held that Rs.2,55,60,000/- received from the Ministry was income/revenue receipt as the same was deposited in the bank account of the respondent/assessee. Accordingly Rs.1,89,50,318/- i.e. receipt minus expenses(2,55,60,000/- minus 66,09,682/-)was directed to be added to the income of the respondent/assessee.

5. The Commissioner of Income Tax(Appeals) deleted this addition observing that the Ministry had sanctioned Rs.1,474.10 lacs (including cost of land) for setting up Model Inspection & Certification Centres. The respondent/assessee was to execute this project for and on behalf of the Ministry. The amount received was in form of a financial sanction and not a grant. The funds though routed and kept in a separate bank account in the name of the respondent-assessee did not belong to the respondent-assessee. They belonged to the Ministry. Separate books of accounts, ledger, bank book etc. were kept. The respondent-assessee was to periodically furnish utilisation certificate to the Ministry. On completion of the project the unutilised amount was to be returned to the Ministry. Thus, the amount received was not revenue receipt. Addition of Rs. 1,89,50,000/- was deleted.

6. The Tribunal by the impugned order has dismissed the appeal of the Revenue.

7. The assessment order lacks and suffers from failure to examine factual details. Revenue while preferring the appeal has not placed on record letters and correspondence between the Ministry and the respondent-

assessee. Revenue is therefore unable to dispute the factual position elucidated and highlighted in the appellate orders. We would therefore not upset the finding that the money in the separate bank account in the name of the respondent-assessee was not a grant, but an amount that belonged to the Ministry. This being the position we do not find any merit in the submission made by the Revenue that the amount received from the Ministry belonged to the respondent-assessee and was their income. The amount received in view of the factual findings cannot be treated as revenue receipt or income of the respondent-assessee.

8. There is case law that money or payment received in trust and in fiduciary capacity, should not be treated as income earned as has been held in *Commissioner of Income-tax Vs. Sandersons and Morgans (1970) 75 ITR 433 (Cal)*. In this case it was observed that solicitor's lien over the advance money received was no different than a person having charge over someone else money. Money received to be income should have profit making quality in it. Every receipt is not income earned. Reference can be also made to *Commissioner of Income-tax, Kerala Vs. Mrs. Doris S. Luiz (1974) 96 ITR 646 (Ker.)*.

9. The second ground raised in the present appeal relates to interest of Rs.2,83,477/-, statedly earned during the period relevant to the assessment year but not accounted for in the income of this year. This addition was deleted by the Commissioner of Income Tax (Appeals), who has observed that the respondent-assessee had received contributions in foreign exchange for two projects, i.e. 'SIMBA' and 'STADIUM'. The contributions had required permission from the Ministry of Home Affairs, Foreign Contribution Division. Further, this Ministry had imposed restriction on use

of the contributions till the permission/registration was accorded by them. Registration under Foreign Contribution Regulation Act was granted to the respondent/assessee on 6.11.2013. Therefore, the interest accrued till 31.03.2012 to the tune of Rs.2,83,477/- was included as income for the Assessment Year 2014-2015, i.e. after the respondent/assessee had secured registration under the Foreign Contribution Regulation Act. Interest amount has been taxed, *albeit* in the said year.

10. Keeping in view the factual matrix and the reasoning, we are not inclined to frame a substantial question of law on the second aspect.

11. The appeal has no merit and is dismissed, without any order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

SEPTEMBER 07, 2018

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