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

\+ ITA 521/2017 & CM No.815/2018

COMMISSIONER OF INCOME TAX (EXEMPTION)

..... Appellant

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

versus

NATIONAL INTERNET EXCHANGE OF INDIA

..... Respondent

Through: Mr. Rohit Jain with Mr. Aniket D. Agrawal, Advs.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **09.01.2018**

1. The Revenue's appeal under Section 260A of the Income Tax Act, 1961 impugns decision of the Income Tax Appellate Tribunal (ITAT). The ITAT had for A.Y. 2009-10 upheld the order of the CIT(A). The Appellate Commissioner had set aside the findings of the AO, bringing to tax ₹11,39,72,556/- on the ground that such receipts were essentially commercial in nature and did not fall within the description of charitable activity.

2. The assessee is a Section 25 Companies Act entity and was granted registration under Section 12A of the Act for A.Y. 2004-05

onwards. It is engaged in general public utility services. What attracted the adverse attention of the AO was the aggregate of the subscription fee and the fee charged by the assessee towards various services provided for, by it. The AO felt that these were in the nature of commercial activity and fell outside the charitable objects, for which it was established.

3. The CIT(A) after considering the objects, was of the opinion that the assessee had been incorporated without any profit motive. He also concluded that the nature of services provided by the assessee were of a general public utility and that the services provided, were towards membership and connectivity charges, only incidental to the main objects of the assessee. The ITAT confirmed these findings.

4. 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.

5. 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 Indian 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)].

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

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 09, 2018
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