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

+ **ITA 1486/2018 & C.M. No. 54341/2018**

THE COMMISSIONER OF INCOME TAX -EXEMPTION

..... Appellant

Through: Ms. Adeeba Mujahid, Junior Standing
Counsel for Mr. Ajit Sharma, Senior
Standing Counsel.

versus

**INDO-FRENCH CENTRE FOR THE PROMOTION OF
ADVANCED RESEARCH**

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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09.10.2019

**ITA 1486/2018 & C.M. No. 54341/2018 (to seek condonation of 310 days
in re-filing the appeal)**

1. We have heard learned junior standing counsel for the Revenue. The present appeal is directed against the order dated 29.08.2013 passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') in I.T.A. No. 2802/Del/2014 (for the assessment year 2010-11). The Tribunal has rejected the appeal preferred by the Revenue against the order of the CIT (Appeals) dated 19.02.2014. Vide order dated 21.12.2018, this Court had expressed that this appeal may be covered by the earlier decision rendered by this Court in the case of the same assessee and directed the learned counsel for the Appellant to place on record a copy of that order. Learned

counsel has produced a copy of the said order and submitted that the matter is not covered by the earlier decision of this Court in ITA 427/2014 decided on 31.10.2014 relating to the same assessee. Before proceeding further, taking advantage of the aforesaid decision, we reproduce from it the background in which the Respondent assessee society came into being, and the purpose for which it was established. The relevant extract from the decision in ITA 427/2014 reads as under:

“(a) Indo French Centre for Promotion of Advanced Research was formed in India, jointly by the Government of India and Government of France based on the principle of reciprocity and parity. The said Centre was registered as a Society under the Societies Registration Act, 1860 on 16.04.1986 and has been recognized as a Scientific and Industrial Research Organization by the Department of Scientific and Industrial Research (DSIR).

(b) As per the bilateral agreement between the Governments of India and France, the decisions of the respondent-Centre are subject to scrutiny of both Governments.

(c) The Government of India had assured exemption from payment of taxes to the then proposed Centre by their letter dated 08.06.1985. Thereafter, there was exchange of correspondence and it was mutually decided by the two Governments that the

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said Centre would be exempt from payment of income tax. No custom duties would be payable by the said Centre under the Indian Laws for import of scientific equipment.

(d) The Government of France had agreed to make contribution to the said Centre in the following manner and mode:-

"1.1 Direct contribution to be transferred and placed at the disposal of the centre according to the approved budget.

1.2 Equipment etc. as may be given, from time to time, by the French side.

1.3 Expenses in France to be borne by the France side on visits of Indian scientists to France.

1.4 Air Fare for French scientists visiting India.

1.5 Any other expenses which the French side agree to bear."

(e) This was accepted by the Government of India. Pursuant to the aforesaid agreement, the Reserve Bank of India had permitted/ allowed opening of a foreign currency account by the respondent Centre in France with a French Bank in Paris. The Reserve Bank of India by letters dated 04.07.1988 and 05.09.1988 granted the following permissions:-

"i. Grants received from the French Govt. may be credited to the account freely.

ii. Interest on balance may be credited to the account freely.

iii. Debit in respect of bank charges and repatriation to India may be made freely.

iv. Debits for the expenses in connection with conducting of research programs in French Laboratories and joint workshops, seminars abroad may be made freely.

v. All other transactions will require the prior approval of Reserve Bank of India.

1.5 As per the arrangement the grants in aid from the Govt. of France is to be deposited in the bank account in France and after meeting the expenses incurred in France, balance grant in aid is freely remittable to India. ""

2. The Assessing officer held that the foreign contribution made by the Government of France to the tune of Rs. 9,45,28,000/- was in breach of the provisions of the FCRA. On that premise, the Assessing Officer has made the said addition. The CIT (Appeals) set aside the addition of Rs.9,45,28,000/- made by the Assessing Officer on the ground that the assessee society had received the grant from the French Government in violation of FCRA (Foreign Contribution Regulation Act, 2010). He also

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set aside the addition of Rs. 8,849/- on the ground that the deposit in the French bank account violates the provisions of section 11(5) read with section 13(1)(d) of the Income Tax Act. A perusal of the impugned order shows that the Government itself had clarified that transaction between Government of India, and Government of any foreign country or territory do not attract the provisions of the FCRA as stipulated in Section 51 of FCRA, 2010. Not only this, the Government of India addressed a communication to the Secretary General, Ministry of External Relations, Government of France through its Foreign Secretary, making it clear that the assessee society established for promotion of scientific research etc. will be exempt from payment of income tax.

3. The submission of learned counsel for the Appellant is that the Respondent assessee is a society registered under the Societies Registration Act, 1860 which cannot be considered to be the Government of India itself. She further submits that the Respondent assessee society had obtained registration under Section 12AA of the Income Tax Act and, therefore, each year the expenditure incurred by the said society was liable to scrutiny under Section 11 of the Income Tax Act. Since the contribution of Rs. 9,45,28,000/- was in violation of FCRA, the Assessing Officer was justified in making the addition.

4. Having heard learned Jr. Standing Counsel, we are of the considered view that firstly, the Appellant is not justified in claiming that the provisions of the FCRA are attracted in the present case, since the contribution has been made by the Government of France under a sovereign agreement between

the Government of France and the Government of India. The two sovereign governments may have decided to incorporate the Respondent assessee society as a vehicle to fulfill their objective in the field of scientific research. That does not take away the fact that the transaction was between the two sovereign governments. Moreover, then Foreign Secretary also gave a sovereign assurance to the Government of France, on behalf of the Government of India on 08.06.1985, that the assessee society established for promotion of scientific research etc. will be exempted from payment of income tax.

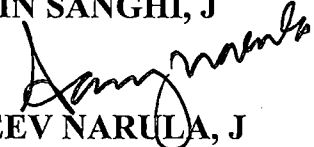
5. Even if the aforesaid aspects were to be kept aside, the enquiry that the Assessing Officer is obliged to undertake under section 11, on year to year basis, is in relation to the expenditure incurred by the assessee society, and to ascertain whether the contributions have been utilized for the purpose for which the said society is incorporated and granted registration. It was not found by the Assessing Officer that the assessee society had utilized any part of its funds for a purpose other than promotion of scientific research. Firstly, there was no violation of the FCRA. Even if, for the sake of argument, this submission is accepted, the so called violation of the FCRA would not give any cause to the Assessing Officer to make the addition of Rs. 9,45,28,000/-. For the same reason, the addition of Rs. 8,849/-, was also not justified.

6. We find no reason to take a different view from that taken by the Tribunal and in our view no question of law arises in the present appeal. The same is, accordingly, dismissed.

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7. Since we are not inclined to entertain the present appeal, we are not considering the aspect of delay in re-filing the same.


VIPIN SANGHI, J


SANJEEV NARULA, J

OCTOBER 09, 2019

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