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

+ **ITA 161/2021 & C.M.No.40492/2021**

PRINCIPAL COMMISSIONER OF INCOME TAX Appellant

Through **Mr.Abhishek Maratha, Advocate.**

versus

SERVANTS OF PEOPLE SOCIETY Respondent

Through **Mr.Ruchesh Sinha, Advocate.**

% Date of Decision: 16th November, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The appeal has been heard by way of video conferencing.
2. Present appeal has been filed challenging the order dated 17th September, 2019 passed by Delhi Bench 'A' of Income Tax Appellate Tribunal in ITA No. 4984/Del/2015 for the Assessment Year 2011-12, whereby the appeal filed by appellant was dismissed. The relevant portion of the impugned order is reproduced hereinbelow:-

"5. We have heard both the parties and perused the records especially the impugned order, Paper Book filed by the Assessee and the case laws relied therein as well as the relevant provisions of the Act on the issue in dispute. We find considerable cogency in the contention of the Ld. Counsel for the assessee that the assessee is a charitable institution and mere receipt of fees and income etc. cannot be said that the assessee is involved in any trade, commerce or business. The assessee is carrying the mandate of the Will of

Late Shri Gopa Bandhu Dass in running the printing press and the newspaper and the income so generated is used for charitable purposes and apparently there is no profit motive in the activities of the assessee and as such it cannot be said that the assessee is involved in any trade, commerce or business and as such the mischief of the Proviso of section 2(15) is not apparently attracted. We further note that the Hon'ble Delhi High Court in the case of India Trade Promotion Organization vs. DGIT9E) 53 Taxmann.com, 404 (Delhi) 2015 order dated 22.1.2015 has upheld the constitution validity of the proviso of section 2(15) which was under challenge being discriminatory in view of the Article 14 (Equality before law) of the Constitution of India but the Hon'ble High Court has read down the strict and literal interpretation of the Proviso to Section 2(15) and has held that mere receipt of fee or charge cannot be said that the assessee is involved in any trade, commerce or business and has accordingly allowed the relief to the aforesaid case. After considering all the facts and circumstances of the case, we are of the considered view that the assessee is a charitable and non-profit institution and also found that assessee is not involved in any trade, commerce or business activity which attracts the mischief of the Proviso of section 2(15) of the Act and the assessee has been enjoying the exemption u/s. 11(1) and also u/s. 10(23C)(iv) in the past and accordingly following the principle of consistency the AO was rightly directed to allow the exemption to the assessee u/s. 11(1) of Act with all the consequential benefits by the Ld. CIT(A). Hence, we do not find any infirmity in the order of the Ld. CIT(A), therefore, we uphold the same and reject the grounds raised by the Revenue and accordingly, dismiss the appeal filed by the Revenue.

3. In the present appeal, the Principal Commissioner of Income Tax (Exemptions) Delhi has proposed the following questions of law:-

“(1)Whether Hon'ble Income Tax Appellate Tribunal was correct in the eyes of the law in allowing benefit of exemption u/s 11 of the Income Tax Act, 1961 in the facts and circumstances of the present case?”

(2) Whether Hon'ble income Tax Appellate Tribunal was justified in the eyes of law in treating the assessee as a charitable institution, even when the activities of the assessee fall under the last limb of Section 2(15) of the Income Tax Act, 1961, i.e. advancement of any other object of general public utility and the same is hit by the amended proviso to the said section?

(3) Whether Hon'ble Income Tax Appellate Tribunal was justified in the eyes of law in passing the impugned order overlooking the fact that the activities carried out by the assessee yielded income/profit to the society and are commercial in nature?

(4) Whether Hon'ble Income Tax Appellate Tribunal was justified in the eyes of law in holding the income earned by commercial activity is charitable because of the application of the said income for the charitable-object of the society?

(5) Whether the Ld. Income Tax Appellate Tribunal was justified in the eye of law in passing the impugned order without testing the case in terms of the Judgement of the Constitutional Bench of Hon'ble Supreme Court in the case of Additional Commissioner of Income Tax Gujarat Vs. Surat Art Silk Cloth Manufacturers Association(1980) 121 ITR 1 (SC)?”

4. Learned Counsel for the appellant states that the Tribunal erred in allowing benefit of exemption under Section 11 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') in the facts and circumstances of the present case. He submits that the Tribunal erred in treating the assessee as a charitable institution, even when the activities of the assessee fell under the last limb of Section 2(15) of the Act. He emphasises that the activities carried out by the assessee yielded income/profit to the society and were commercial in nature.

5. This Court in ITA No.154/2021 titled '*Commissioner of Income Tax (Exemptions) Delhi vs. Association of State Road Transport Undertakings*

has held that it is settled law that the first proviso to Section 2(15) of the Act does not exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee. This Court has further held that the object of introducing first proviso is to exclude organizations which are carrying on regular business with profit motive with intent to distribute the profit to the shareholders/owners.

6. A perusal of the paper book reveals that the assessee/society is running a printing press and publishing a newspaper. The profit so generated is used for charitable purposes and apparently there is no profit motive in the activities of the assessee. As such it cannot be said that the assessee is involved in any trade, commerce or business. Consequently, the mischief of Proviso to Section 2(15) of the Act is not attracted.

7. In any event, the assessee/society is charitable in nature as the profit, if any, made by the assessee/society is being ploughed back for charitable activities. Further, the appellant itself has granted the assessee registration under Section 12A, recognition under Section 10(23C)(vi) and Exemption under Section 80G of the Act.

8. Consequently, this Court is in agreement with the findings of the CIT(A) and ITAT that the assessee/society does not carry on any business, trade or commerce with the intent of earning and distributing profit.

9. The Supreme Court in the case of **Ram Kumar Aggarwal & Anr. vs. Thawar Das (through LRs), (1999) 7 SCC 303** has reiterated that under Section 100 of the Code of Civil Procedure the jurisdiction of the High Court to interfere with the orders passed by the Courts below is confined to hearing on substantial question of law and interference with finding of the fact is not warranted if it involves re-appreciation of evidence. Further, the

Supreme Court in *State of Haryana & Ors. vs. Khalsa Motor Limited & Ors.*, (1990) 4 SCC 659 has held that the High Court was not justified in law in reversing, in second appeal, the concurrent finding of the fact recorded by both the Courts below. The Supreme Court in *Hero Vinoth (Minor) vs. Seshammal*, (2006) 5 SCC 545 has also held that “in a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible.” It has also held that there is a difference between question of law and a “substantial question of law”. Consequently, this Court finds that there is no perversity in the findings of the CIT(A) and ITAT.

10. Accordingly, the present appeal being bereft of merit is dismissed along with pending application.

MANMOHAN, J

NAVIN CHAWLA, J

NOVEMBER 16, 2021
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