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

+ ITA 198/2022 & C.M.No.30914/2022

COMMISSIONER OF INCOME TAX Appellant

Through: Mr.Ajit Sharma, senior standing
counsel for the Revenue.

versus

PROFESSIONAL ASSISTANCE FOR DEVELOPMENT ACTION

..... Respondent

Through: Mr.Piyush Kaushik, Advocate.

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Date of Decision: 15th July, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present Income Tax Appeal has been filed challenging the Order passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.3662/Del./2015 for the Assessment Year 2011-12.

2. Learned Counsel for the Appellant states that the ITAT has erred in not appreciating the fact that the activities of rendering services etc. by the respondent are in the nature of trade commerce or business which are not charitable in nature and therefore hit by proviso to section 2(15) of the Income Tax Act 1961 ('the Act').



3. He also states that the ITAT has erred in directing the Assessing Officer to allow the exemption under Section 11 of the Act without appreciating the fact that the Assessee cannot be treated to be engaged in charitable activities.

4. A perusal of the paper book reveals that the assessee is engaged in activities for upliftment of the poor, providing training and skill development of the poor in the rural areas in the backward districts of the states like, Bihar, Jharkhand, Orissa, Madhya Pradesh, Chhattisgarh and West Bengal etc. The assessee gets grant from Central and State Government and also donation from the various organization like, 'Gate foundation' etc. The assessee has been allowed benefit of exemption under section 11 of the Act continuously up to assessment year 2010-11. However, in the instant assessment year, the assessee has been denied said exemption by the Assessing Officer invoking the proviso to section 2(15) of the Act. On further appeal, the CIT(A) allowed the exemption under section 11 of the Act with all consequential benefits.

5. The Revenue, being aggrieved by the Order of the CIT(A), preferred an appeal before the ITAT. The ITAT upheld the decision of the CIT(A) holding that the assessee is not engaged in any trade, commerce or business and thus proviso of section 2(15) is not attracted to the case of the assessee.

6. The ITAT also noted that the assessing officer has not brought on record any evidences which would suggest that the activities of the assessee had been carried out with profit motive. The Revenue could not controvert the fact that the assessee has not charged any fee from the clients except the cost of project actually incurred. Even in the sanction letter of grant to the assessee, there is mention of supervision or monitoring of activities by the



donor, but that in itself is not sufficient to hold that any profit motive is involved. The ITAT further holds that it is quite normal that a donor would want to verify whether the grants have been incurred for the intended purpose which in our opinion, in any manner does not establish that the activities of the assessee is business activity.

7. The ITAT further observed that in the assessment years 2009-10 and 2010-11, the assessing officer has held the assessee is engaged in providing relief to poor within the meaning of Section 2(15) of the Act. The assessee has claimed that its activity during the year under consideration has remained same and there is no change as compared to assessment years 2009-10 and 2010-11. The ITAT following the rule of consistency dismissed the appeal of the Revenue.

8. This Court in the case of *Institute of Chartered Accountants of India and Anr. Vs. Director General of Income Tax (Exemptions), Delhi and Ors., (2013) SCC OnLine Del 2401* with reference to *State of Andhra Pradesh Vs. H Abdul Barhi & Bros Vs. (1964) 15 STC 644 (SC)* has observed that merely because a fee or some other consideration is collected or received by an institution, it would not lose its character of having been established for a charitable purpose. Furthermore, this Court in the case of *PCIT vs Servants of People Society [ITA 161/2021]* has held as under:

“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, 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.”

9. Consequently, this Court is of the view that no question of law arises for consideration in the present appeal. Accordingly, the same is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

**JULY 15, 2022
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