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

\+ ITA 640/2019

THE COMMISSIONER OF INCOME TAX EXEMPTION ..... Appellant

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann, Adv.

versus

SARV HITKARI EDUCATIONAL SOCIETY .... Respondent

Through: Mr. Akarsh Garg, Mr. Subham Shankar, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>O R D E R</u>

% 01.07.2024

1. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal ["**Tribunal**"] dated 30 November 2018 and proposes the following question of law for our consideration:-

> "A. Whether on the facts and circumstances of the case ld. ITAT erred in allowing the benefit of exemption under section 11 & 12 of the Income Tax Act, 1961 to the Assessee, despite the fact that the assessee was found to be undisputedly indulged in 'sham activities' to get the approval of AICTE for setting up a polytechnic college?"

2. We note that insofar as the issue of sham transaction is concerned, the Tribunal has in paragraphs 13 and 14 of its order observed as follows:-

> "13. When the assessee society has not become the owner of the land in question by virtue of sale deed dated 24.07.2006, the same

being without consideration, there is no question of violating the terms and conditions laid down by the ld. CIT (E) for transferring the land of the assessee society without his permission. Moreover, when it is also undisputed fact that possession of land remained throughout with Darshan Singh, it shows the statements of Darshan Singh and Rakesh Chand Bajaj recorded by the AO during remand proceedings that the land in question has merely shown to have been transferred to satisfy the conditions laid down by the AICTE to start a polytechnic college are true and correct and as such, no malafide can be attributed. Rather it was a mutual arrangement between them.

14. In view of what has been discussed above, we are of the considered view that when the assessee society has not become the owner of the land in question, there is no question of indulging in into ingenuine activities or that the activities of assessee society are not being carried out in accordance with the object of the Trust. Moreover, it is nowhere the case of then CIT(E) that the assessee society is not running in accordance with its aims and objects, No doubt, assessee society has entered into a sham transaction by virtue of the sale deeds dated 24.07.2006 and 26.09.2007 qua the land in question in order to misrepresent AICTE to get the approval for setting up a polytechnic college, but this fact has not proved in any manner that the activities of the assessee trust are not genuine or are not being carried out in accordance with its aims and objects, Rather in the remand report it is recorded by the AO that assessee society is running an educational institution having 1000 students on its roll with huge teaching staff and no complaint has been received as to its activities."

3. We take note of the categorical findings and conclusions which have come to be rendered by the Tribunal to the effect that the society was running in accordance with its aims and objectives. It is further pertinently observed that the appellants had failed to establish or prove that activities of the trust were not been carried forward in accordance with its aims and objectives. It is perhaps in the aforesaid context that it has taken the view that the alleged misrepresentation would not have any impact on the claim for exemption under Sections 11 and 12 of the Income Tax Act, 1961 ["**Act**"].

4. In light of the aforesaid, we find no ground to interfere with the order of the Tribunal.

5. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 01, 2024/*neha*