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

\+ ITA 22/2024 & CM APPLs. 953/2024 & 954/2024

COMMISSIONER OF INCOME TAX-EXEMPTIONS, NEW DELHI ..... Appellant

Through: Mr. Abhishek Maratha, Sr. SC alongwith Ms. Nupur Sharma and Mr. Parth Semwal, Advocates

Versus

M/S NATIONAL ASSOCIATION OF SOFTWARE AND SERVICE COMPANIES (NASSCOM) ..... Respondent

Through: Mr. Manuj Sabharwal, Mr. Sudip Lodh and Mr. Mumuksha, Advocates

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **05.04.2024**

1. The Principal Commissioner questions the judgment rendered by the Income Tax Appellate Tribunal ["**ITAT**"] dated 6 September 2022 and has proposed the following questions for our consideration:-

> A. Whether the Hon'ble ITAT was justified in allowing the assessee exemption u/s 11 & 12 of the Act, even when the assessee is brought under the purview of the proviso to section 2(15) of the Act with an amendment w.e.f. AY 2009-10, where general public utilities will no longer be enjoying charitable status id they involve the carrying on of any activity in the nature of trade, commerce or business, for cess or fee or any other consideration irrespective of the nature of use or application, or retention, of the income from such activity?
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> B. Whether the instant case deserves to be set aside to the AO for

fresh adjudication in compliance with the law laid down by Hon'ble Supreme Court in the case of Assistant Commissioner of Income Tax Exemptions Vs. Ahmedabad Urban Development Authority?

C. Whether ITAT was justified in the eyes of law in holding that the principle of mutuality is applicable in the facts and circumstances of the present case?

D. Whether the impugned order passed by Hon'ble Income Tax Appellate Tribunal is perverse both on facts and on law?

2. We had on the last occasion noticed the submission of Mr. Sabharwal, learned counsel for the respondent-assessee, who had drawn our attention to the judgment rendered by the ITAT in ITA 6521/Del/2013 *inter partes* and where it had ultimately come to hold as follows:-

10. In so far as the objection of the ld. AO based on the variance in the subscription fee and variance in voting rights is concerned, in ITO vs Venkatesh Premises Cooperative Society Ltd., 402 ITR 670 (SC), the Hon'ble Apex court held that so long as the membership forms a class, the identity of individual member is irrelevant and any difference in the contributions payable by the members cannot fall foul of the law as sufficient classification exists. In CIT vs Hindustan Sports Club (supra), the Hon'ble Bombay High Court held that once the assessee is governed by the principle of mutuality, even if there are difference class of members, some of whom are not entitled to vote, the club would not be cease to be governed by principle of mutuality. In Ranchi Club (supra) and Standing Conference of Public Enterprises (supra), it is held that merely because the assessee had entered into transactions with non members and earned profits out of transactions held with them, it is right to claim exemption on the principle of mutuality in respect of transactions held by it with its members is not lost. The principle of establishing identity between the contributors and participators would apply only in respect of contributions made by the members. Hon'ble court concluded that the assessee being a mutual concern, the income derived from the property let out to its members and their guests and sale of liquor etc. to its members would not be taxable.

11. In this case, as already stated, the assessee had offered to tax the income derived from the receipts from the non-members. In so far as the members are concerned, there is no dispute as to the identity between the contributors and the participators.

> 12. During the course of arguments, the question as to the way of disposal of the funds, if any, had arisen. By placing reliance on the decision in the case of Bankipur Club Ltd. (supra), ld. AR submitted that in that case also vide clause 7 of the Memorandum of Association, it was provided that upon winding up and dissolution of the association, the remaining property after the satisfaction of its debts and liabilities, shall not be paid or distributed amongst the members but shall be given or transferred to such other institution or institutions having similar objects to be determined by the members at or before the time on dissolution. On this aspect, the Hon'ble Apex court referred to the decision of the Hon'ble P&H High Court in the case of CIT vs Northern India Motion Pictures Association (1989) 180 ITR 160 to the effect that it is for the contributors to deprive themselves of the control on the disposal of the surplus and they could agree to divide the surplus amongst themselves and contribute the amount to a similar association or to a charitable trust, still the assessee will be a mutual benefit association and its income is not taxable. This aspect also, therefore, stands covered by the judicial precedent and does not admit of any fresh discussion.
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> 13. For the above reasons, we concur with the findings of the ld CIT(A) that the case law relied upon by the ld. AR supports the view taken by the ld. CIT(A) on the aspect of principle of mutuality and the entitlement of the assessee to claim the benefit of Section 11 of the Act. We, therefore, uphold the same and find the grounds of appeal as devoid of merits.

3. We find that the factual position remains unchanged even for Assessment Year 2011-12.

4. Mr. Maratha’s apprehensions however, was with respect to the ITAT in paragraph 13 observing that the respondent-assessee would also be entitled to claim the benefit of Section 11 of the Income Tax Act, 1961 [“**Act**”]. However, and as Mr. Sabharwal rightly points out, in proceedings which had been taken before the Assessing Officer it was the consistent and unequivocal stand of the assessee that it would not fall within the ambit of Section 2(15) of the Act and that it was not intending to claim any benefit of Section 11 of the Act.

5. The aforesaid submission would clearly allay any doubts that

may be harboured by the appellant.

6. In view of the aforesaid, no substantial question of law arises. We consequently dismiss the instant appeal along with pending applications.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 5, 2024
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