

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

+ **{ITA No. 1966 of 2010}**

% Date of order; December 14,2010

**COMMISSIONER OF INCOME TAX**

**....APPELLANT**

Through: Ms. Prem Lata Bansal,  
Sr. Standing Counsel.

**VERSUS**

**CHILD EDUCATION SOCIETY**

**....RESPONDENT**

Through: Mr. C.S. Aggarwal, Sr. Advocate with  
Mr. Prakash Kumar, Advocate

**CORAM :-**

**HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE SURESH KAIT**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

**A.K. SIKRI, J. (ORAL)**

1. The respondent School is enjoying exemption under Section 11 of the Income-Tax Act (hereinafter referred to as 'the Act'). Alongwith this, exemption under Section 80 G of the Act has also been given to the respondent assessee from time to time. For the period w.e.f. 1<sup>st</sup> April, 2000 to 31<sup>st</sup> March, 2003, the exemption under Section 80 G of the Act was granted to the respondent on 30<sup>th</sup> May, 2000. This exemption was renewed for a further period starting from 1<sup>st</sup> April, 2003 to 31<sup>st</sup> March, 2006 vide orders dated 16<sup>th</sup> December, 2003. After the expiry of this period, the assessee made another application for exemption under

Section 80 G (5) of the Act on 30<sup>th</sup> March, 2006. The respondent, however, vide its communication dated 17<sup>th</sup> October, 2006 sought leave to withdraw the said application with liberty to file it afresh subsequently. Orders dated 19<sup>th</sup> October, 2006 were passed allowing the assessee to withdraw the application and the application was thus dismissed. Subsequently, the assessee filed fresh application dated 12<sup>th</sup> June, 2007 for the same purpose namely seeking exemption under Section 80G (5) of the Act. This application was dismissed by the Director of Income-Tax (Exemption), (DIT for short), on 16<sup>th</sup> October, 2008. The application was rejected on the ground that the assessee was forcing the parents of the students in the school to give donation. It was also alleged that the assessee had indiscriminately issued Certificate under Section 80 G of the Act. The DIT took note of the facts that same happened in the earlier assessment years also because of which the assessee was denied exemption under Section 11 of the Act which order was confirmed by the CIT (A) and against those orders, appeals were filed by the assessee which were pending before the ITAT. He, thus, was of the opinion that when exemption under Section 11 of the Act was not allowed, there was no question of giving exemption under Section 80G of the Act.

2. It also appears from the orders dated 16<sup>th</sup> January, 2008 passed by the DIT that the DIT treated the said application for exemption filed by the respondent seeking exemption w.e.f. 1<sup>st</sup> April, 2007. According to the assessee, this was apparent mistake, inasmuch as, application was filed for renewal of exemption w.e.f. 1<sup>st</sup> April, 2006 and not 1<sup>st</sup> April,

2007. This application of the assessee under Section 154 of the Act was dismissed by the DIT vide orders dated 15.7.2009.

3. The assessee preferred appeal against the order dated 16<sup>th</sup> January, 2008. The Tribunal has allowed this appeal and has held that the assessee is entitled to Exemption Certificate under Section 80 G of the Act w.e.f. 1<sup>st</sup> April, 2006. Challenging this order, present appeal is preferred by the Revenue.

4. It would be necessary to point out at this stage that the appeals which were filed by the assessee against the orders of the Assessing Officer and the CIT (A) denying exemption under Section 11 of the Act were allowed by the ITAT. In respect of assessment years 2005-06, in fact, the CIT (A) had reversed the order of the Assessing Officer granting exemption under Section 11 of the Act which order was not challenged by the Department. The Tribunal while allowing the appeal, returned the finding that there was no violation or irregularities committed by the assessee and, therefore, the assessee was entitled to exemption under Section 11 of the Act.

5. Following these earlier orders and finding therein that the assessee had not committed any violation either in forcing the parents to give donation or issuing the certificate under Section 80G of the Act indiscriminately, the ITAT has held by way of impugned decision that the assessee would be entitled to exemption certificate under Section 80G of the Act as well.

6. The first submission of learned counsel for the Revenue is that ITAT relied upon its decision which pertains to assessment years 2002-03 and 2003-04 which was not relevant for deciding the controversy in the concerned year. Her Submission in this behalf was that the DIT had taken note of specific irregularities which were committed in the year 2004 and instances of those irregularities were given in para 4 of the orders dated 16<sup>th</sup> January, 2008. According to her, the Tribunal failed to take note of those irregularities and went by its decision pertaining to earlier assessment years which were of no relevance. The irregularities which are alleged in para 4 of the order of the DIT are as under:-

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Receipt date	no. & dated	Alleged donor	Amount	Mode of payment	Purpose
101	24.4.04	WelingkarInst. Of Mgt.	40,000/-	Cheque	Not mentioned
109	13.7.04	Career Launcher I (P) Ltd.	42,000/-	Cheque	Not mentioned
110	13.7.04	Career Launcher I (P) Ltd.	42,000/-	Cheque	Not mentioned
111	15.10.04	Karuna Sharma	56,400/-	Cheque	Canteen GR & PR
112	21.10.04	Anil Kumar	22,734/-	Cash	Ice Cream
113	23.11.04	Vinof Kumar	43,778/-	Cash	Canteen for Jice/Amul Milk
115	27.11.04	Chhotu Amusement Park	51,500/-	Cash	Towards display stall.

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7. The precise submission is that even when certain persons had supplied the goods or rendered services, the same was treated as donation and certificate under Section 80G were issued which would clearly demonstrate that School was issuing these Certificates indiscriminately. What is ignored by the DIT is the explanation of the assessee contained in para 6 of the assessee's letter dated 28<sup>th</sup>

December, 2007. The assessee had specifically stated that these receipts pertain to Winter Carnival and had been accounted for in the books of accounts of the assessee during the year 2004-05. It is a common knowledge that when such functions or carnivals are organized by these Institutions, many sponsors come forward and instead of giving donation in cash, they contribute in kind which is treated as donation. From the aforesaid Chart it becomes abundantly clear that one person had supplied Ice Cream and another had supplied Juice/Amul Milk and third person had made the arrangement of display of stalls. The amount spent by them in rendering those services was treated as donation and certificates of equivalent sum were issued under Section 80G of the Act. We thus fail to understand as to how it can be treated as irregularities.

8. In so far as contention of learned counsel for the appellant that the application for exemption under Section 80G of the Act was preferred by the assessee only for the period w.e.f. 1<sup>st</sup> April, 2007 is concerned, we do not see any merit therein. The order passed by the DIT on 15<sup>th</sup> July, 2009 dismissing application of the assessee under Section 154 of the Act reveals that DIT was faced by the fact that the first application moved by the assessee on 30<sup>th</sup> March, 2006 was withdrawn and as the second application was moved on 12<sup>th</sup> June, 2007, it was inferred that such an application would be for the period from 1<sup>st</sup> April, 2007. We fail to understand the logic behind such reasoning adopted by the DIT.

9. From the facts narrated above, it is clear that the assessee had made application for exemption under Section 80G of the Act on 30<sup>th</sup> March, 2006. In this application it was specifically mentioned that the

exemption was expiring on 31<sup>st</sup> March, 2006 and request was made for renewal thereon. Merely because the assessee withdrew this application and it was dismissed as withdrawn and later application was filed on 12<sup>th</sup> June, 2007, it could not be inferred that the second application is w.e.f. 1<sup>st</sup> April, 2007 and not from 1<sup>st</sup> April, 2006. Mr. C.S. Aggarwal, learned Senior Counsel appearing for the assessee has produced copies of all these application and other documents. In the application dated 12<sup>th</sup> June, 2007, it is categorically pointed out that the earlier exemption has expired on 31<sup>st</sup> March, 2006 and renewal thereof is sought. The dates which are mentioned in this application dated 12<sup>th</sup> June, 2007 are identical which were stated in the first application dated 30<sup>th</sup> march, 2006. We state at the cost of repetition that while withdrawing first application, the assessee had sought liberty to file fresh application. In these circumstances, the presumption of the DIT that the second application was for the period started from 1<sup>st</sup> April, 2007 is totally fallacious. Mr. Aggarwal has also submitted a chart showing the period from which the assessee has been given exemption under Section 80G. It would be of interest to note that even for the period from 1<sup>st</sup> April, 2008 to 31<sup>st</sup> March, 2001 the assessee has already been granted exemption under Section 80G of the Act vide orders dated 31<sup>st</sup> December, 2008. This would also demonstrate that application which was preferred by the assessee seeking exemption was for the period from 1<sup>st</sup> April, 2006 to 31<sup>st</sup> March, 2008 and not for 1<sup>st</sup> April, 2007 as the assessee would not like to keep the period from 1<sup>st</sup> April, 2006 to 31<sup>st</sup> March, 2007 in vacuum when the assessee has shown its due diligence in seeking exemption even for subsequent years.

10. We thus find no merit in these appeals preferred by the Revenue and dismissed the same with costs quantified @ ₹ 20,000/-.

**(A.K. SIKRI)  
JUDGE**

**(SURESH KAIT)  
JUDGE**

**DECEMBER 14 , 2010**  
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