

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

% Judgment delivered on: 11.01.2010

+ **ITA 1416/2009**

**COMMISSIONER OF INCOME TAX** ... Appellant

- versus -

**DHARAM SHILA CANCER RESEARCH  
FOUNDATION** ... Respondent

**Advocates who appeared in this case:**

For the Appellant : Ms Prem Lata Bansal

For the Respondent : Mr Prakash Kumar

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE SIDDHARTH MRIDUL**

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

**BADAR DURREZ AHMED, J (ORAL)**

1. This appeal by the Revenue is directed against the Tribunal's order dated 27.3.2009 in ITA No.2015/Del/2006 pertaining to the assessment year 2002-2003. The Revenue preferred an appeal before the Tribunal against the order of the Commissioner of Income Tax (Appeals) dated 28.2.2006.

2. The sole grievance of the Revenue before the Tribunal was that the Commissioner of Income Tax (Appeals) had erred in directing the Assessing Officer to allow the benefits of Sections 11 and 12 of the Income Tax Act, 1961 to the assessee. We have considered the submissions made

by learned counsel for the assessee and we find that the Tribunal has returned a finding which is one of facts alone. The Tribunal after considering the arguments raised by the parties observed as under:

“5. We have duly considered the rival contentions and gone through the record carefully. The assessee’s society came into existence in 1990, it was granted registration u/s 12A of the Act. Registration u/s 80G has also been granted to the assessee, it is enjoying status of a scientific research center within the meaning of section 35(1) (ii) of the Act. In earlier as well as subsequent asstt. years benefit of section 11 and 12 were granted to the assessee. In the present year such benefit has been denied to the assessee by the AO merely by drawing adverse inference on two counts namely the hospital charges were on the higher side and were comparable on hospital run on commercial basis. Free and subsidized treatment was given only to the doctors, relatives/friends of the doctors and the employees. In order to conceive these facts AO has taken into consideration the charges for providing various services by the assessee namely room rent and vaccination charges. With the assistance of Ld. Representative we have gone through the record carefully assessee has demonstrated on the record that its charges were in the line of other hospitals who are enjoying the benefit of section 11 & 12. As far as the allegation of the AO that free and subsidized services were provided to the relatives of the doctors/employees and to the doctors and employees themselves is concerned we have perused that list available on page 83-96. In this list name of 443 indoor patients are available. The patients have come from far flung areas also from Uttar Pradesh, Punjab, Haryana and Himachal Pradesh. From the list it is not discernable as to how Ld. AO has considered them as employees or relatives of employees. We could understand the stand of AO if he would have made out a case that assessee is applying its income for any other purpose than the charitable purpose. As rightly observed by the Ld. CIT(A) that profitability is not the sole criteria to judge the charitable nature of a society. In a charitable activity incident of profit can be there but that would not goad any quasi judicial authority to say that society ceases to be a charitable society. The AO fail to point out any defects in the objects of society or in the means of achieving those objects. His only area of grievance is that income is resulting to the society by carrying out such activity. But again he fail to take into consideration that such income was only applied for the purpose of charity. The AO also pointed out that assessee has entered into contracts with the doctors in such a way that the hospital should not suffer any loss. In our opinion from those

contracts nothing adverse can be drawn against the assessee because in order to provide best facilities assessee is supposed to keep best doctors on its panels. Similarly it has to see that hospital should be able to run its activity. If it starts losing the resources then its existence would be in dark. Therefore, taking into consideration all the material on record and the finding recorded by the CIT(A) (mainly extracted supra) we do not find any error in the order of Ld. First Appellate Authority.”

3. In our view these are pure findings of facts. No substantial question of law arises for our consideration.

The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**SIDDHARTH MRIDUL, J**

**JANUARY 11, 2010**

**aj**