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

% *Date of Decision: 18th September, 2012*

\+ ITA 534/2012

DIRECTOR OF INCOME TAX ..... Appellant

Through: Mr. Abhishek Maratha, Sr. Standing Counsel.

versus

HANS RAJ SAMARAK SOCIETY ..... Respondent

Through: None.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

S. RAVINDRA BHAT, J.: (OPEN COURT)

1. The Revenue claims to be aggrieved by the order dated 30.09.2011 passed by the Income Tax Appellate Tribunal in ITA No.1213/Del/2011. The questions of law sought to be urged are with regard to (a) grant of the benefit of application of income in respect of capital expenditure incurred out of the anonymous donation received and (b) the grant of the benefit of exemption to undisclosed income of the assessee.

2. The relevant part of the discussion of the Tribunal on the question of capital expenditure of ₹14,53,112/- held to be application of income is as follows: -

"7. We now turn to the appeal of the revenue. The solitary ground is that the CIT (Appeals) erred in allowing deduction u/s 11(1) of an amount of ₹14,53,112/- being the expenditure incurred on purchase of capital assets. As mentioned earlier, the deduction was not allowed by the AO on his finding that unaccounted money by way of anonymous donation was used for the expenditure it was submitted before the ld. CIT (Appeals) that the purchase of fixed assets is an application of income, thus, the expenditure has to be deducted u/s 11(1)s(a). The CIT (Appeal) considered the facts and the submissions made before him. It is mentioned that the taxation of anonymous donation amounting to ₹3,37,841/- and ₹3,37,841/- and ₹19,45,812/- u/s 115BBC has no bearing in the matter as the tax on anonymous donation is levied separately. However, the amount spent on purchase of capital assets has to be allowed in computing the total income as application of income. Therefore, this ground has been decided in favour of the assessee.

7.1 The ld. DR submitted that the ld. CIT (Appeals) erred in coming to this conclusion in as much as he did not take into account the provision contained in section 13(7). This provision prohibits deduction under section 11(1)(a) in respect of anonymous donations. On the other hand, the ld. Counsel for the assessee relied on the decision of the ld. CIT (Appeals) and the submissions made before us regarding the anonymous donation.

7.2 We have considered the facts of the case and submissions made before us. It has already been held by us that the donations received by the assessee are not anonymous donations. The details in respect of the name and address are available in possession of the AO in the form of the name and address are available in possession of the AO in the form of donation receipts, which were impounded in the course of survey. The discrepancy

in respect of the amount of ₹2,49,000/- has occurred on account of computer malfunctioning, but the details as above are available in the donation receipts. Therefore, no donation can be said to be anonymous. We have also not accepted the case of the revenue that the amounts are taxable u/s 68 by relying on the decision of the Tribunal in the case of Keshav Social Charitable Foundation and the decision of the Tribunal in the case of the assessee itself for assessment year 2006-07. These findings displace the foundation of disallowance made by the AO Accordingly, it is held that the ld. CIT (Appeals) rightly allowed the deduction."

3. The relevant part of the discussion of the Tribunal with regard to the benefit of exemption given to undisclosed income is at paragraphs 4.3 and 4.4 of the Tribunal's order. The finding of the Tribunal is that the income tax authorities were not right in holding that the amount of ₹19,25,047/- received by the assessee as donations was not "anonymous donations" within the meaning of Section 11(3) of the Act because the receipts issued by the assessee trust were still in the custody of the department as the receipt books were impounded in the course of the survey and no confirmations were required to be filed by the assessee. In these circumstances the Tribunal held that Section 68 cannot be applied as the amount has already been shown by the assessee as income. The Tribunal referred to the judgment of this Court in *Director of Income Tax (Exemption) v. Keshav Social and Charitable Foundation*, (2005) 278 ITR 152.

4. The aforesaid discussion would show that if the Revenue's appeal is accepted, the assessee would be brought to income tax but at the same time the capital expenditure will have to be allowed as a deduction as application of

income. Further, the donations, as held by the Tribunal, cannot be assessed as the income under Section 68 since the receipts issued by the assessee were in the custody of the department, having been impounded during the survey. The decision of this Court has been applied. Therefore, the Court does not find any substantial question of law arising out of the order of the Tribunal.

5. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

R.V.EASWAR, J

SEPTEMBER 18, 2012
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