IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 19.10.2011

ITA No. 210 of 2011

Commissioner of Income Tax, Panchkula ...Appellant

Versus

M/s State Urban Development Society ….Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Tejinder K. Joshi, Advocate for appellant.

HEMANT GUPTA, J.

Revenue is in appeal aggrieved against the order dated 30.7.2010 passed by Income Appellate Tribunal, Chandigarh (for short the 'Tribunal') whereby the appeal filed by the revenue was dismissed and the cross appeal filed by he assessee was allowed. The assessee is a society formed by Government of Haryana as per the regulations of Government of India for implementation and monitoring of Poverty Eradication Programmes in the urban area of Haryana. The assessee-society receives the scheme money from Government of India and distributes to every district of Haryana through District Urban Development Agency headed by Deputy Commissioner/Additional Commissioner of each district. Certain amount from the Scheme money is utilized for administrative & office expenses. The assessee was disbursing money under two Schemes i.e. SJSRY and NSDP. The Assessing Officer assessed the income of the assessee @ Rs. 9,00,80,992/- inter alia, hold that the essential conditions of Section 11

and 12 of the Income Tax Act, 1961 (for short the 'Act') have not been fulfilled by the assessee and amount not disbursed.

The assessee follows the system of accounting whereby any amount remaining not disbursed at the end of financial year is shown as opening balance scheme money to be utilized in the next financial year. The Assessing Officer found that the percentage of income used for charitable purposes is less than 85% and that the essential conditions of Section 11 and 12 of the Act have not been fulfilled by the assessee. Thus, the Assessing Officer finalized the assessment.

In appeal, the Commissioner of Income Tax (Appeals), Panchkula granted relief to the assessee in respect of interest exemption from Section 11 of the Act, the amount disbursable due to imposition of model code of conduct. While upholding the order of the Assessing Officer that the gross amount received from the Central and State Governments for the purpose of disbursement to district authorities as income of the Society.

Aggrieved against the order passed by Commissioner of Income Tax (Appeals) dated 27.10.2008, Tribunal dismissed the revenues' appeal and allowed the appeal filed by assessee.

The Tribunal held that the Society is acting as a nodal agency receiving grant from Government of India and State Governments and distributes to district authorities for implementation of various Schemes of Government of Indian and supervising the execution of Schemes. It has no discretion to utilize the amount as per own requirements. It also found that in case of non utilization at the close of the Scheme, the funds are to be refunded along with interest to the Government of India and State Governments. The grants received by the assessee do not belong to the assessee-Society. The grants do not form corpus of the asseesee nor it is

income of the assessee under Section 11 of the Act. Such grants are not the donations or voluntary contributions under Section 12 of the Act. Thus, the grants received by the assessee should not be considered either as income or for ascertaining the amount expanded or amount to be accumulated. Provisions of Section 11 and 12 of the Act are not applicable for grants received by the assessee under the Schemes It further held that the assessee is statutorily required to file its intention of expanding the accumulated funds in future by way of Form No. 10.

The argument that the assessee has shown the entire amount as its income in the profit and loss account as not determinative of nature as the mere entries in the books of account do not decide the nature of receipt and its taxability. The Tribunal also held that even if the amount is not disbursed due to imposition of model code of conduct by the Election Commission, the surplus at the end of the year cannot be included as income under Sections 11 and 12 of the Act. If the grant is not includable as income the surplus at the end of the year remaining unspent is not of any relevance. In respect of the Bank interest, the Tribunal found that the assessee has to keep funds in separate accounts and such interest is treated as part of the grants under respective Schemes to which said funds relate. Hence, with the said findings, the orders of the Assessing Officer and Commissioner of Income Tax (Appeals) was set aside.

Learned counsel for the appellant vehemently argued that the Society itself has reflected the grants received from Central and State Governments as income. Therefore, it is not open to the assessee to take a stand that such grants are not the income. The said aspect has been considered by the Tribunal, wherein, it has been held that reflection in the profit and loss account towards the income is not determinative. The entries

in the books of account do not decide the nature of receipts. Since, the grants have been received by the assessee for disbursement and keeping in view the fact that the same cannot be utilized for any other purpose such as distribution for the poverty in furtherance to the object of the Schemes, it cannot be treated as income of the assessee. As per the finding of fact recorded by the Tribunal, no substantial question of law arises in the present petition.

Dismissed.

(HEMANT GUPTA)

JUDGE

19.10.2011 **(G.S. SANDHAWALIA)**
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