



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

Judgment delivered on: 04.11.2008

+ **ITA Nos. 767/2008 & 789/2008**

% 04.11.2008

**DIRECTOR OF INCOME
TAX (EXEMPTION)**

... Appellant

- versus -

SPAN FOUNDATION

... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Prem Lata Bansal

For the Respondent : Mr Navneet Negi

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE RAJIV SHAKDHER

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. These appeals are directed against the common order dated 30.11.2007 passed by the Income Tax Appellate Tribunal in respect of assessment years 2002-2003 and 2003-2004. Common issues have been raised in respect of both the years. The assessee is a charitable trust. It purchased certain land. Thereafter, it constructed a building



rented out. According to the revenue since the building was rented out to concerns in which some of the trustees were directors, it implied that the income derived out of the renting out of the building was not applied towards charitable purposes but that the renting out of the property was for such interested persons. On behalf of the assessee it has throughout been contended that the income derived from the renting out of the building was used in re-paying the loans with the ultimate object of applying the income, after the loans had been fully repaid, towards charitable objects. It was, therefore, contended that the application of the money received as rentals by the trust for the purposes of repayment of the loans was also for charitable purpose. The Assessing Officer and the Commissioner of Income Tax (Appeals) held in favour of the revenue and denied the exemption under Section 11 and 12 of the Income Tax Act, 1961 (hereinafter referred to as the 'said Act'). Both the authorities also held that the provisions of Section 13 (1)(c) read with Section 13 (3) of the said Act had been violated and, therefore, the exemption could not be given to the assessee trust.

2. The Tribunal, after considering the submissions made by the parties, came to the conclusion that the assessee trust was entitled to the exemption under Section 11 and 12 of the said Act. The Tribunal also



came to the conclusion that the provisions of Section 13 were not attracted.

3. The Tribunal noted that the case of the assessee was that it wanted to let out the building and derive rent therefrom and use the rents for the charitable purposes set out in the trust deed. As noted above, the assessee had borrowed funds for the purposes of constructing the building. The rent that was derived from the said building was utilized by the assessee trust to re-pay the borrowed funds. It was contended on behalf of the assessee that the re-payment of the loan, in these circumstances, has to be regarded as application of income for charitable purposes. The Tribunal accepted this plea of the assessee. The Tribunal noted that if the argument of the revenue was to be accepted, then it would amount to concluding that the assessee could not utilize the rental incomes received by it from the lease of the property for charitable purposes. The Tribunal noted that as and when the loans are discharged and the assessee becomes free to utilize the rental income, it would apply the same for charitable purposes set out in the trust deed and that it is at that juncture that the Assessing Officer could insist that the application of the income be for the purposes mentioned in the trust deed. The Tribunal concluded that the repayment of the funds borrowed for construction of the building was



that the assessee was entitled to the benefits under Section 11 and 12 of the said Act.

4. As regards the benefit being derived by interested persons, the only question that was of relevance was whether the rents paid by the so-called interested persons were adequate or not? In this regard, the Tribunal remanded the matter to the Assessing Officer to decide the question of adequacy in accordance with law, after affording the assessee an opportunity of being heard. However, while doing so, the Tribunal noted its earlier decision in the case of *Rabhubir Saran Charitable Trust v. Income Tax Officer* where the view was taken that if the rent charged by an assessee was higher than the standard rent, as computed under the rent control legislation, then the rent charged by the assessee should be considered as adequate. We note that the Tribunal's decision in *Rabhubir Saran Charitable Trust* was the subject matter of a reference being IT case No. 81/1989 which was disposed of by an order dated 15.01.1990 which has been reported as 183 ITR 297 (DEL). In that decision this Court applied the principles set out in *Dewan Daulat Rai Kapoor v. NDMC*: 122 ITR 700 and concluded that the market rent could not be more than the standard rent.



5. We are informed that the Assessing Officer has since examined the issue of adequacy as directed by the Tribunal by virtue of the impugned order. After examining the lease deeds of adjacent properties immediately to the right and left of the assessee's property as also considering the fact that the rent received by the assessee in respect of the said building was more than the standard rent as computed in accordance with the Delhi Rent Control Act, 1958, the Assessing Officer came to the conclusion that the rent received by the assessee trust was adequate. Consequently, the question of any benefit being derived by an interested person does not arise on facts.

6. It is, therefore, clear that the Tribunal's decision in both the appeals cannot be faulted. No substantial question of law arises for our consideration. The appeals are dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

November 04, 2008
SR