2008:DHC:3113-DB

THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 25.11.2008

\+ **ITA 1322/2008**

DIRECTOR OF INCOME TAX DELHI (EXEMPTION) ... Appellant

\- versus –

JAPAN CHAMBER OF COMMERCE & INDUSTRY IN INDIA ... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Prem Lata Bansal with Mr M. P. Gupta and Mr Sanjeev Rajpal

For the Respondent : Mr Piyush Kaushik

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 ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J (ORAL)

1. The present appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as the ‘said Act’) impugns the order dated 25.04.2008 passed by the Income Tax Appellate Tribunal whereby the Director of Income Tax (Exemptions) was directed to accord registration to the assessee society under Section 12A of the

2. The appeal before the Tribunal was preferred by the assessee, being aggrieved by the order passed by the Director of Income Tax (Exemptions), refusing to grant registration to the assessee under Section 12A of the said Act.

3. The assessee is the Japan Chamber of Commerce & Industry in India and has its office at No.7, Barakhamba Road, New Delhi. It is also registered with the Registrar of Societies under the Societies Registration Act, 1860. The aims and objects of the society, as indicated in the Memorandum of Association of the society, are as under:-

> "1. To undertake, encourage, facilitate and promote the development of trade, industry and commerce between India and Japan in general without any element of profit.
>
> 2. To facilitate economic cooperation and strengthen the relationship between India and Japan.
>
> 3. To establish and exchange social relationship among Members.
>
> 4. To promote education of young Japanese.
>
> 5. To promote mutual interest between Members.
>
> 6. To invite whenever desired intellectuals, industrialists, scholars, creative artists, etc. to address the seminars/ conferences conducted by the Society.

> and conservation or any other matters related thereto."

The Memorandum of Association also clearly stipulates that all the income, earnings, movable/ immovable property, member's subscription, and contributions of the society are to be solely utilized and applied towards the promotion of its aims and objects only, as set forth in the memorandum and cannot be utilized for the purposes of making of profit. It also stipulates that no profit shall be paid or transferred directly or indirectly by way of dividends, bonus, profits or in any manner whatsoever to the present or the past members of the society or to any other person claiming through any one or more of the present or the past members. And, that no member of the society shall have any personal claim on any movable or immovable property or profit or accumulation of the society by virtue of the membership.

4. As per clause 3.1 of the rules and regulations, the membership of the society is open to Japanese companies and Japanese government institutions in India which have a direct or indirect interest in the aims and objects of the society and desire to become a member of the society subject to the approval of the governing body. Clause 7 of the rules and regulations empowered the society to alter, extend or

provided by section 12 of the Societies Registration Act, 1860. Clause 8 provided that all the assets and funds are to belong to the society and not to any individual member. Importantly, clause 12 provides that in case the society is dissolved, it shall be done in accordance with the provisions of Sections 13 and 14 of the Societies Registration Act, 1860.

5. The assessee had made an application on 23.03.2007 for registration under Section 12A of the said Act. The Director of Income Tax (Exemptions), by virtue of his order dated 28.09.2007, declined to grant registration to the assessee society. Essentially what the Director of Income Tax (Exemptions) held was that the aims and objects of the society were independent and distributive and that some of them did not fall within the ambit of the expression "charitable purpose" as defined under Section 2 (15) of the said Act. In particular, the Director of Income Tax (Exemptions) held that the object Nos. 3, 4 and 5 had nothing to do with the object Nos. 1 and 2 and that object Nos. 6 and 7 were independent of object Nos. 1 and 2. Consequently, he held that although object Nos. 1 and 2 were charitable, the other objects not being charitable and being independent of object Nos. 1 and 2, the society could not be regarded as having been established for a charitable purpose and was, therefore, not entitled for registration. He

also held that the beneficiaries of the society are not likely to be the Indian public or a segment thereof.

6. As indicated above, the assessee, being aggrieved by the said order preferred an appeal before the Income Tax Appellate Tribunal, which considered all the aims and objects in detail. The finding returned by the Tribunal is that the object Nos. 1 and 2 were the main objects of the assessee society and the other objects were ancillary and incidental in nature. With regard to object No. 4, the Tribunal noted that it was for the purposes of promoting education of young Japanese and education, *per se*, is a charitable purpose as indicated in Section 2 (15) of the said Act. The Tribunal was also of the view that object Nos. 3 and 5 were clearly linked with object Nos. 1 and 2 and did not exist in isolation. The object No. 6, which relates to inviting intellectuals, industrialists, scholars, artist etc. to address seminars and conferences conducted by the society, cannot be regarded as not being a charitable object. For this proposition, the Tribunal placed reliance on the decision of the Rajasthan High Court in the case of ***CIT v. Jodhpur Chartered Accountant Society*: 258 ITR 548** wherein organizing of seminars and conferences to educate people in different fields of knowledge was held to be a charitable object of general public utility. As regards object No.7, the Tribunal took the view that

conservation amounted to an object of general public utility in the current global scenario where not only countries but even individuals and pressure groups are deeply concerned about preservation of environment. The Tribunal came to the conclusion that the Director of Income Tax (Exemptions) was not justified in his conclusion that the objects of the society were independent of each other and that except for the first two objects the others were non-charitable in nature.

7. The Tribunal also repelled the view taken by the Director of Income Tax (Exemptions) that the activities of the society were restricted to Japanese companies and the Japanese governmental institutions which alone could be members of the society. It was held that the society had been formed to promote development of trade and commerce between India and Japan and to facilitate economic cooperation between the two countries. Promotion of trade and commerce and industry between India and Japan would undoubtedly also benefit the Indian public at large. Consequently, the Tribunal held that the Director of Income Tax (Exemptions) was not justified in saying that the Indian public or any segment thereof would not be benefited by the activities of the society.

8. The Tribunal also took note of the fact that in the event of

proceeds thereof. In fact, the proceeds after clearing all the debts, are to be distributed in the manner provided in Sections 13 and 14 of the Societies Registration Act, 1860, which has been specifically incorporated in terms of Clause 12 of the rules and regulations, as indicated above. The Tribunal also took note of the Supreme Court decision in the case of ***CIT v. Andhra Chamber of Commerce*: 55 ITR 722** wherein the Supreme Court observed that the expression "object of general public utility" was not restricted to objects beneficial to the whole of mankind and that an object beneficial to a section of the public was also an object of general public utility. The Supreme Court further observed that to serve as a charitable purpose, it was not necessary that the object should be to benefit the whole of mankind or even all persons living in a particular country or province and that it was sufficient if the intention was to benefit a section of the public as distinguished from specified individuals. It is apparent that in the present case the benefit that is to be derived from the activities of the society would not be enjoyed by any specified individuals and it is for the general public. The Tribunal has already returned a finding that the objects would be for the benefits of the Indian public at large as the development of trade and commerce between the two countries would undoubtedly lead to such a conclusion.

9. The learned counsel for the appellant argued that the charity should be in India and the benefit should be limited to the Indian public. With regard to the charity being in India, there is no doubt that the assessee society is registered in India. With regard to the benefit accruing to the public in India, although we do not find any statutory stipulation to this effect, the factual position is that the benefit would be derived by the public in India. It is also required to be noted that the question which arises in the present appeal relates only to the registration of the assessee as a society under Section 12A/ 12AA of the said Act. The question of exemption under Section 11 and 12 is to be dealt with separately by the Assessing Officer at the time of assessment for each year. In case any income of the assessee is applied outside India, it goes without saying that the provisions of Section 11 would apply and the Assessing Officer would deal with the situation accordingly. We are informed by the learned counsel for the respondent that pursuant to the order passed by the Tribunal, the Director of Income Tax (Exemptions) has granted registration by an order dated 15.10.2008 but has imposed various conditions. One of the conditions being that the registration did not confer any right of exemption upon the applicant under Sections 11, 12 and 13 of the said Act. Such an exemption from taxation would be available only after the Assessing Officer is satisfied about the genuineness of the activities

promised or claimed to be carried out in each financial year relevant to the assessment year and upon all the provisions of law being complied.

10. In these circumstances, we do not see any reason to interfere with the well-reasoned order passed by the Tribunal. The findings of fact are unassailable. No substantial question of law arises for our consideration.

The appeal is dismissed.

BADAR DURREZ AHMED, J

RAJIV SHAKDHER, J

November 25, 2008
SR