



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

+ **ITA Nos. 274/2005, 337/2010, 338/2010, 339/2010, 340/2010,
341/2010, 342/2010 and 707/2010**

M/S PARIVAR SEVA SANSTHA Appellant
Through: Mr. S.Ganesh, Senior Adv. with Mr.
Kamal K. Jetley, Mr. Manish Singh,
Adv.

versus

DIRECTOR OF INCOME TAX (EXEMPTION) Respondent
Through: Mrs. Prem Lata Bansal, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MANMOHAN

ORDER
29.11.2010

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Regard being had to the similitude of the factual matrix and the questions of law raised, this batch of appeals was heard together and is being disposed of by a singular order. For the sake of clarity and convenience, we shall advert to the facts in ITA No. 274/2005, which pertains to the assessment year 1998-1999 and thereafter refer to the other appeals for the sake of completeness. .

2. In ITA No. 274/2005, preferred under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act'), the assessee has raised the following substantial questions of law:

"1. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that Mrs. Sudha Tewari falls within the category



of prohibited persons specified in sub-section (3) of section 13 of the Income Tax Act, 1961?

2. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the Assessee is not entitled to the exemption under Section 11 of the Income Tax Act, 1961?
3. Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in law in holding that the provision of Section 13(1)(c) of the Income-tax Act, 1961 is applicable to the facts of the present case and as such the Assessee is not entitled to get exemption under Section 11 of the Income-tax Act, 1961?
4. Whether the Income Tax Appellate Tribunal was justified in law, in holding that enhancement in the salary of Mrs. Sudha Tewari in the relevant assessment year was un-reasonable and as such the claim of exemption of the Assessee under Section 12 of the Income-tax Act, 1961 is hit by Section 13(1)(c) of the Income Tax Act, 1961?
5. Whether the Income Tax Appellate Tribunal was justified in law, in confirming the action of the Assessing Officer in treating grants-in aid and contributions received by the Assessee as part of its income?"

3. To appreciate the aforesaid questions formulated by this Court, it is apposite to refer the facts which are essential for adjudication of the appeal.

The assessee – appellant is a society registered under the Societies Registration Act, 1860. Initially, the name of the society was Marie Stopes Society which was later on changed to Parivar Seva Sanstha. The Sanstha is providing services in the field of family planning and maternal and child health care. It was registered under Section 12A(a) of the Act and a certificate of registration was granted by the Commissioner of Income Tax



furnished a return of total income on 16.10.1998 declaring therein its income as nil. The Deputy Director of Income Tax (Exemption) by an order dated 27.3.2001 took note of the gross receipts of Rs.12,91,48,034/- and adopted the same as the total income of the appellant under the head 'income from other sources' by denying the exemption to the assessee under Section 11 of the Act on the foundation that the salary paid to Mrs. Sudha Tiwari amounted to violation of Section 13(1)(c) and 13(2)(c) of the Act.

4. Being dissatisfied with the aforesaid order, the assessee – appellant preferred an appeal before the CIT(A) who by order dated 28.1.2003 dismissed the appeal of the appellant and upheld the order of the assessing officer.

5. Grieved by the aforesaid order, an appeal was carried before the Income Tax Appellate Tribunal (for short 'the tribunal') which concurred with the order passed by the First Appellate Authority.

6. Questioning the correctness of the order, it is submitted by Mr. S. Ganesh, learned senior counsel for the appellant that the tribunal has misconstrued the provision contained in Section 13(3) of the Act. It is put forth by him that the perception of the tribunal is fundamentally erroneous inasmuch as the tribunal has not appropriately appreciated the concept of the reasonableness of the amount paid to Mrs. Sudha Tiwari but has gone by the concept of percentage without any rational basis. It is contended by him that



the approach of the authorities that the increase in salary was not based on material and, hence, the amount received by the institution was amenable to tax as the exemption granted in its favour is of no assistance to it. It is further submitted by learned senior counsel that the tribunal has failed to appreciate that the salary payment was made from the trust perspective and has adopted a different criterion to appreciate that the amount paid is unreasonable and excessive.

7. Be it noted, Mr. S. Ganesh, learned senior counsel raised many other contentions to substantiate the questions that were formulated at the time of admission but in course of hearing the gravamen of contention raised was the reasonableness of the amount that has been determined by the assessee and the approach of the authorities and specially the tribunal with the stance that other issues be kept open.

8. Mrs. P.L. Bansal, learned counsel appearing for the revenue, per contra, submitted that the approach of the appellate authorities cannot be found fault with as the hike in the salary was really not justified and, hence, the benefit of exemption was correctly denied to the assessee.

9. To appreciate the submissions raised at the Bar, we have carefully perused the orders passed by the authorities as well as by the tribunal. It is not in dispute that prior to the assessment year 1998-99 the salary and perquisites were granted to Mrs. Sudha Tiwari and the same was accepted by the assessing authority. For the years 1993-94, 1994-95, 1995-96, 1996-97,



1997-98 and 1998-99 the amount paid was Rs.2.65 lacs, Rs.3.39 lacs, Rs.4.19 lacs, Rs.5.34 lacs, Rs.7.04 lacs and Rs.13.97 lacs respectively. On a perusal of the same, it transpires that the salary and perquisites were increased by Tim Black, the Chief Executive of Marie Stopes International on the basis of Resolution 9.3.1993 whereby he was authorized to determine the same. Mrs. Sudha Tiwari was the oldest employee of the society and having joined in 1981 and regard being had to her experience and the managerial skill the same was determined. The finding that has been recorded by the assessing officer was that if the salary increase was not paid to Mrs. Sudha Tiwari, the same could have been utilized for charitable activities. The CIT(A) has taken note that there was an increase of 59% in the salary paid to Mrs. Sudha Tiwari for the assessment year 1998-99 though the income of the Sanstha (society) had decreased. It is also worth noting that the CIT(A) had referred to the earlier order of the tribunal whereby the tribunal had expressed the view that the 25% annual increase in the salary and perquisites could be considered to be normal increase and, therefore, the said increase was unreasonable. The tribunal addressed itself with regard to the salary paid to a person who comes under the category of prohibited person to be commensurate with the services rendered and observed that the amount that was paid was unreasonable.

10. As has been indicated earlier, we are inclined to keep the other issues open for the time being and only think it apt to address ourselves whether



unjustified increase requires to be reconsidered by the tribunal. Mr. Ganesh, learned senior counsel has invited our attention to the decision in *Commissioner of Income Tax, West Bengal v. Edward Keventer (Private) Ltd.*, AIR 1978 SC 1586, wherein the Apex Court was dealing with an issue whether the tribunal was right in holding that the disallowance of certain amounts out of the remuneration or commission paid to the four directors of the company in four assessment years by taking resort to Section 10(4A) of the IT Act, 1992 was justified. Their Lordships took note of the fact that the tribunal had disagreed with the view of the taxing authorities and came to hold that the remuneration or commission paid to the directors was neither excessive nor unreasonable as the legitimate business needs of the assessee and the benefit derived by or accruing to the assessee therefrom were taken into consideration from the point of view of a businessman. It is worth noting that the order passed by the tribunal was concurred with by the High Court and on appeal being preferred their Lordships declined to interfere with the order of the High Court. It is submitted by Mr. Ganesh, learned senior counsel that though the said decision was rendered in the context of Section 10(4A) of the IT Act, 1992 but fixing of a remuneration or commission or for that matter a salary or perquisite has to be viewed from the various perspectives and not pursuing the enhancement by percentage concept. The learned senior counsel further submitted that the tribunal apprised itself with regard to the duties of Mrs. Sudha Tiwari or involvement in the society, the activities carried out and the number of hours she worked



He also submitted that had the role of Mr. Tim Black in determining the same, the nature of carrying out the activities inasmuch as there were 56 centers of the society and that Mrs. Sudha Tiwari was required to travel, been given its due consideration, possibly the tribunal would have taken a different view altogether.

11. Per contra, Mrs. P.L. Bansal would submit that the tribunal has correctly adjudged the issue by taking note of the amount received by the assessee and the amount paid on that backdrop found that the amount paid to Mrs. Sudha Tiwari was unreasonable.

12. It is not in dispute that the appellant society is engaged in a charitable purpose and that too in family planning and maternal and child health care. On a scrutiny of the order passed by the tribunal, we find that it has really addressed itself only on two facets, namely, the amount received by the trust and the enhancement made in the salary.

13. In our considered view the duties carried out by Mrs. Sudha Tiwari in juxta-position with the purposive of the society to be made effective and its activities apart from the other facets inclusive of her qualifications, her dispensability, the number of centers and the travel aspects should have been addressed to by the final fact finding authority. The same having not been done, the finding that the salary paid being unreasonable is not correct as a tribunal is required to return a finding by taking all the components and that



too from the perspective of the society and also its activities and not from a singular perspective of amount received by the Trust.

14. ITA No. 340/2010 pertains to the assessment year 1999-2000. The Tribunal has held that the salary paid to Mrs. Sudha Tiwari was excessive and not reasonable.

15. ITA No. 341/2010 pertains to the assessment year 2000-2001. The Tribunal has held that the salary paid to Mrs. Sudha Tiwari was excessive and not reasonable.

16. ITA No. 339/2010 pertains to the assessment year 2001-2002. The Tribunal has held that the salary paid to Mrs. Sudha Tiwari was excessive and not reasonable.

17. ITA No. 342/2010 pertains to the assessment year 2002-2003. The Tribunal has held that the salary paid to Mrs. Sudha Tiwari was excessive and not reasonable.

18. ITA No. 338/2010 pertains to the assessment year 2003-2004. The Tribunal has held that the salary paid to Mrs. Sudha Tiwari was excessive and not reasonable.

19. ITA No. 337/2010 pertains to the assessment year 2004-2005 wherein the tribunal has held that the enhancement of salary by 20% was reasonable but as it had previously opined that the contention regarding her status was



interest and proceed with penalty. To elaborate, the directions were issued on the basic foundation that the assessee was not entitled to exemption.

20. ITA No. 707/2010 pertains to the assessment year 2005-2006 wherein the tribunal has held that the enhancement of salary by 20% was reasonable but as it had previously opined that the contention regarding her status was rejected, the assessing officer was required to compute the income and levy interest and proceed with penalty. To elaborate, the directions were issued on the basic foundation that the assessee was not entitled to exemption.

21. In view of our aforesaid analysis while keeping all the issues open, we set aside the order passed by the tribunal and remit the matter back to the tribunal to deal with the issue of reasonableness of the payment made to Mrs. Sudha Tiwari.

22. In the result, the appeals are allowed to the extent indicated above. There shall be no order as to costs.


CHIEF JUSTICE


MANMOHAN, J

NOVEMBER 29, 2010
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