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

\+ ITA 894/2010

DIRECTOR OF INCOME TAX
(EXEMPTION) ..... Appellant
Through: Ms. Prem Lata Bansal, Advocate

versus

DHARAMSHILA CANCER
FOUNDATION AND RESEARCH
CENRE ..... Respondent
Through: Mr. Prakash Kumar, Advocate

% Date of Decision: 19th July, 2010

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

1. Whether the Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether the judgment should be reported in the Digest? No

MANMOHAN, J (ORAL)

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act, 1961") challenging the order dated 14th May, 2009 passed by the Income Tax Appellate Tribunal (in short "ITAT") in ITA No. 1223/Del/2008, for the assessment year 2005-2006.

2. Ms. Prem Lata Bansal, learned counsel for Revenue submitted that both the Commissioner of Income Tax (Appeals) [in short

"Commissioner") and ITAT had erred in law in directing the assessing officer to allow the assessee to avail the deductions under Sections 11 and 12 of Act, 1961. According to Ms. Bansal, the assessee was not a charitable institution as its hospital was being run on commercial lines for profit motive.

3. Upon perusal of the paper book, we find that the ITAT while passing the impugned order has relied upon its own earlier order dated 27th March, 2009 passed with regard to the same assessee for the assessment year 2002-2003. It is pertinent to mention that an appeal being ITA No. 1416/2009 against the said order under Section 260A of Act, 1961 on the same grounds as urged in the present appeal was dismissed by this Court vide order dated 11th January, 2010 after holding that no substantial question of law arises for consideration.

4. Keeping in view the order dated 27th March, 2009 passed by the ITAT as well as the order dated 11th January, 2010 passed by this Court, we are of the opinion that the issue involved in the present appeal is no longer *res integra*.

5. Accordingly, present appeal is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

JULY 19, 2010
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