



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

ITA No. 1345 of 2008

Reserved On: 23rd December, 2009.
% Pronounced On: 22nd January, 2010.

Director of Income Tax . . . Appellant

through : Ms. Prem Lata Bansal,
Advocate.

VERSUS

Indian National Science Academy . . . Respondent

through: Mr. Satyen Sethi, Advocate.

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Certain very prominent persons in the field of science, which included the then Director General of Council of Scientific and Industrial Research (CSIR) came together to form INSA. Most of these scientists were either the holders of prominent offices in Government/semi-Government bodies like CSIR, Planning Commission, Indian Agricultural Research Institute, Bhabha Atomic



Research Centre, Central Drug Research Institute, Council of Medical Sciences, National Institute of Oceanography or the Professors in prominent Universities like Universities of Delhi, Rajasthan, Calcutta, Punjab, etc. Certain scientists were retired persons, who had held high positions in such institutions/bodies of prominence were also included. Dr. Atma Ram, Director, CSIR was the first President and renowned scientist M.S. Swaminathan was the first Secretary, when the original name, National Institute of Science of India established in January, 1935 was changed to Indian National Institute of Science Academy in February, 1970. It is adhering Institute of Science, ICSU on behalf of the country. It was established with the object of nurturing eminence and recognizing scientists in India and harnessing scientific knowledge for the cause of national welfare. Some of the prominent objects of the petitioners Society stated in its memorandum of association are as under:

- a) The promotion of natural knowledge in India including its practical application to problems of national welfare.
- b) To act as a body of scientists of eminence for the promotion and safeguarding of the interests



of scientists in India; and to represent
internationally the scientific work of India.

- c) To act through properly constituted National Committees in which other learned academies and societies will be associated, as the National Research Council of India, for undertaking such scientific work of national and international importance as the Council may be called upon to perform by the public and by government.
- d) To publish such proceedings, journals, memoirs and transactions and other publications as may be found desirable.

There is no change in the object. It is for this reason that the INSA for the last more than twenty five years has been granted approval as a Scientific Association under Section 35(1)(ii) of the Income Tax Act (hereinafter referred to as 'the Act') and recognized Scientific and Industrial Research Organization (SIRO) by the Government in respect of the year in question as well as later years.



2. Section 35 of the Act allows certain deductions in :
of expenditure on scientific research. Clause(ii) of sub-section (1) thereof, with which we are concerned, permits deduction of an amount equal to one and one-fourth times of any sum paid to scientific research institution, which reads as under:

“(ii) an amount equal to one and one-fourth times of any sum paid to a scientific research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research:

Provided that such university, college or institution is for the time being approved for the purposes of this clause by the Central Government by notification in the Official Gazette;”

As proviso to this clause puts a condition of obtaining approval by the Central Government becoming entitled to get this deduction, the INSA had also applied for this approval for last more than twenty five years, approval has been granted by the Central Government as a “Scientific Research Association”. The gist of these approvals granted from time to time is provided by the appellant as under:

- “1. As per records INS was approved u/s. 35(1)(ii) of the Act w.e.f. **01.07.1977** as per the vide letter dated 05.03.1980 issued by DST. Min. of Finance had issued a gazette notification No.2139 File No.203/143/77 ITA-II dated 28.01.1978.



2. Further to the omission of Section 35 in Income Tax Act 1987 and consequent to introduction of Scheme on Recognition of Scientific and Industrial Research Organizations – 1988, INSA was recognized under SIR-1988 for the period from 01.04.1988 to 31.03.1989.
 3. Renewal under SIRO-1988 extended from **01.04.1989 to 31.03.1992**. The recognition under SIR-1988 has been renewed continuously renewed and the present renewal is **upto 31.03.2009**.
 4. The Section 35 of Income Tax Act was restored with modifications by Direct Tax Laws (Amendment) Act, 1989 from 01.04.1989, vide DST letter No.4/220/89-TU-V, dated 08.11.1989. Accordingly, INS applied for recognition under 35(i)(ii) on 12.01.1990.
 5. The Academy was approved u/s.35(i)(ii) of Income Tax Act under category **“Association”** from 01.04.1992 to 31.03.1995 as per notification issued by Department of Revenue, Min. of Finance.
 6. Further renewed from 01.04.1995 to 31.03.1996, 01.04.1996 to 31.03.1999, 01.04.1999 to 31.003.2000, and 01.04.2000 to 31.03.2003 under category **“Association”**.”
3. Once an approval is granted as scientific association to an institute, such an institute becomes entitled to avail tax exemption under Section 10(21) of the Act, in the following terms:

“10. Incomes not included in total income.-In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included –

- (21) any income of a scientific research association for the time being approved for the purpose of clause (ii) of sub-section (1) of section 35.”



We may note only that proviso to this sub-section stipulates certain conditions on the scientific research association to enable it to get the tax exemption. However, as we are not concerned with those, that part is not reproduced.

4. Notification dated 01.03.2001 was effective only upto 31.03.2003 and did not cover the year under consideration, though at that time application for this purpose was pending with the CBDT. The AO accordingly framed the assessment at an income of Rs.1,38,44,790/-. Against this order, the NISA filed an appeal before the CIT (Appeals). By that time Notification dated 28.03.2007 had been issued granting approval to the NISA under Section 35 (1) (ii) of the Act in view thereof CIT (A) allowed the appeal vide orders dated 30.08.2007 granting exemption under Section 20(21) of the Act to the NISA. The Revenue went in appeal against this order of the CIT (A). The Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'), however, has maintained the order of the CIT(A) in view of the aforesaid Notification issued under Section 35(1)(ii) of the Act and dismissed the appeal vide its decision



dated 11.04.2008. Against this order, the present is preferred and the plea of the Revenue is that since the INSA is granted approval under Section 35(1)(ii) as in “other institutions”, which would mean it was partly engaged in research activities, and not “Scientific Research Association”, benefit of exemption under Section 10(21) of the Act would not be available.

5. Since the last approval was coming to end of 31st March, 2003, the INSA again made an application dated 14.01.2003 to the Director, Income Tax (Exemptions) seeking renewal of the approval from 01.04.2003 to 31.03.2008. This approval was granted after vigorous and constant follow-up for almost three and half years with effect from 01.04.2003 vide Notification dated 28.03.2007. However, this time, this approval was given to the INSA under the category of “other institutions”. Due to change in category from “Scientific Research Association” to “other institutions”, Income Tax authorities are of the view that INSA is not entitled to avail tax exemption under Section 10(21) of the Act. Though the INSA has also submitted representation to the Director, CBDT on 15.05.2007 requesting to place it



under “Association Category”. This application pending with CBDT.

6. The order of the CIT(A) shows that it went by the approval granted by Notification dated 28.03.2007 and held that since this Notification was available as per which approval was granted with effect from 01.04.2003, which had not been issued when the assessment order was passed, the assessee would be entitled to exemption. In appeal, the Revenue had specifically averred that the CIT (A) had erred in overlooking the fact that the Notification was put to the NISA under the category of “other institutions” and not “Scientific Research Institutions”. It is clear from the ground No. 2 raised in the appeal and the arguments based thereupon reads as under:

- “2. On the facts and in the circumstances of the case, the ld.CIT(A0) (sic) ld. CIT (A) has grossly erred in overlooking the fact that as per notification dated 28th March, 2007 issued by CBDT, the assessee’s case is notified under the category of “other institution” and not under the category of Scientific Research Association.”
3. Ld. CIT(A0 (sic) CIT(A) has erred in law in holding that he income of the assessee is exempted u/s 10(21) of Income Tax Act ignoring the fact that the provisions of the Section 10(21) are applicable only to “Scientific Research Association” and not to the assessee notified under the category of ‘Other Institutions’.”



7. Notwithstanding this specific plea, the Tribunal dismissing the appeal of the Revenue did not even advert to this plea and summarily rejected the appeal again relying upon the Notification dated 28.03.2007 in the following words:

“4. The AO did not treat assessee as Scientific Research Association for the purposes of sec. 35 (1) (ii) which is the pre-requisite for claim of exemption u/s 10(21) of I.T. Act, 1961. The AO did not grant such exemption on the ground that the certificate earlier granted to the assessee was not renewed for the year under consideration. Ld. CIT(A) had held that the assessee is eligible for exemption u/s 10(21) of the Act as approval has been granted by CBDT to consider the assessee as Scientific Research Association in accordance with provisions of sec. 35(1)(ii) of the Act vide their order dated 28.3.2007 which is subsequent to the passing assessment order i.e. 11.12.2006.

5. At the time of hearing a copy of approval by CBDT was given by ld. AR to ld. DR and time was allowed to ld. DR to go through the said approval of CBDT. After going through the said approval ld. DR submitted that it is a proper approval. In this view of the situation, we find no infirmity in the order of CIT(A), therefore departmental appeal is dismissed.”

8. No doubt, the learned DR had conceded that it was a proper approval. However, such a concession in law would not be binding upon the party, *viz.*, Revenue in this case. Since, the basic issue is as to whether exemption under Section 10(21) is applicable “only to Scientific Research Institution” and not to “other



institutions” and this aspect has not been dealt with all by the Tribunal. We have no option but to set aside the order of the Tribunal and remit the case back to the Tribunal for afresh consideration.

9. Before we part with, we would like to make certain comments. As noted above, the NISA had been allowed approval under Section 35(1)(ii) of the Act for the last twenty five years, *i.e.*, till 31.03.2003 as of “Scientific Research Association”. Reason why the approval is now granted as “other institution”, is not discernible. It was stated by the learned counsel for the assessee that application for reconsideration and put the NISA under the category of “scientific research association” is pending. We hope and expect that CBDT shall decide such an application as expeditiously as possible. It is also necessary to point out that in case representation of the INSA is rejected, it would be open to the INSA to file suitable appeal against such an order. Furthermore, from the perusal of the order of the CIT (A) shows that it was argued before him that the INSA is a non-profit organization fully funded by Department of Science & Technology, Ministry of Science and Technology,



Government of India. If it is correct, it would be c
the INSA to press this fact before the Tribunal to support
its plea that being an institution 100% financed by the
Central Government, it is not liable to pay any tax. The
party shall appear before the Tribunal on 11.02.2010.

(A.K. SIKRI)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

JANUARY 22, 2010.

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