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

\+ ITA 1480/2010

DIRECTOR OF INCOME TAX (EXEMPTIONS) ..... Appellant
Through: Mr. Abhishek Maratha, Advocate

versus

MAHARAJA AGARSEN TECHNICAL
EDUCATION SOCIETY ..... Respondent
Through: None

% Reserved on : 21st September, 2010
Date of Decision: 08th October, 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? Yes
3. Whether the judgment should be reported in the Digest?Yes

MANMOHAN, J

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity, "Act") challenging the order dated 12th March, 2010 passed by the Income Tax Appellate Tribunal (in short "Tribunal") in ITA No. 4886/Del/2009, for the Assessment Year 2006-2007.

2. The relevant facts of the present case are that the respondent-

assessee is not only a society registered under the Societies Registrat Act, 1860, but is also registered under Section 12A of the Act. The respondent-assessee had filed a return of Nil income for the Assessment Year 2006-2007. The said return was processed under Section 143(1) of the Act. However, the matter was selected for scrutiny.

3. During scrutiny, the Assessing Officer (in short, "AO") observed that as per the computation sheet, an amount of ₹ 20,00,000/- had been shown as income applied during the assessment year under the head 'Purchase of Land', but in the schedule for fixed assets, there was no addition to land. According to the AO, as the advance was given on 10th January, 2006 without execution of any agreement, the respondent-assessee could not satisfy the mandatory condition under Section 11 of the Act that the said advance was applied for charitable purpose.

4. While assessing the respondent-assessee's income at ₹ 13,876/-, the AO also relied upon a judgment of the Madras High Court in the case of ***Commissioner of Income-Tax Vs. V.G.P. Foundation (2003) 262 ITR 187***.

5. Though the respondent-assessee's appeal before the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] was dismissed, the Tribunal allowed the respondent-assessee's appeal vide the impugned order. The relevant observations of the Tribunal are reproduced hereinbelow:-

"13. Now, let us look to the facts of the present case where an advance of Rs.20 lacs was given to one Shri Manjeet Singh against the purchase of land. Shri Manjeet Singh executed an irrevocable General Power of Attorney in favour of the assessee vide registered deed of irrevocable General Power of Attorney executed and registered on 12.07.2007. In the irrevocable General Power of Attorney, Shri Manjeet Singh has clearly stated that he received un-refundable consideration of Rs.33 lacs in advance as under:-

(i) Rs. 20 lacs vide cheque no.401640 dated 10.01.2006 drawn on Oriental Bank of Commerce, Branch Paschim Vihar, New Delhi.

(ii) Rs. 9 lacs vide cheque no.416009 dated 16.05.2006 drawn on Oriental Bank of Commerce, Branch Paschim Vihar, New Delhi.

(iii) Rs. 4 lacs vide cheque no.416037 dated 06.06.2006 drawn on Oriental Bank of Commerce, Branch Paschim Vihar, New Delhi.

14. He further stated that the aforesaid advance was received by him against the landed property measuring 700 sq. yds owned by him. He further stated in the deed of irrevocable General Power of Attorney that he had given all the original documents related to the property to the assessee trust and the assessee trust was duly verified the same and was well satisfied with the physical and legal status of the property. He, therefore, executed irrevocable General Power of Attorney giving all the power to the assessee trust to exercise all powers or rights in respect of that property. In the Power of Attorney, it has been categorically stated that the assessee has taken the possession of the land and occupied the same on the spot. From this averment made in the deed of irrevocable General Power of Attorney executed by Shri Manjeet Singh in favour of the assessee, it is clear that all the powers to control, manage, use, occupy and enjoy the property has been given to the assessee. It is not in dispute that Shri Manjeet Singh is not connected or related in any manner to Trust or its trustees. There is no allegation by the Department that the assessee has diverted the money to

related or interested persons within the meaning of section 13(1)(d) read with section 11(15) of the Act. It is well settled that right to obtain conveyance of a property by entering into an agreement to purchase the property and particularly in the light of the fact that the possession of the property has already been given to the purchaser, is a capital asset within the meaning of section 2(14) of the Act. It is also well settled that transfer in relation of a capital asset would include any transaction involving allowing of the possession of any immovable property to be taken or retaining in part performance of contract of the nature referred to in section 53A of the Transfer of Property Act, 1882, as contemplated u/s. 2(47) of the Act. Therefore, in the present case, the assessee has acquired capital asset in the form of a land, in respect of which the assessee has paid advance amount of Rs.20 lacs in the year under consideration, and balance consideration of Rs.13 lacs were paid in immediate next year and has obtained the possession of the property and also got irrevocable General power of Attorney executed in his favour by seller of the property. By making the payment in advance and taking the possession of the property, the assessee has acquired right to secure conveyance of the property in its favour, and as such the amount paid by the assessee to Shri Manjeet Singh cannot be regarded as the money remained with the assessee, and not the application of income for acquiring capital asset. The money was given to Shri Manjeet Singh and on receiving the money from the assessee, Shri Manjeet Singh had credited a legal obligation or duty upon him to convey the property in favour of the assessee and in furtherance to that agreement, Shri Manjeet Singh has also handed over the peaceful and vacant possession of the property to the assessee, and had also executed an irrevocable General Power of Attorney in assessee's favour…….

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16. For the reasons given and in the light of our discussions made above, we, therefore, hold that the revenue authorities below were unjustified in holding that the advance of Rs.8 lacs given towards purchase consideration of the property, which was used to carry out the object of the Trust, was not an application of income for charitable purposes within the meaning of section 11 of the Act. We, therefore, reverse the order of the authorities below and direct the AO to treat the payment of Rs.20 lacs paid by way of advance towards purchase of property as an application of income for charitable purposes and to

> *allow the deduction accordingly. Thus, the ground raised by the assessee is allowed."*
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> (emphasis supplied)

6. Having heard the learned counsel for the revenue and having perused the appeal papers, we are of the view that in the present case the advance payment of ₹ 20,00,000/- to Mr. Manjeeet Singh was towards application of funds for charitable purpose. In fact, in consideration of the said sum, not only Mr. Manjeet Singh had executed a registered irrevocable General Power of Attorney, but had also handed over possession/occupation of the land. In fact, all the powers to deal with the said property had been given to the respondent-assessee.

7. We are also in agreement with the view of the Tribunal that the judgment of the Madras High Court in ***V.G.P. Foundation*** (supra) is not applicable to the present case, as in the said case, the Madras High Court had found that the money instead of lying with the assessee had been deposited with the sister concern of the company and the money had not been applied for a charitable purpose. Since the facts of the present case are entirely different from the decision of the Madras High Court, we are of the opinion that the judgment has no application to the present case.

8. In fact, in our view, the facts of the present case are quite similar to the case of ***S. RM. M. CT. M. Tiruppani Trust Vs.***

Commissioner of Income Tax (1998) 230 ITR 637. In the said c , the Supreme Court held as under:-

> *"For the year ending April 12, 1970, which is the accounting year relevant to the assessment year 1970-71, the amount of Rs.7,82,792.44 which was shown in the earlier balance-sheet (as on April 1, 1969) as advance to S. RM. M. CT. M. Firm, Rangoon, on the "assets" side was substituted by "building for Rs. 8 lakhs" on the assets side. It was the case of the assessee that during the assessment year 1970-71, the advance to the said firm at Rangoon was in effect realised and invested in a building for the purpose of starting a hospital. The trust had also earned during that assessment year other income amounting to Rs.1,64,210.03.*
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> *The assessee claimed exemption for the total income of Rs.8 lakhs plus Rs.1,64,210.03 under Section 11(1) of the Income-tax Act, 1961. The Income-tax Appellate Tribunal by a majority of 2:1 held that the sum of Rs.8 lakhs was to be treated as income of the assessee for the purposes of Section 11. The Tribunal gave the benefit of section 11(1) to the assessee for the assessment year 1970-71 in respect of the entire income consisting of Rs.8 lakhs plus Rs.1,64,210.03. On a reference to the High Court, the High Court has held that the sum of Rs.8 lakhs was an asset acquired in realization of an outstanding due and hence, the sum of Rs. 8 lakhs cannot be included in the income of the assessee for the purposes of section 11(1).....*
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> *xxx xxx xxx*
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> *A mere look at sections 11(1) and 11(2) is sufficient to dispel this argument. Under Section 11(1), every charitable or religious trust, irrespective of whether it has filed a declaration under Section 11(2) or not, is entitled to deduction of certain income from its total income of the previous year. The income so exempt is the income which is applied by the charitable or religious trust to its charitable or religious purposes in India. If the entire income is so applied, the entire income would be exempted. If the entire income is not applied but some*

income is accumulated by such a trust, then also under Section 11(1)(a), such accumulated income to the extent of 25 per cent of the total income (or Rs.10,000, whichever is higher) would be exempted from income-tax…….

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…….The assessee, however, is entitled to claim the benefit of Section 11(1)(a). In the present case, the assessee has applied Rs. 8 lakhs for charitable purposes in India by purchasing a building which is to be utilised as a hospital. This income, therefore, is entitled to an exemption under section 11(1).”

9. Consequently, the amount paid by the assessee to Mr. Manjeet Singh was towards acquisition of a capital asset in accordance with Section 11 of the Act as on receipt of money, Mr. Manjeet Singh had not only handed over peaceful and vacant possession of the property to the assessee but had also executed an irrevocable General Power of Attorney in assessee’s favour.

10. Accordingly, the present appeal being devoid of merit, is dismissed *in limine*.

MANMOHAN, J

CHIEF JUSTICE

OCTOBER 08 , 2010
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