



#17 to #19

% 11.07.2011

Present: Mr. Abhishek Maratha, Sr. Sanding Counsel for the appellant.
Mr. Prakash Kumar, Amicus Curiae, for Respondent/Assessee.

+ITA Nos. 1754/2010, 1755/2010 & 206/2011

*

The respondent/assessee had filed the return declaring income at Nil and claiming benefit under Section 11 of the Income Tax Act (henceforth 'the Act' for short). The respondent is a charitable organization and is admittedly registered under Section 12A of the Act. Assessment was carried out accepting the income at Nil giving the benefit of Section 11 of the Act to the respondent/assessee.

Thereafter, however, a notice under Section 148 of the Act was issued reopening the assessment proceedings on the ground that the department had received information from investigating unit that the assessee had received accommodation entry of ₹30,57,140/- on various dates. After opening the assessment and giving a show cause notice to the assessee on that premise, the re-assessment proceedings were carried out wherein the Assessing Officer made additions of the aforesaid amount under Section 68 of the Act. He also added an amount of ₹11,52,857/- purportedly on



: 2 :

the ground that this could be a commission @5% on the aforesaid accommodation entry would have been paid by the assessee. The assessee took the matter in appeal. The CIT (A) deleted the additions *inter-alia* on the following basis:

- (i) The Assessee was registered under Section 12A of the Income Tax Act, 1961;
- (ii) The Registration of Assessee was still continuing and had not been withdrawn.
- (iii) The aforesaid amount of ₹3057140/- had already been shown by the Assessee as its income by way of donation in the original assessment proceedings.
- (iv) There was no dispute by the A.O. that the entire amount of the aforesaid donation was applied by the assessee for charitable purpose.
- (v) There was nothing on record which could suggest that the aforesaid donation received by the Assessee was accommodation entries as alleged by the Department.

On these facts, the CIT(A) applied the judgment of this Court in ***Director of Income Tax v Keshav Social and Charitable Foundation***, (278 ITR 152) while allowing the appeal and deleting the said addition. The order of the CIT(A) has been upheld by ITAT resulting into dismissal of the appeal preferred by the revenue



: 3 :

against the order of the CIT(A). Feeling aggrieved, the present appeal is filed. As pointed out above, clear finding of facts recorded by the two authorities below are that the amount in question was received by way of donation and not as accommodation entry and it was even applied for charitable purposes.

Curiously, for the first time in this appeal an issue is sought to be raised namely the donation received by the assessee could be a corpus donation and whether such corpus donation would be entitled to exemption or not is a question which needs to be determined.

As pointed out above, it was never the case of the Assessing Officer from very beginning. In the original assessment return the aforesaid amount was shown as donation which was accepted as such. The re-assessment proceedings were carried out only on the ground that the amount received was not donation but accommodation entry which has not been proved. In this appeal preferred under Section 260A of the Act, for the first time, the Revenue cannot make out completely a new case altogether.

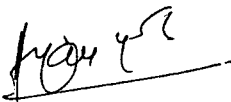
We, thus, do not find any merit in these appeals which are hereby dismissed with costs. The cost is quantified at Rs.7500/- in all appeals (Rs.2,500/- for each appeal).



: 4 :

Since Mr. Prakash Kumar, learned counsel for the respondent is appearing as Amicus, at our request, this cost shall be paid to Mr. Prakash Kumar.

The aforesaid findings would not be the answer to the substantial question of law.


A.K. SIKRI, J.


M.L. MEHTA, J.

July 11, 2011
awanish