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% 13.07.2011

Present: Mr. Abhishek Maratha & Ms. Anshul Sharma,  
Advocates for the Appellant  
Mr. Satyen Sethi, Advocate for the respondent

+ ITA No.464/2011 & ITA No.471/2011


Learned counsel for the parties state that the matter in controversy is no more res-integra in view of the judgment of the Co-ordinate Bench of this court presided over by Hon'ble the Chief Justice in ITA No.1575/2010 decided on 29.11.2010 between the same parties. It is thus agreed that this matter be also remitted back in terms of the orders passed in the aforesaid appeals.

The appeals are accordingly disposed of.

JULY 13, 2011

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SANJAY KISHAN KAUL, J.

  
RAJIV SHAKDHER, J.



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

+ **ITA No. 1575/2010**

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

Versus

PARIVAR SEWA SANSTHA ..... Respondent  
Through: Mr. S.Ganesh, Senior Adv. with Mr.  
Kamal K. Jetley, Mr. Manish Singh,  
Adv.

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

% **ORDER**  
**29.11.2010**

The present appeal has been preferred by the revenue under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act') wherein the following substantial questions of law are sought to be canvassed:

- “(1) Whether ITAT was correct in law in holding that the salary paid by the assessee to Mrs. Sudha Tiwari was reasonable and therefore, claim of the assessee for exemption u/s 12 of the Act was not hit by provisions of Section 13(1)(c) R/W Section 13(2)(c) of the Act?
- (2) Whether ITAT was correct in law in allowing benefit of Section 11 of the Act to the assessee holding that there was no infringement of provisions of Section 13 of the Act?



- (3) Whether ITAT was correct in law in estimating enhancement of salary by 20% every year and thereby treating the salary paid during the year as reasonable?
- (4) Whether order passed by ITAT is perverse in law and on facts?"

2. Be it noted, the present appeal arises out of ITA No.927(Del)/2008 decided on 28.8.2009 by the tribunal pertaining to assessment year 2004-05.

3. We have heard Mrs.Prem Lata Bansal, learned counsel for the revenue and Mr. S. Ganesh, learned senior counsel for the assessee – respondent.

4. On a perusal of the order passed by the Income Tax Appellate Tribunal (for short 'the tribunal'), the question that has been raised by the revenue, whether the enhancement of salary paid to Mrs. Sudha Tiwari for the assessment year 2004-05 was reasonable or not. The tribunal has rejected the plea advanced by the assessee with regard to her status but allowed the reasonableness of salary paid to her. It is worth noting that the assessee has preferred ITA No.337/2010 which has been disposed of today along with ITA No.274/2005 and other connected ITAs wherein this Court has held thus:

“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 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.”

5. Be it noted, in the said decision this Court had adverted to the factum of reasonableness and status and held as follows:

“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 the finding recorded by the



tribunal with regard to the unreasonable and 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.
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.”
6. From the aforesaid analysis, it is quite clear that this Court while keeping the issue of status open has remitted the aspect of reasonableness of salary for all years for reconsideration regard being had to certain factors. It is apt to note that the tribunal has not extended the benefit of exemption despite reasonableness of salary component as in certain years it was found to be unreasonable. As in the appeals preferred by the assessee the matter has been remitted, the same direction has to be issued for the present year and accordingly we reiterate the order passed in above paragraph 21 of the aforesaid order and the present appeal stands disposed of on the said terms. There shall be no order as to costs.

  
CHIEF JUSTICE

  
MANMOHAN, J

NOVEMBER 29, 2010  
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