



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

%

*Reserved on: 10<sup>th</sup> December, 2012*  
*Date of Decision: 14<sup>th</sup> December, 2012*

+ **W.P. (C) 11909/2005**

ESCORTS HEART INSTI. & RESEARCH CENTRE ..... Petitioner

Through: Mr. Parag M Tripathi, Sr. Adv. with  
 Mr. R M Mehta and Mr. Simran  
 Mehta, Advs.

versus

COMMR.OF INCOME TAX, CENTRE ..... Respondent

Through: Mr. Sanjeev Rajpal, Sr. Standing  
 Counsel.

**CORAM:**

**MR. JUSTICE S. RAVINDRA BHAT**  
**MR. JUSTICE R.V. EASWAR**

**R.V. EASWAR, J.:**

Shorn of all niceties, the precise question which arises for consideration in this writ petition is this. Can the assessing officer, who intends to issue notice under section 148 of the Income Tax Act, 1961 to reopen an assessment, entertain a “reason to believe” which is contrary to the statute?

2. Section 10(21) provides for exemption of any income of a scientific research association which is approved under section 35(1)(ii). The first proviso, however, makes the exemption subject to the provisions of sub-sections (2) and (3) of section 11 of the Act. Section 11(3) provides for certain contingencies in which the accumulated income of the scientific research association which was granted exemption over a period of years would become taxable. On the happening of any of the contingencies provided for, the accumulated income which earlier enjoyed exemption “*shall be*



*deemed*” to be the income of the scientific research association of the previous year in which the contingency happened. It does not matter that the accumulated income in respect of the earlier years which had hitherto enjoyed exemption from tax, does not relate to the previous year in which the contingency took place. This, in short, is the substance of section 10(21) read with section 11(2) and (3) of the Act.

3. The petitioner is a scientific research society approved by the competent authority under section 35(1)(ii) for research activity in the field of coronary diseases and other connected fields. In this writ petition we are concerned with the validity of the notices issued by the assessing officer under section 148 of the Act seeking to reopen the assessments for the assessment years 1998-99, 1999-00 and 2000-01. On 01.04.2000 the petitioner was amalgamated with Escorts Hospital, Chandigarh and the amalgamated society got registered under the Companies Act, 1956 on 30.05.2000. The assessing officer recorded reasons as required under section 148(2) and reopened the assessments for the earlier three years under section 147 of the Act and issued notices on 29.03.2004, 22.3.2005 and 14.7.2005 respectively. The reasons recorded by the assessing officer are identical for all the three years and are as under: -

“A.Y.98-99

***Escorts Heart Institute & Research Centre, New Delhi –  
Report regarding***

*Escorts Heart Institute & Research Centre, New Delhi registered as a charitable trust u/s 12A(A) of the Income Tax Act, 1961 transferred its assets worth ₹110.40 crores to Escorts Heart Institute & Research Centre Ltd. Chandigarh which is a subsidiary of Escorts Ltd. Escors Ltd. was the main promoter of the EHIRC, New Delhi and had also contributed ₹60 lacs on 30.12.81. Therefore, EHIRC New Delhi has violated the provisions of section 13(2)(g) read with section 13(3)(b) of the Income Tax Act, 1961. Section 11 & 12 no more remain applicable as the society no longer remains a charitable institution. Thus it is established that the society applied the accumulated income for purposes other than charitable (violation of section 13).*

*The EHIRC, New Delhi has also violated the guidelines for approval u/s 35(1)(ii) for recognition of Scientific and Industrial*



*research, the approval granted needs to be withdrawn with retrospective effect.*

*On perusal of assessment record, there was an accumulated balance of ₹17,55,71,699/- pertaining to Assessment Year 1998-99 which has been utilized for other than charitable purpose. As income of ₹17,55,71,699/- has escaped assessment for the Assessment Year 1998-1999 for which the assessment u/s 143(1) was completed on 25.5.99 at Nil income. In order to tax the escaped income for Assessment Year 1998-99 action u/s 147 is required. Your approval is solicited for issue of notice u/s 148 for which limitation expires on 31.3.2006.*

*ADIT(E) TC-II, New Delhi*

*Approval from the Addl. DIT(E) Range-I, New Delhi vide letter No.76 dated 21.5.04 received for issue of notice u/s 148 for Assessment Year 1998-99 and placed on record. A notice u/s 148 for Assessment Year 98-99 is issued.”*

The reasons recorded for the other two years are identical except for the amounts.

4. It would appear that the petitioner filed its objections to the notices, but these objections were rejected by the assessing officer who proceeded to complete the reassessments. In the re-assessments the assessing officer has added the balances of the accumulated income at the end of each year i.e. 31.03.1998, 31.03.1999 and 31.03.2000 which came to the following: -

Assessment year	Amount
1998-99	17,55,71,699/-
1999-2000	22,33,74,723/-
2000-01	28,62,10,092/-

5. Elaborate arguments were addressed before us on the question of jurisdiction of the assessing officer to reopen the assessments. These have been considered. The



precise question that arises for our consideration has been formulated in the beginning of our order. Even assuming that there was breach of any statutory conditions under which the exemption was granted to the petitioner under section 10(21), the entire accumulated income of the earlier years cannot be taxed in those years by reopening the assessments for those years. Section 11(3), which is made applicable to section 10(21), itself provides that the entire accumulated income shall be deemed to be the income of the assessee of the previous year in which the breach of the conditions or the contingency occurs. The statute having thus fixed the assessment year in which the entire past accumulated income falls to be taxed, it is impermissible in law for the assessing officer to entertain a reason to believe that income chargeable to tax for the assessment years 1998-99 to 2000-01 had escaped assessment. The statute has imposed a fetter on the power of the assessing officer to consider the accumulated income, as the income of the respective earlier years and has mandated it to be the income of the previous year i.e. the previous year commencing on 01.04.2000 and ending on 31.03.2001 relating to the assessment year 2001-02, which is the year in which the petitioner was amalgamated with Escorts Hospital, Chandigarh and transferred all its assets to the Chandigarh Hospital which is looked upon as a breach of the statutory provisions subject to which the exemption under section 10(21) was allowed. The consequences of the breach having been provided by the statute itself, it is not open to the assessing officer to consider the accumulated income as having escaped assessment in the past assessment years. He has to perforce bring to tax the accumulated income only in the year in which the breach occurred; that is the mandate of section 11(3).

6. Two important conditions for the applicability of section 147 are (a) income chargeable to tax must have escaped assessment and (b) assessing officer must have reason to believe so. When section 11(3) treats the accumulated income of the past year of the petitioner as income of the assessment year 2001-02, there can be no question of any income escaping assessment in the past assessment years i.e. the



assessment years 1998-99 to 2000-01. It follows that the assessing officer cannot entertain any reason to believe that income chargeable to tax for those years had escaped assessment.

For these reasons we quash the notice issued under section 148 of the Act for all three years i.e. assessment years 1998-99 to 2000-01 and allow the writ petition with no order as to costs.

**(R. V. EASWAR)**  
**JUDGE**

**(S. RAVINDRA BHAT)**  
**JUDGE**

**DECEMBER 14, 2012**  
hs