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

Date of Decision: October 30, 2014

\+ ITA 427/2014 & 428/2014

DIRECTOR OFINCOME TAX (E)

..... Appellant

Through Mr.Kamal Sawhney, Sr. Standing Counsel

versus

INDO FRENCH CENTRE

..... Respondent

Through Ms.Shashi M.Kapila, Advocate with Mr.Sushil Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL)

These two appeals by the Revenue impugn a common order dated 31.12.2013 passed by the Income Tax Appellate Tribunal ('Tribunal' for short) pertaining to Indo French Centre for Promotion of Advanced Research. The appeals relate to assessment years 2008-09 and 2009-10.

2. Two contentions have been raised on behalf of the Revenue in these appeals. Firstly, there was violation of Section 13(1)(d) read with Section 11(5) of the Income Tax Act, 1961 ('Act' for short) as funds of the

respondent Centre were deposited with a French financial services group, namely, Crédit Industriel et Commercial, Paris, France and interest of Rs. 11,37,438/- and Rs.9,37,722/- (upon conversion) was earned in the assessment year 2008-09 and 2009-10, respectively. The second issue relates to application of proviso to Section 164(2) of the Act because of violation of provisions of Section 13(1)(d) of the Act and accordingly the respondent-Centre should be taxed on the maximum marginal rate.

3. In order to appreciate the contentions, certain facts relating to formation of the Centre and the source of funds is required to be elucidated:-

(a) Indo French Centre for Promotion of Advanced Research was formed in India, jointly by the Government of India and Government of France based on the principle of reciprocity and parity. The said Centre was registered as a Society under the Societies Registration Act, 1860 on 16.04.1986 and has been recognized as a Scientific and Industrial Research Organization by the Department of Scientific and Industrial Research (DSIR).

(b) As per the bilateral agreement between the Governments of India and France, the decisions of the respondent-Centre are subject to scrutiny of both Governments.

(c) The Government of India had assured exemption from payment of taxes to the then proposed Centre by their letter dated 08.06.1985. Thereafter, there was exchange of correspondence and it was mutually decided by the two Governments that the said Centre would be exempt from payment of income tax. No custom duties would be payable by the said Centre under the Indian Laws for import of scientific equipment.

(d) The Government of France had agreed to make contribution to the said Centre in the following manner and mode:-

> *"1.1 Direct contribution to be transferred and placed at the disposal of the centre according to the approved budget.*
> *1.2 Equipment etc. as may be given, from time to time, by the French side.*
> *1.3 Expenses in France to be borne by the France side on visits of Indian scientists to France.*
> *1.4 Air Fare for French scientists visiting India.*
> *1.5 Any other expenses which the French side agree to bear."*

(e) This was accepted by the Government of India. Pursuant to the aforesaid agreement, the Reserve Bank of India had permitted/ allowed opening of a foreign currency account by the respondent Centre in France with a French Bank in Paris. The Reserve Bank of India by letters dated

04.07.1988 and 05.09.1988 granted the following permissions:-

> *"i. Grants received from the French Govt. may be credited to the account freely.*
> *ii. Interest on balance may be credited to the account freely.*
> iii. *Debit in respect of bank charges and repatriation to India may be made freely.*
> *iv. Debits for the expenses in connection with conducting of research programs in French Laboratories and joint workshops, seminars abroad may be made freely.*
> *v. All other transactions will require the prior approval of Reserve Bank of India.*
> *1.5 As per the arrangement the grants in aid from the Govt. of France is to be deposited in the bank account in France and after meeting the expenses incurred in France, balance grant in aid is freely remittable to India. "*

4. Keeping in view the aforesaid factual position, the Tribunal in the impugned order has held that the assessee Society had not parked any of their funds in Crédit Industriel et Commercial, Paris, France either as an investment or as deposit. Grants from the Government of France, which were parked in the said account, as controversy had arisen because of amendments in the Act, on whether the income of the respondent Centre would become taxable or not. The respondent Centre was earlier exempt under Section 35(1)(ii) of the Act for all years prior to 01.04.2003. Albeit,

after the said provision was withdrawn and become inapplicable, the grant by the French Government could not be utilized as per the mandate of the French authorities, for insistence and enunciation that the Centre should remain a non-taxable entity/institution.

5. In such circumstances, the respondent Centre approached the Government of India, the Ministry of Finance, the Department of Revenue, for grant of exemption from taxation under the Act. Pursuant to the request made, the Central Board of Direct Taxes has issued order dated 12.10.2010, which reads:-

> *"In exercise of the powers conferred by proviso to clause (c) of sub-section (1) of section 11 of the Income Tax Act, 1961 (43 of 1961), the Central Board of Direct Taxes hereby directs that the income derived from property held under the trust known as "Indo-French Centre for the Promotion of Advanced Research, New Delhi" shall not be included in the total income of the persons in receipt of such income to the extent to which such income is applied in accordance with the objects of the Indo-French Centre for the promotion of Advanced Research, New Delhi.*
>
> *This order shall have effect for the period covered by Assessment Years 2005-06 to 2009-10.*
>
> *The claim as above of the applicant regarding the extent to*

which such income is applied to such purposes outside India will be subject to verification during the course of assessment proceedings as per the Income Tax Act, 1961."

(emphasis supplied)

6. The order by the CBDT, the highest authority under the Act, in plain and simple English states that income derived from property held under trust shall not be included in the total income of the respondent Centre to the extent such income is applied in accordance with the objects of the Centre. Thus the order affirms and accepts that the objects were charitable and in categorical and positive terms, the order grants exemption from entire income held under trust applied in accordance with the objects of the Centre, without any other stipulation, except in the last paragraph. The said paragraph states that even the income applied outside India could be exempt but would be verified during the course of assessment proceedings, as per the Act. The exemption is for the period covered by assessment years 2005-06 to 2009-10. Thus, the two assessment years in question are covered.

7. True and full legal effect and tax exemption consequence to the said order must be and should be given. In other words, the CBDT in view of the peculiar facts of this case, by a special order, which is not applicable to any other assessee, has held that the income derived from a property held under

trust would not be included in the total income of the person concerned i.e. the respondent Centre, provided it is applied in accordance with the objects of the Centre. This income, even when applied abroad, has to be excluded, subject to the verification stipulations mentioned in the last paragraph. Once we give proper effect and recognition to the order dated 12.10.2010, the entire income derived from property held under trust would be exempt. It is not averred that the income derived from the property held under trust was not applied in accordance with the objects of the Centre. Application of income is different, from accrual. Thus, the interest earned applied for the purpose/objects of the Centre will not form a part of the total income. Therefore, in respect of the said income, there would be no violation of Section 11(5) read with Section 13(1)(d) of the Act.

8. It cannot be argued and stated by the Revenue that the CBDT was not aware of the factual position that the respondent Centre is a joint collaboration between the Government of India and Government of France and as per the joint agreement, grants/aid of the French Government for the benefit of the Centre were kept in a French Bank Account. RBI had also granted permission. These facts, it must be held, were ascertained and known before the exemption was granted by order dated 12.10.2010. It is

normal and natural that some interest may accrue on the amount deposited. This would endure to the benefit of the Centre as additional funds would be available. It is not a case of wrongly parking and misuse. The very fact that the said order mentions about application of income for such purposes outside India clearly shows that the CBDT was fully conscious and aware. The entire income must be used and applied in terms of the charitable objects.

9. In view of the aforesaid position, which is peculiar to the facts of the present case as a specific exemption stands granted, we do not see any reason to interfere with the order of the Tribunal on the first aspect.

10. The second submission will also falter in view of the above findings. We notice that as per the findings of the Assessing Officer, the respondent Centre had excess of expenditure over income in the Profit and Loss Account for the assessment year 2008-09. In other words, the Centre had suffered a loss. However, the Assessing Officer held that the interest in the foreign bank account would be taxable at the maximum marginal rate. Because of the said finding, benefit of carry forward to the assessment year 2009-10 was denied. In any case, once we hold that the exemption granted by the order of the CBDT dated 12.10.2010 would apply, Section 164(2) of

the Act would not be applicable.

The appeals are accordingly dismissed.

SANJIV KHANNA, J

V. KAMESWAR RAO, J

OCTOBER 30, 2014/km