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IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 375/2016

COMMISSIONER OF INCOME TAX (EXEMPTION) Appellant
Through: Ms. Lakshmi Gurung, Advocate

versus

FASHION DESIGN COUNCIL OF INDIA Respondent
Through: Mr. Prakash Kumar and Ms. Rashmi
Singh, Advocates

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR**

ORDER

% **29.05.2017**

1. There are two issues raised in the present appeal filed by the Revenue against the order dated 30th October, 2015 in ITA No. 979/DEL/2011 DATED for Assessment Year 2007-08.
2. The first question is whether the Tribunal was right in law in holding that the Assessee was entitled to depreciation on the assets, the cost of which has been allowed as deduction as application of income.
3. This question has been answered in favour of the Assessee and against the Revenue by judgment of this Court in *DIT(E) vs. Indraprastha Cancer Society (2015) 53 taxman.com 463 (Del)*. Accordingly, the Court declines to frame a substantial question as far as the above question is concerned.



4. Second question urged is whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that there was no violation of the conditions laid down in section 11(2) of the Income Tax Act, 1961 in respect of the accumulation of income in excess of 15%.

5. In support of the above contention, Ms. Lakshmi Gurung, learned counsel for the Revenue has drawn the attention of this Court to the extract of the resolution passed in the meeting of the Trustee of the Fashion Design Council of India held on 25th October, 2007 where it has been stated that "such part of the income, if any, of the accounting year 2006-07 as has not been applied to the extent of 85% for the objects and purpose of the trust during the year be accumulated and set apart for the following: To promote the fashion industry etc. and To take such other steps as the trustee consider as being in tune with the aforesaid objective of the trust."

6. Relying on the decision of the Calcutta High Court in *DCIT (Exe) v. Trustees of Singhania Charitable Trust (1993) 199 ITR 819 (Cal)*, it is submitted by Ms. Gurung that above resolution is vague and general and does not satisfy the legal requirement for the purposes of claiming exemption under Section 11 (2) of the Act. It is urged that a specific purpose in the form of a project for which the funds are earmarked must be indicated.

7. On the other hand, learned counsel for the Assessee has drawn our attention to the judgment of this court *Director of Income Tax v. Mitsui and Co. Environmental Trust (2008) 303 ITR 111 (Del)* where a similar issue was considered by this Court. A reference was made to the earlier



decision in *CIT v. Hotel and Restaurant Association (2003) 261 ITR 190 (Del)* and it was held as under:

"7. This court rejected the contention and held that the purpose or purposes to be specified cannot be beyond the objects of the trust. Plurality of purposes for accumulation is not precluded. In other words, it need not necessarily be specifically stated for which purpose the accumulation is sought.

8. While we reiterate the view already taken by this court, we may mention that the Calcutta High Court had taken a different view in *DIT (Exemption) v. Trustees of Singhania Charitable Trust [1993] 199 ITR 819.*"

8. It is clear that as far as this Court is concerned, it has not agreed with the view of the Calcutta High Court. In the present case, given its objects, the Court is unable to agree with the stand of the Revenue that the Assessee has to state specifically the purpose for which the income is to be applied for availing exemption under Section 11 (2) of the Act.

9. No substantial question of law arise, the appeal is therefore dismissed.


S.MURALIDHAR, J


CHANDER SHEKHAR, J

MAY 29, 2017

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