



§~15 & 16

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

% Judgment delivered on: 24.11.2017

+ ITA 1057/2017

COMMISSIONER OF INCOME
TAX-(EXEMPTIONS)

..... Appellant

versus

ASIAN CENTRE FOR ORGANISATION
RESEARCH & DEVELOPMENT

..... Respondent

+ ITA 1058/2017

COMMISSIONER OF INCOME
TAX-(EXEMPTIONS)

..... Appellant

versus

ASIAN CENTRE FOR ORGANISATION
RESEARCH & DEVELOPMENT

..... Respondents

Advocates who appeared in this case:

For the Appellant(s) : Mr. Zoheb Hossain, Sr. Standing Counsel

For the Respondent(s) : None.

CORAM:-

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE R.K. GAUBA**

RAVINDRA BHAT, J. (OPEN COURT)

1. The Revenue urges in these two appeals that the ITAT fall into



error in confirming the CIT(A)'s order. The appellant-Commissioner had set aside the re-assessment for the years 2005-06, 2006-07. The assessee's returns were framed and filed under Section 143(1) (A) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') which claimed the benefit of Section 12(AA) from the year 2009-10 – which had been granted on 14.10.2008. The assessee's activities included as elaborated in Memorandum of Rules and Regulations were :

“3.2 To conduct, organize, participate in and otherwise associate with seminars, discussions conferences, courses, teams training and educational programmes pertaining to matters of interest to the development of industrial, rural and health organizations.

3.3 To write, design & publish books, video-films, cassettes, manuals, journals, and other literature or audio-visual aids for the furtherance of the objects.

3.4 To render assistance and advise on scientific methods of management of men, materials, machinery, money and other resources, and or, operations.

3.5 To do all other things and such other lawful things as may be conducive to the attainment of the above object or objects identical thereto, but not to engage in business as such.

3.6 To utilize the income of the society towards the promotion and aims and objects of the society.”

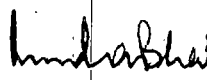



2. The assessment for the concerned years were sought to be re-opened on two grounds; firstly, that the activities which yield an income were not charitable and that they amounted to carrying on a provision – commercial activities and secondly, that the provision of Section 13(3) were violated because of the link with Ms. Kiran Wadhera.
3. The additions made during the re-assessment were set aside primarily on the ground that notice under Section 147 & 148 was not justified. However, the CIT(A) considered the merits and was of the opinion that the assessee had enjoyed the benefit uninterruptedly for 27 years and that the income yielded and reported to the Revenue could not be characterized as commercial. So far as the connection with Ms. Kiran Wadhera was concerned, the CIT(A) noticed that she was a full time employee and therefore did not fall within the mischief of Section 13(c). The ITAT affirmed the opinion of the CIT(A) but confined its discussion to the question of reassessment.
4. The Revenue urges that the ITAT ought to have appreciated the circumstances that the assessment in this case was not completed on scrutiny basis but under Section 143(1) (A). Thus, the reassessment could not be upheld by the ITAT. Learned counsel also cited the decision taken in "*Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd.*(2008) 14 SCC 408(SC), in support of the submissions.



5. It is evident in appeal that the CIT(A) went into the legality of the reassessment of notice as well as merits of the case. Had the Appellate-Commissioner confined his inquiry to the issue of reassessment, the revenue might have been justified in its appeal. Given that the CIT(A) returned the findings on merits as to the permissibility of the receipt within the four corners of Section 12A of the Income Tax Act, the complaint that the ITAT confined its inquiry to the validity of the reassessment in the circumstances of the case, according to us, does not result into a question of law – much less a substantial one. The Court also notices that the assessee had continuously enjoyed the benefit of Section 12A for about 27 years.

6. In view of the forgoing discussion, it is held that the appeals have no merit. They are accordingly dismissed.


S. RAVINDRA BHAT
(JUDGE)


R.K. GAUBA
(JUDGE)

NOVEMBER 24, 2017
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