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

+ **ITA 1296/2018**

THE COMMISSIONER OF INCOME
TAX – EXEMPTION

..... Appellant

Through: Mr. Ajit Sharma, Sr. Standing
Counsel.

versus

SOFTWARE TECHNOLOGIES PARKS OF INDIA Respondent

Through: Mr. J.K. Singh with Mr. Rahul
Chaudhary and Mr. Avesh
Chaudhary, Advocates.

+ **ITA 1303/2018**

THE COMMISSIONER OF INCOME
TAX – EXEMPTION

..... Appellant

Through: Mr. Ajit Sharma, Sr. Standing
Counsel.

versus

SOFTWARE TECHNOLOGIES PARKS OF INDIA Respondent

Through: Mr. J.K. Singh with Mr. Rahul
Chaudhary and Mr. Avesh
Chaudhary, Advocates.

+ **ITA 1345/2018**

THE COMMISSIONER OF INCOME
TAX – EXEMPTION

..... Appellant

Through: Mr. Ajit Sharma, Sr. Standing
Counsel.

versus

SOFTWARE TECHNOLOGIES PARKS OF INDIA Respondent

Through: Mr. J.K. Singh with Mr. Rahul
Chaudhary and Mr. Avesh
Chaudhary, Advocates.



CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER

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30.07.2019

1. These are Revenue's appeals against the common impugned order dated 16th May 2018 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos.843/DEL/2010 (Assessment Year 'AY' 2006-07), 2169/DEL/2011 (AY 2007-08), ITA No.2431/DEL/2011 (AY 2007-08) and ITA No.1470/DEL/2013 (AY 2008-09) respectively.

2. One of the issues urged by the Revenue which is common to AYs 2006-07 and 2007-08 is whether the ITAT was right in allowing the claim of the Assessee in respect of deemed application under Section 11(1) Explanation 2 of the Income Tax Act, 1961 ('Act') notwithstanding that the Assessee did not file the requisite intimation within the time period stipulated in the Act.

3. The Court finds that in *Association of Corporation and Apex Societies of Handlooms v. Assistant Director of Income-Tax (2013) 351 ITR 287 (Del)*, it was held by this Court that intimation in Form-10 for the purposes of claiming the benefit of the Section 11 of the Act could be furnished by the Assessee even during the assessment proceedings. A similar view has been taken by the Bombay High Court in *Commissioner of Income Tax-III, Pune v. Sakal Relief Fund (2017) 81 taxman.com 396 (Bom)*.

4. On the facts of the present case, although the Assessee did not give the intimation at the time of filing the original returns, admittedly, the



intimation was enclosed with the revised return filed by the Assessee. The Court accordingly does not find any error having been committed by the ITAT in holding this issue in favour of the Assessee.

5. A common question urged by the Revenue for AYs 2007-08 and 2008-09 is whether the ITAT was right in granting the benefits of Sections 11 and 12 of the Act to the Assessee even though it was involved in business activities and was conducting no 'charitable activity'?

6. The ITAT noticed that there was no change in the functions of the Assessee from earlier and its objects were never disputed by the Revenue authorities at any stage. It was held that the Revenue failed to establish that the activities carried out by the Assessee were contrary to its objects and functions. It was unable to be established by the Revenue on facts that the Assessee was carrying on commercial activity. In the earlier AYs, this issue had been decided against the Revenue as noticed by the Commissioner of Income Tax (Appeals) ['CIT (A)'] in his order dated 28th February 2011 for AY 2007-08. Consequently, the Court declines to frame any question on this issue.

7. The third issue which has been raised by the Revenue which is specific to AY 2008-09 is whether the ITAT was right in allowing depreciation in assets, the full cost of which was already allowed as application of income in earlier years, even though allowing the same could lead to a situation where amount of depreciation would exceed the purchase value of the assets.

8. It is pointed out by Mr. Rahul Chaudhary, learned counsel appearing for the Assessee on advance notice, that this issue is no longer *res integra*



in view of the decision of the Supreme Court in *Commissioner of Income Tax-III, Pune v. Rajasthan & Gujarati Charitable Foundation Poona, (2018) 89 taxman.com 127(SC)*. The ITAT too followed the said decision and decided the issue against the Revenue.

9. The fourth issue raised for AY 2007-08 is whether an amount received as advance was in fact utilized by the Assessee for charitable purpose. Here again on facts the ITAT has found in favour of the Assessee, which finding has not been shown to be perverse. The Court accordingly declines to frame such issue as raised by the Revenue.

10. The appeals are accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 30, 2019

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