$~**S-22**

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

\+ **ITA 150/2021**

COMMISSIONER OF INCOME TAX
(EXEMPTIONS) DELHI ..... Appellant

Through: Mr. Abhishek Maratha, Advocate.

versus

DABUR RESEARCH FOUNDATION ..... Respondent

Through

% **Date of decision: 27th September, 2021**

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The appeal has been heard by way of video conferencing.

2. Present Appeal has been filed challenging the order dated 10th February, 2020 passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT') in ITA No. 6566/Del/2015 for Assessment Year 2007-08.

3. The questions of law proposed by the appellant-revenue in the present appeal is as under:-

(1) Whether in the facts and circumstances of the present case, ITAT was justified in the eyes of law in allowing the appeal of the assessee by ignoring the fact that the assessee has failed to comply with the precondition mentioned in Rule 5D of the Income Tax Rules, 1962 for registration u/s 35(1)(ii) of the Act?

(2) Whether in the facts and circumstances of the present case ITAT was justified in the eyes of law in holding that the reopening of the assessment was wholly unjustified?

(3) Whether the impugned order passed by Income Tax Appellate Tribunal is perverse both on law and facts?

4. Learned Counsel for the Appellant submits that the ITAT erred in allowing the appeal of the assessee by ignoring the fact that it had not filed the list of donors along with auditor's report for Assessment Year 2007-08 and as such had failed to comply-with the precondition mentioned in Rule 5D(4) of the Income Tax Act, 1961 (for short 'Act') for registration under Section 35(1)(ii) of the Act. He emphasies that the ITAT erred in holding that the reopening of the assessment was wholly unjustified.

5. A perusal of the paper book reveals that the original assessment was completed under Section 143(3) of the Act and there was no failure on the part of the appellant to disclose fully and truly all material facts necessary for assessment. In fact, the statement of donations as received was very much available before the Assessing Officer at the time of original assessment and consequently the assumption of jurisdiction under Section 147 of the Act after four years based on the ground that it was not filed along with the audit report is bad in law and has been assumed on technical ground not mandatory in nature. In the opinion of this Court, the stipulation under Rule 5D(4) of the Act that the statement of donations shall be filed along with audit report is not a mandatory condition and is considered to have been complied with the moment the details of donation were filed before the Assessing Officer prior to the completion of assessment. Both the CIT (A) and ITAT have given concurrent findings to the said effect. The relevant portion of the orders passed by the CIT(A) and ITAT are reproduced hereinbelow:

A) Order dated 15th September, 2015 passed by CIT(A):-

"4.21 After considering all the facts and circumstances of the case, I am of the view that there is no doubt that the copy of audited statement of donations received for the AY 2007-08 was available at the time of completion of original assessment.. Honorable Supreme Court in case of CIT V Nagpur Hotel Owners' Association 2001 247 ITR 201 SC has held that if the details required to complete the assessment were available at the time of original assessment then there is no requirement to invoke the reassessment proceedings. The case of the Appellant is squarely covered by this decision of the Honorable Supreme Court and accordingly the addition of Rs. 16,87,53,200/- made by the AO during the reassessment u/s 147/143(3} is deleted."

B) Order dated 11th February, 2020 passed by ITAT:-

"7. We have considered the rival submissions and do not find any justification to interfere with the Order of the Ld. CIT(A). It is a fact that original assessment was completed under Section 143(3) of the I.T. Act, 1961. The assessee furnished complete details before A.O. at original assessment stage which includes list of donors etc., for completion of the assessment under section 35(1)(ii) of the I.T. Act. No new material was brought on record at the time of reopening of the assessment. The A.O. merely on the basis of the material already on record recorded reasons for reopening of the assessment. There is no failure on the part of the assessee to produce complete details at the original assessment stage. The crux of the findings of the Ld. CIT(A) clearly show that Ld. CIT(A) was satisfied with the explanation of assessee that it is not a fit case of reopening of the assessment, though no specific operative finding have been given in this regard. Ultimately, the Ld. CIT(A) allowed the appeal of assessee. Since assessee has raised point of reopening of the assessment and find merit before the Ld. CIT(A), therefore, it would show that the grounds of appeal raised by the assessee for reopening of the assessment has also been allowed. The Revenue has taken adjournment on 08.07.2019 seeking time to file revised ground of appeal. Though the revised grounds are filed, but, again no

ground have been taken to challenge the quashing of the re-assessment proceedings in the matter. The assessee for abundant precaution has filed application under Rule 27 of the I.T. Rules. The crux of the findings of the Ld. CIT(A) clearly show that it is a case of mere change of opinion and that re-assessment have been made after four years from the end of the relevant assessment year, after passing of the original assessment order under section 143(3) of the I.T. Act, 1961. There is no failure on the part of assessee to disclose all the facts truly and correctly which are required for passing of the assessment order. Therefore, reopening of the assessment was wholly unjustified and have been rightly quashed by the Ld. CIT(A) though no specific operative order have been passed in the matter, but when the Ld. CIT(A) has allowed the appeal of assessee on both the grounds, it would indicate that re-assessment have been quashed by the Ld. (A), therefore, application of assessee under Rule 27 of the I.T. Rules, 1962, is allowed. Therefore, appeal of Revenue would not be maintainable because no ground have been raised by the Revenue challenging the reopening of the assessment, despite giving sufficient opportunity to the Revenue. Further there is no merit in the appeal of the Revenue because complete details required for completion of the assessment were filed at the time of original assessment. Therefore, the issue is covered by Judgment of Hon'ble Supreme Court in the case of CIT vs., Nagpur Hotel Owners' Association (supra). There is, thus, no merit in the appeal of the Revenue and the same is accordingly dismissed.

6. Keeping in view the concurrent findings of fact by the CIT(A) and the Tribunal, this Court is of the view that the said findings should not be lightly interfered with. In fact, the Supreme Court in the case of ***Ram Kumar Aggarwal & Anr. vs. Thawar Das (through LRs), (1999) 7 SCC 303*** has reiterated that under Section 100 CPC the jurisdiction of the High Court to interfere with the orders of the Courts below is confined to hearing on

substantial question of law and interference with finding of the fact is not warranted if it involves re-appreciation of evidence. Further, the Supreme Court in ***State of Haryana & Ors. vs. Khalsa Motor Limited & Ors., (1990) 4 SCC 659*** has held that the High Court was not justified in law in reversing, in second appeal, the concurrent finding of the fact recorded by both the Courts below. The Supreme Court in ***Hero Vinoth (Minor) vs. Seshammal, (2006) 5 SCC 545*** has also held that "*in a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible.*" It has also held that there is a difference between question of law and a "substantial question of law". Consequently, this Court finds that there is no perversity in the findings of the CIT(A) and ITAT. Accordingly, the present appeal is dismissed.

7. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J

NAVIN CHAWLA, J

SEPTEMBER 27, 2021/TS