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

\+ ITA 154/2021

COMMISSIONER OF INCOME TAX (EXEMPTIONS) DELHI

..... Appellant

Through Mr.Abhishek Maratha, Advocate.

versus

ASSOCIATION OF STATE ROAD TRANSPORT UNDERTAKINGS

..... Respondent

Through Mr.Mayank Nagi, Advocate.

% Date of Decision: 30th September, 2021

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

MANMOHAN, J. (Oral)

1. Present appeal has been filed challenging the order dated 25th February, 2020 passed by Income Tax Appellate Tribunal [ITAT] in ITA No. 643/Del/ 2017 whereby the appeal filed by the appellant was dismissed.

2. In the present appeal, the Commissioner, Income Tax (Exemption), Delhi, has proposed the following question of law:-

> *"(1) Whether on the facts and in the circumstances of the present case and in law, the Hon'ble ITAT was correct in upholding the order of CIT (A) ignoring the fact that the activities of the assessee do not fall under any of the categories i.e. relief to poor, education, medical relief, preservation of environment and preservation of monuments or places or objects of artistic or historic interest and that the assessee had receipts under the heads*

'Revenue from test laboratory 'and 'consultancy receipts 'which were commercial in nature and their aggregate value exceeded Rs. 10 Lakh?"

3. Learned counsel for the appellant states that ITAT has erred in upholding the order of CIT(A) to the extent that it has overlooked that the activities of the respondent-assessee do not fall under the categories of education, medical relief, relief to poor, preservation of environment. He states that the ITAT overlooked that the assessee-society has receipts under the head 'revenue from test laboratory' and 'consultancy receipts' which are of commercial nature and their aggregate value exceeds Rs. 10 Lakhs. He further states that the ITAT has erred in following its earlier decision in the Assessee's case for the assessment year 2009-10 as the department has not accepted the said decision and an appeal against the same is being filed.

4. A perusal of the paper book reveals that the assessee-association is an apex coordinating body of all nationalized State Road Transport Corporation working under the aegis of Ministry of Road Transport and Highways, Govt. of India. Its main object is to improve the public transport system in the country and to assist its members State Transport Undertakings by providing automobile parts at the most economical and competitive rates so that the members could run its passenger buses at economical cost. It is settled law that the first proviso to Section 2(15) of the Act does not exclude entities which are essentially for charitable purpose but are conducting some activities for a consideration or a fee and the object of introducing first proviso is to exclude organizations which are carrying on regular business with profit motive. In any event the assessee-association is charitable in nature and the appellant itself has granted the

assessee registration under Section 12A and also recognized under Section 10(23C)(vi) of the Act vide notification No.1348 dated 31st October, 2007.

5. Though the Assessing Officer has held that the assessee-association has various source of income from commercial activities, yet this Court finds that Appellate Authorities i.e. Commissioner (Appeals) and ITAT have held that the assessee-association has not been earning any profit as the main object of the assessee-association is to improve the public transport system in the country and the road safety standards. Undoubtedly, the activities of laboratory testing and consultancy are bringing revenue to the assessee-association but the intent of such activities is not to earn profit for its shareholders/owners. Consequently, this Court is in agreement with the findings of the CIT (A) and ITAT that the assessee-association does not carry on any business, trade or commerce with the intent of earning profit.

6. 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 of the Code of Civil Procedure the jurisdiction of the High Court to interfere with the orders passed by 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. Accordingly, the present appeal being bereft of merit is dismissed.

MANMOHAN, J

NAVIN CHAWLA, J

SEPTEMBER 30, 2021
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