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

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Date of decision: 3rd March, 2014

+ ITA 262/2013
 + ITA 264/2013
 + ITA 265/2013

DEPUTY DIRECTOR OF INCOME
 TAX (E) INV. CIRCLE-II

..... Appellant

Through: Mr. N.P. Sahni, Sr. Standing
 Counsel with Mr. Nitin Gulati, Jr.
 Standing Counsel.

versus

PETROLEUM SPORTS PROMOTION BOARD Respondent

Through: Dr. Rakesh Gupta with Ms. Rani
 Kiyala and Ms. Khushbu
 Upadhaya, Advocates.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE R.V. EASWAR

R.V. EASWAR, J. (OPEN COURT)

1. These three appeals filed by the revenue under Section 260A of the Income Tax Act, 1961 ('Act', for short) are directed against the consolidated order dated 27.07.2012 passed by the Income Tax Appellate Tribunal ('Tribunal', for short) for the assessment years 2003-04, 2004-05 and 2005-06.



2. For the sake of convenience the facts relating to the assessment year 2003-04 are taken as illustrative. The assessee filed its return of income on 24.08.2003 declaring Rs.nil as its income. Apparently the return was processed under Section 143(1) of the Act. Later the assessment was reopened under Section 148 of the Act and after scrutiny, an assessment order was framed under Section 143(3) of the Act in respect of the assessment year 2003-04. It would appear that in the return the assessee claimed its entire income to be exempt under Section 11 of the Act but the same was denied on the ground that the assessee did not get itself registered under Section 12A of the Act. Accordingly, the amount of Rs.1,52,62,956/- received by the assessee as grants from various oil companies was brought to tax under the head “income from other sources”; an estimated expenditure of Rs.1,20,000/- was deducted from the aforesaid amount as expenditure incurred in collecting the grant and the balance of Rs.1,51,42,990/- was assessed to tax. Similar assessments were made for the other two assessment years. The assessee preferred an appeal before the CIT (Appeals) for all the three assessment years. In the appeals the assessee challenged the jurisdiction of the assessing officer to reopen the assessment under Section 148 of the Act and the restriction of the allowance of expenses to Rs.1,20,000/- for all



the years. It was submitted that the assessee was a society formed for the promotion of sports and was registered under the Societies Registration Act, that registration under Section 12A has been granted w. e. f. assessment year 2006-07, that the entire expenditure incurred by the assessee was for the purpose of promotion of sports and should have been, therefore, deducted in full while computing its income and that at any rate the society having been notified by the CBDT under Section 10(23C) of the Act up to the assessment year 2002-03, there was no justification for completing the assessments in the manner done by the assessing officer.

3. The CIT (Appeals) obtained a remand report from the assessing officer who reiterated his view that the expenditure incurred by applying the income of the assessee on the activities for which it was constituted i.e. sports promotion, cannot be allowed as a deduction in the absence of any registration under Section 12(A) of the Act and further that the estimate of allowable expenditure at Rs.1,20,000/- made for possible expenditure incurred to collect the grants was fair and reasonable and nothing more was allowable. After obtaining the remand report the CIT (Appeals) placed it before the assessee for its comments. At that stage



the assessee filed an additional ground for all the three years which is as follows: -

“That the learned DDIT (E) has grossly erred both in law and on facts in taxing the income of assessee ignoring the principle of mutuality. The Income of assessee is outside the preview of levy of Income Tax and no tax is chargeable under the provision of Section 4 of Income Tax Act, 1961”

4. After following the due procedure, the additional ground was admitted being a pure legal ground. On merits, however, the additional ground did not find favour with the CIT (Appeals) who held that principle of mutuality was not applicable to the assessee. Thereafter he proceeded to examine the merits of the disallowance of the expenditure claimed by the assessee and held as follows: -

“6. The appellant also in the course of assessment proceedings by the Assessing Officer submitted the details of all expenditures incurred for the purpose of sports activities as well as books of accounts. The Assessing Officer has not brought out any adverse materials/ features in assessment order that the expenses are not supported by documentary evidences or not relating to the activities of the Board. In fact, no adverse material was brought on record by Assessing Officer. The assessee has furnished complete particulars of its income and expenditure and the nature of the expenditure incurred in the course of promotion of sports activities. It is pertinent to mention here that PSPB was notified u/s 10(23) (C) of the income Tax Act by Central Board of Direct Tax till A.Y. 2002-03. The aforesaid provision was omitted from statute. Therefore, activities



and expenditures is consistent with nature and extent of expenditure incurred by it in the past years. In fact, expenditure depends upon the number of sports events organized by the Board every year, therefore, the expenditure varies every year but its expenses are to promote sports for which PSPB is in existence.

After perusal of details and information placed by the appellant, I hold that the appellant is entitled for claim of legitimate expenses incurred for sports activities and accordingly, the Assessing Officer is directed to allow the expenditure for the following years as per details given below and balance income can be taxed at the rate as applicable.

<i>Asstt. Year 2003-04</i>	<i>Rs.1,41,73,414.04</i>
<i>Asstt. Year 2004-05</i>	<i>Rs.1,25,51,863.35</i>
<i>Asstt. Year 2005-06</i>	<i>Rs.2,42,77,296.98</i>

Thus the appellant will get relief to the extent stated in paragraph 6 & 6.1 and balance amount of income over expenditure will be taxable.

7. For statistical purpose, the appeal will be treated as Partly Allowed for all the three years.”

5. The revenue challenged the aforesaid order of the CIT (Appeals) before the Tribunal. The Tribunal passed a consolidated order, recording the following findings: -

(a) The assessing officer has not brought out any adverse material to show that the expenditure claimed to have been



incurred by the assessee on the sports activities did not in fact relate to those activities or were not supported by documentary evidence;

(b) The full details of the expenditure showing their purpose were submitted before the AO and the books of accounts were also produced;

(c) Since the number of sports events organised by the assessee varies from year to year, the expenditure also varies every year;

(d) The CIT (Appeals) has not given the benefit of exemption under Section 11 to the assessee but has allowed the expenses incurred on sports activity considering their genuineness.

6. On the basis of the aforesaid findings the Tribunal rejected the appeals filed by the revenue.

7. The learned standing counsel for the revenue submitted that the order of the Tribunal is untenable since it indirectly confers the benefit of Section 11 upon the assessee. We are, however, not inclined to accept the contention. The CIT (Appeals) has actually not held so. He never examined the question whether the assessee was eligible for the



exemption under Section 11 since there was no ground before him, taken by the assessee, to that effect. All that the assessee claimed before the CIT (Appeals) was that the entire expenditure should be allowed as a deduction since it was incurred for the very objects for which the assessee was established in 1979 i.e. promotion of sports and, therefore, the assessing officer was not justified in restricting the allowance of expenditure to Rs.1,20,000/- only for all the three years. It was this claim that was accepted by the CIT (Appeals). The objection of the learned standing counsel for the revenue that since the grants were assessed under the residual head, there was no scope for allowing the expenditure incurred on the promotion of the sports activities is not acceptable since even under Section 57(iii), any expenditure incurred for the purpose of making or earning the income is allowable as a deduction. It is open to the income-tax authorities to deny the exemption under Section 11 of the Act in the absence of registration under Section 12A and if they do so, then the assessment has to be completed in accordance with the provisions of the Income Tax Act; if the income is assessed under the residual head full play must be allowed to Section 57(iii). Though *prima facie* it would appear that the phraseology employed in Section 57(iii) is different from Section 37(1), it has been held by the Supreme Court in



CIT vs. Rajendra Prasad Moody, 115 ITR 519 that Section 57(iii) must be construed broadly and the somewhat wider language of Section 37(i) should not affect the interpretation of Section 57(iii). The assessee in the present case was created in 1979 with the object of promoting sports; there was no other object and all its constituents were giving grants/ funds only for that purpose. In truth and reality the assessee was merely acting as a custodian or conduit to the constituents for the purpose of promoting sports activity inside and outside the country. The expenditure incurred by the assessee is only for the purpose of promoting the sports events and activities and in this respect there is no challenge to the finding of fact recorded by the Tribunal. If such expenditure is not allowed, it may amount to taxing the gross receipts of the assessee and not the income, which is not permissible under the income tax law. Moreover, upto the assessment year 2002-03 the assessee was exempt from tax under Section 10(23C); from the assessment year 2006-07 it has been granted registration or a charitable institution under Section 12A making it eligible for the exemption under Section 11.

8. For the aforesaid reasons we do not find any infirmity or error of law in the decision of the Income Tax Appellate Tribunal. There is no challenge to the findings of fact recorded by it. In the circumstances, no



substantial question of law arises for our consideration. The appeals are accordingly dismissed with no order as to costs.

(R.V. EASWAR)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

MARCH 3, 2014
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