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

+ ITA 352/2024

**SANT SANGANERIA FOUNDATION FOR HEALTH AND  
EDUCATION**

.....Appellant

Through: Mr. Abhishek Garg, Mr. Yash  
Gaiha, Mr. Ranesh Singh  
Mankotia & Mr. Naman Mehta,  
Advs.

versus

**CIT, EXEMPTION NEW DELHI WARD EXEMPTION 2(1),  
DELHI**

.....Respondent

Through: Mr. Abhishek Maratha, SSC  
with Mr. Apoorv Agarwal, Mr.  
Parth Semiwal, JSCs, Ms.  
Nupur Sharma, Mr. Gaurav  
Singh, Ms. Divya Verma & Mr.  
Bhanukaran Singh Jodha, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**ORDER**

% **15.07.2024**

**CM APPL. 39026/2024 (Ex.)**

Allowed, subject to all just exceptions.

Application stands disposed of.

**ITA 352/2024 & CM APPL. 39025/2024 (Stay)**

1. Notice. Since the respondent is duly represented by Mr. Maratha, learned counsel, no further steps need be taken.

2. We take note of the following conclusions which have come to be recorded by the Income Tax Appellate Tribunal [**“Tribunal”**] in the order impugned before us:-

“4.3 It is transpired from records, that as per Explanation to Section 11(2) of the Act, any amount credit or paid, out of income referred



to in clause (a) or clause (b) of sub-section (1), read with the Explanation that that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust of any university or other educational institution or any hospital or other medical institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter. It was also noted that section 11(3) of the Act states that any income referred to in sub-section (2) which is credited or paid to any trust or any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (V) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10 shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or credited or paid, as the case may be, or of the previous year immediately following the expiry of the period aforesaid. It is evident that amount of Rs. 65 lacs, has been paid as donation to other Trust/ Charitable organisations and such payment will be hit by Explanation to 11(2) r.w.s. 11(3)(d) of the Act and in view thereof the amount of ₹ 65 lacs, donated by the assessee to other institutions i.e. Hindu College and Shree Raghunath Balika vidyalaya out of accumulated fund should have been brought to tax by the AO. Hence, Ld. CIT(E) correctly observed that that as per Explanation to section 11(2) of the Act read with section 11(3Xd) of the Act, donations given out of accumulated funds u/s. 11(2) of the Act of earlier previous years are not allowable as application of income for charitable or religious purposes and the same shall be deemed to be income of the assessee of the previous year 2016-17, therefore, AO failed to examine this issue, which should have been done during the assessment u/s. 143(3) of the Act and accordingly assessment u/s. 143(3) of the Act and accordingly assessment order exhibits lack of proper inquiry/ verification by the AO, which was required to be carried out in the instant case. As a result thereof, Ld. CIT(E) has rightly held that the assessment order to be erroneous in so far as it is prejudiced to the interest of the revenue as per provisions of section 263 of the Act and accordingly, the same was set aside u/s. 263 of the Act to the file of the AO for making a denovo assessment after proper examination of the issue involved and due verification wherever required by way of affording reasonable opportunity of being heard to the Assessee Trust and pass a speaking and well reasoned order. Hence, the order of Ld. CIT(Exemption) in our considered opinion, does not require any interference on our part, hence, we uphold the same



and accordingly, the Ground Nos. 1 to 3 raised by the assessee stand dismissed.”

3. It is in the aforesaid backdrop that learned counsel submits that the appeal merits further consideration bearing in mind the judgment rendered by the Court in **CIT (Exemptions) vs. Jamnalal Bajaj Foundation** [2024 SCC Online Del 4216].

4. We, consequently, admit the instant appeal on the following questions of law:-

A. Whether the Tribunal has erred in law in deciding the appeal on merits when the only question before it was for examining whether the respondent could have invoked revisory jurisdiction as per Section 263 of the Income Tax Act, 1961 [“Act”]?

B. Whether the Tribunal has erred in law in by ignoring that the Explanation to sub-section (2) of Section 11 of the Act was added only to prevent the mischief of continuous accumulation without any actual application and will not apply where in substance the income has been utilized or applied for a charitable purpose?

5. List again on 14.10.2024.

**YASHWANT VARMA, J.**

**RAVINDER DUDEJA, J.**

**JULY 15, 2024/kk**