



THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 03.05.2010

+ **ITA 424/2010 & CM.3907/2010**

THE COMMISSIONER OF INCOME TAX ... Appellant

- versus -

M/S HPS SOCIAL WELFARE FOUNDATION ... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Prem Lata Bansal

For the Respondent : None

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

V.K. JAIN, J (ORAL)

1. This is an appeal against the order of Income Tax Appellate Tribunal dated 29.08.2008 whereby the appeal filed by the Revenue being ITA No. 3612/Del./2007 against the order dated 18.05.2007 passed by Commissioner of Income Tax (Appeals), in respect of A.Y.2003-04, was dismissed. Since there was delay of 224 days in filing the appeal. CM.3907/2010, for condonation of delay in filing the appeal has also been



2. The impugned order having been received by the appellant on 04.11.2008, the period of limitation prescribed for filing the appeal expired on 04.03.2009, whereas the appeal has been filed on 14.10.2009. A perusal of the application would show that on 23.02.2009 DGIT(E) approved filing of appeal and sent the file to the Assessing Officer on 24.02.2009. The Assessing Officer, who was required to comply with the order, proceeded on leave on 27.02.2009 without sending the file to the office of Senior Standing Counsel of the Department for the purpose of drafting the appeal. He joined the office on 16.03.2009 but continued to forget that appeal was to be filed in this case. He was transferred on 17.06.2009 and handed over the charge to the new officer. It has been stated in the application that on receiving the copy of the order passed by the Tribunal, in the case of this very assessee for the assessment year 2006-06, the Assessing Officer noted on 20.08.2009 that the Tribunal had relied upon its earlier order passed for the assessment year 2003-04 and he then realized that the appeal had not been filed in respect of assessment year 2003-04 and sent the file to the Senior Standing Counsel on 21.08.2009.

3. We are not satisfied with the explanation given by the appellant for the delay in filing the appeal. We fail to appreciate how the Assessing Officer, who received the file from the DGIT(E) on 24.02.2009 could have continued to forget, till the time he was transferred, that he had to send the file to the office of Senior Standing Counsel, for drafting the appeal in terms of the approval given by DGIT(E) on 23.02.2009. There has to be some



compliance of such time bound orders. When the Assessing Officer was transferred on 17.06.2009 and he handed over the charge to the new officer, he was expected to bring it to the notice of his successor that the appeal in terms of the approval dated 23.02.2009 was required to be filed in this case. In any case, he must have handed over all the files to his successor, while relinquishing charge of the office held by him. The new incumbent was required to examine atleast urgent and time bound files, received by him from his predecessor. Had he done so, he would have come to know that the appeal required to be filed in this case had already been delayed and, therefore, he should immediately send the file to the office of the Senior Standing Counsel for the purpose of drafting the appeal. We, therefore, find it difficult to condone so much delay in filing of this appeal.

4. We have also examined the appeal on merits. The assessee foundation was setup in order to provide fees, books, equipments and scholarship, etc. to needy students, to help mentally retarded, crippled and other physically handicapped children in their rehabilitation, to render assistance to indigent persons for their medical treatment, etc. and to conduct education in public health. The Chairman and Directors are stated to be mostly retired bureaucrats and other persons, who have worked for upliftment of the needy and poor. During assessment of the respondent for the assessment year 2003-04 the Assessing Officer noted that the assessee had received donation of Rs 2 Crores, besides corpus donation of Rs 1 Crore from HCL Perot System and had given donations amounting to Rs



Assessing Officer, the respondent assessee submitted a list of 76 institutions/NGOs to whom donations were given by it. Confirmation from 64 such institutions were also submitted. The Assessing Officer was of the view that the donations had been given at the sweet will of the assessee and had been used for the personal benefits. He concluded that the assessee was a tool in the hands of HCL Perot System, where donations were being used for personal benefits. Accordingly he denied benefit of exemption under Section 11 and 12 of the Income Tax Act, 1961 to the assessee and determined its taxable income at Rs2,61,78,450/-.

5. On appeal filed by the assessee, Commissioner of Income Tax (Appeals) deleted the additions except in respect of two donations, one made to Gandhi Smarak and the other to Kaivalya Charities. He was of the view that the assessee had genuinely carried out activities in accordance with its objects as enumerated in its Memorandum of Association and that since there was no material on record to suggest that the assessee had infringed the provisions of Section 13(1) of the Act, there was no reason to deny benefit of exemption to the trust. Confirmation from 10 more donees were filed before Income Tax Commissioner (Appeals) and thus the assessee filed confirmation from 74 out of 76 parties to which donations were given by it. The addition made in respect of two institutions namely Gandhi Smarak and Kaivalya Charities were, however, upheld.

6. During the course of hearing before the Tribunal, it was pointed out that the Chairman of the assessee was former Cabinet Secretary whereas



ever utilized the funds of the assessee for his personal purpose.

7. The Tribunal noted that the organizations to which donations were given were charity organizations such as Blind Welfare Hostel, Delhi Councils for Children Welfare Association, etc. and the Assessing Officer had not pointed out any circumstance to show that these donations were not made for the purpose of charity. It was further noted that the Assessing Officer had not pointed out the personal element stated to be involved in giving these donations. It was also noted that the donations had been given through payee's account cheques. The Tribunal found that no circumstance had been pointed out by the Assessing Officer to show that the donations had been used for personal benefit of Directors of HCL Perot System. The Tribunal accordingly maintained the finding recorded by Commissioner of Income Tax (Appeals).

8. Section 13 of Income Tax Act stipulates the circumstances in which the income of a trust will not be exempted from its income. In the present case, as noted by Commissioner of Income Tax (Appeals), the Assessing Officer has not pointed out violation of any provision of Section 13 of the Act by the assessee. The finding recorded by Commissioner of Income Tax (Appeals) in this regard has been confirmed by the Income Tax Appellate Tribunal and there is no material before us to indicate that the finding recorded by Commissioner of Income Tax (Appeals) and the Tribunal is perverse in any manner.

9. Commissioner of Income Tax (Appeals) as well the Income Tax



donations were given by the assessee during assessment year in question were genuine charity organizations. There was no evidence before the Assessing Officer to show that these were not genuine organizations or were not engaged in social and charitable activities. The Assessing Officer attributed personal elements to these donations without even indicating any circumstance which could give rise to such an inference. The order passed by the Assessing Officer does not show that the Directors of HCL Perot Systems were connected with these organizations or were managing their affairs. The payments to all the organizations were made by account payee cheques. Confirmations from 74 out of 76 organizations were submitted by the assessee. Deletion in respect of remaining two donations were confirmed by CIT(A) and have not been interfered with by the ITAT. If the Assessing Officer doubted any particular donation, he could have summoned the officer bearers of the organization which received that donation. That having not been done, he could not have disputed the genuineness of the donations.

10. There was absolutely no material before the Assessing Officer to show that the funds given to these NGOs/institutions were used for personal benefit of HCL Perot System or any of its Directors. Therefore, it cannot be said that the finding of fact recorded by Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal upholding genuineness of the donations is perverse, calling for intervention by this Court. No contravention of Section 13 of Income Tax Act having been made out and



Income Tax(Appeals) as well as by the Income Tax Appellate Tribunal, there is no ground for interference by this Court under Section 260A of Income Tax Act. No substantial question of law arises for our consideration in this case. The appeal as well as CM 3907/2010 for condonation of delay are hereby dismissed.

(V.K. JAIN)
JUDGE

(BADAR DURREZ AHMED, J)
JUDGE

MAY 03, 2010

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