



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

% Date of Decision: 13th July, 2010

+ ITA 845/2010

COMMISSIONER OF INCOME TAX Appellant
Through Mrs. P.L. Bansal, Adv.

versus

HPS SOCIAL WELFARE FOUNDATION Respondent
Through None.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MANMOHAN

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

DIPAK MISRA, CJ (ORAL)

This is an appeal against the order of Income Tax Appellate Tribunal dated 4th May, 2009 whereby the appeal filed by the Revenue being ITA No. 2344/Del of 2008 against the order dated 10th April, 2008 passed by Commissioner of Income Tax (Appeals), in respect of A.Y.2005-06, was dismissed.

2. 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,



of the respondent for the assessment year 2005-06 the Assessing Officer noted that the assessee had made donations amounting to Rs 70,98,120/- to 43 different parties. Confirmation from 39 such institutions were also submitted. The Assessing Officer was of the view that the donations must have been made as per directions of the directors or specified persons of a profit making company to the person of their choice. He concluded that the assessee was a tool in the hands of the parent company, that is, HCL Perot System. 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 Rs.70,98,120/- and expense of Rs.10,00,820/- inclusive of depreciation.

3. On appeal filed by the assessee, Commissioner of Income Tax (Appeals) deleted the additions except in respect of two donations, one made to S.D. Public School and the other in respect of medical. He was of the view that the donations made to the various institutions were absolutely of charitable nature and that there was no reason not to allow the exemption u/s 11 and 12 to the assessee. The assessee filed confirmation from 41 out of 43 parties to which donations were given by it. The addition made in respect of two parties, namely, S.D. Public School and medical were, however, upheld.

4. The Tribunal noted that the learned DR could not advance any arguments as to how infringement of provision of section 13 is attracted in the case and there is a finding in the impugned order that no donation was received from M/s HCL Perot Systems Ltd. The Tribunal accordingly maintained the finding recorded by Commissioner of Income Tax (Appeals).



question of admission. Section 13 of Income Tax Act stipulate 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), there was no material on record to suggest that the assessee infringed provision of Section 13(1) of the Income Tax Act. 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.

6. Commissioner of Income Tax (Appeals) as well the Income Tax Appellate Tribunal, both have found that the organizations to which 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 41 out of 43 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



having not been done, he could not have disputed the genuineness c
donations.

7. 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 the genuineness of the donations having been accepted by Commissioner of 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 is hereby dismissed.

CHIEF JUSTICE

MANMOHAN, J

JULY 13, 2010
vkm