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

Date of decision: December 03, 2014

+ ITA 67/2003
DIRECTOR OF INCOME TAX (EXEMPTION) Appellant
Through: Mr. Balbir Singh, Senior Standing
Counsel with Mrs. Rubal Maini and
Mr. Abhishek Singh Baghel,
Advocates.

versus

M/S. NBIE WELFARE SOCIETY, NEW DELHI..... Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J (ORAL)

1. This appeal by the revenue pertains to assessment year 1996-97 and was admitted for hearing by order dated 6th November, 2006 on the following substantial question of law:-

“Whether the ITAT was correct in holding that by mentioned (sic. mentioning) “Further utilization” in Form No. 10 read with Rule 17 of the Income Tax Rules, 1962 the Assessee has fulfilled its obligation as required under Section 11 (2) of the Act”.

2. The respondent society claiming itself to be a charitable institution had filed return of income for the assessment year 1996-97 declaring nil taxable income. Respondent also filed Form No. 10 along with its return as required by section 11(2) of the Act. During the course of assessment proceedings, the assessing officer, after going through the return and Form No. 10, noticed that respondent assessee had accumulated Rs.27,54,839/- for the description/purpose “further utilization”. The said purpose/description, it was observed was not a specific one, accordingly, the respondent assessee was asked to explain why the accumulation under Section 11(2) of the Act should not be disallowed. Respondent assessee vide its letter dated 22.02.1999 submitted their explanation that the accumulation was done for the aims and objectives of the society.

The assessing officer, after going through the reply of the respondent assessee, held that the explanation of assessee was vague and the purpose “further utilization” cannot be treated as accumulation for specific purpose. He observed that the Form No. 10, filed by respondent assessee, did not meet the statutory mandate as definite and concrete purpose/purposes should have been specifically stated in Form No. 10. Accordingly, assessing officer disallowed the accumulation under section 11(2) and added it to the total

income of assessee.

3. The Commissioner of Income Tax (Appeals) upheld the view of the Assessing Officer and rejected the contention of the assessee that the expression “further utilization” was in the context of objects of the charity i.e. as per the objectives for which the respondent society was formed. He observed that the accumulation or setting apart income in the context of objectives alone would not meet the statutory requirements under Section 11 (2) of the Act. The purpose for which it had been accumulated should be definite and specified.

4. On further appeal, the Income Tax Appellate Tribunal (Tribunal, for short) reversed the said findings. Tribunal observed that the assessee had mentioned the words “further utilization” in column No. 1 of Form No. 10, which meant that the assessee was to utilize the funds for the benefit of the members i.e. the employees of the New Bank of India in case of death, retirement and permanent disability. They referred to the very object for which the respondent society was formed. It was recorded that the funds were paid/given to the employees of New Bank of India in the aforesaid eventualities and it was in this context, the words “further utilization” had been mentioned. Referring to the objectives of the society, it was observed

that respondent-assessee was to provide financial assistance to the members in case of death, retirement and permanent disability. This was the sole and only purpose for which funds could be utilized. It was held that the description “further utilization” was neither vague nor unspecific.

5. The Tribunal distinguished the decision of the Calcutta High Court in ***Director of Income Tax (Exemption) v. Trustees of Singhania Charitable Trust (1993) 199 ITR 819 (Cal)*** on the ground that in the said case, the charitable trust had as many as 18 objectives and there was no specific objective for which accumulation had been sought. Further, in this case, the objectives of the respondent society were clear and specific and the sole objective being that the funds should be used for the purpose of providing financial assistance to the members in the case of death, retirement and permanent disability.

6. It is obvious that the purpose and objective behind Section 11 (2) of the Act is to curtail long term accumulation of income by charitable institutions without specifying the purpose for which the funds were being accumulated. The accumulation is permitted provided the assessee specifies the purpose or purposes for which accumulation is required and necessary. The question whether and in which cases declaration regarding purpose of

accumulation given by the assessee should be treated as sufficient was examined by the Delhi High Court in ***Commissioner of Income Tax v. Hotel and Restaurant Association (2003) (261) ITR 190 (Delhi)***. The contention raised by the revenue in the said case was that the Tribunal had failed to appreciate that in the prescribed form, the assessed has failed to indicate the specific purpose for which the income was sought to be accumulated and therefore, the assessee had violated Section 11 (2) of the Act. The contention was rejected in the following words:-

“..6 We do not agree. It is true that specification of certain purpose or purposes is needed for accumulations of the trust's income under Section 11 (2) of the Act. At the same time the purpose or purposes to be specified cannot be beyond the objects of the trust. Plurality of the purposes for accumulation is not precluded but it depends on the precise purpose for which the accumulation is intended. In the present case, both the appellate authorities below have recorded a concurrent finding that the income was sought to be accumulated by the assessed to achieve the object for which the assessed was incorporated. It is not the case of the Revenue that any of the objects of the asses-see company were not for charitable purpose. The aforementioned finding by the Tribunal is essentially a

finding of fact giving rise to no question of law”.

7. The decision in ***Hotel and Restaurant Association*** (supra) was referred to in another decision of the Delhi High Court in ***Bharat Kalyan Pratishthan v. Director of Income Tax (Exemption)*** (2008) 299 ITR 406 ***Delhi*** and it was observed that in the ***Hotel and Restaurant Association*** case (supra) this court had observed that if accumulation was for one or more purposes and these purposes were the objects of the institution, then it is permissible for the assessed to accumulate income for utilization of these objects. Reference was also made to the ***Director of Income Tax (Exemption) v. Daulat Ram Education Society*** (2005) 278 ITR 260 (Delhi) wherein, the assessee had specified eight purposes under Section 11 (2) of the Act. This it was held was permissible. Thereafter, the High Court observed as under:-

“12 In the present case, the assessed has only three objects as far as its trust deed, a copy of which has been placed on record, is concerned. The trust deed requires the trust to utilize its funds for charitable purposes which are medical relief, education and relief to the poor. In the application seeking exemption, the assessed had specified these three objects. We are of the opinion that it was not required for the assessed to

be more specific with regard to the utilization of the funds.

8. In the case of ***The Director of Income Tax v. Mamta Health Institute and Children (2007) 293 ITR 380 (Delhi)***, the High Court referred to the objectives for which the society was formed which had seven clauses. Revenue had alleged that in the Form No.10, the assessee had failed to indicate the specific purpose for which the income was sought to be accumulated, but this submission was rejected by observing that the assessee had placed a copy of the annual report in which he has specified the items for which the money was accumulated. It was accordingly observed:-

“9 A perusal of the annual report as well as the overview of these projects clearly shows that the projects were in consonance with the objectives sought to be achieved by the assessed, which were for the benefit of women and adolescent girls particularly in the slums or in a community which was not particularly well off. On going through the objects of the society, it is clear that the assessed sought to accumulate funds for a charitable purpose. Quite clearly, the Tribunal was correct in its conclusion that the decision of this Court would apply to the facts of the case and that the assessed was entitled to the benefit of accumulation. We do not find any infirmity in

the order passed by the Tribunal. No substantial question of law arises for consideration”.

9. In the present case, the assessing officer himself had noted in the assessment order that the aim and objective of the assessee was to work for the welfare of the employees of New Bank of India. This undoubtedly was the purpose and objective of the society. Therefore, during the course of assessment proceeding as is apparent from the appellate proceedings, the assessee has clarified and stated that the money in question would only be used for the purpose of making payments to the members or their legal representatives in case of their death, retirement or permanent disability. The Tribunal in the impugned order has also referred to the scheme floated by the respondent assessee under which the employees who were desirous of becoming members had to deposit Rs.10/- as admission fees and thereafter pay Rs.25/- per month for a period of 25 years. The scheme devised provided:-

“ PRESENT SCHEME

Membership : Membership of the society shall be open to the permanent employees of New Bank of India. Any employee desirous of becoming member may apply on the prescribed form on payment of Rs.10/- as admission fee, duly recommended by any of the office

bearer or Managing Committee member of the society employees appointed on part-time basis and $1/3^{\text{rd}}$ or $2/3^{\text{rd}}$ salary are not eligible for membership.

Subscription : Under the present scheme, every member shall subscribe a sum of Rs.25/- per month for a period of 25 years.

Benefits:

(a) in case of death :

(i) Members in the age group of below 50 years (as on 31-7-85) will be entitled to the following benefits:-

(a) A sum of Rs.500/- p.m. shall be paid to the nominee of the deceased member for a period of 15 years.

(b) Lump sum additional payment of Rs.15,000/- shall be made to the nominee of the deceased member in addition in the benefit referred above if the member dies during the period of service in the bank.

(ii) Members in the age group of above 50 years (as on 31-07-1985) will be entitled to the following benefits:-

(a) A sum of Rs.500/- p.m. shall be paid to the nominee of the deceased member till the age of retirement with a minimum period of 5 years.

(b) A lumpsum payment of Rs.15,000/- shall be made to the nominee of the deceased member in addition to the benefit referred above (ii-a) if the

member dies during the period of service in the bank. Other benefits are also there which are in case of retirement and these have been given in part “B” of this scheme to the extent that a sum of Rs.500/- per month shall be paid to the members as per calculation given in the same. Further, other benefits in the cases of death and permanent disability have also been given. Lastly, benefit have been given on resignation from bank prior to the retirement. The contention of the learned counsel is that this is the only object of the assessee and there are no plurality of the objects and as such if the assessee had mentioned in form no. 10 that the accumulation of the funds were for “further utilization” the very purpose is to utilize the amount of accumulation for further benefits to be given to the members in the case of death, retirement, permanent disability.....”

10. Other benefits which were specified in part (b) of the Scheme, which stipulated that a sum of Rs.500/- shall be paid to the members on the event specified therein.

11. The aforesaid contention has been accepted by the Tribunal. The findings recorded are in consonance with ratio of several decisions of this Court.

12. In view of the factual background, the substantial question of law in terms of the decisions of this court has to be answered in favour of respondent assessee and against the appellant. The appellant revenue, is not entitled to succeed. The appeal is disposed of. There will be no order as to costs.

SANJIV KHANNA, J

V. KAMESWAR RAO, J

DECEMBER 03, 2014/j