IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 1587/2006

DIRECTOR OF INCOME TAX (EXEMPT ..... Appellant
Through Mrs. P.L. Bansal

versus

GURU NANAK FOUNDATION ..... Respondent
Through Mr.M.P. Rastogi

CORAM:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V. B. GUPTA

O R D E R
13.03.2007

This appeal is directed against an order dated 23rd December, 2005 passed by the Income Tax Appellate Tribunal, Delhi Bench 'E' in ITA No.2451(Del)/2002 relevant for the assessment year 1998-99.

2. It appears that the Assessee, which is a charitable organization, had accumulated some income for the purposes of purchasing land at Mohali. This land was so purchased in the year relevant to the assessment year 1997-98 but the benefit of accumulation was not given by the Assessing Officer. Feeling aggrieved, the Assessee preferred an appeal before the

Commissioner of Income Tax (Appeals), which was allowed but the Revenue preferred an appeal before the Tribunal. The Tribunal recorded a finding that the accumulated amount had been spent by the Assessee for the purchase of land for setting up of a school. Against this order passed by the Tribunal for the assessment year 1997-98, the Revenue preferred an appeal under Section 260-A of the Income Tax Act, 1961.

Meanwhile, for the assessment year 1998-99, the Assessee filed a return of income in which an expense of about Rs.40 lakhs for purchase of land at Mohali was shown. This return was then revised and the amount was shown as about Rs.4 lakhs. The Assessee filed a second revised return

but that second revised return was rejected by the Assessing Officer who then proceeded on the basis that a sum of about Rs.4 lakhs was expended by the Assessee in purchase of land at Mohali.

The Assessee then preferred an appeal before the Commissioner of Income Tax (Appeals) and that was allowed in so far as the present issue is concerned.

Thereafter, the Revenue preferred an appeal before the Tribunal, which was dismissed and out of which the impugned order has arisen.

In the Tribunal, it is recorded that at the time of hearing the appeal, the learned representatives of the parties conceded that the issue raised is squarely covered in favour of the Assessee by the decision of the Supreme Court in S. RM. M. CT. M. Tiruppani Trust v. Commissioner of Income Tax, (1998) 230

ITR 636 and of this Court in Commissioner of Income Tax v. Divine Light Mission,
(2005) 196 CTR 135. On the basis of the concession made, the appeal filed by
the Revenue was rejected.

We find from a perusal of the order that the Revenue did not bring it to
the notice of the Tribunal that an appeal under Section 260-A of the Act had
been filed by the Revenue in respect of the assessment year 1997-98. In fact,

it is not very clear from the record whether at that time an appeal was actually
filed but we are presuming that it was filed. In any case, the Tribunal was not
aware of any steps taken by the Revenue for challenging its earlier order for
the assessment year 1997-98.
On these facts, the Revenue has contended before us that a substantial
question of law arises whether the Tribunal was correct in allowing the benefit
of Section 11 (1) of the Act to the Assessee for the amount of Rs.40,74,078/-
being the amount spent by the Assessee for purchase of land at Mohali.
We find that this question of law does not arise from the order of the
Tribunal in as much as the order of Tribunal proceeded on the basis of a
concession made by learned counsel for the parties on the facts of the case.

We also find that it was not brought to the notice of the Tribunal that
the order passed by it for the assessment year 1997-98 was not accepted by the

Revenue. No application for rectification appears to have been moved before the Tribunal in this regard.

Under these circumstances, in our opinion, no substantial question of law arises. Dismissed.

MADAN B. LOKUR, J

V. B. GUPTA, J
MARCH 13, 2007
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