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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% Date of Decision : 11th April, 2012.

+ ITA 1100/2010

COMMISSIONER OF INCOME TAX Appellant
Through Mr. Anupam Tripahti, sr. standing
counsel with Ms. Anusha Singh, Adv.

versus

GOODEARTH FOUNDATION Respondent
Through Mr. Ajay Vohra, Ms. Kavita Jha
and Mr. Somnath Shukla, Advs.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA,J: (ORAL)

The present case is a saga of errors from both the assessee and the revenue. Perhaps the assessee is more at fault. The assessee is a society which claims that it is carrying on charitable activities. It was formed in the year 1979. The society never filed income tax return till at least 2003. The society had a school in Alwar and the school treating itself as an assessee, though it was not an assessee, was filing returns with the Assessing Officer at Alwar. The school claimed that it was carrying on charitable activities. The Assessing

Officer at Alwar continued to assess and treat the school as a separate assessee undertaking charitable activities. We may also note that on 1.4.2002, the respondent-society took over activities of another school at Faridabad.

2. The respondent-society filed its return of income for the assessment year 2003-04 at Delhi in respect of the two institutions including the income of the APS School at Alwar and Eicher Education Welfare society, Faridabad. On 2.12.2003, the respondent-society filed an application in Form 10A for registration under Section 12A of the Income Tax Act, 1961 (herein referred as 'Act') w.e.f. 1.4.2002. By order dated 17.6.2004, the Director of Income Tax (Exemption) granted registration w.e.f. 1.4.2003. He rejected the request/prayer of the respondent-society for registration w.e.f. 1.4.2002.

3. In spite of the aforesaid position, the Assessing Officer did not issue any notice under Section 147/148 of the Act to the respondent-assessee calling upon them to file a return and assess them tax for the period prior to 1.4.2003.

4. It appears that the Assessing Officer at Alwar issued notices under Section 147/148 in respect of the school on the ground that they did not have requisite registration under Section 12A and their assessments were reopened. The Assessing Officer then denied

exemption to the school. The assessee did not succeed in appeals except in the year 1998-99, and thereafter the assessee filed appeals before the Tribunal. For the assessment year 1998-99 assessee succeeded before the CIT(Appeals) on the ground that jurisdictional pre-conditions for reopening the assessment were not satisfied. Revenue preferred an appeal before the Tribunal for the assessment year 1998-99.

5. After a delay of more than 3 years & 4 months the respondent-society on 11.6.2008 filed an appeal against the order dated 17.6.2004 passed by the Director of Income Tax (Exemptions) granting registration under Section 12A w.e.f. 1.4.2003. In this appeal they had prayed that the exemption should be granted w.e.f. 1.4.1997. We may note here that in the application which was filed before the DIT(Exemption), the registration under Section 12A was sought w.e.f. 1.4.2002 and not w.e.f. 1.4.1997. We may also record here that the school at Alwar had filed an application under Section 12A before Commissioner of Income Tax, Alwar on 28.12.2005 seeking retrospective registration w.e.f. 1.4.1997. The application was rejected. The school thereafter preferred an appeal before the Tribunal at Jaipur.

6. When these appeals were pending in Delhi and Jaipur, the matters were consolidated and were decided by Tribunal at Delhi and

the impugned order dated 19.6.2009 has been passed.

7. The gist of the impugned order is that the respondent-society shall be treated as registered under Section 12A w.e.f. 1.4.1997; the notices issued under Section 147/148 of the Act to the school will be treated as having been validly issued to the respondent-society and therefore, the Assessing Officer will assess the income of the respondent-society for the assessment year 1998-99 onwards for all the assessment years.

8. The respondent-assessee had preferred ITAs before this Court which were disposed of vide order dated 2.12.2010 giving liberty to the assessee to raise the issues in the present appeal filed by the Revenue. The contention of the revenue is that registration under Section 12A should not have been granted with retrospective effect. There may be some merit in the said contention as the registration under Section 12A with retrospective effect has been granted from 1.4.1997. Another contention of the revenue is that there was delay of 3 years & 4 months in preferring an appeal against the order of Director of Income Tax (Exemptions) passed on 17.6.2004. The Revenue may be a good case on the said aspect also. At the same time the notices issued by the Revenue under Section 147/148 of the Act to the school are clearly unsustainable as they have not been issued to the assessee. Ex-facie there is merit in the contention

raised by the respondent-assessee that they cannot be assessed on the basis of the notices, which were issued to a non-existing assessee (i.e., the school in Alwar).

9. The Tribunal, it is apparent has taken a pragmatic and practical view of the whole situation. Even if we set aside the order of the Tribunal because of the legal fallacy and lacunae, it will be against and contrary to the interest of the Revenue as they would not be able to now assess and if required tax the respondent-assessee in respect of income right from 1998-99 onwards. The order of the Tribunal ensures that the respondent-assessee is assessed and, if required and justified taxed, w.e.f. 1998-99 onwards. There have been, as noticed above, lapses on both the sides and interfering with the impugned order will lead to difficulties and not in the interest of the Revenue, particularly when the respondent-assessee has not been issued notice under Section 147/148 of the Act for any of the assessment years. In view of the aforesaid position, we are not inclined to interfere with the ultimate decision of the Tribunal. The appeal is dismissed. No costs.

SANJIV KHANNA, J.

R.V.EASWAR, J.

APRIL 11, 2012/vld