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

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+ **ITA 117/2021**

COMMISSIONER OF INCOME TAX (EXEMPTIONS) DELHI

..... Appellant

Through: Mr.Abhishek Maratha, Sr. Standing
Counsel.

versus

HAMDRD NATIONAL FOUNDATION (INDIA) Respondent

Through: Mr.Salil Aggarwal, Sr.Advocate with
Mr.Madhur Aggarwal and Mr.Uma
Shankar, Advocates.

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+ **ITA 156/2021**

COMMISSIONER OF INCOME TAX (EXEMPTIONS) DELHI

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Through: Mr.Abhishek Maratha, Sr. Standing
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versus

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Mr.Madhur Aggarwal and Mr.Uma
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ITA 16/2022

COMMISSIONER OF INCOME TAX (EXEMPTIONS) DELHI

..... Appellant

Through: Mr.Abhishek Maratha, Sr. Standing
Counsel.

versus

HAMDARD NATIONAL FOUNDATION Respondent

Through: Mr.Salil Aggarwal, Sr.Advocate with
Mr.Madhur Aggarwal and Mr.Uma
Shankar, Advocates.

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Date of Decision: 06th April, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present batch of appeals has been filed raising a common question of law, namely, as to whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal (for short 'Tribunal') was correct in allowing the appeal of the assessee ignoring the fact that the assessee has paid most of the scholarship amount to the students of a particular religious community which is a clear violation of Section 13(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The relevant portion of the impugned order passed by the Tribunal is reproduced hereinbelow:-

“37. As far as the question of scholarship is concerned, in the Assessment Year 2010-11 itself, the assessee had challenged the same and the Ld. CIT(A) in his order dated 6/3/2014 held that the benefit of scholarship to the poor and needy student was not confined to the students of a particular community and a perusal of the list submitted by the assessee shows that the benefit is granted to the students from all the communities without any discrimination. Such a finding of Ld. CIT(A) was accepted by the Revenue and while preferring ITA No. 3403/Del/2014 in respect of the Assessment Year 2010-11, the Revenue did not challenge this finding of the Ld. CIT(A).

38. When a similar question had arisen for the Assessment Year 2011- 12 before the Ld. CIT(A), Ld. CIT(A) observed that the facts are identical to the Assessment Year 2010-11 in which a factual finding was given to the effect that the scholarships were not restricted to a particular religious community and there is no violation of the provisions of section 13(1)(b) of the Act in this year also.

39. When a factual finding of Ld. CIT(A) was accepted for the Assessment Year 2010-11, and such a finding was confirmed by the Ld. CIT(A) on similar set of facts and circumstances for the Assessment year 2011-12, we find every force in the argument of the Ld. AR that it is not open for the Assessing Officer to raise such an issue selectively for few years and accept the findings of the first appellate authority for some years. Further, Revenue failed to establish before us as to how the findings of the Ld. CIT(A) on this factual aspect are incorrect for this Assessment Year 2011-12 by placing the material that was available before the Assessing Officer to reach a conclusion that the provisions under section 13(1)(b) of the Act are applicable to the facts of the case. In the absence of any such collaborative piece of material, we find it difficult to disturb the factual finding written by the Ld. CIT(A). We, therefore, while confirming the findings of the Ld. CIT(A), dismiss this ground of appeal.”

3. Learned counsel for the appellant states that the Tribunal, while passing the impugned order, overlooked the fact that the Assessing Officer had found that the Respondent-assessee had given merit-cum-scholarship/financial assistance to candidates predominantly belonging to a particular religious community which is violative of Section 13(1)(b) of the Act. He further states that the advertisement for educational scholarship was published by the assessee in Urdu language and, that too, in one newspaper only. According to him, this clearly indicates that the assessee wanted to restrict the circulation of the scholarship advertisement as its intent was to provide benefit to a particular religious community only.

4. However, upon perusal of the paperbook, this Court finds that both, the Commissioner Income Tax (Appeal) and Tribunal, have given a concurrent finding of fact that the benefit of scholarship to the poor and needy students was not confined to students of a particular community and a perusal of the list submitted by the assessee showed that the benefit had been granted to students from all communities without any discrimination.

5. Moreover, just because advertisement was published in Urdu language and that too in one newspaper, it cannot be presumed that it was targeted at the students belonging to a particular community only. In fact, a similar finding of CIT(A) in the assessment year 2010-11 was accepted by the revenue and was not even challenged before the Tribunal.

6. Undoubtedly, the principle of res-judicata and estoppel are not applicable in taxation matters. However, it has been held that a departure from a finding during the past years would result in a contradictory finding (**Commissioner of Income Tax vs. Sridev Enterprises (1991) 192 ITR 165**).

7. Consequently, this Court is of the view that consistency of approach must be maintained. Accordingly, no substantial question of law arises in the present batch of appeals and the same is dismissed.

MANMOHAN, J

DINESH KUMAR SHARMA, J

APRIL 6, 2022
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