
(2016) 02 DEL CK 0378

DELHI HIGH COURT

Case No: ITA No. 101 of 2016

Commissioner of
Income Tax
(Exemption)

APPELLANT

Vs

Monarch Educational
Society

RESPONDENT

Date of Decision: Feb. 3, 2016

Acts Referred:

- Income Tax Act, 1961 - Section 147, 148

Citation: (2016) 387 ITR 416

Hon'ble Judges: S. Muralidhar and Vibhu Bakhru, JJ.

Bench: Division Bench

Advocate: Mr. Ashok K. Manchanda, Senior Standing Counsel with Ms. Vibhooti Malhotra, Junior Standing Counsel and Mr. Aamir Aziz, Advocate, for the Appellant; Mr. Salil Aggarwal and Mr. Ravi Pratap Mall, Advocates, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

CM No. 3025/2016

1. For the reasons stated in the application, the delay of 215 days in re-filing the application is condoned.
2. The application stands disposed of.

ITA No. 101/2016

3. This appeal by the Revenue is directed against an order dated 24th November, 2014 passed by the Income Tax Appellate Tribunal ("ITAT") in ITA No. 4989/Del/2011 for the

Assessment Year ("AY") 2003-04.

4. The question sought to be urged by the Revenue is whether the ITAT was correct in quashing the notice issued under Section 148 of the Income Tax Act, 1961 ("Act") for reopening the assessment.

5. The reasons to believe recorded by the Assessing Officer ("AO") for issuance of the notice under Section 148 referred to accommodation entries totalling Rs. 16,61,000/- and stated that the said amount is not the income of the Assessee from property held under trust. It was also not in the nature of the voluntary contributions but was income from undisclosed sources.

6. However, in the course of the re-assessment proceedings, as is evident from the assessment order dated 10th December 2010 passed by the AO, the sum that was sought to be added to the income of the Assessee was not the aforementioned sum of Rs. 16,61,000/- but a sum of Rs. 26,10,000/- which according to the AO represented the unsecured loans that were unable to be explained by the Assessee. In other words, the addition sought to be made to the income of the Assessee was not based on the accommodation entries which formed the subject matter of the reasons to believe for issuance of the notice under Section 148 of the Act.

7. Against the order dated 2nd September 2011 of the CIT(A) dismissing the Assessee's appeal, the Assessee approached the ITAT which accepted the plea of the Assessee that the re-assessment order which sought to make an addition of sum of Rs. 26,10,000/- was unsustainable in law inasmuch as that did not form part of the reasons to believe recorded by the AO for reopening the assessment under Section 148 of the Act.

8. The issue urged by the Revenue stands covered in favour of the Assessee by the decision of this Court in **Ranbaxy Laboratories Ltd. v. Commissioner of Income Tax (2011) 336 ITR 136 (Del)** which has been followed in **Commissioner of Income Tax v. Software Consultants (2012) 341 ITR 240 (Delhi)**. In sum, if no addition is made on the basis of the reasons to believe recorded by the AO for reopening the assessment under Section 148 of the Act, resort cannot be had to Explanation 3 to Section 147 of the Act to make an addition on any other issue not included in the reasons to believe for reopening the assessment. No substantial question of law arises. The appeal is dismissed.