

(2002) 07 DEL CK 0117

Delhi High Court

Case No: Income Tax A. No. 139 of 2002

Director of Income Tax
(Exemption)

APPELLANT

Vs

Sindhi Panchayat

RESPONDENT

Date of Decision: July 16, 2002

Acts Referred:

- Income Tax Act, 1961 - Section 11, 12A, 260A

Citation: (2002) 258 ITR 259

Hon'ble Judges: Sharda Aggarwal, J; D.K. Jain, J

Bench: Division Bench

Advocate: R.D. Jolly and Rashmi Chopra, for the Appellant; None, for the Respondent

Final Decision: Dismissed

Judgement

D.K. Jain, J.

C. M. No. 59 of 2002 :

Allowed subject to just exceptions.

2. I. T. A No. 139 of 2002 :

This is an appeal u/s 260A of the Income Tax Act, 1961 (for short "the Act"), arising out of the order of the Income Tax Appellate Tribunal (for short "the Tribunal"), dated October 31, 2001 in I. T. A. No. 1243 (Delhi) of 1995, pertaining to the assessment year 1990-91.

3. Briefly stated the facts giving rise to the present appeal are :

While completing the assessment for the relevant assessment year, the Assessing Officer disallowed exemption to the assessed u/s 11 of the Act on the solitary ground that the audit report u/s 12A(b) of the Act was not furnished along with the return. The assessment was also completed u/s 144 of the Act.

4. Aggrieved by the said action of the Assessing Officer, the assessed-trust preferred appeal to the Commissioner of Income Tax (Appeals) (in short "the CIT(A)"). While holding that the assessed was entitled to exemption u/s 11 of the Act, the Commissioner accepted the stand of the assessed that a detailed audit report dated February 4, 1991, was in fact submitted. It is also recorded that on being asked, a copy of the said audit report was produced before the Commissioner of Income Tax (Appeals). Despite the said categorical finding of the Commissioner, for the reasons best known to the Revenue, it took the matter in appeal to the Tribunal. As expected, the Revenue's appeal was dismissed by the Tribunal. While holding that there was no infirmity in the order of the first appellate authority, the Tribunal also made the following observations :

"Even if the audit report is not taken into consideration, then in that case also it is not a case of addition, as undisputedly the corpus donations during the year were to the tune of Rs. 4,03,243.30, against which the assessed had incurred expenditure during the year at Rs. 5,01,263, which clearly establishes that expenses were more than the corpus fund received as donation during the year. I have also seen the order of the immediately preceding year, i.e., assessment year 1989-90, and found that the Assessing Officer himself allowed the exemption u/s 11 to the assessed by observing that all the conditions are fulfilled by the assessed. Therefore, in view of these facts and circumstances and in view of the reasoning given by the Commissioner of Income Tax (Appeals), I confirm the order of the Commissioner of Income Tax (Appeals)."

5. Hence the present appeal.

We have heard Mr. R.D. Jolly, learned senior standing counsel for the Revenue. In the present appeal it is not the case of the Revenue that the aforesaid finding recorded by the Commissioner of Income Tax (Appeals) and affirmed by the Tribunal with regard to the existence of the audit report u/s 12A(b) of the Act and its production before the Commissioner of Income Tax (Appeals) is erroneous. Even the afore-extracted observations by the Tribunal are not under challenge.

6. The aforementioned findings are pure findings of fact and no question of law, much less a substantial question of law, arises out of the order of the Tribunal. The appeal is accordingly dismissed.