

# THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 26.02.2013

+ ITA 80/2013

**DIRECTOR OF INCOME TAX (EXEMPTION)** ... Appellant

versus

**ABUL KALAM AZAD ISLAMIC AWAKENING** ... Respondent

**Advocates who appeared in this case:**

For the Petitioner : Mr Karan Khanna, Ms Asmita Kumar

For the Respondent : None

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE R.V.EASWAR**

**JUDGMENT**

**BADAR DURREZ AHMED, J (ORAL)**

1. This appeal by the revenue is directed against the order dated 30.03.2012 passed by the Income Tax Appellate Tribunal in ITA 386/Del/2012 pertaining to the cancellation of registration under Section 12AA(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'said Act'). The respondent assessee had filed an appeal before the Tribunal being aggrieved by the order of the Director of Income Tax (E) passed under Section 12AA(3) read with Section 12 of the Income Tax Act cancelling the registration granted to the assessee under Section 12(A).

2. The entire case of the revenue was that since the assessee, in the assessment year 2005-2006, had invested in commercial property at

Bangalore and it was not for a charitable purpose and further that in the said property no educational activity was carried out which was the object of the assessee. The respondent/assessee had contended that it was permissible for it to invest in immovable property in terms of section 11(5) of the said Act. It was also contended that though the investment was in commercial property, the income generated from it was applied for charitable purposes. Therefore, the registration under section 12A of the said Act could not have been cancelled. The Tribunal accepted the pleas raised by the assessee and allowed its appeal. The Tribunal observed as under:-

"7. We have heard rival contentions and gone through the relevant material available on record. Relevant provisions of Section 11, read as under :

**“Income from property held for charitable or religious purpose.**

**11 (2)** Where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of

the person in receipt of the income, provided the following conditions are complied with, namely :

(a) Such person specifies, by notice in writing given to the Assessing Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;

(b) The money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5).

....

(5) The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely :-

.....

(x) Investment in immovable property.

7.1. Plain reading of provisions of sec. 11 (2)(b) lay down that 85% of the income is to be applied to charitable purposes or set apart and the moneys accumulated or set apart can be invested or deposited in the forms or modes specified in sub-sec.(5).

7.2. Clause (x) of Sub sec. (5) to sec. 11 prescribes one of the modes of investment as "investment in immovable property". Thus, the surplus income can be applied to investment in immovable property. The charitable purposes will include

the educational activities and acquiring the income yielding assets to promote the educational objects of the Society. Consequently, combined reading of these provisions make it clear that the assessee can set apart or invest its income in an "immovable property". The word "immovable property" by natural reading, will include any type of land, residential or commercial property or any other form of property, which can be termed as immovable property as defined in the Transfer of Property Act. Thus, the society/ management is allowed to invest its surplus in immovable property, including commercial property. Thus, there cannot be a bar on management of Society to invest its surplus funds in acquisition of a commercial property as the law does not mandate any extra bar.

7.3. Coming to the other aspect that because the assessee is not carrying out any educational activity in this commercial property, therefore, the investment becomes for non-charitable purposes and the assessee has endeavored to enter into business operations. In our view the assessee's charitable objects include spreading education and opening of schools; investment even in commercial property assets remains charitable purposes so long as the income generated by it is applied to charitable objects. It has not been demonstrated that the assessee applied rent received from these properties to any non-charitable purposes. Besides, it has not been demonstrated that the assessee's intention was to enter in business of purchase and sale of commercial property inasmuch as we are in year 2012, the property was purchased in FY 2004-05 and the Trust still retains this property. In these circumstances, we are unable to hold that the assessee's investment can be held non-charitable in nature."

(underlining added)

3. We are of the view that the Tribunal had correctly appreciated the law and has come to the conclusion that the respondent assessee was entitled under Section 11(5)(x) to invest in immovable property out of the funds which were surplus with it. The Tribunal has also concluded that there was no evidence on the part of the department that the assessee had applied the rent received from the commercial property for non-charitable purpose. That being the case, the registration under Section 12 A could not have been cancelled. We do not find any substantial question of law which arises for our consideration.

4. The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**R.V.EASWAR, J**

**FEBRUARY 26, 2013**

‘ns’