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

+ ITA 72/2022

COMMISSIONER OF INCOME TAX (EXEMPTIONS) DELHI
..... Appellant

Through Mr. Abhishek Maratha, Advocate.

versus

INDIA HIV AIDS ALLIANCE Respondent

Through Mr. Uddyam Mukherjee and
Mr. Swapnil Pattanayak, Adv.

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COMMISSIONER OF INCOME TAX (EXEMPTIONS) DELHI
..... Appellant

Through Mr. Abhishek Maratha, Advocate.

versus

INDIA HIV AIDS ALLIANCE Respondent

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Mr. Swapnil Pattanayak, Adv.

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Date of Decision: 01st 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 appeals have been filed challenging the orders dated 22nd March, 2021 passed by Income Tax Appellate Tribunal (hereinafter referred

to as 'the ITAT') in ITA No.7449/Del./2017 & ITA No.7450/Del./2017 for the Assessment Years 2013-14 & 2014-15 respectively.

2. Learned counsel for the Appellant submits that the ITAT was not justified in allowing exemption under Sections 11 and 12 of the Income Tax Act, 1961 (for short 'Act') to the assessee, when the actual work of the assessee is to receive and simply transfer grants to other NGOs and the assessee is found to be charging service charges from its donor in various forms like management fee, etc. for execution of projects.

3. He also states that the ITAT was not justified in holding that the activity of the assessee was charitable in nature when the activity carried out by the assessee yielded income which is commercial in nature.

4. Admittedly, the present case is covered by the decision passed by learned predecessor Division Bench of this Court in assessee's own case for the Assessment Year 2010-11 in *CIT (Exemption), Delhi vs. M/s India HIV/AIDS Alliance in ITA 651/2019*. The relevant portion of the said judgment is reproduced herein below:

"2. The short point that is sought to be urged by the Revenue is whether the Income Tax Appellate Tribunal (ITAT) was right in holding that the activity of the Assessee did not cease to be a „charitable activity“ for the purposes of Section 2(15) of the Income Tax Act, 1961 (Act) because the Assessee charged a „management fee“ for defraying its administrative expenses.

3. In the impugned order the ITAT has noticed that the Assessee is a company registered under Section 25 of the Companies Act. It gives 85% of the donation received by it to the Government of India for HIV Aids and only 15% of its total donation is given to other societies for awareness and

treatment of poor HIV Patients. The entire amount spent by the Assessee is through societies and trusts. It also runs its own project for the welfare of HIV and AIDS patients. In the above circumstances it has been held that merely because the Assessee charges management fees to defray the administrative costs it would not make its essential activity a business activity.

4. The Court is unable to find any legal infirmity in the impugned order of the ITAT. No substantial question of law arises.

5. The appeal is accordingly dismissed.”

5. Consequently, no substantial question of law arises for consideration as the questions sought to be raised in the present appeals are squarely covered by the decision of this Court. Accordingly, the present appeal is dismissed.

MANMOHAN, J

DINESH KUMAR SHARMA, J

APRIL 1, 2022
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