

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NO. 90 OF 2013
(ARISING OUT OF S.L.P. (C) NO.31546 OF 2008)****DIRECTOR OF INCOME TAX
(EXEMPTION), NEW DELHI****.....APPELLANT.****VERSUS****RAUNAQ EDUCATION FOUNDATION****....RESPONDENT****J U D G M E N T****ANIL R. DAVE, J.**

- 1) Delay condoned.
- 2) Leave granted.
- 3) Being aggrieved by an order passed in ITA No.150 of 2008 by the High Court of Delhi at New Delhi, the Revenue has filed this appeal.
- 4) The facts giving rise to the present appeal in a nutshell are as under:

- 5) The respondent-assessee is a trust, who was treated as an AOP by the Assessing Officer for the assessment year 2002-2003 by an order dated 24th May, 2005 and exemption under Sections 11 & 12 of the Income Tax Act [hereinafter referred to as "the Act"] had not been continued. Being aggrieved by the said order of the Assessing Officer, the respondent-assessee had preferred an appeal before the Income Tax Commissioner. The Income Tax Commissioner was pleased to dismiss the appeal by an order dated 29th May, 2005. Being aggrieved by the said order of dismissal, the respondent-assessee had filed an appeal before the Income Tax Appellate Tribunal, Delhi Bench "F" at New Delhi. The said appeal, being ITA No.2657/DEL/2006, was allowed by an order dated 09th March, 2007. Being aggrieved by the said order, the Revenue had filed ITA No.150 of 2008 before the High Court of Delhi at

New Delhi which had been dismissed. Being aggrieved by the dismissal of the said appeal by an order dated 04th March, 2008, the Revenue has filed the present appeal.

- 6) The facts of the case pertain to the assessment year 2002-2003 of the respondent assessee. During the relevant accounting year i.e. 2001-2002, the respondent-assessee had, by way of donation, received two cheques for a sum of Rs.40 lac each from M/s Apollo Tyres Ltd. One of the cheques was dated 22nd April, 2002 and yet it was given in accounting year 2001-2002 i.e. before 31st March, 2002. The said cheque for donation was received by the respondent-assessee before 31st March, 2002 but was honoured after 1st April, 2002 i.e. in accounting year 2002-2003.
- 7) In the assessment proceedings, the Assessing Officer came to the conclusion that with an

intention to do undue favour to M/s Apollo Tyres Ltd., the cheque dated 22nd April, 2002, given by way of donation for a sum of Rs.40 lac had been accepted by the respondent-assessee and receipt for the said amount was also issued before 31st March, 2002 i.e. in the accounting year 2001-2002. According to the Assessing Officer, many of the trustees of the assessee trust were related to the directors of M/s Apollo Tyres Ltd. and so as to give undue advantage under the provisions of Section 80G of the Act, the cheque had been accepted before 31st March, 2002 although the cheque was dated 22nd April, 2002. Thus, by accepting a post dated cheque and by giving receipt in the earlier accounting year, the assessee trust had done undue favour and, therefore, the Assessing Officer observed as under in para 8 of the Assessment Order :

"...This has been primarily done with the sole objective of giving advantage to the donor company M/s Apollo Tyre Ltd. in which the main trustees and their relatives were substantially interested as per provisions of section 13 (3) of the I.T. Act, 1961. This is clearly in violation of provisions of section 13(2) (d) (h) and as such exemption u/s 11 and 12 cannot be allowed to the assessee and the assessment will be made in the status of AOP. With these remarks the income is computed as under..."

- 8) As stated hereinabove, the appeal which was filed against the assessment order had been dismissed and the second appeal filed before the Income Tax Appellate Tribunal by the respondent- assessee had been allowed by an order dated 09th March, 2007.
- 9) The Tribunal, after hearing the concerned advocates, came to the conclusion that there was no violation of the provisions of Sections 13 (2) (b) & 13(2)(h) of the Act and the assessee trust had not acted in improper and illegal manner. The Tribunal noted the fact that the amount of

donation i.e. Rs.40 lac received by way of a cheque dated 22nd April, 2002 was treated as donation receivable and accordingly accounting treatment was given to the said amount. The said amount was not included in the accounting year 2001-2002 as donation but was shown separately in the balance sheet as amount receivable by way of donation. Moreover, M/s Apollo Tyres Ltd. had also not availed benefit of the said amount under Section 80G of the Act during the accounting year 2001-2002 but had availed the benefit only in the accounting year 2002-2003, the period during which the cheque had been honoured and the amount of donation was paid to the assessee trust. For the aforesaid reason, the appeal filed by the assessee was allowed.

- 10) Being aggrieved by the aforesaid order passed in the appeal, the Revenue had filed Income Tax

Appeal No.150 of 2008 in the High Court of Delhi. The said appeal has been dismissed and, therefore, the present appeal has been filed by the Revenue.

- 11) The learned counsel appearing for the Revenue submitted that the High Court committed an error by dismissing the appeal. According to him there was breach of Section 13(2)(b) and 13(2)(h) and he further submitted that though the cheque was dated 22nd April, 2002 it was given by way of donation in the earlier accounting year for which the assessee trust had issued a receipt and as the trustees of the assessee trust and directors of M/s Apollo Tyres Ltd. were closely related, an effort was made by the assessee trust to do undue favour to M/s Apollo Tyres Ltd.
- 12) On the other hand, the learned counsel appearing for the assessee submitted that no illegality or

irregularity of whatsoever type was committed by the assessee trust and he had relied upon the reasons recorded by the Income Tax Appellate Tribunal so to substantiate his case. He further submitted that the post dated cheque for Rs.40 lac was given before 31st March, 2002 i.e. during the accounting year 2001-2002 and the cheque was duly honoured in April, 2002 when it was presented before the collecting bank. As the cheque had been honoured and the amount was paid to the assessee trust, the date of payment of cheque should be treated as the date on which the cheque was given. Had the cheque been dishonoured, things would have been different but as the cheque had been duly honoured, as laid down by this court in the case of **The Commissioner of Income-Tax, Bombay South, Bombay** vs. **Messrs. Ogale Glass Works Ltd., Ogale Wadi (1955 (1), SCR page**

185), it will have to be presumed that the amount was paid on the date on which the cheque was given to the respondent assessee and, therefore, it cannot be said that any undue favour was done by the respondent-assessee to M/s Apollo Tyres Ltd.

- 13) Upon hearing the learned counsel for the parties, we find certain undisputed facts. It is not in dispute that though the assessee trust had issued receipt when it received the cheque dated 22nd April, 2002 for Rs.40 lac in March, 2002, it was clearly stated in its record that the amount of donation was receivable in future and accordingly, the said amount was also shown as donation receivable in the balance sheet prepared by the assessee trust as on 31st March, 2002. It is also not in dispute that M/s Apollo Tyres Ltd. did not avail any advantage of the said donation during the accounting year 2001-2002. Upon

perusal of the Assessment Order of M/s Apollo Tyres Ltd. for the assessment year 2002-2003, it is clearly revealed that the cheque dated 22nd April, 2002 was not taken into account for giving benefit under Section 80G of the Act as the said amount was paid in April, 2002, when the cheque was honoured. The assessment order showing the above fact is a part of the record, which we have carefully perused.

- 14) The submission made on behalf of the respondent-assessee is supported by this court in the case of M/s Ogale Glass Works Ltd. (supra). Relying upon other authorities, this court observed as under in the aforesaid case :

“...When it is said that a payment by negotiable instrument is a conditional payment what is meant is that such payment is subject to a condition subsequent that if the negotiable instrument is dishonoured on presentation the creditor may consider it as waste paper and resort to his original demand : *Stedman v.*

Gooch (1793) 1 Esp.5. It is said in Benjamin on Sale, 8th Edition, page 788 :-

"The payment takes effect from the delivery of the bill, but is defeated by the happening of the condition, i.e., non-payment at maturity."

In Byles on Bills, 20th Edition, page 23, the position is summarised pithily as follows :

"A cheque, unless dishonoured, is payment."

To the same effect are the passages to be found in Hart on Banking, 4th Edition, Volume I, page 342. In *Felix Hadley & Co. v. Hadley (L.R. (1898) 2 Ch.D.680*, Byrne J. expressed the same idea in the following passage in his judgment at page 682 :

"In this case I think what took place amounted to a conditional payment of the debt; the condition being that the cheque or bill should be duly met or honoured at the proper date. If that be the true view, then I think the position is exactly as if an agreement had been expressly made that the bill or cheque should operate as payment unless defeated by dishonour or by not being met; and I think that that agreement is implied from giving and taking the cheques and bills in question."

The following observations of Lord Maugham in *Rhokana Corporation v. Inland Reveue Commissioners (L.R. [1938] AC 380 at p.399)* are also apposite:

"Apart from the express terms of section 33, sub-section 1, a similar conclusion might be

founded on the well known common law rules as to the effect of the sending of a cheque in payment of a debt, and in the fact that though the payment is subject to the condition subsequent that the cheque must be met on presentation, the date of payment, if the cheque is duly met, is the date when the cheque was posted."

In the case before us none of the cheques has been dishonoured on presentation and payment cannot, therefore, be said to have been defeated by the happening of the condition subsequent, namely dishonour by non-payment and that being so there can be no question, therefore, that the assessee did not receive payment by the receipt of the cheques. The position, therefore, is that in one view of the matter there was, in the circumstances of this case, an implied agreement under which the cheques were accepted unconditionally as payment and on another view, even if the cheques were taken conditionally, the cheques not having been dishonoured but having been cashed, the payment related back to the dates of the receipt of the cheques and in law the dates of payments were the dates of the delivery of the cheques."

- 15) Looking into the aforestated undisputed facts, and the view expressed by this court in the case of M/s Ogale Glass Works Ltd. (supra), we are of the view that no irregularity had been committed

by the assessee trust and there was no violation of the provisions of Sections 13(2)(b) or 13(2)(h) of the Act. The fact that most of the trustees of the assessee trust and the directors of M/s Apollo Tyres Ltd. are related is absolutely irrelevant.

- 16) Upon careful perusal of the order passed by the Tribunal, we do not find any error therein. We are, therefore, in agreement with the view expressed by the Tribunal as well as the High Court and, therefore, the appeal is dismissed with no order as to costs.

JUDGMENTJ.
(R.M. LODHA)

.....J.
(ANIL R. DAVE)

New Delhi
January 07, 2013