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

Reserved on: 1st March, 2016
Date of Decision: 23rd March, 2016

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ITA 188/2002

COMMISSIONER OF INCOME TAX, DELHI-XI..... Appellant

Through: Mr. Dileep Shivpuri, Senior Standing
Counsel with Mr. Zoheb Hossain, Junior
Standing Counsel.

versus

JANATA PARTY

..... Respondent

Through: Mr. S. Krishnan, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE VIBHU BAKHRU

J U D G M E N T

23.03.2016

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Dr. S. Muralidhar, J.:

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act') is directed against an order dated 23rd November, 2001 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.2140/Del/2000 for the Assessment Year ('AY') 1995-96.

Background facts

2. The Respondent Assessee is a political party registered under the Representation of the People Act, 1951 ('RP Act'). It was formed on 3rd

May, 1977. According to the Assessee there were three major splits in the party. The first occurred on 18th July 1979, when Mr. Chaudhary Charan Singh left to form the Lok Dal. The second split occurred on 4th April 1980, when Mr. Atal Bihari Vajpayee left to form the Bharatiya Janata Party ('BJP') and the third in July 1989, when Mr. Madhu Dandavate, Mr. Ajit Singh etc. left to form the Janata Dal. It is stated that on 12th November 1990, Dr. Subramanian Swamy was elected as the President of the party and he appointed new office bearers. It is stated that Dr Swamy opened an account of the central office of the party with Vijaya Bank, New Delhi. The voluntary contributions collected in the various States were brought (mostly in cash) by the office bearers to Delhi where they were deposited in the aforementioned bank account. The Assessee's case is that from this account funds were disbursed to the various State units through demand drafts or telegraphic bank transfers. It is stated that a numbered signed receipt was given by the collecting party volunteer to the donor for each voluntary contribution.

3. On 10th October 1990, the Assessing Officer ('AO') wrote to the Assessee demanding production of the accounts from AY 1986-1987 onwards till AY 1990-1991. It is stated that since the party had different office bearers and different bank accounts, some of which the President was not aware of, the said request could not be given effect to. It is stated that when it was found that no income-tax return had ever been filed on behalf of the party, the President of the Party got a firm of Chartered Accountants ('CAs') to audit the central office accounts for the AY 1990-91.

4. On 27th March 1991, the Assessee filed the central office accounts and the income tax return for AY 1990-91. The disclosed figure of voluntary contributions was Rs. 87,71,280/-. However, exemption was claimed under Section 13A of the Act and, therefore, Nil income was declared. It is stated that the aforementioned return was accepted by the AO on 22nd August, 1991.

5. The same firm of CAs was asked to audit the accounts of the central office of the party for AY 1991-92. The income tax return for AY 1991-92 was stated to have been handed over for filing on 30th October, 1991. The disclosed figure of voluntary contributions therein was Rs. 2,46,322 and Nil income was declared after claiming exemption under Section 13A of the Act. However the return for AY 1991-92 was not filed.

6. It is stated that the fourth major split occurred in the party in March 1992, when Mr. Mulayam Singh Yadav left the party and the fifth split occurred in September 1992 when Mr. Chandrashekhar, Mr. Deve Gowda and Mr. Om Prakash Chautala left the party.

7. It is stated that the same CAs again audited the accounts of the central office of the party for AY 1992-93. The disclosed voluntary contributions was Rs. 3,16,77,179. In the return, exemption was claimed under Section 13A of the Act and nil income was shown. The return was sent from Delhi to Madras where the new Treasurer of the party was based. However, no IT returns were filed for AY 1992-93.

8. It is stated that in August 1993-94, the sixth split took place in the party and the State units in Delhi, Tamil Nadu and Kerala also left the party. It is claimed that the local Party bank accounts were taken over by the persons over whom the central leadership had no control. The Treasurer in Chennai is also stated to have left the party.

9. On 21st September 1995, the Assessee was served with a notice under Section 142(1) of the Act calling upon it to file its IT return for AY 1995-96. On 19th February 1996, the Assessee filed its return disclosing voluntary contributions of Rs. 68,84,800. Exemption was claimed under Section 13A of the Act and, therefore, the returned income was shown as Nil. It is now claimed that the said return included only the accounts of the central office although there is no such indication in the return as filed, a copy of which has been enclosed with the appeal. It is stated that on the same date, i.e., 19th February 1996, the returns of the Assessee for the earlier AYs 1991-92 to 1993-94 were filed.

10. It is stated that as regards AY 1995-96, the information sought by the AO was provided on 3rd June 1996. On 3rd July, 1996 notices under Sections 143(2) and 142(1) of the Act were issued calling for the following details:

- i. Complete books of accounts and other documents pertaining to AY 1995-96.
- ii. Complete details of voluntary contributions in excess of Rs.10,000/- received during AY 1995-96 along with the names of donors and their complete addresses.

11. The Assessee claimed that since the Chennai based Treasurer of the Assessee had left the party, it took considerable time to locate and reconstruct the accounts. Adjournments were sought, at least, on ten occasions between 16th July 1996 and 23rd March 1998, all of which were granted by the AO. On 2nd February, 1998, the AO served the Assessee with a letter drawing its attention to the fact that an account of the Party had been opened with the Vijaya Bank, Chennai and the credit entries in the said account in the sum of Rs. 68,53,435 had not been included in the return filed for AY 1995-96.

Proceedings before the AO

12. Meanwhile in the proceedings which took place before the AO on 23rd March 1998, time was again sought by the Assessee till 27th March 1998 to furnish the details. The AO recorded “the Party is being given a final opportunity till 27/3/1998 as the proceedings gets barred by limitation on 31/3/1998.”

13. The proceedings of 27th March 1998, show that Mr. Rajan Malik and Mr. Prem Nath attended the proceedings on behalf of the Assessee and filed details by a letter of that date. It was admitted that there was an account CA 1327 of the Party with the Vijaya Bank at Chennai but that it was left out while filing returns due to a *bonafide* error on account of various pre-occupations “including election campaigns, splits, exodus of office bearers.” It was claimed that the credit entries in the said account were “only towards Party funds and do not constitute receipts of any other nature and the Assessee has not violated any of the provisions of the Income Tax Act.” The

Assessee disclosed that it had four other bank accounts with one each in Bombay and Bangalore and two in Chennai, which had not been included in the return. It was claimed that these accounts had been incorporated in the consolidated return prepared by its Chennai based CA firm and it would be filed shortly in Delhi. One last opportunity was granted to the Assessee to comply with the direction to file all its accounts by 11am on 28th March 1998.

14. The proceedings of 28th March 1998 drawn up by the AO reveal that again Mr. Rajan Malik and Mr. Prem Nath appeared on behalf of the Assessee and filed the consolidated receipts and payment (R & P) accounts of the New Delhi unit, the Maharashtra unit and the Bangalore unit of the party. The accounts of the Chennai unit were also filed.

15. The Assessee filed the cash book ledger of the central office from which the return of income along with the audited accounts were prepared and filed before the Department. It was stated that “this represents the consolidated accounts of the party as per the return of income originally.” The AO noted that from the account of voluntary contributions appearing on page 65 of the ledger produced “all the entries are exceeding Rs.10,000/-.” The AO noted the explanation offered by the AR that the collections are made by respective State units and each collection/contribution was less than Rs.10,000/-. Whenever sizeable amount was accumulated, the same was remitted to Delhi through political workers and Executives of the Party to be deposited in Vijaya Bank, Delhi. The collections in the State units were made by way of issue of receipts and every receipt was less than Rs.

10,000/-. Further a copy of collection books showing accumulation of collections was also maintained.

16. The AO then examined the counterfoils of the receipts from the Tamil Nadu, Karnataka, Mumbai, New Delhi units. The AO noted the following facts:

- i. The receipts were all manually numbered.
- ii. All of them were of denomination less than Rs.10,000/-.
- iii. All the receipts were signed by the party volunteers.

17. The AO then directed the ARs to furnish – (i) the name and address of the party functionaries who had received the aforementioned amounts in the various States; and (ii) the name, date and mode of transport of persons who purportedly brought the money to Delhi. The central office ledger showed that no expenses for travelling had been booked. This was true for the Mumbai and Karnataka units as well. The ARs were, therefore, asked to substantiate the plea that monies were carried to Delhi for deposit in the account of the central office.

18. The AO then examined the consolidated accounts which had been prepared by incorporating all the bank accounts as mentioned in the AR's letter dated 27th March 1998. A perusal of the accounts of the Maharashtra unit revealed that there was one unit for entire Maharashtra excluding Bombay and a separate unit for Bombay. The ledger account of the Maharashtra unit showed that voluntary contributions totalling Rs.35,81,600/- were shown up to 6th August, 1994. The cash book had not

been produced. All the entries were found to be in excess of Rs.10,000/-. The amounts collected in the months of April, May, June, July and August were in excess of Rs.10,000/- and, therefore, the ARs were asked to furnish the names and addresses of the party functionaries who collected these amounts and kept it with them before depositing it in the bank.

19. While perusing the accounts of the Bangalore unit, the AO noted that its total collections were Rs. 12,61,000/-, which were remitted to Account No.572 maintained with Vijaya Bank. The collections in the months of May, August to November were in excess of Rs.10,000/- and totalled to Rs.12,61,000/-. This entire sum was kept in the bank account with Vijaya Bank.

20. As far as the Chennai unit was concerned, the AR explained it by pointing out that all the entries therein pertained to sums transferred from the Maharashtra, New Delhi and Bangalore units. The details were, therefore, called for.

Order of the AO

21. The examination of the statements of the bank accounts and the books produced before the AO showed that in the case of the Mumbai and Bangalore units there was a gap in the collection of money and its eventual deposit in the bank accounts. Although the stand of the Assessee was that the Party functionaries carried money to Delhi, travelling from time to time by rail or air, and that the expenses on such travel were reimbursed from the cash in hand available with the party, no such evidence of travel was

produced. As regards the Chennai account there were transfer entries of Rs.61,91,435/- and cash entry of Rs.6,62,000/-. The contention of the Assessee that the transfer entries were from various other units of the party and that the cash deposits were merely deposits of earlier withdrawals was devoid of merit since the bank account (account No.1327) showed that there were very few withdrawals prior to the cash deposits on various dates. Considering that according to the Assessee it had received voluntary contributions in Chennai unit only to the extent of Rs. 2,970/-, there was no plausible explanation for the cash entries.

22. The AO also found that the Assessee had failed to disclose its receipts truly at the time of filing of the return. It was only after the Department conducted inquiries that the Assessee came forward, virtually at the fag end of the limitation period, to furnish fresh audited accounts. The return was not filed voluntarily by the Assessee under Section 139(1) read with Section 139 (4B) of the Act. Since omission to file the return was not discovered by the Assessee, it was not *bona fide*. The revised statement of income and accounts filed by the Assessee, purportedly consolidating the accounts of other units of the Assessee could not be accepted in terms of Section 139(5) of the Act. There was a failure by the Assessee to comply with the statutory requirements under the Act.

23. More serious was its inability to furnish the complete books of accounts and other documents that it was required to keep and maintain under the Act prior to the detection of an undisclosed bank account of the party in Chennai. Despite adequate opportunities, the Assessee did not comply with

the statutory requirements. It has also been unable to explain the cash deposits in its bank account in Delhi and the cash deposits in its Chennai account. The AO was of the opinion that the Assessee, without maintaining proper books of accounts, had “hastily created evidence by way of manually numbered receipt books each being below Rs.10,000/-.”

24. The AO concluded that the Assessee was trying to misuse the provisions of Section 13A of the Act by creating such evidence and then giving it to the Department at the fag end of the limitation period so as to remove any chance of cross-verification.” It was concluded that this was a methodology adopted to evade tax. Since the conditions under Section 13A of the Act were not satisfied, the Assessee’s claim under it could not be allowed. The Assessee’s receipts from all State units in the sum of Rs.1,17,10,370/- shown as voluntary contributions in the consolidated account and Rs.6,62,000/- shown as cash deposit in the Chennai account were together taken as the receipts and, therefore, the income of the Assessee. None of the expenses were allowed. Thus, the taxable income was computed as Rs.1,23,72,370/-.

Order of the CIT (A)

25. The appeal filed by the Assessee against the aforementioned assessment order was dismissed by the Commissioner of Income Tax (Appeals) [CIT(A)] by the order dated 16th February, 2000. The CIT(A) agreed with the AO that in the return filed under Section 139(4B) of the Act, the Chief Executive Officer (CEO) of the Assessee had to verify the correctness of the contents of the return filed in the prescribed form. The bank accounts of the

Chennai, Mumbai and Bangalore units had not been disclosed. Thus, it was obvious that the CEO had signed a false verification in the return of income.

26. The CIT(A) found that it was only after the detection of the Assessee's bank account in Chennai and after the Assessee's notice was drawn to it that the details of the Chennai, Mumbai and Bangalore accounts were furnished. The claimed expenses of the Assessee were not verified by the bank transactions. The books of accounts were not maintained in the manner that would enable the AO to deduce the Assessee's income therefrom. Consequently, the AO was justified in coming to the conclusion that the Assessee had not fulfilled the conditions laid down for availing the exemption under Section 13A of the Act.

27. The CIT (A) held that the contention of the Assessee that it was under the *bona fide* belief that only the accounts of the central office were to be filed, could not, on the face of it, be accepted. Prior to notice being issued by the AO to the Assessee under Section 142(1) of the Act on 20th September 1995 and even prior to the filing of the return by the Assessee on 14th February 1996, the Gujarat High Court had given its decision in ***CIT v. Gujarat Pradesh Congress Samiti (1994) 207 ITR 622*** which made it plain that the conditions to be fulfilled for availing exemption were not mere machinery provisions, but were mandatory. Thus the Assessee, as a political party, could not claim to be unaware of its statutory obligation to file income tax returns, particularly if it wanted to avail the benefit under Section 13A of the Act.

The order of the ITAT

28. The further appeal by the Assessee being ITA No.2140/Del/2000 was allowed by the ITAT by the impugned order dated 23rd November, 2001. The findings of the ITAT were as under:

- i. The AO had not been able to pinpoint even one case where the voluntary contribution was in excess of Rs.10,000/-. Thus, the conditions stipulated in Section 13A of the Act were satisfied. Once the Appellant had maintained the accounts and such accounts had been duly audited and none of the entries were found to be more than Rs.10,000, “nothing further was required to be proved.”
- ii. The books of accounts could not be rejected on the mere *ipsi dixit* of the Revenue authorities. The AO had not pointed out the defects in the accounts and the objections of the AO were untenable.
- iii. Considering that the Assessee party had undergone many splits over the years, it was anybody’s guess as to the number of state units which still owed allegiance to the Assessee. A political party which has all India status would have bank accounts in different States, Districts and Taluks. No exception could be taken for the failure to recall the political workers, who may have travelled to the capital for depositing money with the Party. In the circumstances, the denial of exemption under Section 13A of the Act for non-furnishing of the particulars of the persons, who had carried the cash to Delhi would not result in denial of exemption

under Section 13A of the Act.

- iv. There is no requirement under the Act for a political party to have automatic numbering of the receipt books. Books of accounts had only a limited role and as far as the income from other sources was concerned what was permitted as deduction against the income is only a direct outflow of income relatable. Therefore, no major book-keeping hassles would be involved.
- v. What was left thereafter were the voluntary contributions. Since the accounts were to be maintained in fairly simple form, there was no provision similar to Section 44AA of the Act which applied to political parties “so long as the auditor has found the accounting version amenable to verification and audit and the report is not qualified, the purpose of law is well subserved.”
- vi. Since the Assessee had been claiming Nil income any variation in the income was an academic issue. As regards claim for interest, it was held that in the light of the decision in ***C.I.T. v. Anjum M.H. Ghaswala [2001] 252 ITR 1 (SC)***, the Assessee deserved to succeed.

The present appeal

29. While admitting the present appeal on 15th January 2004, the following question was framed:

“Whether the finding is perverse and contrary to evidence on record

in so far as applicability of Section 13A of the Income-tax Act, 1961 is concerned?”

Summary of the Court's decision in the INC case

30. In a detailed judgement delivered today in ***Commissioner of Income Tax, Delhi-XI v. Indian National Congress (I)/All India Congress Committee*** and the cross-appeal (ITA Nos. 145 and 180 of 2001), this Court has elaborately discussed the scope of Section 13A of the Act and has come to the following conclusions:

- (i) For understanding and interpreting Section 13A of the Act, it would serve no purpose to compare it with Section 11 of the Act which applies to Trusts.
- (ii) Section 13A of the Act is not a computation section. Income by way of voluntary contributions would be excluded only subject to fulfilment of the conditions stipulated under Section 13A of the Act.
- (iii) It could never have been the legislative intention that voluntary contributions received by a political party that does not satisfy the requirement of Section 13A of the Act - viz., maintaining books of accounts, keeping a record of voluntary contributions in excess of Rs.10,000 (which was later increased to Rs. 20,000 with effect from 11th September 2003) and getting the accounts audited - would be exempt from tax. In such event, the income of a political party by way of voluntary contributions would be included in the taxable income. Voluntary contributions are not in the nature of capital receipts.

(iv) Clause F of Section 14 of the Act is a residuary provision. An income which is not to be excluded from the total income and is not chargeable to income tax under heads A to E, has to be treated as 'income from other sources'. If the total income by way of voluntary contributions of a political party cannot be excluded from its total income because such political party has not complied with any of the conditions in the proviso to Section 13A of the Act, then by virtue of Section 56(1) of the Act, such income by way of voluntary contribution would be 'income from other sources' under Section 56(1) of the Act.

(v) The mere fact that income by way of voluntary contribution of a political party is not deemed to be income under Section 2(24)(ia) of the Act, does not place it outside the purview of 'income from other sources.'

(vi) Donations to a political party are for multiple reasons and is an act of participation in a democracy. The known tests for determining 'income' are, therefore, inadequate for determining whether the voluntary contribution in the hands of a political party is in fact 'income'.

(vii) The requirement of maintaining audited accounts and furnishing those accounts in terms of the proviso to Section 13A of the Act is not merely directory.

(viii) It is with a view to placing a check on the financial transactions of political parties that the proviso to Section 13A was enacted. In this context,

the object of Section 13A of the Act will be defeated if the requirements of the proviso thereto are held not to be mandatory.

(ix) The conditionality attached to Section 13A must be strictly construed. If a political party seeks exemption from payment of income tax in a given AY, it is incumbent on the political party to strictly comply with each of the requirements in the proviso to Section 13A. At the highest, the compliance has to be by the time the assessment is completed but certainly not thereafter.

31. In the aforementioned decision involving the Indian National Congress ('INC'), the Court has held, on the facts of that case, *inter alia*, that since the Assessee failed to place before the AO, or even before the CIT (A), acceptable audited accounts, from which the AO could deduce the taxable income of the assessee, the mandatory requirement of the proviso to Section 13 A of the Act was not fulfilled by the Assessee.

Facts not in dispute

32. Turning to the case on hand, certain facts are not in dispute at all. Crucially there is no denial by the Assessee that it filed its returns for AY 1995-96 and the earlier two AYs, i.e., 1993-94 and 1994-95, only pursuant to the notice issued to it under Section 142 (1) of the Act. Further there is no denial that what was filed by it was the incomplete accounts. It pertained to the central office and not to the State units of the Assessee. A third factor that is not denied is that it was only after the Chennai bank account of the Assessee was detected that the Assessee came forward to make a disclosure

of the bank accounts of its Mumbai and Bangalore units. In other words, the accounts that were produced were not consolidated and were, therefore, incomplete.

Submission of counsel

33. It was sought to be urged by Mr. Krishnan, the learned counsel for the Assessee, that there was a *bona fide* reason for the Assessee not having filed the consolidated accounts of the central office and the state units. He referred to the fact that there were periodic splits in the party and that Dr. Swamy did not have control over the affairs and accounts of the state units. According to Mr. Krishnan, it was also not unusual for the political parties to number the receipt books manually. He, however, is candid that the accounts could have been better maintained. According to him, there was no intention to keep back any document available with the Assessee from being disclosed to the AO. He sought to support the findings of the ITAT and pointed out that unless the books of accounts were rejected by the AO, what was stated therein has to be accepted as the correct depiction of the financial state of the Assessee. Mr. Krishnan submitted that Section 13A of the Act was not a computation provision and there was no requirement that the receipts of the party had to be applied for any expenses for political purposes. According to him, therefore, the ITAT's order was perfectly in order.

34. Mr. Dileep Shivpuri, learned Senior standing counsel for the Revenue, on the other hand, referred to the numerous opportunities afforded to the Assessee for giving a satisfactory explanation regarding entries in the bank

accounts and also to present the consolidated accounts of the central as well as the State units. Mr. Shivpuri also referred to the audit report submitted in the matter which clearly showed that there was no systematic maintenance of the accounts or its audited accounts. Mr. Shivpuri expressed surprise that the receipt books were manually numbered and that not one donation was above Rs. 10,0000. According to him this showed a desperate attempt at producing fabricated documents just to meet the deadline set by the AO for furnishing the accounts.

Analysis and reasons

35. The above submissions have been considered. What is striking in the present case is the casualness of which the Assessee has gone about discharging its statutory obligations as political party in terms of Section 139 (4B) of the Act even while claiming exemption under Section 13A of the Act. One has to simply look at the statement of total income for income tax purposes, appended to the income tax return signed by Dr. Swamy as President of the Assessee, to understand the above conclusion. The said statement reads as under:

Name of the Assessee: Janata Party
 Address: No. 5, Pandity Pant Marg, New Delhi.
 Assessment Year : 1995-1996
 Status: Political Party

“Statement of Total Income for Income Tax Purpose

Income from other sources:

Gross receipts: Voluntary contributions :	68,64,800
Less : Exemption u/S 13A :	68,64,800

Taxable income : NIL

Note: Assessee is a political party registered with the Election Commissioner of India and Election Symbols (Reservation and Allotment) Order, 1968. The entire income of political party by way of voluntary contributions are exempt under Section 13A of the IT Act.

Sd/-
(Dr. Subramanian Swamy)
President”

36. Enclosed with the income tax returns, the auditor’s report reads as under:

“I have carried out the audit of the accounts of JANATA PARTY for the year ended 31st March 1995 and state that as per the records produced to me and to the best of my knowledge and belief, the party had receipts only from Voluntary contributions during the year under reference and each such voluntary contribution was not in excess of Rs. 10,000 (Rupees ten thousand only). The party did not derive any income from property or other sources. Proper books of accounts and documents necessary for above have been maintained.

The receipts and payments duly certified by me is in accordance with the records maintained by the party.

Date: 16th Feb. 96
Place: Madras

Sd/-
(S. SANTHANAGOPALAN)”

37. In order to justify the above report, the third document was appended titled ‘Receipts and Payments Account 1994-1995’ and reads as under:

“JANATA PARTY

RECEIPTS AND PAYMENTS ACCOUNT 1994-1995

<u>Receipts:</u>	Rs.	P.
Cash at Bank: Vijaya Bank: New Delhi a/c	27,46,633.65	
Voluntary contributions received and remitted		
Into the bank account	68,64,800.00	

	96,11,433.65	

Payments:

Payments made to Party units at	
: Kerala Unit	1,00,000.00
: Simla	26,075.00
: Delhi	5,55,000.00
: Tamilnadu	22,08,000.00
: Karnataka	20,000.00
Building – Bangalore	11,65,000.00
Vishwa Dharmayatan	24,93,000.00
General expenses	7,79,765.00
Cash from bank	4,88,413.00
Telephone charges	1,19,214.00
Bank charges	6,247.00
The Express (Malayalam) (P) Ltd.	13,80,000.00
Cash at Bank : C.B.	2,70,719.00

	96,11,433.65

In terms of separate report attached

Sd/-
(Dr. SUBRAMANIAN SWAMY)
President”

Sd/-
(S. SANTHANAGOPALAN)

38. Apart from the above documents, nothing has been filed along with the returns. On the date when the above returns were filed, it was known to the

auditor that there were bank accounts of the state units and yet the Auditor made no reference to them. Two inferences are possible: either Dr. Swamy did not disclose the full facts to the auditor or the auditor gave an incorrect report without qualifying the report. Nowhere does the report state that the accounts depict a true and correct picture of the state of the financial affairs of the Assessee. Significantly the report only refers to “the records produced” as forming the basis of the auditor's belief that the party's receipts were “only from voluntary contributions during the year” and that each such contribution “was not in excess of Rs.10,000/-.” Even the sentence “proper books of accounts and documents necessary for above” reveal that the auditor himself had not been satisfied that the entire accounts had been disclosed. Even as regards the Receipts and Payments (R & P), the auditor only states that it “is in accordance with the records maintained by the Party.” It is plain that the auditor had no access to the entire accounts of the party and therefore, the above statement was false to his knowledge.

39. It is also not in dispute that it is only during the course of the assessment proceedings and, in fact, towards the end thereof, that the Assessee on 31st March 1998, filed a consolidated return incorporating the accounts of the four state units, which showed voluntary contributions in the aggregate of Rs.1,17,10,370/- (i.e. Rs. 68,84,800/- declared by the central office and the amounts in the accounts of the Mumbai and Bangalore units). This was at variance with the figure disclosed in the statement appended to the original return where only a sum of Rs.68,84,800 was disclosed as the voluntary contribution.

40. At this stage it requires to be noticed that a CA can possibly give four kinds of audit reports. First is to state that the complete accounts have been produced and it represents the 'true and fair view' of the financial affairs of the Assessee. The second is to give a qualified audit report highlighting which matters have not been fully explained by the Assessee. The third is to give an adverse report to the effect that the complete accounts have not been placed before the auditor and therefore it cannot be said that they depict the true and fair view of the financial affairs of the Assessee. The fourth is to candidly state that it is not possible to give an audit report since the accounts have not been maintained in the manner required.

41. The statutory obligation of an auditor flows from the provisions of the Chartered Accountants Act 1949 under which the Institute of Chartered Accountants of India (ICAI), the disciplinary body of chartered accountants, is constituted. The ICAI has issued a Code of Conduct for the guidance of its members to adopt high standards of professional conduct. Referring to the said document this Court in ***Council of Institute of Chartered Accountants of India v. Kul Rattan Bhasin (2011)183 DLT 648*** observed:

"A large section of public relies on the objectivity and integrity of professional accountants to maintain the orderly functioning of commerce. Such reliance imposes a public interest responsibility on the accounting profession. Professional accountants have an important role to play in the society. Investors, creditors, employees and other sectors of the business community as well as the government and the public at large rely on professional accountants for sound financial accounting and reporting, effective financial management and competent advice on a variety of business and taxation matters. The attitude and behaviour of the professional accountants in providing such services have an impact on the economic well-being of their

community and the country.”

42. In a separate judgment delivered today in ***Commissioner of Income Tax, Delhi-XI v. Indian National Congress (I)/All India Congress Committee*** (*supra*), while dealing with the role and responsibility of auditors in relation to accounts of political parties, the Court has noted as under:

" 105. The ICAI issued a 'Guidance Note on Accounting and Auditing of Political Parties' in February 2012. The covering note of the President, ICAI states inter alia:

"Political Parties are one of the core organisations for functioning of a democracy. In this dynamic scenario, where the sources of funding of the Political Parties are diversified, the objectives of accountability and transparency seem to be of great importance. Transparent accounting and financial reporting are also central to the fulfilment of new age governance, The introduction of acceptable accounting practices and disclosure norms are not just technical practices but the foundations for the integrity and maturity of the Political Parties. Political Parties would, therefore, need to reflect their 'financial position' and 'financial performance' which should indicate their ability to achieve their developmental goals, meet their programme targets, their efficiency in the use of resources.

106. The covering note of the President ICAI acknowledges that "the present system of accounting and financial reporting followed by political parties in India does not adequately meet the accountability concerns of the stakeholders." The 'Illustrative format of Auditor's report' appended to the note requires the auditors to state *inter alia* that:

"In our opinion and to the best of our information and according to the explanations given to us, the said

accounts give a true and fair view in conformity with the accounting principles generally accepted in India"

43. An auditor discharges both a statutory and a professional responsibility. With particular reference to Section 13A of the Act, the audit report becomes a most crucial document from which the AO should be able to determine if the claim for the exemption under Section 13A of the Act is justified.

44. To recapitulate, the three mandatory requirements for availing of the benefit of exemption under Section 13A of the Act are that a political party:

(a) has to keep and maintain such books of accounts and other documents as would enable the AO to properly deduce its income therefrom;

(b) has to, in respect of each voluntary contribution in excess of Rs. 10,000, (now enhanced to Rs. 20,000) keep and maintain a record of such contribution and the name and address of the person who has made such contribution;

(c) has to have its accounts audited by an Accountant as defined in the Explanation below Section 288 (2) of the Act.

45. Therefore, the role of the auditor in the matter of political parties claiming exemption under Section 13 A of the Act is critical. For the reasons already noticed, it is plain that the audit report in the present case does not

satisfy the requirement of the law. The accounts produced by the Assessee were not such as would enable the AO to properly deduce its income. The consolidated accounts produced after the filing of the returns disclosed a figure of voluntary contributions that differed from that disclosed in the original return. The consolidated returns revealed the figure of voluntary contribution in the sum of Rs. 1,17,10,370. This included the figures shown in the accounts of the units at Maharashtra, Bangalore and Mumbai.

46. The entries in the bank accounts, as also in the ledger produced in respect of the central office, showed that there were donations of more than Rs.10,000. Yet, in order to substantiate its stand that the individual contributions were less than Rs.10,000, the Assessee submitted manually numbered receipts which were rightly disbelieved. The Assessee's case that all donations were received in cash, were accumulated at the various units and were remitted to the central office personally by the party functionaries when they happened to come to New Delhi for attending meetings was unable to be satisfactorily substantiated. The AO found large gaps in the monthly accumulations of the donations at the various places and its actual deposit in the bank account of the central office. No regular books of accounts had been maintained except at the central office. The bank account at Chennai showed that a sum of Rs. 6,62,000 was deposited in cash on five/six occasions for which there was no explanation as regards sources. It was sought to be explained that these were out of prior withdrawals but the bank accounts did not reveal any such withdrawal prior to the deposits. There were small amounts of cheque withdrawals in the name of the different persons but there was no correlation between such withdrawals and

the deposits of cash.

47. The Assessee also did not offer any explanation as to why donations collected by the various state units were not remitted to the central office either by the bank draft or telegraphic transfer. The assertion that each donation was less than Rs. 10,000 was a desperate one and not at all convincing. The documents produced did not support such an assertion. It was not enough that documents in support of voluntary contributions ought to have been preserved but they ought to have the names and addresses of the donors whose donations were in excess of Rs. 10,000. As rightly pointed out, the provisions of Sections 142 to 145 of the Act are applicable to political parties as much as they are to other Assesseees.

48. The finding of the ITAT that the Assessee satisfied the mandatory conditions for availing the exemption under Section 13A of the Act is nothing short of perverse as it is wholly contrary to and unsupported by the documents on record. A political party which seeks to avail of the exemption cannot be heard to say that it is not possible for it to maintain its accounts on a consolidated basis. As long as a political party continues to avail the exemption from payment of income tax, there can be no excuse for not maintaining its account whether it has one or more state units. Where in any particular FY, a political party is unable to maintain its accounts for any reason whatsoever, or satisfy the pre-conditions set out in the proviso to Section 13A of the Act, an exemption cannot be possibly be granted from payment of income tax for that FY.

Conclusion

49. The Court finds that no valid reasons have been given by the ITAT for overturning the reasoned and detailed orders of the AO and CIT (A). In the circumstances, the question framed is answered in the affirmative by holding that the finding of the ITAT is perverse and contrary to evidence on record in so far as applicability of Section 13A of the Act is concerned, i.e., in favour of the Revenue and against the Assessee.

50. The impugned order dated 23rd November 2001 of the ITAT in ITA No. 2140/Del/2000 is set aside and the corresponding order dated 31st March 1998 of the AO, as upheld by the order dated 16th February 2000 of the CIT (A), is restored. The appeal is allowed in the above terms with no order as to costs.

S.MURALIDHAR, J.

VIBHU BAKHRU, J.

MARCH 23, 2016

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