

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM
श्री महाविर सिंग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष

ITA NO.1156/Mum/2013
(निर्धारण वर्ष / Assessment Year: 2009-10)

Income-tax Officer- (E)(1)(1),Room No.505, Piramal Chamber, Parel, Mumbai-400012	<u>बनाम/</u> Vs.	Bhatia General Hospital Trust, Tardeo Road, Nana Chowk, Mumbai-400070
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

ITA NO.1588/Mum/2015
(निर्धारण वर्ष / Assessment Year: 2010-11)

Bhatia General Hospital Trust, Tardeo Road, Nana Chowk, Mumbai-400070	<u>बनाम/</u> Vs.	Income-tax Officer- (E)(1)(1),Room No.505, Piramal Chamber, Parel, Mumbai-400012
स्थायी लेखा सं./ PAN : AAATT3440K		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से /Assessee by	:	Shri Bharat Janarthanan and Shri R V Shah
प्रत्यर्थी की ओर से/Revenue by	:	Shri K Mohandas

सुनवाई की तारीख /Date of Hearing	:	31.1.2017
घोषणा की तारीख /Date of Pronouncement	:	27. 2.2017

आदेश / ORDER**PER RAJESH KUMAR, A. M.:**

These two appeals are filed by the respective parties. ITA No.1156/Mum/2013 is directed against the order of Id.CIT(A) dated 19.11.2014 and ITA No.1588/Mum/2015 is directed against the order of CIT(A) dated 22.12.2014 passed by the Id. CIT(A)-1, Mumbai for the assessment years 2009-10 and 2010-11 respectively. Since these appeals pertain to the same assessee, for the sake of convenience, they are clubbed together, heard together and are being disposed of in this consolidated order.

2. First we shall take up the appeal filed by the assessee bearing ITA No.1588/Mum/2015:

3. The issue raised in ground no.1 is against the confirmation of the order of the AO in treating the registration u/s 12A as deemed to be cancelled thereby denying the exemption u/s 11 and u/s 12 of the Income Tax Act, 1961 and assessing the income at Rs.5,88,70,787/- under the normal provisions of Act.

4. Brief facts of the case are that the assessee filed return of income on 29.9.2010 along with the income and expenditure account, balance sheet and audit report in form 10B declaring a total income at Rs.NIL. The assessee is a charitable trust registered with DIT(E), Mumbai u/s 12A of the

Act under registration No.TR/2763 dated 29.8.1975 and with Charity Commissioner, Mumbai- under registration no.A-746 dated 16.12.1952. The said charitable trust was created by deed dated 11.1.1932 for the purpose of setting up Bhatia General Hospital besides other objects as reproduced in the para 3 of the assessment order. According to the AO the said trust was granted registration by Charity Commissioner as well as by the Income Tax Commissioner on the basis of trust deed dated 11.1.1932 considering the objects specified therein. However the object clause of the assessee trust was amended and thereafter an application was filed under section 50 of the BPT Act, 1950 and was accorded registration vide order dated 15.3.2004 by including educational objects and the other object of general public utility in addition to Medical objects as enshrined in the original trust deed. According to the AO, the assessee trust was required to re-register itself with the Director of Income Tax (Exemptions), Mumbai under section 12A of the Act in view of the amendment in the object clause in the original trust deed and a show cause notice was issued dated 28.10.,2011 calling upon the assessee, whether the trust has been re-registered u/s 12A with the Director (Exemption), Mumbai on the basis of amended clauses of the trust or if not to show cause as to why the trust should not be treated as not registered u/s 12A of the Act. The assessee has filed detailed reply vide letter which was incorporated by the AO in his order at pages 3 and 4.

The AO after perusing the submissions and contentions of the assessee was not convinced with the same and came to the conclusion that in view of the non-registration of the trust under section 12A with Director (Ex), Mumbai after amendment in the object clause, the benefit provided under sections 11 and 12 of the Act could not be given/allowed to the assessee and accordingly assessed the assessee in the status of Association of Persons (AOP) by passing order under section 143(3) of the Act by assessing the income of the assessee at Rs.6,89,24,869/-. Being aggrieved, the assessee filed an appeal before the First Appellate Authority, who also confirmed the action of the AO. Further aggrieved, the assessee is in appeal before this Tribunal.

5. The Id. AR vehemently submitted before us that the order passed by the Id.CIT(A) was against the fact on record and contrary to the provisions of Income Tax Act. The Id. AR filed before us a copy of letter issued by the CIT(Exemption), Mumbai bearing No. CIT(E)/u/s 12A/TR-2763/15-16 dated 29.3.2016 in which the DIT(E) has continued the registration u/s 12A of the Act after amendment in the objects of the assessee trust. The Id AR also produced a copy of assessment order for AY 2013-14 in which the AO has allowed the benefits under section 11 and 12 of the Act. The DR on the other hand relied on the order of FAA.

6. Heard both the parties, perused the material placed before us and also gone through the impugned orders including the letter issued by the DIT(E), dated 29.3.2016. A perusal of the said letter the DIT(E) reveals that DIT(E) allowed registration which is extracted below:-

OFFICE OF THE
COMMISSIONER OF INCOME TAX (EXEMPTIONS)
6TH FLOOR, PIRAMAL CHAMBERS, LALBAUG,
MUMBAI - 400 012.

No.CIT(E)/U /s.12A/TR-2763/ 15-16

Date: 29.03.2016

To
The Trustees,
The Bhatia General Hospital Trust,
Tardeo Road, Nana Chowk,
Mumbai - 400 007.

Sir/Madam,

*Sub: Registration u/s.12A of the LT. Act, 1961- reg.
Ref : Letter No.SHR/597/ 15-16 dated 23/03/2016.*

Please refer to the above.

2. Vide above stated letter a request has been made to take on record the amended trust deed and grant benefit of exemption u/s. 11 and 12 of the LT. Act, 1961. It is also noted that similar requests was made on 24/09/2012 and 12/03/2013.

3. This is to inform you that the new trust deed which was amended on 15/03/2004 and duly approved by the Charity Commissioner, Mumbai under a scheme for the management and administration of the trust u/s.50A(1) of the Bombay Public Trusts Act, 1950 has been taken on record. The registration certificate u/s.12A No.TR-2763 dt.29 j081 1975 shall continue to be valid ."

*Sd/-
(SHELLELY JINDAL)
commissioner of Income-tax (Exemptions),
Mumbai.*

Copy to:

1. The Applicant.
2. Guard File, ITO(E)(HQ)(Tech). Murnbai.
3. The Respective A.O., Mumbai.

(SANTOSH A. CHAVAN)
Tax Recovery Officer(E),
For CIT(E), Mumbai.

We also find from the copy of the assessment order for the assessment year 2013-14 dated 31.3.2016 that the department has duly allowed the exemption under section 11 and 12 of the Act to the assessee. Under these facts and circumstances of the case, we are of the view that the deduction under section 11 and 12 of the Act cannot be denied to the assessee especially when the Registration granted by the Commissioner u/s 12A was allowed to be continued meaning thereby that the registration of the trust was continuing retrospectively. Moreover the Revenue itself accepted and allowed deduction u/s 11 and 12 of the Act in the assessment year 2013-14. In view of these facts and circumstances ground no.1 raised by the assessee is allowed.

7. The issues raised in grounds of appeal no.3,4 and 5 are without prejudice to the ground no.1 of this appeal and therefore do not require any adjudication.

8. Ground no.6 pertains to the scheme of indigent fund as laid down by the jurisdictional High Court which did not come up for discussions or hearing before the AO during the assessment proceedings and therefore the

FAA was not justified in observing that assessee had earmarked a sum of Rs.126.45 lakhs however utilized only Rs.56.42 lakhs and enhanced the assessment accordingly. Since, the issue was neither discussed during the assessment proceedings nor in the appellate proceedings. We, therefore, consider it fit and proper to send this issue back to the file of the AO for fresh adjudication. Accordingly the AO is directed to decide the issue after providing fair and reasonable opportunity of being heard to the assessee accordingly to the principle of natural justice as per facts and law.

ITA NO.1156/Mum/2013

9. The issue raised by the revenue in the sole ground of appeal pertains to exemption u/s 11 of the Income Tax Act. Since we have already decided the issue of exemption u/s 11 of the Act in the appeal filed by the assessee in ITA No.1588/Mum/2015 in assessee's favour. Therefore, in view of our decision in ITA No 1588/Mum/2015 , the appeal of the revenue becomes infructuous. Therefore, the appeal taken by the revenue is dismissed.

10. In the result, appeal of the assessee is allowed and that of revenue stands dismissed.

Order pronounced in the open court on 27th Feb, 2017.

Sd

sd

(महाविर सिंग /Mahavir Singh)
न्यायिक सदस्य / Judicial Member

(राजेश कुमार /Rajesh Kumar)
लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 27.2.2017

SRL,Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

True copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai