

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.778/PUN/2015

निर्धारण वर्ष / Assessment Year : 2010-11

Saraswati Medical Foundation & Research Centre,
1438, C-Ward, Laxmipuri,
Kolhapur

PAN : ALTPG5845K

.....अपीलार्थी / Appellant

बनाम / V/s.

Principal Commissioner of Income Tax (Exemptions),
Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri Shivraj More

सुनवाई की तारीख / Date of Hearing : 26-06-2018

घोषणा की तारीख / Date of Pronouncement : 29-06-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Pr. Commissioner of Income Tax (Exemptions), Pune dated 30-03-2015 passed u/s. 263(1) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2010-11.

2. Shri Nikhil Pathak appearing on behalf of the assessee submitted that the assessee is a charitable trust engaged in the activities of advancement of medical facilities, medical education and health and prevention and relief to the needy and underprivileged. The assessee filed its return of income for the impugned assessment year on 15-10-2010 declaring total income as Nil. During the course of scrutiny assessment proceedings, the Assessing Officer observed that the assessee has declared income of Rs.73,74,724/- and has claimed the same as exempt under the provisions of section 11 of the Act. The assessee is running one medical shop in the premises of charitable hospital. The Assessing Officer issued detailed questionnaire to assessee to explain the activities/services carried out by the assessee and about the income from the retail pharmacy shop in the hospital. The assessee vide letter dated 17-11-2012 gave detailed reply to questionnaire. The ld. AR pointed that in reply to question raised by Assessing Officer with respect to pharmacy shop the assessee specifically replied that the shop is being run from the last 11 years and the income from shop has been claimed as exempt. The Department has not raised any objection to the same. The running of pharmacy shop is only incidental to the attainment of charitable objects carried out by the assessee. The Assessing Officer after considering the submissions of the assessee finalized the assessment without making any addition. Thereafter, Pr. Commissioner of Income Tax (Exemptions) invoked the provisions of section 263 and issued show cause notice. In the show cause notice the Pr. Commissioner of Income Tax (Exemptions) pointed that running a retail medical shop amounts to conducting business. Hence, the activities carried out by the assessee ceases to be charitable in nature. The assessee gave detailed reply to the show cause notice on 17-02-2015 explaining the entire position and the fact that the issue has been

examined by the Assessing Officer during scrutiny assessment proceedings.

2.1 The Pr. Commissioner of Income Tax (Exemptions) further observed that the assessee is conducting DNB courses. The assessee is paying stipends to the trainee students whereas these trainee students are working for Apple Hospital and Research Institute Ltd., Saraswati Hospital and Dr. D.Y. Patil Hospital. The assessee is not receiving any amount towards the services rendered by the trainees to these hospitals. The Apple Hospital and the assessee have one of the common trustees having substantial interest of more than 20% share holding. The Pr. Commissioner of Income Tax (Exemptions) directed the Assessing Officer to examine the transactions with the persons covered u/s. 13(3) of the Act.

The ld. AR explained that the assessee is conducting DNB courses, ANM Nursing Course and EMS course. The assessee is conducting these courses after procuring accreditation with the National Board of Examination, New Delhi, Ministry of Health & Family Welfare, Government of India. For such accreditation one of the requirement is that the students should get training in 100 bedded hospitals. The assessee has tie-up with 3 hospitals namely Saraswati Hospital and Advanced Care Centre, Dr. D. Y. Patil Hospital and Apple Hospital and Research Institute Ltd. for providing necessary apprenticeship training to the students. The assessee is paying stipends to the students during training period. The Hospitals providing training to the students of the assessee are under no obligation to pay for the services rendered by the trainees. In fact, the hospitals are extending help to the assessee by accommodating the students of the assessee for imparting practical training.

2.2 The ld. AR finally submitted that the Pr. Commissioner of Income Tax (Exemptions) has wrongly invoked the provisions of section 263 of the Act. The generation of incidental income from running a retail medical shop has been examined by the Assessing Officer during the scrutiny assessment proceedings. The Assessing Officer after considering the submissions of the assessee in cautious decision has not made any decision. In so far as the objection of the Pr. Commissioner of Income Tax (Exemptions) qua not receiving any amount for the services rendered by trainees is concerned, the Pr. Commissioner of Income Tax (Exemptions) has not raised this issue in show cause notice issued u/s. 263 of the Act. Further, there is no loss of revenue to the Department, no income has accrued to the assessee which has escaped assessment. The ld. AR pointed that the Assessing Officer in giving effect to the order of Pr. Commissioner of Income Tax (Exemptions) has not made any addition on account of services rendered by trainee students.

3. On the other hand Shri Shivraj More representing the Department vehemently defended the order of Pr. Commissioner of Income Tax (Exemptions) in invoking the provisions of section 263 of the Act. The ld. DR submitted that it is a well settled law that in revision order the Pr. Commissioner of Income Tax (Exemptions) can raised any other issue along with the issue already subject matter of notice, even if the other issue is not mentioned in the show cause notice. In support of his submissions the ld. DR placed reliance on the decision of Hon'ble Supreme Court of India in the case of Commissioner of Income Tax Vs. Amitabh Bachchan reported as 384 ITR 200. The ld. DR submitted that the Assessing Officer in assessment order has not touched upon the issue. The ld. DR pointed that one of the trustees of the assessee and Apple

Hospital and Research Institute Ltd. is common. Thus, the arrangement between the assessee and the said hospital are hit by the provisions of section 13(3) of the Act.

3.1 The ld. DR pointed that the assessee is running a medical shop in hospital premises. The medical shop is an independent and dominant activity. The receipts from the sale of medicines from the shop constitute 78% of the total receipts of the assessee. This clearly indicates that running a medical shop is primary activity of the trust. The assessee is running medical shop with a clear motive of profit. The assessee earns approximately 35% of the profit from the retail sale of medicines. The activity of sale of medicines cannot be treated as incidental to the object of the trust. The ld. DR submitted that the Pr. Commissioner of Income Tax (Exemptions) has rightly invoked the provisions of section 263 as the assessment order is erroneous and prejudicial to the interest of revenue. To support his contentions the ld. DR placed reliance on following decisions :

- i. Malabar Industrial Co. Ltd. Vs. Commissioner of Income Tax, 243 ITR 83 (SC);
- ii. Jeevan Investment & Finance (P.) Ltd. Vs. Commissioner of Income Tax, 291 CTR 241 (Bombay);
- iii. Commissioner of Income Tax Vs. Ballarpur Industries Ltd., 85 taxmann.com 10 (Bombay);
- iv. Visvesvaraya Technological University Vs. Assistant Commissioner of Income Tax, 362 ITR 279 (Karnataka).

4. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. We have also

considered the documents and decisions on which the rival sides have placed reliance. The Pr. Commissioner of Income Tax (Exemptions) in the impugned order has raised two issues :

- i. The assessee is running a medical shop, it is an independent activity not incidental to the charitable activities carried out by the assessee.
- ii. The assessee is not charging any amount from the hospitals where the trainee students of the assessee are rendering services.

5. We observe that on the issue of assessee running a medical shop, the Assessing Officer in the scrutiny assessment proceedings had raised specific query in the questionnaire issued to the assessee. The assessee was asked to produce separate books of account of retail pharmacy shop business as required u/s. 11(4) and 11(4A) of the Act. The questionnaire issued by Assessing Officer to the assessee is at page 60 of the paper book. The assessee vide communication dated 17-11-2012 gave detailed reply to the questions asked including on the specific question of pharmacy shop. The Assessing Officer after being satisfied with the reply of the assessee neither made further enquiries nor deem it proper to make any addition in respect of income from pharmacy shop. A perusal of questionnaire and the reply of assessee indicates that the Assessing Officer had made enquiries on the issue and had applied his mind on the same. It is not a case where the Assessing Officer has not made any enquiry.

The ld. AR of assessee has pointed that the assessee is running a pharmacy shop for the last 11 years. The assessee has been disclosing the income generated from the said shop in its return of income and the same has been accepted by the Department. The running of a pharmacy shop is an object incidental to the attainment of other charitable objects of the

assessee trust has not been disputed by the Department. Once, running a medical shop by the assessee has been accepted by the Department as object incidental to the attainment of objects of trust, the Pr. Commissioner of Income Tax (Exemptions) cannot in revision proceedings disturb the settled and accepted position. It is a clear case of substitution of view, accepted by the Department in the past several years.

6. The second objection raised by the Pr. Commissioner of Income Tax (Exemptions) is in relation to services rendered by trainee students of the courses conducted by the assessee without charging any amount from the following three hospitals :

- i. Saraswati Hospital and Advanced Care Centre.
- ii. Dr. D. Y. Patil Hospital.
- iii. Apple Hospital and Research Institute Ltd.

7. The ld. DR has pointed that in one hospital i.e. Apple Hospital and Research Institute Ltd. one of the trustee is common with the assessee trust. A perusal of records show that the assessee is running various nursing courses. For imparting training to the students the assessee has tied-up with above mentioned three hospitals. None of the hospitals mentioned above pay to the assessee in lieu of the services rendered by the trainee students. The assessee is paying stipend to the trainee students on its own account. We find no merit in the objection raised by Pr. Commissioner of Income Tax (Exemptions) on this count. It is not a case where the assessee is charging any amount from the hospitals other than the hospital where the assessee is having common trustee. It is an arrangement between the assessee and the hospitals for providing training to the students of the assessee. The Department cannot step into the

shoes of assessee and dictate as to how the business is to be conducted. We find merit in the appeal of assessee. Hence, the impugned order passed u/s. 263(1) of the Act is set aside and the appeal of assessee is allowed.

8. In the result, the appeal of assessee is allowed.

Order pronounced on Friday, the 29th day of June, 2018.

Sd/-	Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th June, 2018

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. Pr. Commissioner of Income Tax (Exemptions), Pune
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune