

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 638/JP/2018  
निर्धारण वर्ष / Assessment Year :2014-15

Getwell Health & Education Samiti, Near Dr. B.L. Ranwa, Opp. S.K. School, Sikar.	बनाम Vs.	CIT(Exemptions), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABTG 3870 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)  
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT)

सुनवाई की तारीख / Date of Hearing : 23/10/2018  
उदघोषणा की तारीख / Date of Pronouncement : 26/10/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the revision order dated 28/03/2018 of Id. CIT(E), Jaipur for the A.Y. 2014-15. The assessee has raised following grounds of appeal:

- "1. Under the facts and circumstances of the case, the order passed by Ld. CIT U/s 263 is illegal and bad in law be quashed.*
- 2. The Id. CIT has erred on facts and in law in holding that payment of rent of Rs. 5,50,000/- to B.L. Ranwa HUF is not genuine and directing the A.O. to make addition on this issue, without causing any independent inquiry of his own as to how the same is not genuine or unreasonable more particularly, when the A.O. has*

*already assessed such rental income in the hands of B.L. Ranwa in the order passed U/s 143(3)/147 dated 26/12/2017 for A.Y. 2010-11 and initiated proceedings U/s 147 for assessing the same in his hands for A.Y. 2011-12 and A.Y. 2012-13.*

- 2.1 *The Id. CIT(E) has erred in facts and in law in holding that A.O. has not make any inquiry or verification regarding the income of medical shop run by Smt. Kamla Ranwa (Secretary) ignoring that she is not running any such shop in the year under consideration and this fact is evident from the order of CIT(E) U/s 254/12AA dated 09/10/2015.*
3. *The assessee craves to amend, alter and modify any of the grounds of appeal.*
4. *Necessary cost be allowed to the assessee."*

2. The assessee is a society registered under Rajasthan Society Registration Act, 1958. The main object of the society is to provide medical facility in the State of Rajasthan. The assessee is running a hospital at Sikar in the name and style of Getwell Hospital & Research Centre. The assessee filed its return of income on 19/2/2015 declaring NIL income after claiming exemption U/s 11 of the Income Tax Act, 1961 (in short the Act). The Assessing Officer completed the scrutiny assessment U/s 143(3) of the Act on 23<sup>rd</sup> December, 2016 and denied the claim of exemption U/s 11 of the Act. Accordingly, the Assessing Officer assessed the income of the assessee at Rs. 27,41,852/- being a surplus declared by the assessee. Subsequently on examination of the record, the Id. CIT(E) noted that the order passed by the Assessing

Officer is erroneous and prejudicial to the interest of the revenue in respect of two issues viz (i) income of medical shop (M/s Getwell Medical Agency) & (ii) bogus claim of rent payment. Accordingly, the Id. CIT(E) issued a show cause notice U/s 263 of the Act as to why the order passed by the Assessing Officer is not set aside being erroneous and prejudicial to the interest of the revenue. Though the assessee requested for time for filing the reply however, the Id. CIT(E) declined to grant more opportunity to the assessee to file the reply and consequently passed the impugned order whereby the assessment order was set aside for fresh assessment.

3. Before us, the Id AR of the assessee has submitted that the assessee filed an application seeking registration U/s 12AA of the Act before the Id. CIT(E) on 19/01/2010, however, this application was rejected by the Id. CIT(E) on the ground that the payments of rent violates Section 13(1)(c) of the Act and further the income of the medical shop from the hospital premises was also considered by the Id. CIT(E) as in violation of Section 13(1)(c) for refusing the registration U/s 12AA of the Act while passing the order dated 09/10/2015. Thus, the Id AR has submitted that since the registration was refused, therefore, the Assessing Officer denied the benefit of Sections 11 and 12 of the Act and further the rental income was already assessed by the Assessing Officer

in the hands of Dr. B.L. Ranwa for the A.Y. 2010-11 vide order dated 26/12/2017 passed U/s 143(3) read with Section 147 of the Act. The Assessing Officer has also reopened the assessment for the A.Y. 2011-12 and 2012-13 in case of Dr. B.L. Ranwa for the assessment of rental income in his hand. As regards the income from medical shop run by Smt. Kamla Ranwa, no such shop is run by her in the year under consideration, therefore, there is no question of any income from the medical shop during the year under consideration as an issue taken up by the Id. CIT(E) by issuing the show cause notice. The Id. AR has further submitted that the assessee challenged the order passed by the Id. CIT(E) refusing to grant registration U/s 12AA of the Act in the appeal filed before this Tribunal and this Tribunal vide order dated 28/09/2018 has directed the Id. CIT(E) to grant registration U/s 12AA of the Act to the assessee. Both the issues which were subject matter of denial of registration U/s 12AA of the Act has been considered by the Tribunal while passing the order dated 28/09/2018 in the appeal against the order of denial of registration U/s 12AA of the Act. He has further submitted that even otherwise Smt. Kamla Ranwa finally donated the entire stock of medicines to the assessee's society and the Id. CIT(E) has not disputed this fact that on 30/11/2011, the medicines stock of medical shop in question was donated to the assessee society. Therefore,

invoking the provisions of Section 263 of the Act by the Id. CIT(E) based on the order passed U/s 12AA(1)(b) of the Act and consequential impugned revision order are not valid and liable to be quashed. He has relied upon the decision of Hon'ble Gauhati High Court decision in the case of Smt. Lalita Chaoudhary Vs CIT & ors. (2007) 289 ITR 226.

4. On the other hand, the Id CIT-DR has submitted that the Assessing Officer while completing the assessment U/s 143(3) of the Act has not conducted due enquiry on the issue of income from medical shop and payment of rent by the assessee society to B.L. Ranwa (HUF) and therefore, the order passed by the Assessing Officer is erroneous so far as it is prejudicial to the interest of revenue. He has referred to explanation-2 to Section 263 of the Act and submitted that the order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue if in the opinion of the Commissioner, the order is passed without making enquiry or verification, which should have been made. Thus, when the Assessing Officer has not conducted any enquiry on this issue then the order passed by the Assessing Officer shall be erroneous so far as it is prejudicial to the interest of the revenue. He has relied upon the order of the Id. CIT(E).

5. We have considered the rival submissions as well as the relevant material on record. The Assessing Officer has passed the scrutiny assessment U/s 143(3) of the Act on 23<sup>rd</sup> December, 2016 whereby the Assessing Officer has denied the exemption U/s 11 and 12 of the Act for want of registration U/s 12AA of the Act. Subsequently the Id. CIT(E) has issued show cause notice U/s 263 of the Act to revise the assessment order on two issues as under:

- "1. *Income of M/s Getwell Medical Agency: The assessee society is running a medical shop at the hospital premise in the name of Smt. Kamla Ranwa who is Secretary of the society. However, income of medical agency was not incorporated in the receipts of society during the year under consideration. Therefore, files explain as to why income of medical agency should not be considered in the society for the year under consideration.*
2. *Bogus claim of rent payment: The assessee society made payment of rent Rs. 5,50,000/- to B.L. Ranwa (HUF) in the income and expenditure account during the year. However, ownership of such rental property held in the name of Sh. B.L. Ranwa (Individual). Therefore, payment of rent covered U/s 13(1) (c) of the Act. The claim of rent payment of Rs. 5,50,000/- is not admissible and required to be disallowed, therefore, file explanation of the same.*

*Therefore, an opportunity of being heard is given to file reply of this notice on 20/01/2018 at my office situated at 3<sup>rd</sup> Floor, Kailash Heights, Lal Kothi, Tonk Road, Jaipur."*

As regards the income of M/s Getwell Medical Agency, we note that during the year under consideration, there was no such shop run by Smt. Kamla Ranwa as the said shop was closed in the year 2011 itself and the medicine stock of the shop was donated to the assessee society on 30/11/2011. Thus, it is clear that there was no such issue in the year under consideration, however, the Id. CIT(E) has taken up the said issue as it was one of the reasons for denial of registration U/s 12AA of the Act while rejecting the application of the assessee vide order dated 09-14/10/2015. The said order passed by the Id. CIT(E) U/s 12AA(1)(b) of the Act was challenged before this Tribunal and this Tribunal vide order dated 28/09/2018 in ITA No. 245/JP/2016 directed the Id. CIT(E) to grant registration U/s 12AA of the Act. Therefore the issue raised by the Id. CIT(E) in the show cause notice regarding the income of the medical shop was a non-existing issue for the year under consideration.

5.1 As regards the bogus claim of rent payment, we find that the Id. CIT(E) has given the reference of Section 13(1)(c) of the Act whereas the Assessing Officer while passing the assessment order U/s 143(3) of the Act has denied the benefit of Sections 11 and 12 of the Act, therefore, the question of violation of provisions of Section 13(1)(c) of the Act as alleged by the Id. CIT(E) does not arise. It appears that both

these issues were picked up by the Id. CIT(A) as these were the grounds for rejecting the application for registration U/s 12AA of the Act. The order of the Id. CIT(E) passed U/s 12AA (1)(b) of the Act has been set aside by the Tribunal in the appeal filed by the assessee and considered these two issues in para 6 to 8 of order dated 28/09/2018 as under:

*“6. We have considered the rival submissions as well as the relevant material on record. The provisions of section 12AA contemplate that the Id. CIT (E) has to satisfy himself about the genuineness of the activities of the Trust or Institution and also about its objects. Subject to the satisfaction about the genuineness of the activities and charitable nature of objects, the Id. CIT (E) would either grant the certificate of registration or would reject the prayer. Thus in order to satisfy himself, the primary conditions are only to ascertain whether the objects of the Trust or Institution are charitable in nature and the activities are genuine and being carried out to achieve the objects. The enquiry by the Id. CIT (E) shall be restricted to the examination whether the applicant is actually carrying on the activities which are genuine and thus the genuineness of the activities has to be seen keeping in mind the objects thereof. In other words, the Id. CIT (E) shall satisfy himself about the fact that the activities are genuine and in consonance with the objects of the Trust or Institution. Section 12AA lays down the procedure for registration and, therefore, the enquiry to be conducted by the Id. CIT (E) while considering the application for registration is restricted only on the aspect of charitable nature of the objects and genuineness of the activities and it would not extend to ascertain whether the income derived by the Trust or Institution is either not being spent for charitable purposes or such institution is earning profit*

*except the case falls in the proviso to section 2(15) of the Act. It is undisputed fact that the case of the assessee before us does not fall in the category of proviso to section 2(15) and, therefore, the scope of enquiry by the Id. CIT (E) at the time of grant of registration under section 12AA would not extend to such aspect of earning profits. Even otherwise, the Id. CIT (E) has not questioned the charitable nature of objects of the assessee and even the dominant and primary objects and activities of the assessee are not in dispute. The objections raised by the Id. CIT (E) are only in respect of violation of provisions of section 13(3) read with section 13(1)(c) of the Act and the genuineness of the donations due to spurt increase in amount of donation. The main objection is regarding the violation of section 13(3) as in view of Id. CIT (E) the assessee has diverted the income to the persons specified in section 13(3) of the Act. It is pertinent to note that section 13(3) provides only the class of the persons to whom if any benefit is granted by the Trust or Institution, the same would not be considered as income applied for the charitable purposes but will be considered as applied for benefit of such persons. For ready reference, we quote section 13(3) of the Act as under :-*

*“ Section 13(3) : The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following namely :-*

- (a) The author of the trust or the founder of the institution,*
- (b) Any person who has made a substantial contribution to the trust or institution, [that is to say, any person whose total contribution up to the end of the relevant previous year exceeds [fifty] thousand rupees],*
- (c) Where such author founder or person is a Hindu undivided family, a member of the family;*

*(cc) any trustee or the trust or manager (by whatever name called) of the institution;*

*(d) Any relative of any such author; founder, person, [member, trustee or manager] as aforesaid;*

*(e) Any concern in which any of the persons referred to in clauses (a), (b), (c),(cc) and (d) has a substantial interest.”*

*There is no dispute that the hospital building in question is owned by the persons, who are the President and Secretary of the assessee society and, therefore, they fall in the category of specified persons under section 13(3) of the Act. However, section 13(3) itself would not ipso facto lead to the conclusion that an income of the Society or Institution has been applied for the benefit of the persons without considering the provisions of sub-section (2) of section 13 of the Act which reads as under:-*

*“(2) Without prejudice to the generality of the provisions of clause (c) <sup>45</sup>[and clause (d)] of sub-section (1), the income or the property<sup>46</sup> of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—*

- (a) if any part of the income or property<sup>47</sup> of the trust or institution is, or continues to be, lent<sup>47</sup> to any person referred to in sub-section (3) for any period during the previous year without either adequate security<sup>47</sup> or adequate interest or both;*
- (b) if any land, building or other property<sup>47</sup> of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;*
- (c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;*
- (d) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;*
- (e) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;*

- (f) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate;
- <sup>48</sup>[(g) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3):  
**Provided** that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed one thousand rupees;]
- (h) if any funds<sup>49</sup> of the trust or institution are, or continue to remain, invested<sup>49</sup> for any period during the previous year (not being a period before the 1st day of January, 1971), in any concern<sup>49</sup> in which any person referred to in sub-section (3) has a substantial interest.”

*Therefore, the income which would be deemed to have been used or applied for the benefit of the persons specified under section 13(3) is only to the extent if it was without any adequate security or interest or adequate service or consideration etc. In the case in hand, the assessee has paid the rent to the persons specified under section 13(3) on account of the hospital building in which the assessee is running its activities of providing medical facility being hospital. The area of the hospital building is not in dispute and, therefore, the assessee has taken the building which consists of five stories on a plot of 746 sq. yards. The Id. CIT (E) has not disputed this fact that the building in question comprising of five stories on a plot of 746 sq. yards and, therefore, if the rent paid by the assessee is unreasonable or excessive by comparing the fair market rent then to the extent of such excess rent paid by the assessee would constitute the income of the assessee society is applied or deemed to have been applied for the benefit of the persons referred under section 13(3) of the Act. However, the Id. CIT (E) without ascertaining or getting any report of the AO on this point has assumed that the rent paid by the assessee is the income deemed to have been used or applied for the benefit of the persons specified under section 13(3) of the Act. The Id. CIT (E) has not given the finding that the quantum of rent is excessive or unreasonable keeping in view the total*

*constructed area under the tenancy of assessee society for running the hospital. Even otherwise, whether the rent paid by the assessee is excessive or unreasonable in comparison to the fair market rent, the same in our considered view, is a subject matter of assessment when the fact is not in dispute that the rent is paid against the hospital building taken on lease by the assessee society. Hence the mere payment of rent itself would not amount to violation of provisions of section 13(2) and 13(3) of the Act or section 13(1)(c) of the Act. What section 13(1) provides is that to the extent of income which is not applied for the charitable purposes of the Institution or Society the same would not get the benefit of section 11 of the Act. Therefore, to arrive at the conclusion whether an Institution or Trust has applied any part or any property of the Trust or Institution directly or indirectly for the benefit of the persons referred in section 13(3) of the Act, a proper investigation and enquiry is required when it is not a mere case of diversion of income but the payment is against the consideration or against the services. Therefore, subject to the provisions of section 13(2) of the Act and without conducting a proper enquiry about the fair market rent of the building in question it is not possible to come to the conclusion that the payment of rent of Rs. 50,000/- per month by the assessee society in respect of the hospital building of such a big size or area is in violation of the provisions of section 13 of the Act. Even otherwise, the Tribunal while remanding the matter to the record of the Id. CIT (E) has expressed its inability to determine the issue for want of relevant record. However, once the matter was remanded to the Id. CIT (E), it ought to have first ascertained the fair market rent of the hospital building in question when the constructed area of hospital is not in dispute. Thus when the Id. CIT (E) has not given a finding about the fair market rent of the building in question then giving a finding in the*

*impugned order that the payment of rent is in violation of provisions of section 13(3) read with section 13(1)(c) is based purely on assumption and conjectures and not based on the facts which can show that the rent paid by the assessee is excessive or unreasonable in comparison to the fair market rent of the building in question. Hence we do not approve the approach applied by the Id. CIT (E) in respect of the issue of payment of rent in question.*

- 7. It is pertinent to note that the AO for the assessment years 2010-11 to 14-15 while passing the scrutiny assessment under section 143(3) read with section 147 and 143(3) respectively has not questioned or doubted the reasonableness of rent paid by the assessee to the related parties. Though the AO was not required to examine the issue in the light of the provisions of sections 11 to 13 of the Act, however, even in the normal assessment proceedings if the rent is paid to the related parties then it is always subject matter of scrutiny of the AO to ascertain whether the payment made by the assessee was reasonable or excessive in comparison to the fair market price or rent. Hence when the AO while passing the scrutiny assessment in all the assessment years repeatedly has not doubted the reasonableness of the rent paid by the assessee society, then the finding of the Id. CIT (E) without conducting any enquiry is based purely on assumption and conjectures and not on the correct facts.*
- 8. The second objection raised by the Id. CIT (E) is regarding income from medical shop. It is not in dispute that the assessee never invested any amount in the medical shop but the shop was owned and run by Smt. Kamla Ranwa. Further it is also not an allegation of the Id. CIT (E) that Smt. Kamla Ranwa has charged excessive or unreasonable price of the medicines either from the assessee society or from the patients treated*

*in the hospital. Thus mere running a medical shop by a person specified under section 13(3) of the Act would not ipso facto tantamount to diversion of income of the assessee society. Rather the medical shop is essential in providing the services to the patients and, therefore, it can be an aid to the activity of providing medical facility to the patients of the assessee society instead of considering it as diversion of income. There is no allegation that during the period when Smt. Kamla Ranwa was running the shop has got any favour or benefit in the shape of monetary or otherwise from the assessee society. The Id. CIT (E) has not disputed this fact that on 30.11.2011 the medicine stocks of medical shop in question was donated to the assessee society and, therefore, thereafter there is no question of even alleged benefit or diversion of income to the specified persons. The order in question has been passed in the month of October, 2015 whereas the said shop itself was donated to the hospital on 30.11.2011. In view of these facts, when there is no specific instance of any favour or diversion, then running a shop by the specified person itself cannot be regarded as a violation of provisions of section 13 of the Act until and unless any benefit is provided in the shape of income applied on such persons. Hence we do not find any merit in the objection raised by the Id. CIT (E) on this account.”*

Thus, in view of the order of the Tribunal dated 28/09/2018 in the appeal filed by the assessee against the order passed U/s 12AA(1)(b) of the Act, the impugned order passed by the Id. CIT(E) U/s 263 of the Act would not survive. Even otherwise once the registration U/s 12AA of the Act was directed to be granted then the Assessing Officer has to consider the issue of exemption U/s 11 and 12 of the Act while passing the giving

effect order and therefore, the impugned order passed by the Id. CIT(E) becomes infructuous. In view of the above facts and circumstances as well as discussion, we set aside the impugned order passed U/s 263 of the Act.

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

Order pronounced in the open court on 26/10/2018.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

Sd/-  
(विजय पाल राव)  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 26<sup>th</sup> October, 2018

\*Ranjan

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

1. अपीलार्थी / The Appellant- Getwell Health & Education Samiti, Sikar.
2. प्रत्यर्थी / The Respondent- The CIT(Exemptions), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 638/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar