

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.499/Coch/2017 : Asst.Year 2011-2012

M/s.MAJ Hospital Edappally, Ernakulam Pin - 682 024. PAN : AABTM0661Q.	Vs.	The Dy.Commissioner of Income-tax (Exemption) Kochi.
(Appellant)		(Respondent)

Appellant by : Sri.K.M.Jose
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 01.11.2018	Date of Pronouncement : 12.11.2018
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ORDER

Per George George K., JM

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 31.07.2014. The relevant assessment year is 2011-2012.

2. The ground raised reads as follows:-

"1. The Learned Commissioner Of Income Tax (Appeals)-III erred in coming to the finding that the activities of the MAJ Nursing School, an integral part of MAJ Hospital, is only commercial in nature and is therefore to be assessed u/s 11 (4) and (4A) of the IT Act and also held that it is mandatory to carry out the audit of Accounts under section' 44AB of the IT Act.

2. It is respectfully submitted that the fact is that the MAJ Nursing School is an integral part of MAJ Hospital and for the smooth functioning of the Hospital and in order to carry out the objectives of the Trust it is necessary to have Nursing School as

part of the Hospital, and therefore the income of the Nursing School (a division of the Hospital) is eligible for assessment u/s 11(1) of the Act.

3. Without prejudice to the above, even if the income of the Nursing School is assessable U/s 11(4), (4A); the provisions of section 44JB with regard to tax audit are not applicable since it is assessable U/S 11 of the Income Tax Act and is not assessable under the head Profit and Gains of Business or Profession, Further, the total Turn Over of the Nursing School is below Rs.40 lakh and therefore the provisions of section 44AB are not attracted."

3. Brief facts of the case are as follows:-

The assessee is a charitable trust registered u/s 12A of the I.T.Act. For the assessment year 2011-2012, return of income was filed declaring Nil income after claiming exemption u/s 11 of the I.T.Act. The assessment u/s 143(3) was completed vide order dated 17.01.2014. The A.O. treated the income received from running a hospital and nursing school as business activity and exemption u/s 11 of the I.T.Act was denied. The Assessing Officer also relied on the judgment of the Hon'ble jurisdictional High Court in the case of *Lissie Medical Institutions v. CIT [(2012) 348 ITR 344 (Ker.)]* and denied depreciation on the assets, the cost of which was allowed as application of income. The A.O. further observed that the assessee has failed to get its books of account audited u/s 44AB of the I.T.Act and hence penalty proceedings u/s 271B is to be initiated against the assessee.

4. Aggrieved by the assessment completed, the assessee preferred an appeal to the first appellate authority. The CIT(A) following his predecessor's order in assessee's own case for the assessment year 2009-2010, held that the assessee is entitled to exemption u/s 11 of the I.T.Act in respect of the income received from hospital. However, with regard to the income from nursing school, it was held that it was not entitled to exemption u/s 11 of the I.T.Act. As regards the denial of depreciation, the CIT(A) confirmed the view taken by the Assessing Officer. The CIT(A) also held that the assessee ought to have got its books of account audited u/s 44AB of the I.T.Act in respect of the income earned from nursing school.

5. The assessee being aggrieved by the order of the CIT(A) in denying exemption of income from nursing school, denial of depreciation and for initiation of penalty u/s 271B of the I.T.Act in respect of non-audit of books of account of nursing school, has preferred the present appeal before the Tribunal. The learned AR has filed a paper book enclosing the trust deed of the assessee, annual accounts for the year ending 31.03.2011 etc. The learned AR reiterated the submissions made before the Income-tax authorities. The learned Departmental Representative, on the other hand, strongly supported the assessment order and the order of the CIT(A).

6. We have heard the rival submissions and perused the material on record. For the assessment year 2009-2010, the CIT(A) held against the assessee that income from nursing

school was not entitled to exemption u/s 11 of the I.T.Act. It is submitted by the learned AR that no further appeal was filed before the ITAT since there was no taxable income after set off of excess applications of prior years. Copy of the order giving effect to the CIT(A)'s order for assessment year 2009-2010 is placed on record. It is an admitted fact that the assessee runs hospital and income from the same was granted exemption u/s 11 of the I.T.Act. The school of nursing run by the assessee is located in the same premises, where the assessee runs the hospital. The students of the nursing school get training in the hospital. There cannot be nursing school, where the students are not trained in hospitals. The hospital and nursing schools are intricately connected and dependent on each other and in fact is part of one inseparable activity. The main objective of the assessee trust is to render medical reliefs by running a hospital. Article 4(iv) of the trust deed authorizes the assessee to engage in any legitimate activity for the attainment of objects of the charitable institution. Article 4(iv) of the trust deed reads as follows:-

“(iv) To engage in any legitimate activity which is incidental or conducive to the attainment of the objects as a Charitable Institution.”

6.1 It is clear from the above Article 4(iv) of the trust deed that the carrying on the activity of nursing school is part of the objects of the assessee-trust and that both medical relief and education are charitable objects entitled for exemption u/s 11(1) of the I.T.Act. The above view was further confirmed

by the Department Circular No.11/2008 dated 19.12.2008, wherein it is stated that the activities with regard to education and medical relief are not hit by the restrictive provisions contained in the proviso to section 2(15) of the I.T.Act. Accordingly, the income of the school of nursing is not to be assessed as business income but as arising out of charitable activities of the trust eligible for assessment u/s 11(1) of the I.T.Act. Further, we notice that the income for the relevant year from the hospital is Rs.7,13,38,194 whereas the income of the nursing school is only Rs.15,23,338 i.e. 2.14% of the total income of the hospital. Moreover, on perusal of the accounts for the year ending, we find that there was excess application in the case of hospital which was to be carried forward in the subsequent years. The Hon'ble Apex Court in the case of Addl.CIT v. Surat Art Silk Cloth Manufacturers Association reported in 121 ITR 1 had held that if the dominant object is charitable then the incidental object for attainment of the dominant / primary object would also be charitable in nature. It was further held by the Hon'ble Apex Court that there is a very clear distinction between the object of a trust to carry on a business activity and the carrying on an activity of profit for achieving its objects. The Hon'ble Apex Court in the case of Thanthi Trust reported in 247 ITR 785 had also held that the assessee is entitled to the assessment u/s 11 of the income derived from an activity incidental to the achievement of the objects of the trust. For these reasons, we hold that the assessee's activities of running the hospital and the nursing school is intricately connected and dependent on

each other and it is one inseparable activity and both are entitled to exemption u/s 11(1) of the I.T.Act. It is ordered accordingly.

6.2 As regards the disallowance of depreciation amounting to Rs.31,15,807, we find that the recent judgment of the Hon'ble Apex Court in the case of *CIT v. Rajasthan And Gujarati Charitable Foundation [(2018) 402 ITR 441 (SC)]* had held in favour of the assessee by holding that the amendment brought about to section 11(6) is not retrospective in effect and is only prospective and applicable for and from 2015-2016 onwards. Therefore going by the dictum laid down by the Hon'ble Apex Court in the case of *CIT v. Rajasthan And Gujarati Charitable Foundation (supra)*, we hold that the assessee is entitled to depreciation on assets though the cost of the same was allowed as application. It is ordered accordingly.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 12th day of November, 2018.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 12th November, 2018.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT (A)-III, Kochi.
4. The CIT (Exemption) Kochi.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

AR-ITAT- Cochin