



*has wrongly concluded that the applicant assessee is engaged in promoting a profit making venture.”*

**3.** At the outset, it is observed that there is a delay of five days for filing the instant appeal which by way of application as well as an affidavit filed by the President of the assessee's society, explained by submitting that the order impugned herein was received by the assessee on 31<sup>st</sup> August, 2017 and the same was forwarded to their Authorized Representative, Sh. Aditya Sharma, C.A of M/s. D. Sharma & Co., Jalandhar for filing the appeal, however, the same was got delayed due to rush of office work in the office of assessee's counsel and further rush of the work was increased in the months following imposition of Goods & Service Tax (GST) in July, 2017 which was further increased by the due date of filing Tax Audits & Income Tax Return in the month of October, 2017.

**4.** On the contrary, the Ld. DR objected and submitted that the delay as explained by the assessee/appellant society is not genuine and therefore, the appeal of the assessee is liable to be dismissed *in limine* itself.

**5.** We have considered the submissions made by the parties. The assessee society has specifically filed the affidavit of its President and explained the unavoidable circumstances due to busyness of its counsel which according to our opinion seems to be quite logical and reasonable and hence, we do not have any hesitation to condone the delay of five days.

**6.** Now, we will proceed with the case on merit.

In the instant case, the society is an on-going entity and has been an operation since 11.02.2013 and had filed an application u/s 12A of the Act, on 07.02.2017 which was taking into consideration while offering an

opportunity of personal hearing on 18.07.2017 by the Ld. CIT(E) and the applicant was requested to file the details/clarifications as mentioned in para No.5 of the order on 02.08.2017, however, no one attended on the date fixed and thereafter another show cause dated 7/8 August, 2017 was issued to the applicant society while requesting to submit the reply to the queries raised on 16.08.2017, in response to which Sh. Indrajeet Sharma CA, the AR of the assessee society attended the proceeding. The counsel was further requested to submit the details of tax, hospital expenses as claimed along with statement of bank accounts and the case was adjourned to 22.08.2017. Subsequently, reply to the queries raised by the Id. CIT(E) was submitted by the assessee society on 22.08.2017. On perusal of which the Id. CIT(E) rejected the grant of registration u/s 12AA of the Act by observing as under:

*“7. Perusal of the reply submitted by the applicant reveals that the receipts of the society are only through donations. Major expenditure has been shown under the Head “Hospitalization Expenses” which constitute 41.3%, 86.7% and 78.7% of the total expenditure incurred by the society during Financial Year 2013-14, F.Y.2014-15 and F.Y.2015-16 respectively. Other claimed expenses are of general nature such as accounting charges, Bank Charges, legal charges and salaries etc. The applicant was specifically asked to clarify and explain the nature and genuineness of the expenditure reflected under the head “Hospitalization expenses”, since the expenditure was claimed to be for the charitable purpose. The applicant vide reply dated 22.08.2017 submitted that the Hospitalization expenses are paid to M/s Srinath Nephrocare Private Limited, a subsidiary of M/s Fresenius Medical Care India Private Limited as a reimbursement to the expenditure incurred by the patients at M/s Nephrocare Private Limited for dialysis. Further, the two directors of the Company (Receiving the payment) Sh. Rajeev Kumar Bhatia and Sh. Ajay Marwaha are also the members of the applicant society. It is clear that the composition of the society overlaps with that of the company M/s Srinath Nephrocare Private Limited going by similar name as that of the applicant society. Moreover the operations of the two entities are seemingly intertwined. The quantum of financial assistance given by the society is very meager and varies from Rs.200 to Rs.2,250 with majority of the figures towards the lower end. On the other hand, it is a known fact that expenses on nephrocare/surgery are quite*

*substantial and are not evidenced to be born by the society. In a nutshell it is evident that the society is subsidizing part of the admission fee/facilitating admissions to a related concern. There is no evidence of any person suffering from a serious ailment, being helped financially or subsidized by the Society. The activities of the applicant society are mere collecting donations and disbursing the same indirectly to its related company and creating a captive patient base for the connected hospital. This conclusion would have been rebutted had even a single case of financing a kidney transplant or treatment of serious kidney ailment been cited. Financial statements do not corroborate pursuance of any other of the host of objectives enumerated in the Memorandum of the society. In such a case one cannot restrict oneself to the ostensible objects merely particularly in a case where the activities are held to be undertaken to promote a profit making connected venture.*

*8. In view of all the above coupled with the fact that facilitating admission doesn't amount to charity, the charitable intent of the society is not brought out. The application for grant of registration u/s 12AA is accordingly rejected."*

**7.** From the grounds of rejections as observed in para No.7 of the impugned herein, it reflects that the CIT(E) had taken into consideration, financial statement of financial year 2013-14, 14-15 and 2015-16 and observed that the major expenditure have been shown under the head "Hospitalization Expenses", which claimed to be paid to M/s. Srinath Nephrocare Private Limited, a subsidiary of M/s Fresenius Medical Care Indian Private Ltd. as a reimbursement to the expenditure partly incurred on account of treatments of the patients at M/s. Srinath Nephrocare Private Limited for dialysis. It was further observed by the Ld. CIT(A) that two Directors of the company (receiving the payment) Sh. Rajiv Kumar Bhatia and Sh. Ajay Marwaha are also the members of the applicant society. It is clear that the composition of the society overlaps with that of the company M/s. Srinath Nephrocare Private Limited, going by similar name as that of the applicant society. Moreover, the operations of the two entities are seemingly intertwined. It was further observed by the Ld. CIT(A) that the quantum of financial assistance given by the society is very meager and

varies from Rs.200 to Rs.2,250 with majority of the figures towards the lower end. On the other hand, it is a known fact that expenses on Nephrocare /Surgery are quite substantial and are not evidenced to be borne by the society. In a nutshell, it is evident that the society is subsidizing part of the admission fee/facilitating admissions to a related concern. There is no evidence of any person suffering from a serious ailment, being helped financially or subsidized by the Society. The activities of the applicant society are mere collecting donations and disbursing the same indirectly to its related company and creating a captive patient base for the connected hospital. Further, it was also observed by the Ld. CIT(A) that financial statements do not corroborate pursuance of any other host of objectives enumerated in the Memorandum of the Society. In such a case, one cannot restrict oneself to the ostensible objects merely particularly in a case where the activities held to be undertaken to promote a profit making connected venture. Finally, it was observed by the Id. CIT(E), that in view of all the above coupled with the fact that facilitating admission doesn't amount to charity, the charity intent of the society is not brought out.

**8.** Having heard the parties at length and perused the material available on record. The assessee/applicant society is a society registered under the provisions of the Societies Registration Act, 1860 vide registration No.DIC/JAL/416/2012-13 dated 11.02.2013 with the following objects.

- “1. To provide medical aid and financial assistance to the poor patients suffering from illness or any other diseases and providing every kind of medical facilities.
2. To provide the treatment to the person requiring medicinal attention of rehabilitation and to provide medical relief to the public in all branches of medical sciences by all available means.
3. To provide free Medical Consultation to the needy patients and to organize and carry out Donation camps. Free health check-ups and such other programs to create public awareness and

do educate general public towards better health and hygiene and preventive measures against diseases.

4. To provide education regarding various diseases to the people living in the mud areas, village etc. and to provide the ways of treatment to prevent such diseases.

5. Improving the public health and medical education in India and to set up hospitals, nursing homes and health care centres and provide, encourage, initiate or promote facilities for discovery improvement or development of new methods of diagnosis, understanding and preventions and treatment of diseases. To build hospitals and make arrangements like free Ambulance Facility, Free Medicines etc. for poor and needy people.

6. To do the other social work, campaigning against evils of the society like HIV/AIDS, Smoking and Drinking, Drugs, Education regarding prevention from such evils.”

**9.** From the objects, it reflects that the assessee society has been established in order to provide medical aid and financial assistance to the poor patients suffering from illness or any other diseases, to provide every kind of medical facilities and to provide the treatment to the person requiring medical attention or rehabilitation and to provide medical relief to the public in all branches of sciences by all available means. More or less the society has been formed with the object to provide medical aid and financial assistance to the poor patients irrespective of any disease. During the financial year 2013-14 and 2014-15 and 2015-16 the assessee society has incurred expenses under the head 'Hospitalization Expenses to the tune of Rs.41.3%, 86.7% & 78.7% of the donations received which goes to show that the assessee society is certainly doing some charitable work to achieve its object, may not be general in nature but otherwise in special branch of medical science like Kidney disease.

**10.** During the course of hearing, we also verified from the vouchers, documents and other material available on record i.e., invoices, debit notes

and credit notes from which goes to show that the assessee society has explained to have extended medical aids to the patients of kidney disease.

**11.** The Ld. DR had raised objection that the assessee society is helping the patient of M/s. Srinath Nephrocare Private Limited only but not otherwise and there is not a single instance whereby it can be proved that the assessee society has extended any medical help to the patients suffering from other ailments or patients of other hospitals/Medical Centers etc. which strengthen that the society subsidizing part of the admission fee which facilitate M/s. Srinath Nephrocare Private Limited only, from where dialysis centre is being operated and even 02 doctors of that center are also members of the applicant society, from which it is clear that the composition of the society overlaps with that of the company M/s. Srinath Nephrocare Private Limited and going by similar name as that of the applicant society and operations of the two entities are seemingly intertwined.

**12.** In reply, it was submitted by the Ld. Counsel of the Assessee Society that M/s. Srinath Nephrocare Private Limited is subsidiary of M/s Fresenius Medical Care India Private Limited and the ultimate holding company of these companies is Fresenius Medical Care AG & CO. (A German Company). Further, the parent company holds approximately 89.5% of the share capital in Srinath Nephrocare Private Limited while 5% of the share capital is held by Dr. Ajay Marwaha & Dr. Rajeev Kumar Bhatia, each, who are directors in the company and also members of the managing body of the society. The working style of the applicant society is as under:

“A patient, who is financial week, is counseled at the dialysis centre to approach the society for financial aid. The patient then submits an application to the society for financial help. The patient is required to provide his family details and financial position in the application. The matter is considered by the trustees and necessary aid in the form of regular discounts from the dialysis unit is allowed to the patient. In other words, a part of the

expense of the patient which are payable to the dialysis unit, are borne by the society. M/s. Srinath Nephrocare Private Limited issues a debit note to the society, for the charges recoverable from the patient, in respect of whom the society has committed to provide financial help and in subsequently the assessee society is paying the said amount of debit note.

In support of its case, the assessee has also relied upon the case titled as Dy. CIT(Exemptions) vs. St. Xavier Educational & Charitable Trust (ITA No.1192/Chny/ 2017) wherein certain payments in lieu of services were made to a company in which two trustees of the trust were also directors and the exemption under section 11 was not allowed. It was held by the Bench that just because, the trustees were Directors, would not mean that they were entitled to 20% of the profit or were having 20% of its voting power. In our considered opinion the ratio of the aforesaid judgment passed by the Chennai Bench is squarely applicable to the instant case wherein 02 members of the society happened to be a Director in M/s. Srinath Nephrocare Private Limited by holding only 5% of the share capital in each, therefore, the adverse inference cannot be drawn that composition of society overlaps with that company M/s. Srinath Nephrocare Private Limited going by similar name as that of applicant society and operations of the two entities are seemingly intertwined.

**13.** Now coming to another ground of rejection of application u/s 12AA of the Act to the effect that the society is subsidizing part of the admission fee which facilitating admission to related concern and there is no evidence of any person suffering from a serious ailment, being helped financially or subsidized by the society. At the time of hearing, it was submitted by the Id. CIT-DR that although the assessee society is not entitled to get registration but for the sake of argument, still if the Bench considering the grant of registration then it should be subjected to the condition that the assessee

society shall not restrict its medical help to particular patient of kidney disease and of M/s. Srinath Nephrocare Private Limited only but should also extend medical aids/help to the other patients suffering from various other ailments and of other hospitals/nursing homes etc. On the aforesaid submission, the Ld. AR has not shown any reluctance and/or objections. In our considered view submission/suggestion of the Ld. DR seems to be quite logical and reasonable because the Assessee Society can not restrict its medical aid/help to patients suffering from particular disease and/or patients of particular hospital.

**14** It is also case of the assessee that Worthy CIT(E) has not accorded any opportunity to the assessee society to provide any submission/explanation on the issue, although, various details and information have been called for and have duly been provided at the time of hearing and therefore in absence of opportunity of being heard, the assessee was unable to explain/substantiate its case properly.

We considered this aspects also, as it is reflecting from the order that on two occasions, the assessee was asked to submit the reply in response to the queries raised in para No.5 of the order and on both occasions the assessee has submitted the detailed reply along with documents, however, after receiving the reply on 22.08.2017, the assessee was never been confronted with the documents submitted in support of its case and even not given any opportunity of hearing to substantiate its case before the Ld. CIT(E) which goes to show that the assessee was not given proper opportunity of being heard which according to our considered view amounts to contravention to the principle of natural justice and therefore order impugned herein cannot sustain and liable to be set aside with direction to

the Ld. CIT(E) to provide proper and reasonable opportunities of being heard to the assessee society and to pass the order afresh within 03 months of this order, while considering the peculiar facts and circumstances of the case and also keeping in view the discussions/observations made in this order. Hence, the case is remanded to the file of Ld. CIT(E), Chandigarh.

**15.** In the result, the appeal filed by the assessee society stands allowed for statistical purposes.

*Order pronounced in the open Court on 02.01.2019.*

Sd/-  
(SANJAY ARORA)  
ACCOUNTANT MEMBER

Sd/-  
(N.K.CHOUDHRY)  
JUDICIAL MEMBER

Dated:02.01.2019

/PK/ Ps.

Copy of the order forwarded to:

- (1) Shri Nath Kidney Foundation Society 37-A, Silver Residency  
Apartments Nakodar Road, Jalandhar
- (2) The CIT(Exemptions), Chandigarh
- (3) The SR DR, I.T.A.T., Amritsar

True copy

By order