

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.1388/PUN/2016, 2756/PUN/2016 and
2394/PUN/2017

निर्धारण वर्ष / Assessment Years : 2011-12, 2007-08 & 2008-09

M/s. Shree Medical Foundation,
1247, Apte Road,
Deccan Gymkhana,
Pune – 411 004

ITO, Ward-6(2),
Vs. Pune

PAN : AAATS5765Q

(Appellant)

(Respondent)

Appellant by
Respondent by

Shri Sunil U. Pathak
Shri Pankaj Garg

Date of hearing 21-01-2019
Date of pronouncement 22-01-2019

आदेश / ORDER

PER BENCH :

These three appeals by the assessee relate to the assessment years 2011-12, 2007-08 and 2008-09. Since common issue is raised in all these appeals, we, therefore, are proceeding to dispose them off by this consolidated order for the sake of convenience.

A.Y. 2011-12 :

2. The only issue in this appeal is against confirmation of disallowance of certain amounts paid to the persons specified in section 13(3) of the Income-tax Act, 1961 (hereinafter also called 'the Act').

3. Briefly stated, the facts of the case are that, the assessee is a trust registered under Bombay Public Trust Act, which was granted registration under the Income-tax Act vide order dated 17-01-1981. Main object of the assessee trust is to give medical relief to the patients requiring medical attention and rehabilitation. During the year under consideration, the assessee declared gross receipts amounting to Rs.4.11 crore, which included receipts from the hospital to the tune of Rs.3.90 crore. On perusal of details of payments, the Assessing Officer (AO) observed that the assessee paid an honorarium of Rs.30 lakh to Dr. Shirish Prayag; Rs.34,99,854/- to Dr. Aarti Prayag; and Rs.1,80,000/- to Mrs. Usha Prayag. On being called upon to justify such payments, the assessee stated that Dr. Shirish Prayag is Chief Medical Officer of Prayag Hospital (Shree Medical Foundation) who is a qualified MBBS and MD, practising since 1986. He set up a Medical ICU, i.e. Shree Medical Foundation which is a first critical care unit in

Pune city. Dr. Shirish Prayag was stated to have received number of academic awards and honours, who also served as President and Chairman of National and International Critical Care Associations. As regards the payments made to Dr. Aarti Shirish Prayag amounting to Rs.34,99,854/-, it was stated that she is a Chief Consultant in Department of Pathology and Microbiology having qualified MBBS and DCP from B.J. Medical College, Pune and practising as Senior Pathologist for last 32 years. Assessee submitted that she was paid @ Rs.50,000/- per month plus 25% of IPD and OPD collections of Pathology laboratory. As regards the payments made to Smt. Usha Prayag, it was stated that she was looking after the entire administration of the hospital for which she was paid a sum of Rs.15,000/- per month. The AO, after considering the assessee's justification of payments, came to disallow a sum of Rs.12 lakhs from payments made to Dr. Shirish Prayag; Rs.25,59,854/- from payments made to Dr. Aarti Prayag and Rs.1,25,000/- from payments made to Smt. Usha Prayag. The Id. CIT(A) sustained the additions, against which the assessee has come up in appeal before the Tribunal.

4. We have heard both the sides and gone through the relevant material on record. It is noticed that all the three persons to whom

the assessee paid salary etc. are admittedly covered under sub-section (3) of section 13. Controversy as to the characterization of the amounts paid to the above three persons as the same being salary or honorarium, was not pressed by the Id. AR in appeal before the Tribunal. Section 11 provides exemption in respect of income from property held for charitable and religious purposes. Section 13 provides that section 11 shall not be applied in certain cases, meaning thereby, that the exemption otherwise eligible will not be allowed if the conditions as set out in section 13 namely, the payments made to the persons specified u/s.13(3) are in contravention of the provisions contained in other parts of section 13. Section 13(2) provides that exemption u/s.11 shall not be allowed in respect of any income or property applied for the benefit of persons referred to in sub-section 3). Certain situations have been contemplated, which are set out through clauses (a) to (h) of sub-section (2), in which the benefit of exemption will not be allowed. Clause (c) of section 13(2), which is material for our purpose, provides for not allowing exemption : `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*'.

5. On going through the above provision, it becomes apparent that if any amount is paid by way of any salary, allowance or otherwise etc. to a person specified u/s.13(3), then no exemption will be allowed in respect of "the amount so paid is in excess or what may be reasonably paid for the services". It, therefore, transpires that exemption is to be denied for any payment made by way of salary etc. paid to the persons referred in section 13(3) to the extent it is excessive or unreasonable. Under these circumstances, a question arises as to whether the payment made by the assessee to the above referred three persons can be construed as unreasonable?

6. Turning to the facts of the instant case, we find that the assessee gave elaborate submissions justifying the reasonableness of the amount paid to the persons specified u/s.13(3). We have set out in detail the experience of Dr. Shirish Prayag and Dr. Aarti Prayag. The AO has considered a part of the amount paid to Dr. Shirish Prayag as reasonable and treated the entire amount paid to Dr. Aarti Prayag and Smt. Usha Prayag as unreasonable. When we consider the totality of the facts and circumstances of the case, it

emerges that such payments are neither unreasonable nor excessive. Here is a case in which Dr. Shirish Prayag is a qualified MBBS, MD practising since 1986. His academic achievements have been set out in the assessment order. When we consider the amount of Rs.30 lakhs paid to him, namely, Rs.2,50,000/- per month as salary, the same cannot be termed as excessive in the backdrop of the hospital receipts of Rs.3.90 crore. The AO has compared his remuneration with certain other part time doctors visiting the assessee-trust on call, which is not a good comparison. It is further relevant to note that the assessee was continuously paying remuneration to Dr. Shirish Prayag. A chart of has been placed on record, which shows that for the A.Y. 2007-08, assessee paid a sum of Rs.18 lakhs to Dr. Shirish Prayag, that got allowed by the AO. For the A.Y. 2008-09, he was again paid a sum of Rs.18 lakhs which was also allowed by the AO. For the A.Y. 2010-11, he was paid a sum of Rs.24 lakhs. The AO in his assessment made u/s.143(3), has allowed deduction of Rs.24 lakhs paid to Dr. Shirish Prayag vide his order dated 28-12-2012, a copy of which is available on page 92 onwards of the paper book. In this shade of the matter, a reasonable increase of Rs.50,000/- per month during the year under consideration, in our considered

opinion, cannot be termed as unreasonable or excessive. We, therefore, order to delete the addition to this extent.

7. Next is payment made to Dr. Aarti Prayag. We have noticed above that she is a qualified MBBS and DCP from B.J. Medical College, Pune and working as Senior Pathologist for last 32 years. The remuneration paid to her during the year has been Rs.50,000/- per month plus 25% of IPD and OPD collection of Pathology Lab. It is pertinent to note that the assessee paid a sum of Rs.25,91,597/- to Dr.Aarti Prayag during the previous year relevant to the A.Y. 2010-11. The AO vide his aforesaid assessment order has allowed full deduction. When we consider the quantum of amount paid by the assessee during the year *vis-à-vis* the amount paid and allowed in the immediately preceding assessment year, the payment during the year cannot be termed as unreasonable or excessive. Taking a holistic view of the matter, we hold that the payment of Rs.34.99 lakhs made by the assessee to Dr. Aarti Prayag is reasonable and does not call for any disallowance.

8. Last payment to Smt. Usha Prayag is amounting to Rs.1,80,000/-, namely, Rs.15,000/- per month. She was looking after the administration of the hospital since the inception of the trust and was handling safe-keeping of cash, supervision of

banking transactions and also supervision of shift duties of staff nurses etc. She was also responsible for co-ordination between doctor-trustees and other trustees since beginning of the trust and her duties have been set out in the assessment order itself. When we consider the overall supervision of the hospital by Smt. Usha Prayag and payment of Rs.15,000/- per month, the same appears to be quite reasonable and not excessive or reasonable in any manner. We, therefore, order to delete this addition.

A.Yrs. 2007-08 and 2008-09 :

9. The only disallowance made for the A.Y. 2007-08 is in respect of payment made to Dr. Aarti Prayag. Assessee paid a sum of Rs.16,91,847/- to Dr. Aarti Prayag. The AO disallowed a sum of Rs.10,19,847/- which disallowance was reduced by the Id. CIT(A) to Rs.7,91,847/-. For the A.Y. 2008-09, Dr. Aarti Prayag was paid a sum of Rs.17.91 lakhs, out of which the AO disallowed a sum of Rs.8,95,250/-, which disallowance came to be sustained in the first appeal.

10. Having gone through the relevant facts and the position discussed above in relation to the A.Y. 2011-12 for which we have held that no disallowance is called for, we hold that the payments

made to Dr. Aarti Prayag for the years under consideration are reasonable and not excessive on consideration of her qualification and experience. We, therefore, order to delete these additions.

11. In the result, all the appeals are allowed.

Order pronounced in the Open Court on 22nd January, 2019.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 22nd January, 2019
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) /
The CIT (Appeals)-10, Pune
4. The Pr.CCIT, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय
अधिकरण, पुणे “बी” / DR ‘B’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	21-01-2019	Sr.PS
2.	Draft placed before author	21-01-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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