

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI.**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.5189/Del./2016
(ASSESSMENT YEAR : 2012-13)**

ACIT, Circle 1(1), vs. M/s. Balaji Medical & Diagnostics
New Delhi. Research Centre
108, I.P. Extension, Patparganj,
New Delhi – 110 092.

(PAN : AAABB0018M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Atul Nanawat, CA
REVENUE BY : Ms. Ashima Neb, Senior DR

Date of Hearing : 19.12.2018

Date of Order : 12.02.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant, ACIT, Circle 1(1), New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal, sought to set aside the impugned order dated 13.07.2016 passed by Ld. CIT (Appeals)-40, New Delhi qua the Assessment Year 2012-13 on the grounds inter alia that :-

“1. Ld. CIT (A) has erred in allowing the appeal of the assessee by ignoring the fact that though the objects of the assessee seem to be charitable in nature but the

activities which yielded income to the assessee are commercial in nature.

2. The society i.e. Balaji Medical and Diagnostics Research Centre which was allowed registration u/s 12A has ceased to have any effective function as far as hospital is concerned. The running of the hospital is governed by the profit motive for the benefit of Max Group; hence claim for exemption u/s 11 & 12 of the assessee is not longer justifiable.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee society being registered under Societies Registration Act also accorded registration under section 12A of the Income-tax Act, 1961 vide order dated 21.08.1997 claimed exemption under sections 11 and 12 of the Act. Assessing Officer declined the exemption claimed by the assessee society under sections 11 and 12 on the ground that the assessee society is running hospital on commercial line with profit motive as is apparent from the fee structure of the hospital for VIP rooms, classic deluxe rooms, deluxe rooms etc. and moreover all the hospital activities were entirely dependent upon its agreement with Max Healthcare Institute Limited. AO also noticed that substantial fee charged from the patients for the rooms etc. shows the real intention of the assessee that it is established to earn the profit and is out of the reach of the common man. AO also observed that the

assessee has not been providing any free treatment to the patients, so cannot be said to be engaged in charitable activities. AO accordingly assessed the total income of the assessee society at Rs.15,96,95,870/- under the head 'profit and gains of business or profession'.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who partly allowed the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. In order to decide the controversy at hand, it is necessary to look into the main objectives of the assessee society which are as under :-

“a. To undertake the development of research in medical filed.

b. To promote, develop and improve scientific exchange of knowledge as well as technical and medical Co-operation between similar research institutions.

c. To organize the technical courses, conferences and publication.

d. To develop / improve methods for early detection of all diseases.

e. To develop / improved medicines for treatment of disease.

f. To develop new/improved surgical equipments and to make innovation in the field of Bio-medical engineering.

g. To initiate the projects for the development of research centers supported by laboratories, operation theatres particularly for research and development of medical and surgical techniques.

h. To provide for all facilities, including financial assistance for any medical research work.

I. To build, maintain and run necessary infrastructure including realization of any or all the objectives for realization or all the objectives of research and prevention of disease set forth above.”

6. Undisputedly, vide agreement dated 12.05.2005, assessee society has entered into an agreement with Max Health Care Institute Ltd. (MHC) to outsource all activities like running and operating the hospital from the MHC. It is also not in dispute that all the hospital activities like medical advisory services in medical domain, employment of nurses, depends upon recommendation and assistance from MHC. It is also not in dispute that out of the total expenses of Rs.182,94,53,917/- incurred by the assessee society, Rs.69,63,06,278/- was paid to MHC and also a loan of Rs.104,46,57,932/- were payable to MHC on 31.03.2012. It is also

not in dispute that the assessee society has submitted audited financials during the assessment proceedings. It is also not in dispute that DDA has given the land to the assessee society for running hospital on concessional rate. It is also not in dispute that the Id. CIT (A) has relied upon one inspection report given by the Directorate of Health Services, wherein it is stated that the assessee's hospital is providing free treatment to patients.

7. Ld. DR for the Revenue challenging the impugned order contented inter alia that the Id. CIT (A) has ignored the fact that the assessee society was no longer operating as a charitable institution within the meaning of section 2(15) of the Act; that Id. CIT (A) has also ignored the predominant object of the assessee society as profit making and in these circumstances, charitable purpose ceased to exist.

8. Bare perusal of the impugned order passed by the Id. CIT (A) goes to show that firstly, Id. CIT (A) has given finding on fact that MHC is not having total control over the hospital as has been held by AO, rather detail of expenditure tabulated at page 13 of the impugned order shows that out of the total expenditure incurred by the assessee society in running the hospital less than 50%, has been given to MHC.

9. However, at the same time, the Id. CIT (A) based his findings primarily on the fact that the assessee society provided free / concessional treatment to OPD / IPD patients of which details were submitted to the Directorate of Health Services at regular intervals. Ld. CIT(A) has also relied upon the inspection report dated 29.02.2008 issued by the Directorate of Health Services, Government of NCT, which is available at pages 106 & 107 of the paper book.

10. So far as issue as to the running of the hospital by the assessee society with a profit motive for benefit of Max Group is concerned, this issue has already been decided in favour of the assessee society by the co-ordinate Bench of the Tribunal in assessee's own case vide order dated 05.08.2016 passed in ITA No.4317/Del/2012 for AY 2018-19, wherein it is held that, *“the findings of the AO that MHC was having de facto control of the hospital with the motive of profit earning was not based on any factual or legal ground, Rather the findings are returned on incorrect appreciation of facts.”*

11. However, at the same time, we are of the considered view that when providing free medical aid to the poor persons by the assessee hospital is a predominant object to claim exemption under

sections 11 & 12 of the Act and to prove this fact, no findings have been brought on record. The Id. CIT (A) has relied upon the report given by the Directorate of Health Services, Government of NCT dated 29.02.2008 to prove the fact that it has been providing free medical aid to the poor in the hospital cannot be relied upon for the year under assessment i.e. AY 2012-13 as the said report can at the most be relied upon for AY 2008-09. So, in these circumstances, order passed by the Id. CIT (A) is liable to be set aside and as such, case is remanded back to the Id. CIT (A) to decide afresh after getting the discreet inquiry done if the assessee society has provided free medical aid to the poor patients during the year under assessment, by providing an opportunity of being heard to the assessee. Consequently, appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in open court on this 12th day of February, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 12th day of February, 2019/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-40, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**