

आयकर अपीलीय अधिकरण पुणे न्यायपीठ एक-सदस्य मामला पुणे में

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

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA Nos.2724 & 2725/PUN/2017

निर्धारण वर्ष / Assessment Years : 2004-05 & 2005-06

Parkar Medical Foundation,  
Parkar Hospital,  
828, Shivajinagar,  
Ratnagiri – 415639

.... अपीलार्थी/Appellant

PAN: AAATP4632P

Vs.

The Asst. Commissioner of Income Tax,  
Ratnagiri Circle, Ratnagiri

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Nikhil Pathak

प्रत्यर्थी की ओर से / Respondent by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 11.03.2019	घोषणा की तारीख / Date of Pronouncement: 20.03.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

Both the appeals filed by assessee are against consolidated order of CIT(A)-2, Kolhapur, dated 20.09.2017 relating to assessment years 2004-05 and 2005-06 against respective orders passed under section 143(3) r.w.s. 263 of the Income-tax Act, 1961 (in short 'the Act').

2. Both appeals relating to the same assessee on similar issue were heard together and are being disposed of by this consolidated order for the sake of convenience. However, in order to adjudicate the issues, reference is being made to the facts and issues in ITA No.2724/PUN/2017, relating to assessment year 2004-05.

3. The assessee in ITA No.2724/PUN/2017, relating to assessment year 2004-05 has raised the following grounds of appeal:-

- 1] *The learned CIT(A) erred in holding that the appellant trust had violated the provisions of section 13(1)(c) by paying professional charges of Rs.6,52,748/- paid to the trustees namely, Dr. Alimiya Parkar and Dr. Mumtaz Parkar.*
- 2] *The learned CIT(A) erred in holding that there was no mandate in the trust deed to pay the professional charges to the above two trustees and hence, the payment thereof resulted in granting undue benefit to the trustees and hence, there was a clear violation of the provisions of section 13(1)(c).*
- 3] *The learned CIT(A) failed to appreciate that the professional charges paid to the above two trustees were on account of the actual professional services rendered by the above two trustees and therefore, there was no question of holding that the said payment resulted in violation of section 13(1)(c) as there was no undue benefit granted by the appellant trust to the above two trustees.*
- 4] *The learned CIT(A) failed to appreciate that there was no bar for the appellant trust to pay professional charges to the trustees on account of the said persons rendering their professional services and hence, the appellant had not violated the provisions of section 13(1)(c) on account of the above referred payment.*
- 5] *The learned CIT(A) erred in holding that the appellant trust had violated the provisions of section 13(1)(c) by paying utilization charges of Rs.75,000/- to Dr. Alimiya Parkar and Rs.1,20,000/- paid to Dr. Mumtaz Parkar.*
- 6] *The learned CIT(A) erred in holding that there was no mandate in the trust deed to pay the utilization charges to the above two trustees and hence, the payment thereof resulted in granting undue benefit to the trustees and hence, there was a clear violation of the provisions of section 13(1)(c).*
- 7] *The learned CIT(A) failed to appreciate that the utilization charges paid to the above two trustees were on account of the use of their assets by the appellant trust and therefore, there was no question of holding that*

*the said payment resulted in violation of section 13(1)(c) as there was no undue benefit granted by the appellant trust to the above two trustees.*

- 8] *The learned CIT(A) failed to appreciate that there was no bar for the appellant trust to pay utilization charges to the trustees on account of use of the assets owned by them by the appellant trust and hence, the appellant had not violated the provisions of section 13(1)(c) on account of the above referred payment.*

4. The issue raised in grounds of appeal No.1 to 4 by assessee is against denial of deduction of professional charges paid to trustees namely Dr. Alimiya Parkar and Dr. Mumtaz Parkar amounting to ₹ 6,52,748/-, applying the provisions of section 13(1)(c) of the Act. The issue raised in grounds of appeal No.5 to 8 is against denial of utilization charges paid of ₹ 75,000/- to Dr. Alimiya Parkar and ₹ 1,20,000/- paid to Dr. Mumtaz Parkar.

5. Briefly, in the facts of the case, the assessee was registered trust and was granted registration under section 12A of the Act. The case of assessee was reopened under section 147/148 of the Act. The assessee trust had two trustees viz. Mr. Alimiya D. Parkar, Managing Trustee and Mrs. Mumtaz Alimiya Parkar, Secretary and Treasurer. The Assessing Officer noted that the assessee had paid salary and perquisites of ₹ 6,11,044/- and utilization charges of ₹ 1,95,000/- to two of its trustees. The assessee explained that the trust had paid professional fees to the trustees as besides looking after day-to-day activities and managing hospital as a whole, both trustees were providing professional services to the patients. The professional fees were based on case to case basis directly relating to the fees collected from the patients. The assessee also explained that it had paid professional charges to other doctors @ 100% but in case of Dr. Alimiya Parkar and Dr. Mumtaz Parkar, the same was retained upto 67%. In respect of utilization fees paid to trustees, it was

explained that equipment and assets were owned by the trustees and which were utilized by the hospital, for which utilization fees was paid. The list of assets was also provided and it was pointed out that assets were not used by either of the trustees for their individual benefits. The Assessing Officer noted another professional fee paid of ₹ 6,52,748/- and in totality, the Assessing Officer did not agree with the submissions of assessee on the premise that the administrator of hospital do not have time in providing professional services. The Assessing Officer thus, held the assessee not to be entitled to the said exemption under sections 11 and 12 of the Act as there was violation of section 13(1)(c) of the Act and he disallowed sum of ₹ 14,58,792/-.

6. The CIT(A) did not allow the claim of professional charges of ₹ 6,52,748/-. The assessee had furnished details of total charges collected from the patients by hospital and the professional charges passed from the trust. The assessee had relied on clause 31 of trust deed, which states that any trustee being a doctor, shall be entitled to be paid all the usual professional fees for the time expended, business transacted in connection with the trust. Similarly, the CIT(A) denied the payment of utilization charges of ₹ 1,95,000/- to the trustees being in violation of provisions of section 13(1)(c) of the Act.

7. The assessee is in appeal against the order of CIT(A).

8. The learned Authorized Representative for the assessee pointed out that professional fees were paid to two trustees who were also doctors as per clause 31 of trust deed. The duties of managing trustee and secretary / treasurer were as per clauses 16 and 17 of trust deed. Our attention was

drawn to trust deed placed at pages 80 to 103 of Paper Book. He further stated that since the two trustees had professional ability and charges were paid to them, because of the same there is no merit in disallowing the same on the ground that there was violation of provisions of section 13(1)(c) of the Act. He further stated that the provisions are attracted in case the payment is made over and above the market value of services / facilities.

9. Coming to next issue, the learned Authorized Representative for the assessee pointed out that utilization charges were also paid as per clause 7 of trust deed which is placed at page 91 of Paper Book. He pointed out that the said utilization charges were also allowable and strongly opposed the stand of authorities below in holding that there was violation of provisions of section 13(1)(c) of the Act, wherein nobody saw whether there was violation or not. Since the charges were paid within market value of the said facilities, there is no merit in the disallowance.

10. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

11. We have heard the rival contentions and perused the record. The assessee was running hospital for charitable purpose. The case of assessee was taken up for scrutiny pursuant to re-assessment proceedings initiated against the assessee. In the said proceedings, the Assessing Officer noted that the trust deed had only two trustees i.e. Almiya D. Parkar, Managing Trustee and Mrs. Mumtaz Alimiya Parkar, Secretary and Treasurer. The said trust came into existence vide trust deed dated 28.03.2002. The assessee had placed

copy of trust deed in the Paper Book. The trust was set up by Dr. Almiya D. Parkar to carry out hospital activities with corpus of ₹ 1000/- only. Since it was not possible for the assessee to start the hospital activity because of lack of funds, Dr. Parkar allowed the carrying on of hospital activity in the hospital building owned by them and he also allowed the entire medical infrastructure including available medical equipment and facilities to be used by the assessee trust. The hospital was being run in Ratnagiri. Dr. Almiya D. Parkar was the Chief Medical Officer and Administrator of assessee trust and even providing medical services to patients coming to hospital, in lieu thereof, professional fees were paid to him. The said professional fees were based on case to case basis directly relating to the fees collected from the patients. Similar was the position in respect of his wife Dr. M. A. Parkar. The total remuneration which is paid in the year under consideration was ₹ 6,52,748/-. The issue which is raised in the present appeal is the allowability of said professional fees paid to trustees.

12. Under section 13(1)(c) of the Act, it is provided that where any part of the income of trust enures or any part of such income or any property of the trust or the institution is, during the previous year, used or applied, directly or indirectly for the benefit of any persons referred to in sub-section (3), then such amounts are not to be allowed as deduction. The test to be applied is whether any part of income is directly or indirectly utilized for the benefit of any person referred to in sub-section (3). Admittedly, the provisions of said sub-section (3) are applicable but the issue which has to be seen is 'whether the said payment is directly or indirectly for the benefit of such person'.

13. In the present set of facts, admittedly, the managing trustee had established hospital and had even allowed the hospital to use medical facilities and equipment available in the hospital, for which utilization charges were paid, which is also second issue before us, which will be addressed in later paras. However, it is not disputed that both trustees were professionally qualified doctors, who besides looking after the administration and running of hospital, were also providing services to the hospital. The payment to them was also linked to the fees collected from the patients. The total professional charges paid to them were ₹ 6,52,748/-. In such circumstances, where the payment is made for rendering professional services to the assessee trust, it cannot be held to be for the direct or indirect benefit of trustees. We find no merit in the orders of authorities below in invoking provisions of section 13(1)(c) of the Act in the present set of facts. Accordingly, we hold that professional fees of ₹ 6,52,748/- paid to two trustees is to be allowed as deduction.

14. Now, coming to next disallowance made by the authorities below i.e. utilization fees paid to the trustees. The said fees were paid against equipment and assets which were owned by trustees, but were used by trust. There is no finding that utilization fees paid is excessive or is for the direct or indirect benefit of any person. In the absence of the same and where the facilities of using equipment and services were provided by the trustees to the assessee trust, then utilization fees linked to such facilities or services is to be allowed as deduction in the hands of assessee. We find no merit in the orders of authorities below in this regard. Accordingly, we direct both the issues in favour of assessee and direct the Assessing Officer to allow the deduction on account

of professional fees and utilization fees paid to the trustees. The grounds of appeal raised by assessee are thus, allowed.

15. The facts and issues in ITA No.2725/PUN/2017 are identical to the facts and issues in ITA No.2724/PUN/2017 and our decision in ITA No.2724/PUN/2017 shall apply *mutatis mutandis* to ITA No.2725/PUN/2017.

16. In the result, both the appeals of assessee are allowed.

Order pronounced on this 20<sup>th</sup> day of March, 2019.

Sd/-  
(ANIL CHATURVEDI)  
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-  
(SUSHMA CHOWLA)  
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 20<sup>th</sup> March, 2019.

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-2, Kolhapur;
4. The Pr.CIT-2, Kolhapur;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे, एक-सदस्य  
मामला / DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune