

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH 'B' : NEW DELHI)

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
and
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No.4257/Del./2016
Assessment Year : 2012-13**

**Dy. Commissioner of Income-tax (E), vs. Flt. Lt. Rajan Dhall Charitable (Regd.)
Circle 1 (1), New Delhi. B – 1, Aruna Asaf Ali Marg,
Vasant Kunj,
New Delhi – 110 070.**

(PAN : AAATF0185H)

(APPELLANT)

(RESPONDENT)

Appellant by : Ms. Ashima Neb, Senior DR
Respondent by: Shri R.M. Mehta, CA

Date of Hearing : 14.08.2019
Date of Order : 28.08.2019

ORDER

PER K. NARASIMHA CHARY, JM :

Challenging the order dated 18.05.2016 in Appeal No.53/2015-16 passed by learned Commissioner of Income-tax (Appeals)-40, New Delhi {for short "ld.CIT(A)"} for Assessment Year 2012-13, Revenue preferred this appeal on the following ground :-

“On the facts and in the circumstances of the case and in law, Ld. CIT (A) has erred in allowing the appeal of the assessee by ignoring the fact that though the objects of the assessee seems to be charitable in nature but the activities carried out by the assessee, which resulted in income, are commercial in nature.”

2. Brief facts of the case are that the assessee is a charitable society registered under the Societies Registration Act, 1860 vide order dated 23.09.1971. Assessee has also registered u/s 12AA(1) of the Income-tax Act, 1961 (“the Act”) on 12.02.1997. The assessee is running a charitable hospital at Vasant Kunj, New Delhi in the name of Flt. Lt. Rajan Dhall Charitable Trust, which provides medical relief to the general public.

3. Assessee filed their return of income on 29.09.2012 declaring nil income and by order dated 12.03.2015, Ld. AO while denying the claim of the assessee for exemption u/s 11(1) of the Act treated the assessee’s contract with Fortis Hospital for running hospital as commercial activity and assessed the income at Rs.8,56,98,070/-.

4. Assessee preferred appeal before the Ld. CIT(A) and contended that the assessee has been running a charitable hospital providing medical relief to the general public and for both earlier and subsequent years, the claim of the assessee for exemption u/s 11(1) of the Act was allowed by AO, for some years the first appellate authority granted relief whereas, for certain years, the Tribunal allowed the relief. Ld. CIT (A) considered the fact of consistent allowing of the exemption u/s 11 (1) of the Act and following the rule of consistency, granted relief to the assessee. Revenue is, therefore, in this appeal.

5. It is the argument of the Ld. DR that the activities of the assessee trust are commercial in nature disentitling the assessee the benefit of sections 11 and 12 of the Act. It is further contended by the revenue that as per various clauses of “Operational and Management agreement”, it is established that Rajan Dhall Charitable Trust, Vasant Kunj, New Delhi has been transferred to

M/s Fortis Hospital Pvt. Ltd. and the Society has no concern with the activities of the hospital and in view of the judgment of a coordinate bench of this Tribunal in the case of M/s Devki Devi Foundation, ITA No.1027/Del/2012 dated 31.3.2015, the benefit of Section 11 & 12 should not have been allowed to the assessee.

6. It is the argument of the learned DR that in the assessment order Ld. AO enumerated the reasons for disallowing the claim of the assessee u/s 11(1) of the Act and more particularly, the fact that the assessee is getting rental income and Fortis Hospital has paid an amount of Rs.35 crores to Vaitalik on behalf of the assessee society. She specifically brought to our attention para 7 (iii) of the assessment order which states that the assessee has entered into an agreement by which if the plan of share of surplus has not been fulfilled, assessee will be liable to pay entire money spent by OBPL including the amount paid to Vaitalik along with interest @ 12% p.a within 30 days of such breach of agreement to Fortis Pvt. Ltd. According to the learned AO, this clause has totally ended the basic charitable nature of the trust and made it in full control of the private company which is purely working on commercial lines and earning the major share of income of the charitable organization. Likewise, the assessee is earning rental income from erecting Airtel, Hutchison towers, Idea cellular in its hospital, which is not at all incidental to any activities of the assessee society. Further, learned DR submitted that the AO recorded that the assessee has earned income from book café and visitor café, business centers, parking area, which are all purely on commercial lines and not related or incidental to the activities of the assessee. Learned DR submitting that in view of this business and commercial activities, AO is

justified in denying the exemption u/s 11(1) of the Act and inasmuch as the learned CIT(A) did not consider these factors, the impugned order cannot be sustained. Learned DR placed reliance on a decision of a coordinate bench in the case of M/s Devki Foundation, ITA No.1027/Del/2012 dated 31.3.2015, to show that the contract of the trust with Max group of hospitals is a commercial activity.

7. Per contra, it is the argument of the learned AR that all the activities enumerated by the learned AO in para 7 of the assessment order are nothing new but have been in place since its inception, as such, merely because some activities are recorded in the assessment order for some years and some activities are recorded in some other year, does not convert the charitable nature of the assessee into a commercial entity and as a matter of fact, considering all these factors only both the AO and the first appellate authority have allowed exemption u/s 11(1) of the Act of which assessee right from the year 2007-08 to 2014-15. Learned AR submitted that learned CIT(A) has rightly followed the rule of consistency and the appeal of the revenue is devoid of merits. He further submitted that the order of the Tribunal in M/s Devki Foundation, ITA No.1027/Del/2012 dated 31.3.2015 was set aside by the Hon'ble Delhi High Court and the matter is restored to the Tribunal for deciding afresh, and hence, such a decision cannot be a precedent. Further, in ITA No.2649/Del/2015 for the Assessment Year 2011-12 by order dated 05.11.2018, coordinate Bench of this Tribunal allowed relief to the assessee.

8. We have gone through the record. Though the learned DR brought to our notice that vide para 7 of the assessment order, the learned AO enumerated certain activities to say that they are not charitable in nature but only

commercial ones, it is not established before us that these are activities that are undertaken by the assessee in the year under consideration only, but neither earlier nor subsequently. There is nothing contrary to the submission on behalf of the assessee that as a matter of fact, all these activities have been undertaken by the assessee right from the year 2007-08 but merely because the AO has chosen to enumerate certain activities for certain years, does not render the binding precedence applicable to the facts of the case.

9. It is an admitted fact that for the Asstt. year 2007-08, the AO has allowed such an exemption vide order dated 31.12.2009 u/s 143(3) of the Act and the copy of such order is on record at page 1 & 2 of the paper book. For the Asstt. year 2008-09 and 2009-10, the first appellate authority allowed the claim of the assessee and the same was upheld by a coordinate bench of this Tribunal in ITA No.3073/Del/2012 and batch by order dated 21.8.2017. For the Asstt. years 2013-14 and 2014-15, AO himself allowed such an exemption by orders dated 29.2.2016 and 22.12.2016. It is also evident that from the order dated 05.11.2018 in ITA No.2649/Del/2015 for AY 2011-12, coordinate Bench of this Tribunal granted relief to the assessee.

10. When the facts remained identical, it is not open for us to take a different view in the absence of any compelling reasons to do so. Further, the decision in the case of Devki Devi Foundation vs DCIT (supra) rendered by a coordinate bench of this Tribunal dated 31.3.2015, was in appeal before the Hon'ble jurisdictional High Court in ITA No.484/2015 and by order dated 15.2.2016, the Hon'ble jurisdictional High Court set aside the order and restores ITA 1027/Del/2012 to the Tribunal for fresh decision, according to law. So no reliance can be placed by the revenue on this decision, which is no

longer in force. In these circumstances, we are of the considered opinion that the learned CIT(A) rightly followed the rule of consistency and allowed the claim of the assessee. We find no reason to interfere with the same. We accordingly uphold it. Appeal of the revenue being devoid of merit, is liable to be dismissed. The appeal of the revenue is accordingly dismissed.

11. In the result, appeal of the Revenue is dismissed.

Order pronounced in open court on this 28th day of August, 2019.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

**sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

**Dated the 28th day of August, 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.