

आयकर अपीलीय अधिकरण, चंडीगढ़ न्यायपीठ - चंडीगढ़।

IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH - BENCH 'B'

BEFORE S/SHRI N.K. SAINI, VICE-PRESIDENT AND
RAJPAL YADAV, VICE-PRESIDENT

ITA No.10/CHANDI/2018

निर्धारण वर्ष/ Asstt.Year: **2014-15**

DCIT, Cir.1(Exemption) Chandigarh.	Vs.	M/s.Punjab Medical Foundation Charitable Trust 63-64, Waryam Nagar Cool Road, Jalandhar PAN : AAATP 5171 B
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(Applicant)		(Responent)
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Assessee by :	Shri Sudhir Sehla, Advocate
Revenue by :	Shri Ashok K. Khana, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 18/11/2020

घोषणा की तारीख /Date of Pronouncement: 21/12/2020

आदेश/O R D E R

PER RAJPAL YADAV, VICE-PRESIDENT: Revenue is in appeal before the Tribunal against order of the Id.CIT(A)-2, Jalandhar passed for the Asstt.Year 2014-15.

2. The Revenue has taken four grounds of appeal, which read as under:

“i. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law as the findings recorded are perverse and contrary to the evidence/material available on record and facts of the case and duly considered by the Assessing Officer.

ii. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition made by the AO on applicability of the proviso to the section 2(15) of the I.T. Act, 1961.

iii. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition made by the AO on account of the professional fees paid to Dr. R.S. Chahal without appreciating the evidence on record.

iv. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in law in deleting the addition made by the AO on the basis of disallowance of loss in Kinder woman hospital without appreciating the fact that rent paid is not attributable to the purpose of the trust.”

3. A perusal of the record along with the above grounds of appeal would indicate that though Revenue has taken four grounds of appeal but its grievance revolve around solitary issue, whether the assessee is to be treated as a “charitable institution” and entitled for benefit under sections 11 and 12 of the Income Tax Act, 1961 for assessment of its income ?

4. Brief facts of the case are that the assessee is a registered society under the Societies Registration Act, 1860. It has applied for grant of registration under section 12AA of the Income Tax Act. The registration was granted to the assessee by the Commissioner of Income-Tax, Jalandhar vide registration No.JUDL/TRUST/23097 dated 21.03.1991. Copy of registration certificate has been placed on page no.2 of the paper book. The Society has been running a hospital, medical shop and diagnostic centre. It has filed its return of income on 28.9.2014 declaring total income at NIL. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) of the Act was issued and served upon the assessee on 3.9.2015. In response to the notice under section 143(2) and 142(1) of the Act, authorized

representative of the assessee appeared before the AO. On an analysis of the record, the Id.AO took cognizance of objects of the Society, and thereafter issued a show cause notice inviting explanation of the assessee on various aspects. A perusal of the assessment order would indicate that the first area of inquiry made by the AO was that the assessee has been running a pharmacy shops wherein it was continuously showing profit. He noticed that from the Asstt.Year 2013-14 to 2015-16, the profit from sale of medicines through this shop has been shown by the assessee at 22.43%, 20.02% and 17.07% respectively. According to the AO, the sale of medicines has resulted in huge profit to the assessee, and therefore the assessee cannot be considered as a charitable society within meaning of section 2(15) of the Income Tax Act. After hearing the assessee, the Id.AO has denied charitable status and consequently did not grant benefit under sections 11 and 12 of the Act. The basic reasons assigned by the AO are –

- (i) the assessee is running a shop, which is not an integral part for running of the hospital. This pharmacy is being run on commercial basis, and huge profit is being earned on this activity. The assessee has not provided concessional medicines to the poor and also not maintained separate books of accounts for running its shop,
- (ii) the assessee's hospital is earning profit in between 5.96% to 14.08%, which is not a normal profit, and therefore, the hospital is also being run on commercial line, and cannot be considered to be charitable purpose. The Id.AO has

compared the rates with SGL Charitable Hospital and Indian Kidney Hospital for determining the fact that the rates of the assessee are on the higher side,

- (iii) the Id.AO found that one of the doctors Shri R.S. Chahal is a relative of the trustee, and huge salary of Rs.65,42,155/- has been paid to him as professional charges. This payment is hit by section 13(1)(c) of the Act. In other words, the AO was of the view that on account of Dr.R.S. Chahal's relationship with the Society, undue benefit is being extended to him on account of higher payment of professional charges,
- (iv) the assessee has another women kinder hospital where it has suffered loss, and such loss are not to be allowed to the assessee,
- (v) the Id.AO has made reference to section 11(4A) of the Act and observed that if a charitable trust or society runs any other unit for business purpose, which gives rise to profit, then separate books of accounts are to be maintained. According to the AO, such books of accounts were not maintained for the chemists shop. On the basis of above reasoning, the Id.AO has denied the benefit of sections 11 and 12 to the assessee. He determined taxable income of the assessee at Rs.2,75,41,048/- as against NIL income shown by it. The Id.AO mainly made additions under the following heads:

a) Rs.37,56,251/- *Shown as net profit and*

		<i>claimed exempted u/s.11 – disallowed by AO</i>
b)	<i>Rs.1,72,42,642/-</i>	<i>Loss from kinder women hospital (a unit of the trust) – disallowed by AO</i>
c)	<i>Rs.65,42,155/-</i>	<i>Payment to Dr.RS.Chahal (relative of trustee) disallowed u/s.13(3)</i>
	<i>Total Rs.2,75,41,048/-</i>	

5. Dissatisfied with the action of the AO, the assessee carried the matter in appeal before the CIT(A). It has filed detailed written submissions. These submissions have been reproduced by the Id.CIT(A) from pages 4 to 17 of the impugned order. The assessee, at end of its submissions has compiled certain details in tabular form pointing out reasons of the AO vis-à-vis explanation given by it – *qua* those reasoning. The Id.CIT(A) has taken note of summary of such explanation in page nos.15 to 17 and we deem it appropriate to take note of these submissions along with finding of the Id.CIT(A), which reads as under:

	<i>Observation of AO CHEMIST SHOP</i>	<i>Assessee's submission</i>
1	<i>The assessee is running Chemist shop which is not an integral part of the running of hospital.</i>	<i>Running of chemist shop is an integral part of hospital and approved by the CIT as per clause no 14. Of MOA while approving the registration of the society u/s 12A(a) The running of chemist shop is considered as integral part for the last 26 years that is from 1991 till date. Please also see 251 CTR Page 237</i>
2	<i>Pharmacy is being run on commercial basis</i>	<i>The A.O. stated that profit rate of 20.02 is commercial where as he himself accepted 22.43% during</i>

		<i>previous year (2014-2015 Asstt. Yr.) and his predecessor during all the previous years. The entire profit is utilized for the fulfillment of the objects of the society, which is not disputed by the A.O.</i>
3	<i>No free /concessional medicine are Given to the poor.</i>	<i>Complete list of concessions amounting to RS.24,78,530/ and list of free medical camp, free OPD on specified days , filed with A.O.which has not been disputed by the A.O. More so it is no where mentioned in the act to provide free medicine/services to avail the benefit of section 11</i>
4	<i>Profit of chemist shop utilized by the trustees</i>	<i>not a single penny was paid to any trustee in any shape by the trust nor the A.O. has given any instance of payment to trustees out of chemist shop</i>
	HUGE PROFIT	----
1	<i>Trust is earning huge profit that is from 5.96% to 14.08% as per chart at Page -4 of Asstt. Order.</i>	<i>Firstly profit of 5.96% to 14.08 % is not abnormal. The A.(has wrongly prepared the chart i:e only of one unit. The combined chart of all unit of trust at Page-11 of assessee submission shows profit of 1.05% only. More so the same A.O. accepted profit rate of 9% during the previous year as reasonable.</i>
2	<i>Comparison of rates with SGL and , National Kidney Hospital and Indian Kidney Hospital.</i>	<i>SGL Hospital is not comparable with the assessee , as the same received donations and grants from Govt and the maximum rates quoted are in respect of heart bypass, eye care , ortho , Neuro, MRI,CT Scan and our society is not receiving donations, Govt grant or providing any of the above said services. The rates of other hospitals in respect of OPD and ICU rent are more or less either same or more than our society as per chart at Page -21 of the asstt order . Even the charges of each institution depends upon the infrastructure and the facilities. Our each department is</i>

		<i>being looked after by Doctor having DM Qualification where as in other local /comparable hospitals they are more or less M.D./M.S. The society has utilized more than 85% of the total funds during each year right from the inception of the trust till date. Earning of profit is not fatal for claiming exemption u/s 11 . Kindly see CIT VS CT education Society,253 CTR page 518 , 391ITR Page 73(ALL Punjab High Court) Page 6 to 10. Of our written submission</i>
	<i>PAYMENT TO DR.R.S. CHAHL</i>	
<i>1</i>	<i>DR.R.S.Chahl is trustee as mentioned at Page1,8.8,12,16,23,24 etc etc</i>	<i>Infact DR.R.S.Chahal is not the trustee . He is simply a relative of trustee.</i>
<i>2</i>	<i>He is being paid the highest Professional Charges (Page-8).i.eRs. 65,42,155/-</i>	<i>This is wrong as per chart at Page-13 of assessee's submission and 24 of the A.O. order .Dr Satish Mishra is being paid 80,28,920/ Dr.Vijay Nanda RS.68,60,728/ Dr Ravi Angral RS.68,57,756/.</i>
<i>3</i>	<i>The payment to DR.R.S.Chahl is not reasonable (Page-8)</i>	<i>Prior to joining the trust DR.R.S.Chahl has filed his Income Tax return for the assessment year 2003-2004 to 2006-2007 declaring net taxable income at RS. 54,31,1027 and 58,07,676, and 63,93,856 and RS.77,97,124 respectively after the claim of depreciation . The same A.O. accepted the professional payment to DR. R.S.Chahl at Rs.61,94,5627 During the previous year and his predecessor at RS 50,29,4627 during the assessment year 2011-2012. He is M.Ch. and standing of about four decades to his credit The payment to trustee is allowable as per clause no .7g of article of association which has the approval of CIT A while granting registration u/s.12A (a) of</i>

		<i>the Act.</i>
4	<i>DR.R.S.Chahl is paid 11.52% of professional charges .</i>	<i>The figure is incorrect as the A.O. has taken the figures from only one profitable unit. It is 2.60% of the total receipts and 2.68% of the total expenses of the trust. The ratio is 6.82% if total payment of professional charges and salary to paramedical staff of all the unit is considered.____</i>
	<i>Amount is not reasonable and higher(Page-8,23,24)</i>	<i>The admitted facts are that DR.R.S.Chahl is a chief surgeon and holding top position in management. without assigning any reason the A.O. disallowed the entire professional charges . He has not given any finding of any comparable case of his caliber getting lesser salary nor he has doubted that he is not doing any service to the hospital. He is getting only 13.50% and giving 86.50% to the society.</i>
	LOSS OF KINDER HOSPITAL	
1	<i>There is no income or activity</i>	<i>The assessee is maintain complete books of accounts, bills and vouchers of this unit which are duly certified by CA. A.O. failed to point out any omission in either receipts or expenses.The assessee has shown receipts of RS.5,09,9007 of this unit .All the major payment of expenses including rent and professional charges were paid through account payees cheque from the start of this unit till its closure.</i>
2	<i>Rent paid without using the building</i>	<i>The rent was paid to SH.G.S.Ghosal (PAN:AAWPG0188M) .This building was taken on rent in March 2012 with a lock in period of three year upto March 2015..The rent deed is duly registered with the sub</i>

		<p>registerrar, Jalandhar .Copy of rent deed filled with A.O. The building was used by the trust and DR.Arun Kumar Sharma (PAN: BCOPS5796J) was the incharge of this unit. TDS on both the payment was deducted and deposited .The loss of this unit was accepted by the department during the assessment year 2013-2014 and by the same A.O. during the assessment year 2014-2015.</p>
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I have gone through the assessment order passed by the AO, detailed submissions made by the appellant and find that there are four issues which have been raised in the assessment order- (a) The Hospital run by the trust is also running a pharmacy and selling medicines on a profit; (b) The trust is engaged in commercial activities and earning profits from hospital; (c) Payments have been paid to persons covered u/s 13(1)(c) or u/s 13(3) of the IT Act and (d) Loss claimed from Kirn' Women Hospital is not genuine.

4.5 AO has stated in the order that appellant has earned 20.02% profit, which comes to Rs. 94,08,947 on total sale of medicines of Rs. 4,69,89,258 in the year under consideration and has also compared the list of charges for different tests taken by the appellant viz-a-viz the charges taken by the other hospitals in the city of Jalandhar. AO has also stated that payment on account of rent and professional charges have been made to related persons which are not reasonable and are therefore hit by the provisions of section 13(1)(c) r.w.s. 13(3) of the IT Act.

4.6 AO has after analyzing the detailed information given by the appellant concluded in para 5.4 to 9.2 of the order that appellant trust is earning huge surplus from hospital, which comes to 10.57% of the total' receipts and also from sale of medicine which comes to 20.02% of the total receipts. AO has also held that substantial amount has been paid to persons which are related to the trustees and are claimed under the head of rent and professional charges. It is also stated that no separate books of accounts have been maintained for lab and other business activities which is mandatory u/s.11(4) of the IT Act.

4.7 AO has held after considering the submissions made by the appellant and going through various judicial decisions that trust is running its institutions on commercial principle and earning huge profits. The activities of the trust cannot be termed as charitable within the meaning of section 2(15) of the IT Act and therefore the surplus of Rs. 2,09,98,893 is to be taxed as income in the capacity of an AOP.

4.8 AO has also held that professional payments of Rs.65,42,155 are covered by provisions of section 13(l)(c) of the IT Act r.w.s. 13(3) of the IT Act and are found reasonable and were not treated as an application of income u/s 11(1) of the IT Act. Accordingly, this amount was also brought to tax by the AO as an income of the in the capacity of AOP.

4.9 The appellant has submitted that there is no justification in the action of the AO to adopt a different approach as has been held by the Hon'ble Supreme Court in the case of CIT v. Excel Industries Ltd. (2013) 358 ITR 295 (SC) and Radha Soami Satsang v. CIT (1992) 193 ITR 321 (SC). There is no material change in the facts in all the previous years and the view taken for previous years would continue on the principle of consistency the assessee finds support from the decision reported in 245 ITR 492, 264 ITR 276. It is stated that exemption had been granted to the assessee u/s 11 from the A.Y. 1991-92 consistently for twenty six years. There is absolutely no change of circumstances and there was no occasion for a different approach to be taken for the assessment year in question when the activities have continued uninterruptedly since the time of inception of the institution and the fact that the assessee is a non-profit organization and it has not been disputed.

4.10 The appellant has submitted that hospital is running a chemist shop which is an integral part and is also approved by the CIT while giving approval to the trust and has been there since 1991. It is also stated that a complete list of concession of Rs. 24.78 lacs which includes medical camp, free OPD etc has been given to the AO, which is not disputed. It is submitted that profit rate of 22.43% has been accepted during previous year and therefore profit of 20.02% on chemist shop in this year is not unreasonable as no benefit has been derived by the trustees on account of this.

4.11 *The appellant has further stated that profit computed by the AO is only of one unit and combined profit of all the units is only 1.05% and it is stated that same AO has accepted profit rate of 9% in the previous year. The appellant has stated that comparative analysis of rates charged by the other hospitals like SGL hospital is not fair as this hospital receives donations and grants from government. The appellant has submitted that more than 85% of the receipts are utilized for the purposes of the trust, which is not disputed by the AO and earning of reasonable profit is not fatal for claim of exemption u/s 11 of the IT Act. The appellant has relied upon the decision of Hon'ble Punjab & Haryana High court in the case of CIT vs CT Education Society 253 CTR 518 for this proposition.*

4.12 *The appellant has further justified the payments made to Doctor R.S. Chahal not a trustee but a relative and is a renowned practitioner in this field in this part country. He has been drawing amounts in this range for the last five years and have been filed to support its contentions. It is stated that due taxes have been the recipients on the incomes received on account of rent and professional fees. These payments have been accepted in the past many years. It is stated that payments made to the doctors are only 6.82% of the total professional charges and consist of only 2.6% of the total receipts of the trust.*

4.13 *The appellant has also stated that complete books of accounts, bills and vouchers of each and every unit of the trust have been maintained which are duly audited and no deficiency has been pointed out by the AO. All the major payments have been made through account payee cheque and therefore AO was not justified in disallowing the loss from Kinder Women Hospital. It is submitted that the action of the AO in disallowing the entire expenditure and treating the entire receipts as income of the trust is uncalled for and not justified. The appellant has relied upon a number of judicial decisions to support its contentions.*

4.14 *The appellant has submitted that provisions of section 2(15) of the IT Act clearly provide that provision of medical relief is covered with in the definition of charitable purpose. The appellant has also relied upon the circular issued by the CBDT on this issue.*

4.15 Having considered the material available on record, I find that appellant trust is claiming the benefit of exemption of income u/s 11 of the IT Act for the last more than 25 years. I find that as regards the nature & purpose of activities carried out by the trust are concerned, the amount of profit earned there-from has to be viewed as a whole rather than segment wise because at times surplus of one segment would help in meeting the deficit of other segment. For this purpose, it would be appropriate to compare the aggregate receipts, expenses and net surplus for period of 5 years which would involve 2 years preceding and 2 years succeeding the year under consideration. The comparative results are as under:-

Asstt year	Total Receipts	Revenue Expenditure	Capital Expenditure	% of utilisation	Net Profit	Of NP
2012-13	16,70,35,839	15,84,11,623	10,71,38,157	158.97%	86,24,216	5.2%
2013-14	22,24,44,203	20,23,32,884	1,50,74,392	97.74%	2,01,11,319	9.0%
2014-15	24,78,08,876	24,40,52,624	3,23,57,155	111.54%	37,56,252	1.5%
2015-16	26,08,99,385	25,92,25,608	1,64,88,843	105.68%	16,73,777	0.6%
2016-17	24,87,55,805	24,39,23,365	6,86,68,148	125.66%	48,32,440	1.9%

4.16 It is seen from the above table, that surplus income (NP) rate has varied from 0.6% to 9% and it is 1.5% for the year under consideration as against 20.02 % stated by the AO in the order. Further, as regards the profit on sale of medicines is concerned, this fact cannot be ignored that it is only the composite profits are to be considered and the activities of the trust as a whole are to be considered for this purpose. The chemist shop as part of the trust is being run since inception and has been accepted in the previous year also and with a higher profit rate of 22% as well on this segment in the preceding year and has been accepted as such. It is seen from the above table that total Surplus/Net profit comes to only 1.5% of the total receipts and as long as these are deployed for the purposes of the trust, it does not lead to the fact that activities are being carried out on commercial principles.

4.17 I find force in the contentions of the appellant that the issue of disallowance of loss of Kinder Women Hospital by the AO is not

*justified in the absence of any finding with regard to the expenses claimed. The appellant has submitted that all the expenses are duly vouched and audited and it was started as new unit in March, 2012 but could not sustain the operations and was eventually closed down. Further, I find that **no** material has been brought on record by the AO before disallowing the claim of loss on this unit. Therefore, I hold that there is no justification in disallowing the loss claimed on account of this unit.*

4.18 Further, I find that the issue of earning of profits by the charitable trust in the course of their activities has been considered in detail by the Hon'ble Punjab & Haryana High Court in the case of CT Educational Trust. It is found that profit rate declared by the appellant has been accepted in the past as well and considering the fact that it is 1.5% for the year under consideration, I hold that no adverse inference can be drawn from this.

4.19 In view of the above facts and material available on record, I find that it cannot be held that activities of the trust are being run on commercial principles and there is no justification in the action of the AO in denying the claim of exemption of income u/s 11 of the IT Act. Accordingly, I direct the AO to allow the claim of exemption of income u/s 11 of the IT Act to the appellant.

4.20 Further, as regards the issue of payment of professional charges to Dr. R.S. Chahal is concerned, the finding given by the AO that payments made to the doctor 11.52% of total professional charges claimed is stated by the appellant to be not rect. The appellant had filed a chart of payments made to different doctors :-

<i>Dr. VijayNanda</i>	<i>:</i>	<i>Rs. 68,60,728</i>
<i>Dr. Ravi Angral</i>	<i>:</i>	<i>Rs. 68,57,756</i>
<i>Dr. R.S. Chahal</i>	<i>:</i>	<i>Rs. 65,42,155</i>
<i>Dr. Manoj Chaudhary</i>	<i>:</i>	<i>Rs. 54,31,589</i>
<i>Dr. Atul Khullar</i>	<i>:</i>	<i>Rs. 46,61,318</i>
<i>Dr. Satish Mishra</i>	<i>:</i>	<i>Rs. 80,28,920</i>

4.21 Further, it is seen that payments in the same range have been made to the doctor R.S. Chahal who is a reputed professional in his area of Specialization and also payments of similar amounts or even higher amount have been made to other doctors as well. The

appellant has also submitted an evidence of ITRs being filed by the doctor wherein the income earned has been declared after making payment of due taxes. Further, it is seen that payments of Rs.61,94,562 made to Dr. R.S. Chahal in the preceding year has been accepted by the AO. The appellant has also submitted that payments to other related parties on account on rent have been made after deducting tax at source and were also claimed in the earlier years. Thus, considering all these factors and in the absence of any adverse material on record, I hold that there is no justification in invoking the provisions of section 13(l)(c) of the IT Act r.w.s. 13(3) of the IT Act as the element of unreasonableness in making payments has not been established.

Accordingly, I hold that these payments have to be treated as an application of income as these were incurred for the purpose of trust.”

6. With the assistance of Id.representatives, we have gone through the record carefully. Before embarking upon an inquiry on the facts and reasoning given by the AO in order to find out whether the assessee society is entitled to be treated as a charitable trust within the meaning of section 2(15) of the Act and benefit of sections 11 and 12 of the Act is to be granted to it for assessing its income. We deem it appropriate to bear in mind the scheme of the Income Tax Act for assessments of charitable institution. Therefore, it is imperative upon us to take note of the relevant part of the provisions viz. sections 2(15), section 11 and 13. They are as under:

“Section 2(15) "charitable purpose" includes relief of the poor, education, yoga, medical relief, preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest, and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering

any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity, unless—

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and*
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed twenty per cent of the total receipts, of the trust or institution undertaking such activity or activities, of that previous year;*

11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

- (a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;*

Section 11(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.

13. (1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

- (a) any part of the income from the property held under a trust for private religious purposes which does not enure for the benefit of the public;*

Section 13(3) The persons referred to in clause (c) of sub-section (1) and sub-section (2) are the following, namely :—

- (a) the author of the trust or the founder of the institution;*
- (b) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds fifty thousand rupees;*
- (c) where such author, founder or person is a Hindu undivided family, a member of the family;*
- (cc) any trustee of the trust or manager (by whatever name called) of the institution;*
- (d) any relative of any such author, founder, person, member, trustee or manager as aforesaid;*
- (e) any concern in which any of the persons referred to in clauses (a), (b), (c), (cc) and (d) has a substantial interest.*

7. Section 2(15) of the Income Tax Act provides definition of expression “charitable purpose”. A perusal of the above provision would indicate that it contained two parts. In the first part there are four main activities which are to be carried out by an institution/trust/society.

These are –

- relief of the poor,
- education, yoga,
- medical relief,
- preservation of environment ...

These activities are being considered as *per se* charitable. In second part there is only one activity that embrace various types of work undertaken by the society/trust namely “advancement of any other objects of general public utility”. Since in the appeal in hand, this part does not involve, we need not delve into this aspect. In brief, this activity can be treated uncharitable if hit by conditions provided in the *proviso* to section i.e. an assessee should not carry out activities in the nature of trade, commerce

or business for fees, cess or for any other consideration. In other words, it should not be carried out with a profit embedded intention or motive. If some incidental profit is there, then it is a secondary circumstance. Sub-clause (i) and (ii) further provides guidance and conditions to find out whether this fifth category of activity is being carried out on trade, commerce or business. Since this aspect is not involved in this appeal, therefore, it is not necessary to go in detail. The activity undertaken by the assessee is medical relief, and same is *per se* charitable.

8. Next condition is that such institution/trust should get itself registered under section 12AA of the Act. Section 12AA of the Income Tax Act provides that on receipt of an application for registration by the Pr.Commissioner/Commissioner from a trust/institution under this section he will call for such documents or information from the trust or institution as he thinks necessary in order to satisfy himself about; (i) genuineness of the activities of the trust/institution, (ii) compliance of such requirement of any other law for the time being in force by the trust or institution as material for the purpose of achieving its objects. The Id.Commissioner thereafter may make such inquiry as he may deem necessary in this behalf. Once he has satisfied with the genuineness of activities of the trust or institution, and also satisfied with the objects and compliance of any other laws, then he would pass an order in writing registering the trust or institution.

9. In the present case, such registration was granted way back in 1991. It is still intact. Sub-clause (iii) further empowers the Commissioner to hold an inquiry and find out if activities of such trust

or institution are not genuine or not being carried out in accordance with the objects of trust or institution, then after providing an opportunity to such institution he will pass an order in writing for cancellation of the registration. Thus, for claiming benefit under sections 11 and 12 of the Act, an assessee should be a charitable institution and it should have registered under section 12AA of the Act. As observed earlier, medical relief is *per se* considered as a charitable activity. It is also found from the record that registration under section 12AA has been granted to the assessee, and it is still intact.

10. Keeping in mind the above provision, let us evaluate section 11 of the Income Tax Act. A bare perusal of this section would indicate that basic condition for claiming benefit under section 11 is that income should be derived by a trust/society from the property held under the trust for charitable purpose. The trust or institution should have been registered under section 12AA of the Act. The accounts of the trust should have been audited by chartered accountant and return of income should have been furnished. 85% of the receipt ought to have been applied on the objects of the trust. This section further provides how surplus from unutilized receipts is to be treated; whether assessee has applied for accumulation of such receipts for the future application on the objects of the society or not. Section also contains mechanism in this regard as to how an assessee can accumulate surplus receipts over expenditure for the purpose of future application, and how it has to intimate the AO with regard to such unutilized receipts. No circumstance is available in the present case, neither the AO has

recorded. Therefore, again much discussion is not required on other procedural aspect of section 11.

11. Similarly, a perusal of section 13 would indicate that if any part of income from the property held under a trust does not enure for the benefit of public, and it has been used for the benefit of certain individuals who happen to be relatives of the trustee, then such receipt will not qualify for exemption under sections 11 and 12 of the Act. In other words, benefit of section 11 and 12 would not be available. For this purpose, list of persons who could be categorized as enured undue benefit from the trust or institution provided in section 13(3) of the Act. If some undue benefit is being extended to such persons on account of their position in the institution/trust, then to that extent that income would not qualify for exemption, and will be brought to tax.

12. Keeping in mind, this basic scheme of Income Tax Act for assessment of charitable institution, let us revert to the facts of the present case. In the opening part of the order, we have briefly summarized the reasons assigned by the AO for denying the benefit of sections 11 and 12 to the assessee. However, it is pertinent to observe that the assessee is providing medical help. It is a charitable object as contemplated in section 2(15) of the Income Tax Act. The assessee has been enjoying registration under section 12AA, which is still intact. Taking note of these two factors, we have to evaluate, whether the AO is able to lay his hand on the material which can lead him to arrive at a conclusion that in the garb of object of providing medical relief, the assessee has been doing some commercial activities, and therefore, its

activities should not be treated as charitable. Similarly, upto and until, activities of the assessee are found to be charitable and genuine by an higher authorities i.e. Commissioner, while granting registration to the assessee under section 12AA could be doubted without bring evidence to the notice of the Commissioner at the end of the AO and applying for the canellation under section 12AA. In this background, we are going to take note of each objection raised by the AO in the assessment order which did not meet approval of the Id.CIT(A). Before taking up main aspect, it is also pertinent to note that at the time of hearing, the Id.cousnel for the assessee at the very outset submitted that Hon'ble Supreme Court in the case of CIT V. Excel Industries Ltd., 358 ITR 295 (SC) and Radha Soami Satsang Vs. CIT, 193 ITR 321 (SC) has held that if there is no material change in the facts of all the previous years, and view taken for previous year has not been disturbed by the higher forums, then the same view ought to be taken in the subsequent assessment year. On the strength of these judgments, he contended that in the previous year and in the sequent years, status of the assessee has been accepted as charitable institution. Assessments have been passed under section 143(3). He placed on record copy of the assessment orders for the Asstt.Year s011-12 and 2013-14 on pages no.59, 60 and 61 of the paper book. Identical activities have been carried out by the assessee in those years. He also submitted that since inception the assessee has been running hospital, diagnostic centres and pharmacy in the hospital. There is no change in the facts and circumstances in these years. *Qua* this proposition, the Id.DR was unable to point out any aspect. He failed to bring to our notice any changes which authorise the

AO to take different stand in this assessment year. Therefore, on this preliminary reason itself, order of the CIT(A) should be upheld, but nevertheless, we would like to go into circumstances narrated by the AO for arriving at a conclusion, whether settings of these circumstances as whole could goad any adjudicating authority to record a finding that activities of the assessee are not charitable, and therefore, benefits under sections 11 and 12 of the Act should be denied to the assessee.

13. First circumstance highlighted by the AO is that the assessee is running a pharmacy in the hospital. While impugning orders of theld.CIT(A), the ld.DR relied upon order of the AO and contended that running a pharmacy in the hospital is an independent business activity, and therefore, the profit earned in such running of a pharmacy ought to be separately assessed. On the other hand, the ld.counsel for the assessee relied upon written submissions made before the CIT(A) as well as synopsis filed during the hearing before the Tribunal. We have duly considered these objections of the AO and the explanation of the assessee. The stand of the assessee is that hospital provides various services for 24-hours in various medical fields. Therefore, it becomes more necessary and forms a duty on the part of the Trust to run its medical stores to provide medicines to the patients as prescribed by the doctors. The hospital runs medical shops for 24-hours in order to meet emergency requirement of the patients, who are admitted in the emergency. According to the assessee, it has maintained separate books of accounts and those were produced before the AO. We find that the AO has not specifically rebutted the stand raised by the assessee. The maintenance of pharmacy has been considered in the past as ancillary to

the object of running a hospital. It is to be appreciated that how the attendant of the patient would procure medicine from outside during emergency hours, and more so in the night. Thus, it could be considered as an integral part of the hospital activity. It is akin to running hostel alongwith educational institution. It is pertinent to note that when any explanation or a defence of an assessee based on number of facts supported by evidence and circumstances required consideration whether explanation is sound or not must be determined not by considering the weight to be attached to each single fact in isolation but by assessing the cumulative effect of all the facts in their setting as a whole. The AO ought to have appreciated concept of a running of hospital as well. He should not consider running of medical stores in isolation, but he should have appreciated that this medical shop is an essential part for running of a hospital. It is also pertinent to mention that the assessee has already maintaining separate books of accounts and section 11(4A) requiring the assessee to maintain separate books of accounts before some business is being carried out is concerned, the profit from medical store is incidental to the main object and not as separate business activity at the end of the assessee. The AO failed to appreciate this distinction which has been appreciated by the Id.CIT(A) while reversing the finding of the AO. It is also to be appreciated that in the last more than 12-13 years, this has never been doubted by the Income-tax Department, then what is the strong motive in this year to disbelieve the version of the assessee ? Therefore, we find that no merit in the first fold of reasoning given by the AO to reverse the finding of the CIT(A).

14. Next reason assigned by the AO is that the assessee is showing huge profit, and therefore it is to be construed that the hospital is being run on commercial line under the shadow of a charitable institution. We have gone through the details as well as circumstances highlighted by the Id.AO. The Id.CIT(A) as a matter of fact found that the AO has not appreciated activities of the assessee as a whole, rather he has carved out the higher range of profit under one unit. The Id.CIT(A) took note of total receipts, revenue expenditure, capital expenditure etc. in para 4.15 of the impugned order. The AO has compared rate of such hospitals who were provided subsidies from the Government. SGL Hospital, whose rates were relied by the AO, received subsidies/donations/grants from Government, therefore, rates of such hospital cannot be compared with rates of the assessee, who has to take care of day-to-day operational expenses, and future expansion in the area of investigative tools viz. x-ray machines, CT-scan etc. These equipments require higher lay out of the capital, and therefore in order to remain in competition with the hospitals, and to provide best facility to the patients, and to provide medical help, the assessee has to upgrade its investigative tools. Therefore, the rates considered by the AO are not relevant rates for determining higher range of profit in the hands of the assessee. We have made reference to submissions summarized by the Id.CIT(A) while taking note of the written submissions of the assessee. We have gone through these submissions. On an analysis of the details submitted by the assessee as well as considered by the AO, we are of the view that the AO has made reference to irrelevant claims for working out higher rate of profit in the hands of the assessee for running a hospital. After going

through order of the Id.CIT(A), we do not see reason to interfere in the order on this fold of reasoning also.

15. The next reason assigned by the AO is that it has paid higher consultancy charges to Dr.R.S. Chahal and this payment was being made simply for the reason that Dr. Chahal is trustee of the institution. Firstly, this finding has been found to be incorrect by the Id.CIT(A). Dr.Chahal is not a trustee, but relative of the trustee. Nevertheless he falls in the category of the persons provided in section 13(1)(c) of the Act. Thus, it has to be decided whether payment of alleged salary of Rs.65,42,155/- to Dr.Chahal is on the higher side or not. It is pertinent to note that basic purpose of section 13(1)(c) is that a charitable institution should not provide undue benefit to any relatives or trustee or any other because of his position in the institution. In other words, one has to determine at how much salary, services similar to Dr.Chahal could be available from the open market. In order words, had he not happened to be relative of the trustee, could he command this much salary ? A perusal of the assessment order would suggest that the AO has failed to take note of educational qualification of the Dr.R.S.Chahal, who is a nephrologist. The AO tried to compare his salary with an anesthesiologist. The AO nowhere made reference to the salaries of any other nephrologist having qualification of Dr.R.S.Chahal in the open market in other hospitals. He could appreciate if he could able to lay his hand on the material that a particular doctor having identical educational qualification and experience in the medical field is paid at lesser amount in similar type of hospital. There may be certain Government institutions where instead of making salary payment at this level, other facilities like housing and

transportation etc. may be extended to the medical professions. Thus, the Id.CIT(A) has rightly appreciated the facts and circumstances and also considered rule of consistency.

16. The next reason assigned by the AO is that loss from Kinder Hospital should have not been claimed by the assessee. During the assessment proceedings, the AO noted from the balance sheet of Kinder Women Hospital that the assessee has not shown any receipts, rather it has claimed various expenditure for running of this centre. It was explained by the assessee that this unit could not be run successfully and therefore it was closed down. The unit was functioning from the rented premises and paid rent amounting to Rs.71,72,980/-. The assessee has also to incur certain other fixed overhead expenses which also contributed to the increase in loss. The assessee was under obligation to run the unit for a minimum period of three years as per the registered lease agreement with the land landlord; that immediately after the expiry of lease period, assessee vacated the premises and closed down the unit in order to avoid increasing loss due to recurring and fixed overhead expenses. The Id.AO doubted contentions of the assessee and denied its claim by holding that as there is no income or activity by the assessee for the purpose of the trust. Before the Id.CIT(A), the assessee has also submitted that new unit of advance gastroenterology set up in March, 2012 on rented premises became unviable, and therefore it was to be closed down, which was very much part of the assessee hospital. The expenses as claimed by the assessee were accounted for and audited. The AO has not pointed out any defect in the books of accounts and has

not brought any material on record on account of disallowance of expenses. On one hand, the AO accepted receipt of Rs.5,09,900/-, but on other hand, disallowed entire expenditure incurred by the trust at Rs.1,72,42,642/-. The assessee also submitted that similar loss amounting to Rs.68,79,289/- for the Asstt.Year 2013-14 was accepted by the AO vide order dated 15.3.2016, and further loss of Rs.98,42,611/- for the Asstt.Year 2015-16 was also accepted by the AO vide order dated 23.11.2017. The Id.CIT(A) after considering submissions of the assessee held that the AO was not justified in denying the claim of the assessee in absence of any material finding and he allowed the claim of the assessee.

17. On due consideration of the above facts and circumstances, and after hearing both the sides, we find no infirmity in the order of Id.CIT(A) on this issue, more so in view of the fact that similar losses have been accepted by the Department for the assessment years 2013-14 and 2015-16.

18. Taking into consideration the order of the Id.CIT(A) in entirety and the facts and circumstance, and the rule of consistency, we are of the view that no interference is called in the order of the CIT(A). The appeal of the Revenue is devoid of any merit, hence stands dismissed.

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

Order pronounced in the Court on 21st December, 2020 at Chandigarh.

Sd/-
N.K. SAINI
(VICE-PRESIDENT)

Chandigarh; Dated 21/12/2020

Sd/-
(RAJPAL YADAV)
(VICE-PRESIDENT)

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण,/ ITAT, Chandigarh

Vk*