

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
ANDSHRI GEORGE GEORGE K, JUDICIAL MEMBER**

ITA Nos.1667 & 1668/Bang/2019
Assessment year : 2013-14 & 2014-15

The Dy. Commissioner of Income-tax (Exemption), Circle-1, Bengaluru.	Vs.	M/s Karnataka ChinmayaSeva Trust, CMH Road, Indiranagar, Bengaluru-560 038. PAN – AAATK 0797 Q
APPELANT		RESPONDENT

CO Nos.3 & 4/Bang/2021
Assessment year : 2013-14 & 2014-15
(By assessee)

Revenue by	:	Shri Shankar Ganeshan, JCIT (DR)
Assessee by	:	Dr. N Suresh, C.A

Date of hearing	:	02.11.2021
Date of Pronouncement	:	02.11.2021

**ORDER**

**PerBench :**

The appeals by the Revenue and Cross-objections filed by the assessee are directed against the different

orders of the CIT(A) for the asst. year 2013-14 and 2014-15.

2. The Revenue has raised following common grounds in this appeal, which reads as follows:-

*“a) The order of the CIT(A) is opposed to facts and circumstances of the case.*

*b) Whether in the facts and circumstances of the case, the CIT (A) is right in directing the assessing officer to delete the addition u/s. 11(4A) of the I T Act, 1961, made on account of income from Pharmacy Unit.*

*c) Whether in the facts and circumstances of the case, the CIT (A) is right in not appreciating the fact that the assessee has not maintained separate books of account viz, independent ledgers, journals, cash book, bank book etc. except for purchase and sale account in respect of its Pharmacy unit.*

*d) The CIT(A) has failed to appreciate the fact that the AO has also made the finding in assessment order that the accounts of pharmacy unit are merged with Chinmaya Mission Hospital Accounts.*

*e) Whether CIT(A) is right in not appreciating the fact that the activities carried out by the assessee with regard to pharmacy unit are "admittedly" in the nature of a business and, therefore, the provisions of Section 11(4A) are attracted, with the result that the assessee should maintain separate books of accounts for such activities in respect of pharmacy unit.*

*f) Whether in the facts and circumstances of the case, CIT(A) while deleting the addition u/s.11(4A) of the Act, is right in relying on the decision of the Supreme Court in the case of M/s. Aditanar Educational Institute Etc. Vs. Addl.CIT,224 ITR 310, wherein the facts relied upon are distinguishable and not applicable to the facts of the assessee's case.*

*g) Any other ground to be raised at the time of hearing the appeal.”*

3. The assessee has filed Cross-objections in support of the order of the CIT(A) and raised the following grounds:-

*“The order of the CIT under the facts and circumstances of the case is in accordance with the provision of sec 11 of IT Act, 1961.*

*2. On the facts and circumstances of the case CIT(A) is right in directing the AO to delete the addition u/s 11(4A) of the IT Act, 1961 made an account of income from pharmacy unit and allowed exemption.*

*3. On the facts and circumstances of the case, the CIT(A) is right in appreciating that the separate books of account not required to be maintained for the pharmacy unit.*

*4. CIT(A) is right in appreciating the fact that the activities carried out by the assessee with regard to pharmacy unit are not in the nature of business. Therefore, the provision of Sec. 11(4A) are not attracted. Therefore separate books of account for such activities in respect of pharmacy unit are not required. The CIT(A) has correctly held that the predominant object is charitable therefore, entitled to exemption u/s 11.*

*6. On the facts and circumstances of the case, CIT(A) is rightly held by deleting the addition u/s 11(4A) of the Act by relying on the Supreme Court in the case of M/s. Aditanar Educational Institute Etc. V/s Addl. CIT 1 224 ITR 310(SC).”*

4. There was a delay of 47 days in filing the appeal by the Revenue before this Tribunal. The AO explained delay in filing the appeal before the Tribunal vide petition dated 19/7/2019 that the delay is due to procedural aspect and, which may be condoned. In our

opinion, the delay is due to administrative reasons and there is good and sufficient reason to condone the same in the interest of justice. Accordingly, the delay in filing these appeals are condoned and the appeals are admitted for adjudication.

5. There were 447 days delays in filing the Cross-objections before this Tribunal. The assessee has not explained the delay in filing this Cross-objections in proper manner and it has not given any reason for such delay. Though, we consider the delay was due to COVID-19 from March, 2020, the delay before March 2020 has also not been explained by the assessee before us in the proper manner. There is no good and sufficient reason to these cross objections filed belatedly before this Tribunal. Accordingly, the Cross-objections filed by the assessee are dismissed *inlimine*.

6. Now, coming to the appeals filed by the Revenue, we consider the facts narrated in ITA No.1667/Bang/2019 in the asst. year 2013-14.

**The brief facts of the case are as under:-**

7. The assessee is a Public Charitable Trust registered under the Indian Trust Act 1882. The Trust is also registered u/s 12A(a) of the Income Tax Act, vide certificate of registration No. TRUST/718/1OAIVOL.A1/374 dated 20.12.1985 issued by the CIT, Karnataka -II, Bangalore and the trust is also enjoying recognition u/s 80G of the Income Tax Act, vide order No. DIT(E)BLR/80G(R)/702/AAATKO797Q/ITO(E)-1 VOL2009-10 dt.26.11.2009.

8. The assessee is carrying on activities of the nature of Charitable as defined under section 2(15) of the Income Tax Act ,1961 and, therefore, is eligible for exemption as per the provisions contained in sections 11, 12 and 13 of the Act.

9. For the Assessment year 2013-14, the assessee had filed the return of income, admitting gross receipts of Rs.35,67,77,831/- and total income as NIL after claiming specific deductions.

<b>Details of Income</b>	<b>Amount (In Rs.)</b>
(a) Interest on Bank Deposits & Unit Trust of India	2,02,54,937
(b) Voluntary Contribution	1,91,84,155
(c) Other Income	31,73,38,739
<b>INCOME</b>	<b>35,67,77,831</b>
<b><u>Application for Charitable purposes</u></b>	
(a) Amount Exempted U/s 11(1)(a), 15% of income of Rs. 35,67,77,831/-	5,35,16,675
(b) Amount applied towards maintenance expenses	23,85,18,613
(c) Amount applied for acquisition of fixed assets	4,25,99,530
(d) Depreciation on fixed assets	3,91,05,648
<b>Total amount applied for Charitable purpose in India</b>	<b>37,37,40,466</b>
<b>Excess Amount applied for Charitable Purpose in India</b>	<b>(1,69,62,635)</b>
<b>Taxable Income</b>	<b>NIL</b>

10. The trust has been established with the object of promoting relief to the poor, education, medical relief, and the advancement of any other object of general public utility as defined u/s 2(15) of the Act. The trust has accordingly established schools, nursing institutes at various centers and a hospital by name Chinmaya Mission Hospital with a pharmacy attached to the hospital. The trust has its centers at Bangalore,

Mysore, Mandya, Mangalore, Shimoga, Kolar, Sagar, Tiptur amongst others to carry on its charitable activity. The Trust has been receiving interest on deposits from Bank and others and also income from schools, nursing institute and hospital with pharmacy attached thereto which are the properties of the Trust and the Income from Pharmacy unit considered separately.

11. The assessee is also running a hospital under the name 'Chinmaya Mission Hospital' as a part of medical relief which being one of the objective of the trust as defined u/s 2(15) with a pharmacy inside the hospital. The medicines are purchased by the inpatients and out patients who visits the hospital. The assessee has received service charges of Rs. 15.75 crores from the inpatients and out patients amongst other receipts. The Hospital has supplied medicines valued at Rs. 7,93,67,379/- to its in patients and out patients at the MRP prescribed by the companies resulting in surplus of Rs.1,63,64,866/-. The assessee is maintaining separate books of accounts recording the purchases, sales and inventory and based on such records, is also paying VAT to the government of Karnataka by filing

monthly and annual returns as required under Karnataka Value Added Tax Act.

12. The AO has computed the net surplus of Rs. 1,63,64,866/- from the pharmacy unit and has considered the same separately u/s 11(4A) stating that assessee is running it as business venture rather than charitable entity alleging no separate books of accounts in respect of pharmacy business is maintained.

13. Before CIT(A) the assessee submitted that the provisions of Section 11(4A) specifies that Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) of Section 11 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.

14. The CIT(A) observed that the Assessing Officer is not correct in invoking provisions of Section 11(4A) as

the pharmacy unit maintained by the appellant is not a separate unit and is part of Chinmaya Mission Hospital maintained with the objective of attaining the one of the objects of the trust i.e., providing medical relief. The pharmacy unit procures and supplies the medicines for the purpose of effectuating the charitable objective of providing 'medical relief to the general public at large'. Merely because the activity yielded some surplus, a negative inference cannot be drawn. If the predominant object is to carry out as a charitable purpose and not earn profit, the organization would not lose its charitable character merely because some surplus arises from the charitable activity.

15. The CIT(A) placed reliance on the judgment of Hon'ble Supreme Court in the case of Aditanar Educational Institute Etc. Vs. Addl.CIT, 224 ITR 310 wherein, the addition is deleted by observing as under:-

*"while construing the provision of section 10(22) that the decisive or acid test is whether on an overall view of the matter the object is to make a profit. If after meeting the expenditure any surplus results incidentally from the activity lawfully carried on by the institution, it will not cease to be one existing solely for the statutorily stipulated purpose so long as the object is not to make a profit . Again, it is a well*

*settled position in law that the dominant nature of the purpose for which the trust exists has to be considered. The Chief Commissioner has not doubted the genuineness of the trust or the fact that it is running a hospital. A hospital must of necessity have a section or department where medicines can be dispensed and it is not uncommon for a medical hospital which exists even for philanthropic purposes to have a chemist shop where pharmaceutical products are sold. This is a facility which is intended to be used predominantly by patients and their relatives."*

16. Against this, the Revenue is in appeal before us.

17. We have heard both the parties and perused the materials on record.

18. The ld.DR placed reliance on the judgment of the Bombay High Court in the case of Indian Machine Tool and Manufactures Association Vs. DIT(Exemption) in 302 CTR 289 wherein, it is held that the assessee has claimed exemption u/s 11 in respect of surplus earned by it by well organized exhibition and regular activity was incidental to assessee's business but assessee could not maintain separate books of account in respect of said activity as mandated u/s 11(4A) of the Income-tax(Exemption). Hence, exemption u/s 11 could not be granted.

19. Further, he relied on the judgment of Hon'ble Karnataka High Court in the case of DCIT VS. Moogambigai Charitable Educational Trust 281 taxmann.com 349(Kar), wherein, it is observed as under:-

*“Where Tribunal held that pharmacy income of assessee trust was charitable income and not business income, however, had not recorded any reasons whether or not assessee had complied with conditions mentioned in section 11(4A), order passed by Tribunal was cryptic and suffered from vice of non-application of mind and therefore, finding of Tribunal could not be sustained.”*

20. Thus, he submitted that running of pharmacy is incidental activity of the assessee and the assessee has not maintain separate set of books of account as prescribed in sec.11(4A) of the Act and hence, the assessee was not entitled to exemption of income earned from pharmacy.

21. The ld.AR submitted that running pharmacy is not incidental business of the assessee and on the other hand, it is part and parcel of the main object of the trust activity of the assessee and being so, the assessee is not required to maintain separate set of books of account as enumerated u/s 11(4A) of the Act. He

submitted that the assessee has been established and carried out the following activity.

*“4.2. The one of the objective of the assessee-trust is "To provide medical relief to the poor, distressed, afflicted and mentally, physically, or psychologically handicapped persons, in India including supply of spectacles and other medical, surgical and remedial appliances and for this purpose to start, establish, conduct, maintain and manage and help dispensaries, hospitals, medical centres, diagnostic centres or other medical or aftercare institutions." The affirmations of the AO for bringing to tax the surplus income from pharmacy by invoking provisions of section 11(4A) of the Act areas under:*

- 1. No separate books of account are not maintained except purchase and sale account in respect of pharmacy unit.*
- 2. On perusal of purchase and sale of medicine and after determining surplus amount, it is concluded by the AO that assessee is running pharmacy unit as business entity rather than charitable trust.”*

22. Thus, while carrying on the above activities, the assessee has also carried on the business of pharmacy and income from that business was used for charitable purposes viz., providing medical relief to the poor public etc., and the assessee has claimed exemption u/s 11 of the Act for the income earned from the business of pharmacy.

23. The case of the Revenue is that the pharmacy shop constitutes an independent business that requires

maintenance of the books of account separately in addition to the books of account maintained for the purpose of business of the hospital run by the assessee. When, such separate books of accounts are not maintained for pharmacy, there is a violation of provisions of section 11(4A) of the Act resulting in denial of exemption in respect of profits relatable to the said pharmacy shop.

24. On the contrary, the case of the assessee is that the running of a hospital includes a running of pharmacy as well. Therefore, the pharmacy business is not an independent business activity so far as the assessee is concerned. In fact, the same constitutes an integral part of the business of running of a hospital. For this proposition, assessee relied on various decisions, which were already cited above. As the assessee has undisputedly maintained the books of account for the hospital separately, the assessee fulfils the condition of maintaining the separate books of account for the integral business activity for all integral business activities of running of a hospital i.e pharmacy shop as

well. Therefore, there is no violation of the twin conditions specified in section 11(4A) of the Act. 7

25. We have perused the relevant provisions of section 11(4A) of the Act and the same reads as under:-

*“Sec: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 .....*”

*“ We have also examined the relevant proviso to section 10(23C) of the Act and the relevant portions are extracted as under:*

*“Provided also that nothing contained in sub-clause (iv) or sub-clause (v) [or sub clause (vi) or sub-clause (via)] shall apply in relation to any income of the fund or trust or institution [or any university or other educational institution or any hospital or other medical institution], being profits and gains of business, unless the business is incidental to the attainment of its objectives and separate books of account are maintained by it in respect of such business;”*

26. From the comparison of the language of the two provisions extracted above, we find, the language used in the provisions are comparable and, therefore, the common purpose is easily decipherable by the above provisions appearing in to different sections from the

Act. Therefore, we agree with the relevant argument propounded by the Ld Counsel for the assessee.

27. Regarding the argument pertaining to whether the pharmacy shop is an integral part of the hospital business, as mentioned above, we find that the High Court of Bombay in the case of Baun Foundation Trust Vs. CCIT (73 DTR 45), which was delivered in the context of the provisions of section 10(23C) of the Act and find relevant to extract the relevant para which is as follows:-

*“4. In Aditanar Education Institute Etc. v. Additional Commissioner of Income Tax (1997) 224 ITR 310 (SC), the Supreme Court has observed, while construing the provisions of Section 10(22) that the decisive or acid test is whether on an overall view of the matter the object is to make a profit. If after meeting the expenditure any surplus results incidentally from the activity lawfully carried on by the institution, it will not cease to be one existing solely for the statutorily stipulated purpose so long as the object is not to make a profit. Again, it is a well settled position in law that the dominant nature of the purpose for which the trust exists has to be considered. The Chief Commissioner has not doubted the genuineness of the trust or the fact that it is conducting a hospital. Even if the figures which are taken into account by the Chief Commissioner are to be had regard to, it is evident that the activity of a chemist shop is an activity which is incidental or ancillary to the dominant object and purpose which is to run a hospital. The Chief Commissioner has accepted that the surplus which is earned from the operation of a chemist shop is utilized for the purposes of the hospital. A hospital must of necessity have a section or department where medicines can be*

*dispensed and 8 it is not uncommon for a medical hospital which exists even for philanthropic purposes to have a chemist shop where pharmaceutical products are sold. This is a facility which is intended to be used predominantly by patients and their relatives. Though the members of the general public are not prohibited from using the facility, the crucial question to ask or the test to answer is whether the establishment of a chemist shop is incidental or ancillary to the dominant object and purpose which is to set up and conduct a hospital for philanthropic purposes. As a matter of fact, Section 10(23C) permits the accumulation of income upto a certain stipulated amount over a stipulated period. In our view, the Chief Commissioner of Income Tax has clearly misapplied himself in law by having regard to a clearly ancillary or incidental activity and elevating it to the status of the dominant purpose for which the hospital has been established. Running the chemist shop in the present case is not the dominant object or purpose of the trust. Nor would the figure as disclosed indicate that the nature of the activity has assumed such a dominating or overwhelming importance so as to cast doubt on the true nature and character of the hospital which is conducted by the Petitioner. The Chief Commissioner has acted contrary to the judgments of the Supreme Court which hold the field consequent upon which the impugned order would have to be set aside.”*

28. From the above, it is clear that the running of a pharmacy is a necessary requirement for running of a hospital. It is impossibility from medical point of view that the hospital can run without “pharmacy shop” in the premises of the hospital. Considering the same, the Hon’ble High Court has held that maintenance of a pharmacy shop is ancillary to the dominant object of

running of a hospital and thus, it is an integral part of the hospital. Actually the pharmacy shop is being maintained by the hospital itself and not by any private contractor. Drawing the medicine from such pharmacy shop by the Doctors in respect of the patients is also evident from the records, commonly maintained in their medical reports. It is not the case of the revenue that the profits earned on pharmacy was not spent for the objects of trust. Therefore, we find, that the cited judgments (supra) are applicable squarely to the facts of the case so far as the argument relating to if the pharmacy is an integral part of the hospital business or not. Considering the above, we are of the opinion, the conditions of maintenance of books of account in respect of the business activity of trading of medicines, which is an integral part of the hospital activities, is not the requirement of the law on the facts of this case. Thus, we affirm the assessee's contention that the pharmacy shop is an integral part of the hospital business and the same is not hit adversely by the conditions specified in the provisions of section 11(4A) of the Act. Therefore, so long as the transactions of such pharmacy which ancillary/ incidental for the

business of a hospital and objects of the trust, the conditions relating to maintenance of separate books of accounts are met within the meaning of section 11(4A) of the Act. Accordingly, grounds raised by the Revenue are dismissed.

29. In the result, this ground in both the Revenue's appeals are dismissed.

30. Finally, the Revenue's appeals as well as Cross-objections filed by the assessee are dismissed.

Order pronounced in the open court on 2<sup>nd</sup> Nov, 2021.

Sd/-

Sd/-

**(GEORGE GEORGE K)**

**( CHANDRA POOJARI)**

Judicial Member

Accountant Member

Bangalore,

Dated, 2<sup>nd</sup> Nov, 2021

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.

1. Date of Dictation  
.....
2. Date on which the typed draft is placed  
before the dictating Member .....
3. Date on which the approved draft comes to Sr.P.S  
.....
4. Date on which the fair order is placed  
before the dictating Member .....
5. Date on which the fair order comes back to the Sr.  
P.S. ....
6. Date of uploading the order on  
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11. The date on which the file goes to the Assistant  
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12. The date on which the file goes to dispatch section  
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13. Date of Despatch of Order.  
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