

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH 'B', NEW DELHI

BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER

AND

SH. C.N. PRASAD, JUDICIAL MEMBER

ITA No.1447/Del/2020
Assessment Year: 2014-15

DCIT (Exemptions) Circle Ghaziabad	Vs	Gautam Budh Healthcare Foundation, Noida C-1, Sec-12, Noida PAN No.AAATG4991Q
(APPELLANT)		(RESPONDENT)

Appellant	Sh. Vivek Upadhyay, Sr. DR
Respondent	Sh. Ved Jain, Advocate Ms. Uma Upadhyay, CA

Date of Hearing	19.10.2023
Date of Pronouncement	31.10.2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-1, Noida dated 24.02.2020 pertaining to A.Y. 2014-15.

2. The grievance of the revenue read as under :-

1. Whether on the facts or in law the CIT(A) was justified in allowing benefit of exemption u/s II of the IT Act to the assessee while activities carried out by the society during the instant assessment year were not found to be covered by any limb of charitable purpose' as defined in section 2(15) of the IT Act, 1961.

2. Whether allowability of exemption and violation of prescribed Law may go hand in hand as the assessee was found to indulged in the activities which vitiate the sanctity of trust.

3. The order of Ld.CIT(A) be cancelled and the order of the AO be restored.

4. Appellant craves leave to modify/amend or add any one or more grounds of appeal.

3. Briefly stated the facts of the case are that the assessee is a trust duly registered u/s. 12AA of the Act with the object of providing Medical Relief, Education and Training and also running a medical college namely Prakash Institute of Physio-therapy, Rehabilitation and allied medical sciences.

4. The assessee filed its return of income electronically on 25.11.2014 declaring nil income. The return was selected for scrutiny and accordingly statutory notices were issued and served upon the assessee.

5. The assessment was completed vide order dated 21.12.2016 framed u/s.143(3) of the Act at an assessed income of Rs.556,06,660/-after making following two additions :-

a. On account of investment made in Prakash hospital

3.40 crores.

b. Denial of benefit of exemption claimed u/s. 11 of the

Act Rs.21606656/-

6. The additions were challenged before the CIT(A). In so far as first addition is concerned it was contended that the entire investment has been received back by the trust, therefore, no benefit is derived by Prakash Hospital Private Limited.

7. The CIT(A) was of the opinion that even if the entire investment has been received back by the assessee the fund which was utilized by Prakash Hospital Private Limited saved interest in as much as if the assessee trust had not given the loan fund Prakash Hospitals would have borrowed the loan and paid interest thereon.

8. The appellant has worked out interest @ 12% over the fund utilized by the hospital which is as under :-

Details of Investment in Shares	Date of purchase	Amount Rs	Date of Sale	Amount Rs	Interest @12%	AY
500000 Shares of Prakash Hospital Pvt. Ltd	31.03.2013	1,00,00,000	31.03.2015	1,00,00,000.00	12,00,000.00	14-15
					12,00,000.00	15-16
Details of Loan	Date of Loan paid	Amount Rs	Date of Loan Recd	Amount Rs		AY
Prakash Hospital Pvt Ltd	31.03.2013	2,70,78,979	16.07.2013	30,78,979.00	29,88,312.58	14-15
			31.03.2015	2,40,00,000.00	28,80,000.00	15-16
				2,70,78,979.00		

Thus the total interest for AY 2014-15 is worked out at Rs. 41,88,312/- which is to be taxed at Maximum Marginal Rate without giving benefit of exemption. Remaining amount of Rs. 40,80,000/- is to be taxed for AY 2015- 16. The prevailing market rate of interest is to be ascertaining by the AO and required to take remedial action accordingly. The figures of interest are subject to alteration based on banking rate for the year. The action of the AO is partly correct. The ground of appeal of the appellant is partly allowed.

9. The above findings of the CIT(A) are in line with the relevant provisions of the Act, therefore, called for no interference.

10. In so far as the denial of exemption we are of the considered view that any violation u/s.13 does not result in denial of exemption u/s. 11 of the Act to the total income of the assessee meaning thereby that only that income is denied exemption which is in violation of section 13 of the Act. For this proposition we draw

support from the decision of the Hon'ble Karnataka High Court in the case of **Mullers Charitable Institutions** wherein the Hon'ble High Court has held that "it is only the income from such investment or deposit which has been made in violation of Section 11(5) of the Act that is liable to be taxed".

11. Accordingly deletion of addition of Rs.2,16,06,656/- does not called for any interference, accordingly appeal by the revenue is dismissed.

Order pronounced in the open court on 31.10.2023.

Sd/-
[C.N PRASAD]
JUDICIAL MEMBER

Dated: October, 2023.

Neha, Sr PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi