

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H' : NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.192/DEL/2024
(Assessment Year: 2016-17)**

**ITA No.195/DEL/2024
(Assessment Year: 2017-18)**

DCIT, Circle 1 (1)(E),
Delhi.

vs. Balaji Medical and Diagnostic
Research Centre,
108-A, Indraprastha Extension, Patparganj,
Delhi – 110 092.

(PAN : AAABB0018M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ajay Vohra, Sr. Advocate
Shri Shubham Sharma, CA
REVENUE BY : Ms. Sapna Bhatia, CIT DR

Date of Hearing : 02.05.2024
Date of Order : 08.05.2024

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These appeals by the Revenue are directed against the respective orders of the Id. CIT (Appeals) for the concerned assessment years.

2. Since the issues are common and connected, these are being disposed of by this common order.

3. Since the facts are identical, we are referring to facts and figures of ITA No.192/Del/2024 for AY 2016-17. Grounds of appeal taken by the assessee in AY 2016-17 read as under :-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) has erred in allowing the appeal of the assessee by ignoring the facts that even though the objects of the society may have been charitable but the activities carried out by the society which yielded income to the society were commercial in nature.

2. The society i.e. Balaji Medical and diagnostics Research Centre which was allowed registration u/s 12A has ceased to have any effective function as far as hospital is concerned. Whether the Ld. CIT(A) has erred in ignoring that running of the hospital is governed by the profit motive for the benefit of Max Group and hence, claim for exemption u/s 11 & 12 of the assessee is not longer justifiable.”

4. Brief facts of the case are that Assessing Officer had denied exemption claimed by the assessee under section 11 & 12 of the Income-tax Act, 1961 (for short ‘the Act) and consequently completed the assessment of the assessee as an “BOI” at an income of Rs.35,76,51,706/- under the head ‘Profits and Gains from Business and Profession’. Assessing Officer also disallowed of expenditure by an amount of Rs.12,41,79,658/- which amount was included in Rs.35,76,51,706/-.

The Assessing Officer held as under :


“The sum and substance of discussion made in above paras leads to a conclusion that the assessee is simply wearing a mask of charity, whereas it is actually running Max Balaji Hospital on commercial lines and with commercial expediency only as per agreement made with Max Health Care Institute Ltd. I am included to quote the judgment of Hon’ble ITAT Delhi Bench dated 31.03.2015 where the case of M/s. Devki Devi Foundation on similar facts and grounds was discussed at length which formed the basis of computation of income. In a very elaborate judgment, Hon’ble ITAT Delhi Bench has postulated certain principles/tests for an entity to be considered as charitable. In view of the above and relying on previous assessment orders, since there is no substantial change in the facts of the case and activities of the assessee, the claim for exemption u/s 11 & 12 for the assessee is no longer justifiable. Hence, the assessee is not allowed exemption of income u/s 11 & 12 as activities of the assessee do not fall within the ambit of charitable purpose u/s 2(15) of the Act.”

5. Upon assessee’s appeal, Id. CIT (A) referred to assessee’s appeal for AY 2014-15 and granted relief to the assessee. We may gainfully refer to the Id. CIT (A)’s order as under :-

3.1 The assessing officer essentially relied on earlier assessment orders as there are no changes in facts and circumstances. However in earlier year, Delhi ITAT in the case of the appellant for the AY 2014-15 [ITA No.105/Del/2019] passed an order in favour of the assessee on 08.02.2022 which is quoted below. This was pronounced after the order related to M/s Devki Devi Foundation relied by the AO.

Section 11 of the Act. Further, ^{the} ~~the~~ fact that the First Appellate Authority in ^{the} ~~the~~ assessee's own case has allowed identical relief to the assessee in assessment years 2009-10, 2011-12 and 2012-13 is borne out from record. Thus, considering the fact that the Tribunal has upheld the decision of learned First Appellate Authority in allowing assessee's claim of exemption under Sections 11 and 12 in assessment year 2008-09 and taking note of the consistent view of learned First Appellate Authority on the issue in some of the subsequent assessment years, we do not find any justifiable reason to interfere with the decision of learned Commissioner (Appeals).

This is for the reason that in absence of any material difference in factual position, Rule of Consistency must apply. Accordingly, we uphold the decision of learned

 Commissioner (Appeals) by dismissing the ground raised.

3.2 In the case of the appellant for AY 2008-09, Delhi Bench of the ITAT in ITA No.4317/Del/2012 held that, *considering the above submissions, we find that with the assistance of the above stated documents under the certificate that these were made available before the authorities below as well, the assessee has successfully tried to rebut the adverse observation made by the Assessing Officer. At page Nos. 56 to 436 of the paper book, the assessee has made available the details of patients to whom free treatment was given during the relevant financial year. In these details, name of each of the patients with the details of medical help provided to each of them has been furnished. At page Nos. 35 to 50 of the paper book filed on 27.5.2016 has been made available the chart of comparative room rent charged by various hospitals offering services of similar standard during the financial year 2012-13. At page Nos.*

28 to 34 of the paper book dated 27.5.2016 has been made available, copies of letter of appreciation dated 18.4.2012 issued by the Directorate of Health Services, Govt. of NCT of Delhi praising the charitable activities of the assessee; notice dated 11.2.2019 issued by the Directorate of Health Services, Govt. of NCT of Delhi to various hospitals, including assessee, for verification of implementation of EWS guidelines in hospitals and minutes of meeting dated 20.10.2015 of the Special Committee constituted by the Directorate of Health Services, Govt. of NCT of Delhi, wherein list of defaulting hospitals after verification of EWS guidelines implementation were identified and assessee was not included in such lists. The Learned CIT(Appeals) has discussed in detail all the important aspects of the case supported by the above documents. There is no dispute on the object of the society and the fact that it was enjoying registration under sec. 12A of the Income-tax Act, 1961 issued by the department during the course of assessment proceedings for the year under consideration. The Learned AR also referred page Nos. 437 to 874 of the paper book Volume-II wherein have been furnished the copies of details of patients to whom free treatment was given during the relevant financial year along with details of each one of them; details of patients to whom discount of Rs. 5,000 or more was given during the year, guidelines for provisions of free treatment facility to patients of EWS categories in private hospitals in pursuance of directions of Hon'ble High Court of Delhi in W.P.(C) No. 2866/2002 in the matter of Social Jurist vs. JNCT, Delhi; letters to the Director of Health Services regarding provisions of free beds/treatment during the year; inspection report dated 29.2.2008 issued by the Director of Health Services, Govt. of NCT of Delhi stating that the assessee's hospital is providing free treatment to patients including supply of free medicines; letter dated 14.9.2010 from Mr. Ashok Aggarwal, a social activist, appreciating the assessee's efforts in providing free quality treatment with respect of free/discounted treatment provided to late Shri Vijay Kumar Verma, Smt. Asmeen Begum and Master Sidhu along with their affidavits and the copies of report furnished by the assessee to the Medical Superintendent of Director of Free Treatment to the patients; service agreement dated 16.12.2010 entered into between the assessee and Max Health Care Institute Ltd; letter dated 16.12.2010 from Max Health Care Institute Ltd. certifying the amounts charged from the assessee during the previous year relevant to the assessment year; letter to Registrar of Societies dated 25.9.2008 notifying the updated list of office bearers and members of the governing body of the assessee; relevant extracts from the minutes of annual general body meetings and governing body meetings of Balaji Medical & Diagnosis Research Centre held from time to time; and remaining are the copies of submissions made time to time before the Assessing Officer and submissions filed before the Learned CIT(Appeals) as well as remand report dated 21.11.2011 and rejoinder dated 18.1.2012.

6.1 It is an established proposition of law that Assessing Officer cannot doubt

charitable nature of organization once registration under sec. 12A of the Act is granted. The charging of fee in the course of achieving charitable purpose is irrelevant for the purpose of exemption under sec. 11 of the Income-tax Act, 1961. The Hon'ble Supreme Court in the case of Queen Educational Society vs. CIT (supra), has been pleased to hold that whether institution exists solely for educational purposes and not for profit, the finding that the society makes profit does not necessarily mean it exists for profit. The Hon'ble Delhi High Court in the case of DIT (E) vs. R.B. Seth Jessaram & Bros. Charitable Hospital Trust (supra) wherein it has been held that there is no evidence to show that there has been any siphoning of funds and that by virtue of the agreement, control of the trust has been transferred to Fortis Health Care Ltd. The Hon'ble Bombay High Court in the case of Breach Candy Hospital Trust vs. CCI (supra) has been pleased to observe that philanthropy is not restricted to give free treatment to the extremely poor, but it would also be philanthropy to give treatment at a concessional rate to those who though not extremely poor cannot afford to pay the full and normal charges. It was held that in absence of any material to show that generally there was a profit, it cannot be said that the petitioner does not exist solely for the philanthropic purpose but exists for the purpose of profit. It is not the case of the Assessing Officer before us that entire receipts were not used for the treatment of patients and medical care. In the case of Pine Grove International Charitable Trust vs. Union of India (supra), the Hon'ble Punjab & Haryana High Court has been pleased to hold that generation of surplus over four or five years after meeting expenditure is not a disqualification. Whether institution applying profits wholly and exclusively to object for which is established is to be seen. So far as the allegation that control over running the hospital was given in favour of MHC is concerned, we find it relevant to reproduce hereunder the unrebutted finding of the Learned CIT(Appeals) in this regard;

The aforesaid expenditure is less than 50% of the total expenditure incurred by the appellant during the year in relation to running and maintenance of the Hospital. That apart, the appellant incurred expenditure aggregating to Rs. 1,44,51,598 towards purchase of various medical equipment's/plant and machinery/other fixed assets for the hospital and incurred equipment's/plant and machinery/other fixed assets for the hospital and incurred expenditure of Rs. 8,49,54,122 towards capital work in progress. It would be appreciated that MHC had no say whatsoever in the incurrence of aforesaid expenses.

In view of above, no inference can be drawn that the control over running the hospital was given in favour of MHC. The finding of the A.O. and MHC was in defacto control of the hospital with a motive of profit earning was not based on any factual or legal ground, and are merely written on the

basis of incorrect appreciation of facts. Therefore, the finding of the A.O. in this regard is not justified, hence needs to be set aside. In the result, ground Nos. 1,2.1, 2.2, 2.3, 2.4, 2.5 and ground No. 3.1 and 3.2 of the appellant are allowed."

6.2 And above all, it is an undisputed fact that the appellant was enjoying registration under sec. 12A of the Act during the year under consideration and is still enjoying and that in the assessment years 2006-07 and 2007-08, the Revenue has accepted the exemption and there is no material change in the facts of the case during the year to justify the action of the Assessing Officer in withdrawing the exemption. We are thus of the view that the Learned CIT(Appeals) was justified in deleting the disallowance of exemption with this finding that appellant is charitable organization and running the hospital to achieve its charitable objects. The first appellate order in this regard is upheld. In result, grounds are rejected.

3.3 As seen above, the ITAT discussed all facts and reached a conclusion that the appellant is eligible for deduction u/s 12A. Respectfully following the decision of the jurisdictional tribunal the appeal is allowed.

6. Against the above order, Revenue is in appeal before us. We have heard both the parties and perused the records.

7. Ld. Counsel for the assessee stated that the issue is duly covered by the decision of ITAT in ITA No.105/Del/2019 for AY 2014-15 vide order dated 08.02.2022. Furthermore, he pleaded that the aforesaid ITAT order has been duly upheld by the Hon'ble Delhi High Court in ITA 430/2023 vide order dated 15.04.2024.

8. Per contra, ld. DR for the Revenue did not dispute the proposition that the issues are covered in favour of the assessee.

9. Upon careful consideration, we find that the issue is squarely covered by the decision of the ITAT, as referred in the order of ld. CIT (A) above. Furthermore, one of the orders of ITAT was even upheld by the Hon'ble Delhi

High Court. In this view of the matter, we do not find any infirmity in the order of ld. CIT (A), hence we upheld the same.

10. Our above order applies *mutatis mutandis* to both the assessment years.

11. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on this 8th day of May, 2024.

**Sd/-
(SUDHIR PAREEK)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 8th day of May, 2024
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A).
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**