

आयकर अपीलीय अधिकरण, कोलकाता पीठ “सी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
श्री राजेशकुमार, लेखा सटस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 1264/Kol/2019
Assessment Year: 2012-13

Sitaram Bhartia Institute of Science & Research (PAN: AABTS 8833 N)	Vs.	DCIT (Exemption), Circle-11(1), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	05.03.2024
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	22.05.2024
For the Appellant/ निर्धारिती की ओर से	Shri S. Jhajharia, A.R
For the Respondent/ राजस्व की ओर से	Shri Rajesh Kumar Das, CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-25, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 28.03.2019 for the AY 2012-13.

2. Ground no. 1 raised by the assessee is not pressed therefore dismissed as not pressed.

3. Issue raised in ground nos. 2,3 & 4 are against the order of Ld. CIT(A) affirming the action of AO in treating the income earned from sale of medicine as a separate business activity u/s 11(4A) of the Act which is illegal and bad in law and contrary to the provisions of the Act.

4. Facts in brief are that during the course of assessment proceedings, the AO found that running a pharmacy is part and parcel to the activity of running a hospital which is the main activity of the assessee. The AO confronted the assessee the said issue and it was replied that the said activity is subservient to the main object of the trust and is integral part of charitable activity of the trust and was accordingly taken into account for the purpose of calculation the income of the assessee trust u/s 11 of the Act. Accordingly to AO , the assessee has not maintained separate books of account in the said activity as per the mandate of law and computed the income from the said activity as per the provisions of Section 11(4)/11(4A) of the Act. Finally the AO made an addition of Rs. 52,41,166/- as computed in para 5 of the assessment order in the assessment framed u/s 143(3) of the Act dated

5. In the appellate proceedings, the Ld. CIT(A) also dismissed the appeal of the assessee by observing that the assessee has not denied the running of pharmacy as incidental activity of running to the hospital. The Ld. CIT(A) noted that medicine purchase in the pharmacy were sold at a higher prices and was clearly a business activity and therefore provisions of Section 11(4)/11(4A) of the Act were clearly applicable. The Ld. CIT(A) noted that the assessee has not maintained separate books of account for purchase and sale of medicines for walk in customers and has charged a profit at 8.7% app.

6. After hearing the rival contentions and perusing the material on record, we find that the activity of running a pharmacy is integral to the running of the hospital by the assessee trust. Without having a pharmacy, how the hospital can function. In other words , the pharmacy is purely an activity for the attainment of main object as the hospital could not be operated and run without having a pharmacy. We note that the

assessee has recorded total sales of Rs. 6,05,52,369/- during the year and expenses on medicine and consumable purchases were Rs. 5,53,11,203/-. Thus a margin of Rs. 52,41,166/- earned from such activity. We note that the gross margin of the assessee on sale of medicines worked out to around 8.66% on the sales. We also find merit in the contentions of Ld. A.R that the assessee is charging very reasonable profit on the sale of medicines and if the other overhead expenses relating the pharmacy are taken into account then there would be loss from the sale of medicines.

6.1. The argument of the Id counsel before us was that the pharmacy is integral part of medical relief/hospital and thus the amendment in section 11(4A) w.r.t. last limb in section 2(15) of the Act which relates to General Public Utility is not applicable. According to the Id AR the section 11(4A) of the Act applies to incidental activity while pharmacy is integral to hospital. In case of worst case scenario, even if the activity is treated as incidental to main activity even then the gross margin is very thin as low as 8.66% and if other overheads are considered, then there would be loss in the pharmacy on standalone basis. In that event also the case is squarely covered by the decision of the Hon'ble Supreme court in the case ACIT(E) vs. Ahmedabad Urban Development Authority [2022]143 taxmann.com 278 (SC) wherein the Hon'ble Apex Court with reference to general public utility as contemplated in 4th limb of proviso to Section 2(15) of the Act has held that if the mark up profit are out of reasonable limits then the same is not to be considered to be a business activity. We also find merit in the argument that even on principle of consistency as in the preceding and succeeding assessment years, the revenue has accepted the income from pharmacy as part of the trust and considered the same while calculating the exempt income u/s 11 of the Act. The assessee has placed the assessment orders passed u/s 143(3) of the Act for AY 2009-10 to A.Y. 2014-15 wherein the stand of the assessee has been accepted. We note in AY 2011-12 and 2013-14 the AO has treated this as part of the business activity and the Ld. CIT(A) has granted full relief against which the revenue is not in appeal before the Tribunal. Considering all the aspects, we are of the view that income from pharmacy which is hardly 8.66% of the pharmacy receipt (that too gross margin)

, undoubtedly not covered by the proviso to section 2(15) of the Act. We are of the view that the said activity is integral to the main activity of the assessee and there has to be treated the part of hospital and the provisions of Section 11(4)/11(4A) are not applicable and the assessee is also not required to separate books of account in respect of said activity, ground nos. 2 to 4 are allowed.

7. Issue raised in ground no. 5 is against the order of Ld. CIT(A) upholding the action of AO in applying accumulation of income and contemplated u/s 11(1)(a) on the net income instead of gross income of the trust.

8. At the outset, the Ld. Counsel for the assessee submitted that this issue has been squarely covered by the decision of Hon'ble Co-ordinate Bench in the assessee's own case in ITA No. 202/Kol/2020 for AY 2013-14 dated 4.1.2023 wherein in Para 7 of the order the Bench has decided the income of the assessee by holding that accumulation of income to the extent of 15% u/s 11(1)(a) of the act was applied but gross receipts are to be taken as basis not adjusted the gross income. The Ld. A.R therefore prayed that issue may be decided in the current year as well.

9. The Ld. D.R relied on the order of authorities below.

10. After hearing the rival contentions and perusing the material on record, we find that the assessee's case is squarely covered in favour of the assessee. The decision of Co-ordinate Bench in para 7 which is reproduced as under:

"7. After hearing the rival parties and perusing the material on record, we are of the view that in the case of trust there is no concept of net income but of gross receipts and application of funds. In our opinion, for the purpose of calculation of accumulation of income to the extent of 15% u/s 11(1)(a) of the Act, the gross receipts are to be taken as basis and not the net income after deducting expenses which has been done by both the authorities below. The case of the assessee finds support from the decision of Co-ordinate Bench of Mumbai (Special Bench) in the case of Bai Sonabai Hirji Agiary Trust vs. ITO in [2005] 93 ITD 70 (Mum) (SB) wherein the Co-ordinate Bench has taken a view for the purpose of accumulation of income, which is deemed to be derived for the purpose of charitable activities subject to the fulfillment of other condition in that section, is to be taken on the gross receipt of the trust before deducting any sum towards application of income. In other words, the application of income has to be taken into account from the said gross receipts for the purpose of accumulation u/s 11(1)(a) of the Act. The case of the assessee is squarely covered by the decision of co-ordinate Bench of Kolkata in the case of Kanehialall Lohia Trust vs. ITO in

[2020] 120 taxmann.com 208 (Kol-Trib). Accordingly we set aside the order of Ld. CIT(A) on this issue and direct the AO to compute the income to be accumulated u/s 11(1)(a) of the Act on the gross receipts. Accordingly ground no. 2 is allowed."

Since the issue is squarely covered under similar facts in AY 2013-14 as extracted above, we are inclined to allow the grounds raised by the assessee.

11. Issue raised in ground no. 6,7 & 8 are consequential in nature and need no adjudication.

12. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 22nd May, 2024

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 22nd May, 2024

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Sitaram Bhartia Institute of Science & Research, C/o, M/s Salarpuria Jajodia & Co., 7, C.R. Avenue, 3rd Floor, Kolkata-700072.
2. Respondent – DCIT (Exemption), Circle-1(1), Kolkata
3. Ld. CIT(A)-25, Kolkata
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata