

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 4770/MUM/2023
(Assessment Year :2013-14)**

Dy. Commissioner of Income Tax (Exemption)-2(1). 608, 6 th Floor, MTNL Building, Cumballa Hill, Dr. G.D. Deshmukh Marg, Peddar Road, Mumbai – 400026	Vs.	Sir Kikabhai Premchand Trust Settlement No. XI Plot no. 96, Kikabhai Building, Sion Matunga Estate, Sion, Mumbai – 400022
PAN/GIR No. AABTS7221E		
(Appellant)	..	(Respondent)

Assessee by	Shri. Siddharth Kothari
Revenue by	Shri. P.D. Chougule
Date of Hearing	15/05/2024
Date of Pronouncement	21/05/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against order dated 31/10/2023 passed by NFAC Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2013-14.

2. In the grounds of appeal, Revenue has raised following grounds:-

“1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A), Mumbai has erred in allowing the exemption u/s 11 of the I.T. Act, that the assessee trust while calculating 2% of the Gross billing has excluded the doctor's fees of Rs. 12,14,14,758/- and the same has resulted in shortfall of Rs. 26,22,523/- in the transfer to the Indigent Patient Fund (IPF Account)

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A), Mumbai has erred in allowing the exemption u/s 11 of the I.T. Act and allowed the appeal of assessee by not considering the fact that, the assessee has violated the directions given by the Bombay High Court, in regard to create a IPF account and transferred the amount to IPF Account for the betterment of poor and Indigent patients.”

3. The brief facts are that assessee is a public charitable trust registered under the provisions of Bombay Public Trust Act, 1950 by the Charity Commissioner since 1964. The assessee trust is running a hospital for medical relief and accordingly, looking to its activity which falls within the scope and ambit of “charitable purpose” u/s.2(15) of the Act, it was granted registration u/s.12A, vide certificate dated 22/03/1974. Since then it has been regularly assessed to tax and its income is being computed u/s.11. During the year also assessee had spent more than 85% of the income from property held for charitable purpose and income and expenditure account revealed no surplus. Accordingly, it has filed its return of income on 30/09/2013 declaring ‘nil’ income after claiming exemption u/s.11 amounting to Rs.53,77,89,461/-.

4. In the cases of hospitals and medical centres, the Hon'ble Bombay High Court vide his judgment and order dated 17/08/2006, notified a scheme applicable to all public charitable trust registered under the provisions of the Bombay Public Trust Act, 1950 who were running charitable hospital and or any other centre for medical relief and whose annual expenditure exceeds Rs.5,00,000/-, whereby it was stipulated that these hospitals / medical centers have to compulsorily provide free and concessional medical treatment of indigent and weaker sections patients. For this purpose, the trust had to credit 2% of the gross billing of all the patients (other than indigent and weaker section patients) to the "Indigent Patient's Fund" (IPF) every year. This fund is to be utilized only for providing medical treatment to the said weaker section patients. The assessee trust who is also one such charitable trust was also obliged to comply with the scheme. According to the ld. AO assessee trust was required to transfer Rs.99,39,785/- to IPF which was calculated by him in the following manner:-

OPD Collection	23776507
Sales Indigent Bill	48555502
Sales Ortho	87457306
Sales Patient	379346572
Sakes Weaker Bill	1543358
Total	496989245
Percentage	2%
2% of Gross Billing	9939785
Trf to IPF	7328262
Short Transfer	2611523

5. He noted that assessee while calculating 2% of the gross billing has excluded doctor's fees of Rs.12,14,14,758/- which has been stated by the assessee in its notes to the account. He further held that as a result, an amount of Rs.26,11,523/- have not been set aside for IPF account during the year and same have not been spent for the treatment of Indigent and weaker Sections. The ld. AO held that since there is a shortfall of Rs.26,22,523/- in the transfer to the IPF account which is in violation of High Court's direction, therefore, assessee's character cease to be charitable in nature and hence entire surplus income of Rs.6,97,87,628/- is to be assessed as income and taxed accordingly. Thus, he denied the claim of deduction u/s.11.

6. The ld. CIT(A) after considering the submissions made by the assessee as well as based on earlier appellate orders and Tribunal orders allowed the claim for exemption u/s.11 after observing and holding as under:-

“The appellant in its ground of appeal has assailed the AO in assessing the total income of the appellant at Rs. 6,97,87,628/- as against the NIL by denying the exemption u/s 11 of the Act. The AO in the assessment order noted that the assessee is a Charitable Trust having registration u/s 12A and 80G of the Act. The AO further noted that as per the order of the Hon'ble High Court of Bombay the assessee has to transfer 2% of the gross receipt to the Indigent Patient Fund meant for the weaker section. The AO noted that there is short transfer of Rs. 2611523/-. Therefore, the assessee trust has violated the stipulated condition of the Hon'ble High Court and accordingly denied the exemption claimed u/s 11 of the Act and adding the surplus to the income of the trust.

6.1 *The appellant in its submission submitted that is a registered as a Charitable Trust with DIT/CIT (E), Mumbai u/s. 12AA vide order F.No. BMY/TR/K(a)/23/73-74 dated 22.03.1974 and is regularly assessed to tax and that the appellant is also registered under Bombay Public Trusts Act, 1950 by the Hon'ble Charity Commissioner since 1964. The appellant is engaged is engaged in quality health care at affordable rates to the members of the society of all strata. Appellant further submitted that during the year under consideration appellant instead of charging 2% of the gross bill, excluded the doctor's fee of Rs. 12,14,14,758/-. Appellant claimed that AO contended that there was a shortfall of Rs. 15,30,523/- in the transfer of Indigent Patient Fund Account due to exclusion of doctor's fee. The appellant in its submission relied on a number of case laws. Further the appellant in its submission stated that the Hon'ble ITAT-Mumbai in its own case on identical issue decided the appeal in the favour of appellant and dismissed the appeal filed by the revenue in ITA No. 3141& 5441/Mum/2015 for A.Y. 2011-12. The appellant has also filed the copy of the order of the Hon'ble ITAT.*

6.2 *The submission of the appellant is examined and respectfully following the order of the Hon'ble ITAT the addition made by the AO is deleted. The ground of appeal is allowed.”*

7. Thus, ld. CIT(A) has followed the ITAT order in the case of the assessee in the appeal for A.Y.2011-12.

8. Before us both the parties agreed that this issue is covered by the decision of the Tribunal for A.Y.2010-11 and 2011-12 in ITA No.3141 & 5441/Mum/2015 order dated 24/02/2017.

9. After hearing both the parties and on perusal of the impugned order as well as judgments referred to before us, we find that it is not in dispute that assessee has been granted

registration u/s.12A and 80G of the Act and therefore, its income has to be computed in accordance with the provisions of Section 11-13. If the conditions of Section 11 to 13 are fulfilled then the claim of exemption u/s.11 cannot be denied. As noted above, the Hon'ble Bombay High Court had notified the scheme known as B.P.T scheme which stipulated that charitable hospitals registered under the Bombay Public Trust Act have to be compulsorily provide free and concessional treatment to the Indigent and weaker sections patients. Accordingly, the Trust has to credit 2% of the gross funding of all the patients of IPF every year and this fund to be utilized only for providing medical treatment to the said category of patients. Para 18 of the scheme framed by the Hon'ble High Court of Indigent Patient Fund provides that, in case of breach of the scheme and the terms and conditions of Section 41AA of the BPT Act for any charitable hospitals besides penal action u/s.66 of the BPT Act, Charity Commissioner will make a report to the State Government recommending to withdrawal of exemption granted to the concerned hospitals in the next preceding year any payment of contribution towards PTA fund.

10. The IPF scheme formulated by the Hon'ble High Court, para 11 provides as under:-

“11. The Charitable Hospitals shall physically transfer 2% of the total patients' billing (excluding the bill of indigent and weaker section patients) in each month to IPF Account. The amount available in the IPF Account shall be spent to provide medical treatment to maximum number of indigent and weaker section patients. In case of surplus or shortfall in the IPF Account of the

month, the same shall get adjusted in the subsequent months. In case there is imbalance in the credit of the IPF Account and the expenditure incurred in the treatment of indigent and weaker section patients for more than six months, such Charitable Hospital may bring this aspect to the notice of the Monitoring Committee who may issue appropriate directives to the concerned hospital.”

The paragraph 18 of the scheme reads as under:-

“18. In case of the breach of the Scheme and/or the terms and conditions of section 4IAA by any Charitable Hospitals, besides the penal action as is provided under section 66 of the B.P.T. Act, the Charity Commissioner shall make report to the State Government recommending withdrawal of the exemption granted to the concerned hospitals during the next preceding year in payment of contribution towards P.T.A Fund and the amount of contribution towards P.T.A. Fund be recovered from the said hospital. The Charity Commissioner may also request the Government to withdraw any other concessions/ benefits given to the said hospital.”

11. Here in this case, it is not a case that assessee has not transferred 2% of the gross receipts, albeit, 2% of the billing is net of doctor's fees of the IPF. It has been stated that assessee while billing include doctor's fees which is collected by the assessee separately and paid to the doctors. Therefore, instead of charging 2% of the gross bill, assessee excludes the doctor's fee collected which was Rs.12,14,14,750/-. This is how ld. AO has calculated the shortfall in the contribution of IPF. This precise issue had come up before the Tribunal wherein it has been observed and held as under:-

“The above clause of this scheme indicates that the power to decide whether a Charitable Hospital has breached the terms of the Scheme rests with the Hon'ble Charity Commissioner who can in turn refer the matter to the State Government recommending even the withdrawal of various benefits provided to such Charitable Hospital, if necessary. These benefits do not include the exemption granted to the trust u/s 11 of the Act. So, effectively, it is the State Government with whom, rests the ultimate power to adjudicate whether a Public Trust is or is not in compliance with the Scheme and to take consequential corrective measures. We find that during the year under consideration, the assessee has transferred 2% of the billing net off doctor's fees to the IPF and not 2% of the total billing without considering doctor's fees. Now before us, the learned Sr. DR argued that the assessee has violated the High Court's order and that for this sole reason its character ceases to be charitable in nature. In this regard, we are of the view that has not violated the scheme stipulated by the Hon'ble Bombay High Court for the reason that the assessee has duly transferred 2% of its billing to the IRE as required by the scheme. The assessee includes in his bill, doctor's fees, which is collected by the assessee and paid to the doctors. We are of the view that for administrative convenience and control, the doctor's fees are also collected by the assessee in its bills and then paid to the doctors and further the doctor's fees do not constitute the income and it is merely facilitating the collection of fees on behalf of the doctors. Therefore, the assessee, under bonafide belief did not transfer 2% of such doctor's fees included in its bills to the IRE.

8. According to us, AO has mingled two unrelated sets of legal compliances stipulated by different Authorities; viz. compliance of a Scheme drawn by the Hon'ble Bombay High Court and compliance of section 11 of the Act. The scheme has been drawn with the objective of providing decent health care specifically to the indigent and weaker section patients and it accordingly provides a mechanism for the same. Section 11 on the other hand, stipulates

the fundamental requirement for a charitable organization to avail the exemption in respect of the surplus earned by it from its charitable activities. This requirement being appropriating or rather utilizing more than 85% of its earnings towards charitable purpose. The Assessee has duly adhered to this condition by utilizing almost 88% of its total earnings towards its charitable objectives. The AO has denied exemption u/s 11 of the Act contending violation of a Scheme drawn by Hon'ble Bombay High Court. But we are of the view that section 11 does not stipulate adherence by an Assessee to the said Scheme rather the Assessee has complied with and not violated the conditions stipulated by the Scheme. Accordingly, we are of the view that the AO has usurped the power of the Charity Commissioner and the State Government; by making the decision that the assessee has breached the provisions of the Scheme. This is clearly contrary to Clause 18 of the Scheme as discussed in Para no. 7 above. According to us, the charity commissioner who has been entrusted with the responsibility of verifying the genuineness of the activities of the trust or institution before registering such trust or institution u/s. 12A of the Act has been usurped the power. Subsection 3 of the said section has also vested the Charity Commissioner and not the Assessing Officer with the power to pass an order cancelling the registration of such trust or institution where subsequent to registration, he is satisfied that its activities are no longer genuine in nature. Till such time, the benefits available pursuant to such grant of the registration cannot be denied.

9. *In this regard, we place reliance on the decision of the coordinate Bench of Delhi Tribunal in the case of The Civil Services Society Sanskriti School Vs. Director of Income Tax (Exemption) in ITA No.1488/Del/2012, wherein it is held as under: -*

"6.3 There is sufficient evidence available on record which is uncontested that the objects of the society are charitable in nature and a finding to the said effect has been given in the impugned order itself. Regarding the shortfall in the requisite

no. of students belonging to the EWS category students in the facts as they stand no evidence of non-compliance has been brought to our notice either in the arguments or in the impugned order. The reasons consistently advanced for the situation in regard to locational aspect in the face of the evidence to the contrary have to be accepted as where there is no alleged violation of any of the requirements either of the Urban Ministry or of the Directorate of Education the authorities under the Income-tax Act cannot be said to presume to sit over in judgment for the implementation of the public policy on the judgment of the authorities empowered to implement them. The DIT(E) in the facts of the peculiar case cannot cancel Registration in the facts of the present case for the reasons set out in the impugned order as the same amounts to usurping the Role of an authority constituted to implement the government policy. Only when there is any instance of violation of terms and conditions pointed out by the Directorate of Education and/or the Urban Ministry on the information of de-recognition of the school by the Directorate of Education, the tax authorities can take notice. The gravity of the consequences of holding a certain school as de-recognized is not to be trifled with or taken lightly and it is a powerful tool in the hands of the Directorate of Education and if it is taken away, serious consequences are visited on the school which is not a fact in the present case."

10. *Similar to the above, even in the case of the assessee, non-compliance of one of the statutory stipulations should not nullify its efforts made towards achieving its charitable objectives. The same can be observed from the fact that it has appropriated 88% of its Income towards achieving the objectives of the trust. Further, the assessee has not altogether shrugged off its responsibility towards the Indigent and Weaker Section Patients. There is a difference of opinion w.r.t the amount of funds to be transferred to the Indigent Patient's Fund (IPF). It is noteworthy, that the assessee has not simply waited for the clarification and stalled*

the appropriation of funds to the IPF and its utilization towards the requisite purpose. Rather, until clarification on such matter, the assessee has chosen to transfer 2% of the total hospital billing net of doctor's' fees to the IPF and has utilized the same towards the medical treatment of the Indigent and Weaker Section Patients. There is no single evidence which would suggest otherwise. The rationale behind the same being that the doctor's fees is not a part of the hospital's earnings, but rather a reimbursement to the hospital. The hospital merely acts as a collecting agent between the two for this particular aspect. Neither is there any evidence which would suggest the assessee's status of that of a "Charitable Trust registered under the Bombay Public Trusts Act, 1950" being revoked by the Charity Commissioner. In such a scenario, we are of the view that the AO has no role in law by usurping the role of the Charity Commissioner and declaring that the assessee has breached the covenants of the Scheme. Hence, in light of the above, we confirm the order of CIT(A) and the appeal of Revenue is dismissed”

Thus, the Tribunal has upheld the contention of the assessee and ld. AO's action has been reversed.

12. Otherwise also, from the perusal of the afore paragraphs of the scheme it can be seen that in case of any breach of the scheme, then Charity Commissioner alone can recommend withdrawal of exemption granted to the concerned hospitals during the next preceding year in the payment of contribution towards PTA fund and the amount of contribution towards PTA fund shall be recovered from the said hospital. Such withdrawl of exemption is under the Bombay Public Trust, 1950 and not under section 12A or section 11. It is not a case here that any such exemption has been withdrawn by the Charity

Commissioner in case of assessee trust. Nowhere, it has been brought on record by the ld. AO, whether any such action was taken by the Charity Commissioner or there is any condition which has been breached by the assessee trust under the scheme; Further, assessee has already applied more than 85% of its income towards achieving objects of the Trust and it is not the case that the assessee trust has not carried out the responsibility towards indigent and weaker section patients as directed by the Hon'ble Bombay High Court. The assessee has transferred 2% of total hospital billing net of doctors fees which was collected separately in the bill and has been reimbursed / paid to the doctors treating the patients. Doctor's fees cannot be treated as part of the hospitals earning but rather it is charged from the patients in the bill separately which is a reimbursement and hospital is merely a collecting agent to reimburse to the doctors and accordingly, we do not find any infirmity in the order of the ld. CIT(A) following earlier year proceedings. Thus, appeal of the Revenue is dismissed.

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

Order pronounced on 21st May, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 21/05/2024
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai