

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE PRASHANT MAHARISHI, AM
AND
SHRI RAJ KUMAR CHAUHAN, JM
ITA NO. 4086/MUM/2023
(Assessment Year: 2015-16)**

Punjab Kesari Charitable
Trust,
242, Bhandar Galli,
L.J. Road, Mahim- 400016

Vs.

Income Tax Officer
(Exemption) – 2(2)
Room No. 502,
5th Floor,
Piramal Chamber,
Lalbaug- 400012,
Mumbai.

(Appellant)

(Respondent)

PAN No. AAATP0040R

Assessee by : Shri. S. M. Kapoor

Revenue by : MS Madhu Malati Ghosh (CIT-DR)

Date of hearing:	16.04.2024
Date of pronouncement :	13.05.2024

ORDER

PER RAJ KUMAR CHAUHAN, J.M.:

- 1) This appeal bearing ITA No. 4086/MUM/2023 for the assessment year 2015-16 is directed against the order of National Faceless Appellate Centre, Delhi hereinafter referred as CIT(A) [the Ld. Commissioner of Income Tax] Under Section 250 of the Income Tax Act, 1961 of (the Act) dated 18th October, 2023 in DIN No.



ITBA/NFAC/S/250/2023-24/1057173433(1), wherein the order of the Ld. Assessing Officer ITO (E)-2(2) Mumbai dated 26.12.2017 was upheld.

2) The order of Ld. CIT has been challenged before us on the following grounds:

- “1) *The learned CIT (Appeals) has erred in law and on the facts of the case in sustaining the order of the assessing officer holding that the income received from dispensaries is not incidental to be attainment of the main object of the trust and that the trust has not maintained separate books of accounts for the same.*
- 2) *The learned CIT (Appeals) has erred in law and on the facts of the case in not appreciating the fact that the assessee trust is maintaining separate books of accounts in relation to the income from dispensaries.*
- 3) *Without prejudice to the above, the learned CIT (Appeals) did not appreciate that even if the income is taxed as business income, the same should be taxed on total income of Rs. 25,46,926 instead of on gross receipts of Rs. 1,03,87,060/-*
- 4) *The learned CIT (Appeals) has erred in law and on the facts of the case in not adjudicating the ground relating to carry forward of deficit of earlier years.”*

3) The brief facts of the case are that the assessee filed its return of income for the relevant assessment year i.e. A.Y. 2015-16 on 27th September, 2015 along with Income and Expenditure Account,



Balance Sheet and Audit Report in form no. 10B declaring total income of Rs. Nil. The case was selected for compulsory manual scrutiny and notice Under Section 143(2) was issued on 21st September, 2016, was duly served. Subsequently, notice Under Section 142(1) along with questionnaire was issued to the assessee on 7th February, 2017. In response to the statutory notices, the Assessee Representative and Authorized Representatives of the assessee trust attended the hearing from time to time and furnished the required details called for. After discussion with the Authorized Representative it transpired that the assessee trust is registered with the Commissioner of Income Tax Bombay City IV, Bombay Under Section 12A of the Income Tax Act vide No. INS/6122. The assessee Trust is also registered with the Charity Commissioner vide no, F-1050 (Mumbai). The assessee trust is engaged in charitable activities, relief to the poor, education and medical claim. During the assessment year under consideration the assessee trust has claimed expenditure on accounts of depreciation of Rs. 26,21,923/- . It is seen that the assessee trust has claimed depreciation as well as capital expenditure for



addition to fixed assets. Vide order sheet dated 14th December, 2017, the Authorized Representative of the assessee was asked as to why depreciation claimed by the trust should not be disallowed on account of double deduction claimed as capital expenditure as well as depreciation. The assessee trust did not submit any reply on that issue. Hence, the claim of assessee of depreciation of Rs.26,21,923/- was disallowed on account of double deduction claimed by the assessee. Further, the assessee has claimed exemption Under Section 11 of the Act, with regard to income from dispensaries and hospital to the tune of Rs. 6,21,14,204/-. The Ld. Assessing Officer has disallowed the said amount claimed as exemption holding that it was an income from business of the assessee and exemption under Section 11(4A) of the Act, was attracted because the said exemption was not available to the assessee because the income was not from a business activity incidental to the attainment of the objective of the trust and separate books of accounts are not maintained by the assessee. While rejecting the appeal of the assessee the Ld. CIT(A) has observed as under:

“5.2 *The addition made by the Assessing Officer and the submissions of the appellant have been perused. It is to note that the income received from dispensary is not incidental to the attainment of the main object of the appellant trust and no separate books of account have been maintained by the appellant. As per provisions of Section 11(4A) of the Act, any income of the 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. In the instant case, no separate books of account were maintained and produced before the AO by the appellant during the course of assessment proceedings. In view of the above, the action of the Assessing Officer treating the income from dispensaries at Rs.1,03,87,060/- is upheld and Ground Nos. 1 & 2 are dismissed.*”

4) We have heard the learned Authorized Representative on behalf of Assessee/Appellant and Ld. DR on the behalf of the Revenue. It is argued on behalf of the appellant that the Ld. Assessing Officer as well as Ld. CIT(A) has not considered the fact that the books of account are separately maintained for the dispensary and the hospital and the same were submitted before the Assessing Officer as well as CIT(A) and the same has not been considered. It is

further argued that Ld. Assessing Officer and Ld. CIT(A) had wrongly interpreted the benefit of sec 11(4A) of the Act, and under that section exemption from taxation had been wrongly denied by the Ld. Assessing Officer as well as Ld. CIT(A). It is further argued that it is evident from the aims and objects of the assessee trust that to maintain, construct, open, own, run, manage library, schools, charitable institutions, Dispensaries and hospitals are the objects of the trust. The Ld. AR has taken us to the clause No. 5 of trust as per Memorandum of association which is reproduced as under:-

“Aim and Objects :

5. To maintain, construct, open own, run, manage libraries, schools, charitable institutions, Dispensaries and hospitals to attain these objects.”

5) It is further argued that to run and manage dispensaries and hospitals for attaining the charitable objects of the trust is one of the main charitable activities carried out by the trust/assessee. It is therefore submitted that the earning from running the dispensary and hospital was entitled to be exempted Under Section 11 of the Act, because the said activity is incidental to the attainment of the

- objective of the trust. Hence, denial of the said exemption by the Ld. Assessing Officer and the learned CIT(A), while resorting to the provision of Sec 11(4A) is highly misplaced and is not legally sustainable.
- 6) The Ld. Departmental Representative on behalf of the Revenue has argued that there is no illegality and perversity in the order of Ld. CIT(A), who has rightly dismissed the appeal because the appellant has miserably failed to satisfy the requirement of Sec 11(4A) of the Act; in order to claim Section 11 of the Act, separate books of accounts need to be maintained by the trust for the earning of the income from dispensary and it is further argued that, the said activity is not incidental to the attainment of the objective of the trust. Therefore, it is vehemently argued on behalf of Revenue that there is no merit in the appeal and same is liable to be rejected.
- 7) We have considered the rival submissions made on behalf of the parties. The question before us which needs to be determined is whether the Ld. Assessing Officer and CIT(A) are justified in denying the exemption Under Section 11 of the Act to the appellant

/assessee and the assessee/appellant has failed to satisfy the requirement of Section 11(4A) of the Act, so as to escape from the rigor of the said Section. In other words, whether the income of Rs.6,21,14,204/- earned from running dispensary and hospital is income from business or is earned from a business activity which is incidental to attainment of the objectives of the trust.

8) Let us first examine the provision of Section 11(1) and Section 11(4A) relevant to the present controversy;

“11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

- (a) Income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;*
- (b) Income derived from property held under trust in part only for such purposes, the trust having been created before the*

commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property;

- (c) *Income derived from property held under trust—*
- (i) *created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and*
 - (ii) *for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:*

Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;

- d) *income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution 36[, subject to the condition that such voluntary contributions are invested or*



deposited in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus].”

(4) For the purposes of this section "property held under trust" includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in receipt thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this Act relating to assessment; and where any income so determined is in excess of the income as shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes.

(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 or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business.

9) The Ld. AR on behalf of appellant referred and relied upon the following cases:

- Case No.1: ITA No. 4193/MUM/2019 Acharya Jiyalal Vasant Vs. ITO (Exemption)–II(1), [2021] 127 taxmann.com



582 (Mumbai–Trib) order dated 30th March, 2021 wherein it is held;

“7.1 It would be relevant to refer to section 2(15) of the Act which defines "charitable purpose" to include inter alia the following:

- i. relief of the poor*
- ii. education*
- iii. medical relief, and*
- iv. the advancement of any other object of general public utility.*

Circular No. 11 of 2008 dated 19.12.2008 issued by Central Board of Direct Taxes (CBDT) clarifies that the newly inserted proviso section 2(15) will not apply in respect of the first three limbs of section 2(15), i.e. relief of the poor, education or medical relief. Consequently, where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute 'charitable purpose' even if it incidentally involves the carrying on of commercial activities.

7.2In the instant case, the maintenance of studio is intrinsic and in pursuance of the objects of the assessee which is education. It is well understood that teaching of Indian Classical Music is within the field of "education". The activities of the studio are carried on in order to achieve the main object of the Trust and cannot be construed as business. As mentioned earlier, since the trust is engaged in education, the provision to



section 2(15) does not apply as clarified by CBDT Circular No. 11 dated 19.12.2008.”

- Case No. 2: in ITO (E), Trust Word 1(1), New Delhi Vs. Escorts Cardiac Disease Hospital Society, (2018) 99 taxmann.com 86 (Delhi –Trib.)

“6. We have heard both the parties and perused the records especially the impugned order. We find that AO had denied the exemption u/s 11(1) of the Act for the A.Ys. 1996-97, 1997-98 & 1998- by following the earlier year's order, but the appeal of the assessee was allowed by Tribunal. The department had filed the appeal before the Hon'ble High Court who had dismissed the appeal of the Department Escorts Cardiac Diseases Hospital Society (supra). Later, the Department filed the SLP before the Hon'ble Supreme Court of India against the order of the Hon'ble High Court and the Hon'ble Supreme Court of India had dismissed the SLP of the Department. Accordingly, the exemption u/s 11(1) of the Act for the A.Y 2003-04, 2004-05 & 2005-06 was allowed to the assessee as a charitable society who is engaged in providing medical relief. We further find that the AO has denied the exemption u/s 11(1) of the Act to the assessee for A.Y. 2010-11 by invoking the mischief of the Proviso of Section 2(15) mainly on the ground that the assessee is involved in trade commerce or business as the assessee receives the sponsorship receipt by conducting the seminars vide the order of the AO. The assessee appealed



against the orders of the AO before the Ld. CIT(A) and submitted that the assessee is a charitable institution is eligible for exemption u/s 11(1) of the Act as the assessee fully involved in the field medical to build, maintain and run hospitals, dispensaries and laboratories for treatment of various ailments & diseases and to launch activities for relief of poor, education & other medical reliefs and not involved in any trade commerce or business. We find force in the submissions of the AR's that the mere receipt of fees or charges does not tantamount that the assessee is involved in any trade, commerce or business as held in the various cases in favour the assessee on which the assessee also relied viz. India Trade Promotion Organisation's case (supra) wherein, it was held that mere receipt of fee or charge cannot be said that the assessee is involved in any trade, commerce or business and has accordingly allowed the relief to the India Trade Promotion Organisation's case (supra) case vide Paras 58 and 59 of the order. We further find considerable cogency in the findings of the Ld. CIT(A) that the assessee is a charitable society and is involved in providing the medical facilities and spread the awareness to the public at large and is fall in the last category i.e. "advancement of any other object of general public utility". However, on perusing the material on record, there is there is no proper justification for denying the exemption and the Proviso of section 2(15) is not attracted in this case and therefore, the assessee's case is fully covered by the orders of Ld. CIT(A), order of the Tribunal

dated 13/11/2003 and the orders of Hon'ble Delhi High Court dated 24/01/2007 and the Hon'ble Supreme Court who had also confirmed the order of the Hon'ble Delhi High Court. Therefore, respectfully following the precedence as aforesaid and by following the rule of consistency the Ld. CIT(A) has rightly directed the AO to allow the exemption u/s 11(1) of the Act with all the consequential benefits vide order dated 15/9/2015, which does not need any interference on our part, hence, we uphold the order of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue.”

- Case No.3 Income Tax Appeal No. 103 of 2017, Daya Nand Pushpa Devi Charitable Trust Ghaziabad Vs. Additional Commissioner of Income Tax Ghaziabad, (2021) 128 taxmann.com 118(Allahabad) dated 23rd June, 2021.

“Sub-section (4A) of Section 11 is the bone of contention between the parties. A careful reading of the said provision indicates that it talks of any income of the trust or an institution which is in the nature of "profit and gains of business" and states that sub-section (1) of Section 11 would not apply unless two conditions mentioned therein are fulfilled, i.e (i) such business is incidental to the attainment of the objectives of the trust; (ii) and separate books of accounts are maintained by such trust or institutions in respect of such business.

Sub-section (4) of Section 11 states that for the purpose of Section 11 "property held under the trust" includes "business undertaking so held".

The crucial word in sub-section (4A) is "business" which has to be understood as per the meaning provided under Section 2(13) of the Act. The "business" in sub-section (4A) can mean any activity including any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce, or manufacture. A business undertaking of the trust may also be included as property held under the trust in view of the sub-section (4) of Section 11. But for getting the benefit of sub-section (1) of Section 11, the income derived from property held under the trust whether wholly or in part, must be used for charitable or religious purposes. Under sub-section (4A) of Section 11, income of any business of the trust in the nature of profit and gains of such business can be exempted under sub-section (1) of Section 11 only if two pre-conditions mentioned in the said sub-section are fulfilled. The first condition is that the business must be incidental to the attainment of objectives of the trust.

While considering the scope of sub-section (4A) of Section 11 which came into effect by the Finance (No.2) Act 1991 w.e.f. 01.04.1992, in Assistant Commissioner of Income Tax Vs. Thanthi Trust, the Apex Court had noted that the substituted sub-section (4A) gave trust and institution a wider latitude than the earlier sub-section (4A). In the wide language of sub-section (4A), a trust is entitled to the benefit of Section 11, if it utilises the income of its business for the purpose of achieving its charitable objects. In this way, the trust is allowed to create a corpus by indulging in business activity to feed the

charity. As the provision stands, all that is required for the business income of the trust or institutions to be exempted from the tax is that the business should be incidental to the attainment of the objectives of the trust or institution. A business whose income is utilised by the trust or the institution for the purpose of achieving the objectives of the trust or the institutions, is, surely, a business which is incidental to the attainment of the objectives of the trust. It was, thus, held that the substituted sub-section (4A) is more beneficial to a trust or institution than the original provision.

It can, thus, be seen that sub-section (4A) of Section 11 presupposes a business venture of the trust or institution which is though independent to its main activity but incidental to the attainment of the objectives of the trust. The "business" as mentioned in the said sub-section can be an adventure or concern in the nature of trade, commerce or manufacture.

Having held that the applicability of the sub-section (4A) of Section 11 presupposes income from a business, being profit and gains of the business, the test applied is whether the activity which is pursued is integral subservient to the dominant object or is independent/ancillary/incidental to the main object or forms a separate activity in itself. The issue whether the institution is hit by sub-section (4A) of Section 11 of the Act will essentially depend upon the individual facts of the case of the institutions where considering the nature of the individual activity, it will have to be tested whether the same forms incidental, ancillary, connected activity (ies) and whether the same was carried out pre-



dominantly with the profit motive in the nature of trade, commerce etc.”

- 10) Thus, the question arises whether running of dispensary having a chemist shops selling medicines being run by the assessee/appellant trust is such business activity which is incidental to the attainment of its objectives.
- 11) As discussed earlier one of the main objective of the assessee trust and its establishment is to maintain and run the charitable institutions which includes dispensaries and hospitals to attain its objects. On perusal of the material on record and the order of the Ld. CIT(A) dated 2nd June, 2021, it becomes known that activity of running dispensaries is the main charitable object of the assessee. Assessee is a registered charitable trust and is running a 60 bed hospital in Navi Mumbai. The assessee is also having homeopathic dispensaries in Chembur, Mahim, Mulund, Santacruz and Vashi located in Mumbai and Navi Mumbai. The hospital is not a specialty hospital as it is catering to every section of the society. The five dispensaries are specializing in homeopathy. The medicine are not sold commercially and the rates are very low and



cateres to the poor and middle class population of the area in which they are situated. The dispensaries are being operated since 1963 and in the past, the provision of section 11(4A) of the Act has not been applied in respect of income from dispensaries. In view of these facts and the discussion made above, we have no hesitation in concluding that running of dispensary and hospital is one of the main object of appellant/assessee it is such business activity which is incidental to attainment of objectives the trust. Thus, the first requirement of Section 11(4A), stands satisfied.

- 12) Regarding the second condition of maintaining separate books of accounts for claiming exemption Under Section 11(4A) of the Act, it is argued on behalf of the appellant that the appellant/assessee is maintaining separate books of accounts for its earning from the dispensaries and hospital and the said separate accounts was duly submitted before the Ld. AO as well as Ld. CIT(A) appeal but both of them has failed to notice that the said requirement is already fulfilled as per the requirement of Section 11(4A) of the Act. We have glanced through the paper books of the appellant and it is noticed that in the schedule B, Income and Expenditure account



for the year ended on 31st March 2015, there is an auditor's report at page 1 which is containing the statement of account of the appellant from page no. 2 to page no. 15 of the paper book which clearly shows that the separate books of account has been maintained for hospital and dispensary income. The law referred and relied by Ld. AR on behalf of the appellant/assessee perfectly covers and applicable to the facts and circumstances of the present case. Nothing contrary to the said law or to the facts and circumstances on record has been brought by the revenue/respondent which may controvert the stand of the appeal that running of dispensary is one of the main charitable objective of the trust and separate book of account has also been maintained for the said business activity by the appellant. Thus, the appellant has fulfilled both the requirements of Section 11(4A) of the Act and is therefore, entitled to the exemption Under Section 11(1) of the Act. Hence, the order of the Ld. AO where income of Rs. 1,03,87,60/- has been added as business income from the dispensaries run in the premises of the hospital of the appellant is liable to be set aside to and the finding of the Ld.



CIT(A)/ National Faceless Appellate Centre, is accordingly set aside to the effect that the income received from the dispensary is such income earned from the activity which is incidental to the attainment of the main object of the appellant trust and that separate books of accounts has been maintained by the appellant for the said activity. The findings returned by the Ld. CIT(A) is also held to be not legally sustainable and accordingly set aside.

- 13) From the above discussion it became crystal clear that the assessee has maintained separate books of accounts of the alleged business activity of running dispensary and hospitals and the activity carried out is incidental to the main objective of the assessee /appellant and as such benefit of Section 11 (1) cannot be denied. Therefore, both the Ground no. 1 and 2 are decided in favour of appellant. In view of decision of Ground no. 1 and 2 given in favour of the appellant/assessee, the decision on Ground no. 3 and 4 pales into insignificance and stands disposed off accordingly.
- 14) Hence, the income of ₹ 1,03,87,60 is not liable to be added as business income of the appellant and is accordingly held entitled



to be exempted Under Section 11 (1) read with Section 11(4A) of the Act. The appeal is accordingly allowed in above terms in the favor of the appellant.

- 15) For the above reasons the appeal of the appellant is allowed in above terms.

Order pronounced in the open court on 13.05.2024.

Sd/-

(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Sd/-

(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Mumbai, Dated: 13.05.2024
Anandi Nambi, Stenographer

Copy of the Order forwarded to:

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

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai