

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.1302 to 1304/Chny/2023
निर्धारण वर्ष/Assessment Years: 2014-15 to 2016-17
&
Cross-Objection Nos.1 to 3/Chny/2024
निर्धारण वर्ष/Assessment Years: 2014-15 to 2016-17

The ITO (Exemptions Ward), Bibikulam, Madurai.	v.	M/s.D.N. Public Charitable – Trust, 13, Theni Main Road, Arasaradi, Madurai-625 016. [PAN: AAATD 9013 C]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent/Cross- Objector)
Department by	:	Dr. Samuel Pitta, JCIT
Assessee by	:	Mr. Arjun Raj, Advocate
सुनवाईकीतारीख/Date of Hearing	:	22.08.2024
घोषणाकीतारीख /Date of Pronouncement	:	09.10.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

ITA Nos.1302 to 1304/Chny/2023 are the appeals preferred by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short 'the Ld.CIT(A)'), Delhi, all dated 22.09.2023 for the Assessment Years (hereinafter in short 'AYs') 2014-15



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 2 ::

to 2016-17 and CO Nos.1 to 3/Chny/2024 are the Cross-Objections filed by the assessee for AYs 2014-15 to 2016-17.

2. Both sides agreed that since the facts/issues are similar/identical, the appeal [ITA No.1303/Chny/2023] in respect of AY 2015-16 of the Revenue and the CO No.2/Chny/2024 of the assessee would be taken as lead case, result of which, will be followed for AYs 2014-15 & 2016-17.

3. The Revenue has raised the following grounds in ITA No.1303/Chny/2023 for AY 2015-16:

1. The order of the Learned CIT(A) is contrary to the law and facts of the case.

2.1 When the facts of the case are that the assessment in the case was based on the outcome of survey conducted in the premises of assessee trust, whether the Ld.CIT(A) is right in holding that the modus operandi of the assessee that for diversion of funds was not proved with material?

2.2 Whether the Ld.CIT(A) was right in holding that the assessing officer was not justified in invoking section 13(1)(c) of the Act, when the assessment, order passed by the assessing officer clearly established the fact that there was violation of provisions of Section 13(1)(c) of the Act and the company was a specified concern as per section 13(3)(e) of the Act?

2.3 The Ld. CIT(A) erred in deleting the addition made by invoking provisions of Sec.13(1)(c) of the Act, when the value/usage/benefit of the CT Scanner had been passed on to an interested person without any adequate consideration by way of rent/compensation to the assessee trust who owned the CT Scanner.

2.4 The Ld CIT(A) erred in allowing exemption u/s.1/12, when there is specific violation of provisions of section 13(1)(c) on the part of assessee trust.

3. The Ld CIT(A) failed to appreciate the fact that the AD has clearly established that the assessee's activities cannot be considered as business incidental to the attainment of the objectives of charity.

4.1 The Ld.CIT(A) erred in holding that the assessee trust is entitled for depreciation at the rate of 40% on its CT scanner machine when no such equipment was mentioned in the Income tax Rules [New Appendix 1 Part A III(3)(xia)].



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 3 ::

4.2 Whether the Ld.CIT(A) was right in relying on the Hon'ble High Court decision in the case of M/s. Vasantha Subramanian Hospitals Private Limited in TC. (A) No.885 of 2015 dated 04.09.2018, when, the facts of that case are distinguishable with the present case and that the disputed equipment referred in the present case is only a 'Detection machine and not a 'Life saving equipment'?

5. For these and other grounds that may be adduced at the time of hearing. It is prayed that the order of the Learned CIT(Appeals) may be set aside and that of the Assessing Officer may be restored.

4. The assessee has raised the following grounds in CO No.2/Chny/2024 for AY 2015-16:

1. The order of the NFAC, Delhi dated 22.09.2023 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1056446268(1) in so far as the issues raised in present Cross Objection for the above mentioned assessment year is contrary to law, facts, and in the circumstances of the case.

2. The NFAC, Delhi erred in sustaining the assumption of jurisdiction u/s 147 of the Act and consequently erred in confirming the order of re- assessment without assigning proper reasons and justification.

3. The NFAC, Delhi failed to appreciate that having not provided the reasons of reopening despite having sought for the same during the course of re-assessment proceedings, the consequential re-assessment order passed in complete defiance to the law declared by the Supreme Court in the case reported in 259 ITR 19 should be reckoned as bad in law.

4. The NFAC, Delhi failed to appreciate that in any event, the Assessing Officer having not recorded belief / suggestion of escapement of income by the Respondent Trust, the consequential invocation of provisions in Section 147 of the Act should be reckoned as bad in law.

5. The NFAC, Delhi failed to appreciate that mechanical approval by the competent authority in terms of Section 151 of the Act for the purpose of initiating re-assessment proceedings would vitiate the consequential re-assessment order passed in view of glaring non application / independent application of mind by the competent authority in terms of Section 151 of the Act.

6. The NFAC, Delhi failed to appreciate that the order of re-assessment under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.

7. The NFAC, Delhi went wrong in rejecting the grounds raised on the validity of re-assessment on 3 facets and ought to have appreciated that the findings at para 4.2 of the impugned order was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

8. The NFAC, Delhi failed to appreciate that having not dealt with the issues of the assumption of jurisdiction under Section 147 of the Act as more fully captured in the detailed/ exhaustive written submissions filed, the impugned order passed by them should be considered as non est in law and ought to



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 4 ::

have appreciated that the cryptic order passed by them would defy the principles laid down by the Calcutta High Court by explaining the process of adjudication, thereby vitiating appellate order under consideration.

9. The NFAC, Delhi erred in sustaining the addition of Rs 5,11,399/- being the notional interest charged at the rate of 12% for the closing balance of the sum of Rs 42,61,664/- presumed to have been lent to Dhevaki Diagnostics P Ltd for the assessment year under consideration without adequate interest in the computation of taxable total income without assigning proper reasons and justification.

10. The NFAC, Delhi failed to appreciate that there was no actual flow of cash from the trust to the Company and further ought to have appreciated that the said entry in the books of accounts was merely a book entry, thereby vitiating the action in levying a notional interest at the rate of 12% on the closing balance of such sum presumed to have been lent to the company.

11. The NFAC, Delhi failed to appreciate that the assessment of notional interest as part of the computation of taxable total income / tax exemption computation relief under Section 11 of the Act was wrong, erroneous, incorrect, invalid, unjustified and not sustainable both on facts and in law.

12. The NFAC, Delhi failed to appreciate that the computation reported as part of the return of income filed by the Respondent / Cross Objection was correct and was in accordance with the provisions in Section 11 of the Act.

13. The Respondent craves leave to file additional grounds/arguments at the time of hearing.

5. Ground No.1 is general in nature, which doesn't require any adjudication, so, dismissed.

6. First, we will take up **Ground Nos.2.1 to 2.4**, wherein the Revenue has mainly challenged the action of the Ld.CIT(A) holding that in the facts and circumstances of the case, there is no violation of sec.13(1)(c) of the Income Tax Act, 1961 (hereinafter in short 'the Act') and therefore, allowed deduction u/s.11/12 of the Act. Since both parties agreed that **Ground Nos.2.1 to 2.4** as well as **Ground No.3** are inter-connected, we are inclined to decide these grounds together.



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 5 ::

7. Brief facts as noted by the AO are that assessee-Trust was registered under the Trust Act on 04.06.2003 and was registered as Public Charitable Trust u/s.12AA of the Act from AY 2004-05 onwards vide C.No.464/37/03-04 dated 21.07.2003. The AO noted that the assessee Trust has filed return of income for AY 2015-16 on 27.09.2015 admitting 'NIL' income. Later, the assessment of the assessee was scrutinized and completed u/s.143(3) of the Act 29.12.2017, and the AO accepted the income returned by the assessee. Thereafter, a survey was conducted at the premise of the assessee Trust on 22.01.2018 (AY 2018-19) and it was found during the survey that the property of the assessee Trust i.e. CT Scanner Machine had been installed and utilized by a company M/s. Dhevaki Diagnostics (P) Ltd., (hereinafter in short 'M/s. DDPL') in which, the Trustees of the assessee-Trust had substantial interest [author and the Trustee of assessee Trust viz., Dr. P.S.Nagendran & Dr. K. Dhevaki was Managing Director and Director of M/s. DDPL respectively and jointly holding 99.16% of the shares in the said company] and the said machine/property was utilized by them without charging adequate rent or compensation. According to the AO, the company M/s. DDPL is a concern as specified u/s.13(3)(e) of the Act and therefore, there was violation of sec.13(1)(c) of the Act read with sec.13(2)(b) of the Act, since assessee didn't charge adequate rent or compensation for allowing M/s. DDPL to use the Trust property (CT scanner Machine); Consequently according to



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 6 ::

the AO, the assessee Trust is not eligible for exemption of income u/s.11 & 12 of the Act and therefore, the excess income over expenditure was chargeable to tax and since there was escapement of income, he issued notice u/s.148 of the Act on 23.07.2018 and proceeded to re-assess the escaped income of the assessee.

8. In the re-assessment order, the AO noted that assessee-Trust as part of its philanthropic activity was running a scan centre in the name and style of "Seva Scans" at Kakkan Street, Shenoy Nagar, Madurai, and the gross receipts for AY 2016-17 was to the tune of ₹1,93,07,489/- and the expenditure incurred to earn the above income was ₹ 1,74,13,726/- and the balance amount was claimed as exempt u/s.11 of the Act. The AO noted that Dr. P.S.Nagendran & Dr. K. Dhevaki were author/trustee of the assessee-Trust and the AO has reproduced the main objects of the Trust at Para No.3 of reassessment order and noted that assessee-Trust was established to maintain Hospitals, relief to the public, medical relief to the poor. Provide medical, nursing courses to poor village people, distribution of notebooks to school children, promote facilities for the discovery or development of new methods of diagnosis, understanding and prevention and treatment of diseases, providing diagnostics facilities for evaluation of cancer and tuberculosis and subsequent treatment at free of cost or at concessional cost etc.



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 7 ::

9. Thereafter, the AO took note of the survey conducted on 22.01.2018 and noted that the survey-team found that the CT Scanner machine "Siemens Somatom Definition" [Page No. 15] was purchased by assessee-Trust for ₹ 3.80 Crs. on 26.09.2011 (AY 2012-13) was not found in the premise of assessee-Trust at "Seva Scans" at Kakkan Street, Shenoy Nagar, Madurai, as well as at the Trust registered Office. Upon enquiry during survey, it was found that the aforesaid machine was installed in the premise of the company named M/s. DDPL located at No.13, Theni Main Road, Madurai and utilized by the said company, wherein, the Author and the Trustee of the assessee-Trust (Dr. P.S.Nagendran & Dr. K. Dhevaki) are Managing Director and Director of M/s. DDPL respectively and holding substantial interest i.e. 99.16% of the said company. Thus, according to the AO, the company M/s. DDPL was a concern as specified u/s13(3)(e) of the Act and took note of certain statements recorded by the survey team in his order at Para Nos.6 to 6.4 and issued show cause notice to the assessee dated 27.11.2018 and directed assessee to give its explanation regarding the violation of sec.13(1)(c) of the Act; and the AO after perusal of the reply/explanation (reproduced at Para No.8 of his order), was pleased to reject the same on the following reasons which are reproduced as under:

9. The assessee's submissions are considered carefully, however not accepted due to following reasons,



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 8 ::

a) As given by the supplier features and specifications of the machinery "Siemens Somatom Definition AS Excel Edition 128 Slice Spiral CT Scanner has been described by the supplier Siemens as below.

"The unit is manufactured at our Factory at Forchheim Germany and has been imported into India by us specifically for the supply to D.N Public Charitable Trust, Madurai.

This high end 128 slice CT Scanner has Cardiac CT Angiography capability which is useful for early detection of coronary artery disease. This system also has Neuro Angiography capability with Neuro DSA for detection of Cerebro-Vascular pathology. This system is capable of whole-body scanning required for Poly-Trauma cases such as Road traffic accidents etc. All Oncology evaluation is possible for cancer patients to diagnose the stage of the disease.

b) In answer to the question no. 11 in sworn statement recorded during the course of survey conducted on 22.01.2018, regarding installation of the trust machinery Siemens CT Scanner in the premises of the Company M/s Dhevaki Diagnostics (P) Ltd, Dr. P.S. Nagendran, stated that "The said machine is exclusively used for cancer patients and cardiac patients. It is used for internal radiation. Since the Dhevaki Heart Hospital and Cancer Hospital is situated in the Dhevaki Scan Premises, we have installed the machine at Dhevaki Scans. This machine is exclusively used for brachy therapy, angiograms to detect the cardiac vessels blocks. The machine is also used for treatment under Chief Minister Health Insurance Scheme Patients. Therefore this machine is kept in Dhevaki Scans" It is clear from the above statement that the assessee trust machinery were utilised by the company for the patients of Dhevaki Heart Hospital and Cancer Hospital and other patients as well and it also has been utilised for patients covered under Chief Minister Health Insurance Scheme Patients, Also the only CT Scan machine available in the Company Premises is the assessee trust's Scan Machine Siemens Somatom Definition AS - Excel Edition 128 Slice Spiral CT Scanner and the company has no other CT scan machine to use.

c) It is seen from the bills for taking CT-Scan by utilizing the assessee trust's machinery, that the same were raised in the name of the company M/s Dhevaki Diagnostics (P) Ltd and charged at the prevailing market rate. It is seen from the fees being charged for taking MRI Scan, CT Scan for different parts of the body as per the rate chart taken from the premises of the assessee trust Seva Scans' that the fees being charged for taking Brain CT-Scan was Rs. 700. However, as seen from the bills impounded during the course of survey, that were raised in the name of the company by utilizing the trust machinery Siemens CT Scanner for taking BRAIN-CT the company has charged Rs. 1,500/- which is at par with the prevailing market rate and hence no concessional rates were applied.

d) As stated by the author of the trust cum Managing Director of the company, in his sworn statement that the bills for taking CT Scan by utilizing the assessee trust machinery were claimed to be accounted for in the books of the company M/s Dhevaki Diagnostics (P) Ltd, and there was no basis for transfer of the CT Scan fees to the assessee trust from the company. Also there were no registers maintained to substantiate the number of scans taken and amount of fees collected by utilizing trust machinery. In this circumstances the claim of trust that the CT machine installed in the premises of the Company, M/s Dhevaki Diagnostic Pvt. Ltd., has been used by the trust, and whatever the income earned by utilizing the trust machinery CT Machine has been transferred by the company to the trust, no amount or benefit has been



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 9 ::

enjoyed by the company or by the trustees, the entire amount has been transferred is not acceptable and thus rejected.

e) Further. During the course of scrutiny assessment, in response to the summon u/s 131 dated 08.11.2018, the company M/s Dhevaki Diagnostic Pvt. Ltd. had submitted the details of total fee receipts made by the company by way of utilisation of CT scan, MRI scan and Ultra sound machine, Amount of CT scan fees transferred to D.N. Public Charitable Trust and CT Scan, MRI Scan & USC fees shown by the company in its P & L account for the A.Y. 2012-13 to AY 2017-18. The same is tabulated as below:

SL No	AY	Total fees receipts made out of CT scan, MRI scan and Ultra sound machine by the Company (in Rs.)	CT scan fees transferred to Trust (in Rs.)	Percentage of revenue sharing	CT, MRI, USC fees shown by the company in its P&L account (in Rs)
1	2011-12	3,84,45,735	-	0%	-
2	2012-13	5,69,64,218	2,08,28,501	36%	3,61,35,717
3	2013-14	6,71,08,777	2,01,68,780	30%	4,69,39,997
4	2014-15	6,18,12,729	1,60,20,100	25%	4,57,92,629
5	2015-16	7,48,09,449	66,27,830	8%	6,81,81,619
6	2016-17	8,10,96,322	35,64,850	4%	7,67,41,894
7	2017-15	8,56,71,975	0	0%	8,56,71,975

It is clear from the above tabulation that the receipts by way of CT scan fees of the company M/s Dhevaki Diagnostic Pvt Ltd., has been substantially increased after the installation of the assessee trust's machinery in the premises of the company M/s.Dhevaki Diagnostic Pvt. Ltd, which has been directly enjoyed by the Managing director and Director of the company who were Author and Trustee of the assessee trust during this periods. This is a clear violation u/s 13(1)(c) r.w.s 13(2)(b) of the I.T. Act. The CT scan fees transferred to the assessee trust has been substantially reduced from year after year even though the total fee receipts by way of CT Scan of the company increased and there were no change in the holding of machineries by the company in the category of CT scan, MRI scan and Ultra sound machines during this period.

f) It has been gathered by the inspector of this office on 20.12.2018 through inquiry that the life time of the Siemens CT Scanner is only 7 to 8 years and the prevailing market rate of rent for taking lease of the machinery Siemens Somatom Definition AS Excel Edition 128 Slice Spiral CT Scanner is between 30% to 40% of the total scan charges receipts. Also 80 to 90 scans per day can be taken by utilising the above machinery and the charges for taking scan as on date was Rs. 3,500/- for Chest, Rs. 5,000/- for Abdomen, Rs. 750/- for Sinusitis, etc and if the average charges for taking a scan is taken as Rs. 2500/ then the machinery Siemens Somatom Definition AS Excel Edition 128 Slice Spiral CT Scanner average revenue could generate Rs. 7 Crore to Rs. 8 Crore per year. (2500 average cost per scan X 80 scans per day X 350 days).

g) There was no agreement between the company M/s Dhevaki Diagnostic Pvt Ltd and the assessee trust for sharing of revenue generated by way of utilising the assessee trust property Siemens CT Scanner and there was no register maintained by the company for generation of revenue through utilisation of assessee trust machinery. Also the assessee trust's property Siemens CT Scanner is the only CT-Scanner available in the company premises in this category and maximum fee receipts has been generated by the company only



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 10 ::

by utilising the above machinery. Therefore, after taken into account all the above aspects, it has been decided that 37.5% of the total fees receipts of the company after reducing the fees already transferred to the assessee trust has to be treated as compensation u/s 13(1)(c) r.w.s. 13(2)(b) of the I.T. Act, for utilising the assessee trust's property Siemens CT Scanner.

h) Therefore, Rs. 2,14,25,713/- (2,80,53,543 (74809449*37.5%)- 66,27,830) arrived as per the above calculation after deducting revenue already shared by the company is treated as compensation for the A.Y. 2015-16 for utilizing the trust property Siemens Somatom Definition AS Excel Edition 128 Slice Spiral CT Scanner and the same is charged to tax at maximum marginal rate as per the proviso to section 164(2) of the I.T. Act.

And thereafter, the AO estimated the compensation for using/utilizing the CT Scanner at Rs.2,14,25,713/- and added it to the income of the assessee-Trust for AY 2015-16.

10. Further, the AO was pleased to hold that since there was a violation of sec.13(1)(c) of the Act, the assessee was not eligible for claiming of exemption u/s.11 & 12 of the Act and referring to the coordinate Bench decision of this Tribunal in the case of M/s.Paramsiva Naidu Muthuvel Raj Educational Trust dated 09.07.2016, disallowed the surplus income of ₹19,59,537/- as shown in the income and expenditure for AY 2015-16 which according to the AO, was chargeable to tax at the rates applicable for AOP (Association of Persons) as specified in sec.164(2) of the Act and thus, added ₹19,59,537/- and computed the total assessed income at Rs.2,46,32,479/-.

11. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A)/NFAC who was pleased to delete the same by holding as under:

5.3 I have carefully considered the order passed by the Assessing officer and the submission filed by the appellant. The brief fact of the case is that the case



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 11 ::

of the appellant was reopened by issuing notice u/s. 148 on 23.03.2018 and re-assessment proceedings was completed u/s 147 r.w.s 143(3) of the Act on 25.12.2018. The appellant, M/s. D.N. Public Charitable Trust was registered under Trust Act on 04:06:2003 As per the assessment order, the appellant registered as Public Charitable Trust u/s.12AA of the Income Tax Act from AY 2004-05 onwards via C. No.464/37/03-04 dated 21.07.2003. The appellant trust is running a scan centre as a part of charitable activity in the name & style of Seva Scan at Kakkan Street Shenoy Nagar, Madurai. A survey u/s. 133A was conducted on 22-01-2018 in the premises of the Trust and it has been found during survey that the assessee trust violated the provision of section 13(1)(c) of the Act. As per reason for re-opening, it was found that one machinery by name Siemens Somatom Definition AS+ Excel Edition -128 Slice Spiral CT Scanner along with accessories (Siemens CT Scanner) purchased for Rs 3,80,00,000/- was not found in the premises of the assessee trust but had been installed in the premises of the company M/s Dhevaki Diagnostics (P) Ltd. Arasaradi", (running a Medical Scanning Centre under the name and style of Devaki Scans) in which the author and trustee of the trust namely P. S. Nagendran and Dr. K. Dhevaki were managing director and director having substantial interest of 70% and 29.16% respectively. The assessing officer held that the above Siemens CT Scanner was used for enriching the company without transferring the entire fees collected to the trust account. The assessing officer was of the opinion that the Siemens CT Scanner was made available to the benefit of the company without charging adequate rent or compensation from the company and therefore, he invoked section 13(1)(c) read with section 13(2)(b) and levied tax at maximum marginal rate.

5.4 The assessee contended before the assessing officer that even though the Siemens CT Scanner was installed in the premises of the company to meet the convenience of the patients, the entire fees of CT Scanner machine collected were transferred to the trust. Further the company did not charge any rent from the Trust and thereby only trust benefitted from the company and not otherwise. The assessing officer held that there was no basis or record for determining the amount to be transferred to the trust and he therefore resorted to estimation of 37.5% of the total fees collected by the company as the fees relating to the Siemens CT Scanner and after deducting the amount already shown by the trust in return of income, the added Rs.2,14,25,713/- as benefit transferred to the company by the trust and charged the same at maximum marginal rate by applying section 164(2) of the Act He further held that once there was violation under section 13(1)(c), the trust would lose exemption under section 11 in respect of the other income also and thereby added Rs.19,59,537/-and taxed the same at maximum marginal rate.

5.5 The appellant has contended that the trust installed the Siemens CT Scanner in the premises of the company so that it would be convenient to the patients visiting Dhevaki Hospital and the trust also would get more fees collected to meet the objects of the trust. The trust did not pay any rent to the company for utilising the premises of the company. The entire fees collected in respect of the Siemens CT Scanner were transferred to the trust. The assessing officer based on suspicion, assumption conjectures and surmises that the company could not have transferred the entire fees collected to the trust resorted to estimation of 37.5% of the total fees collected by the company as relating to the Siemens CT Scanner and made addition, The appellant has also contended that during the course of survey under section 133A in the premises of the company and the trust, the assessing officer could not collect any iota of evidence to show that the company retained any part of the fees collected in respect of the Siemens CT Scanner. The assessing officer has not mentioned any rational basis for arriving at 37.5% but at his whims and fancies adopted 37.5% The company transferred the entire fees collected



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 12 ::

to the trust on a regular basis and the same is evident from the fees admitted by the trust. The assessing officer even after conducting survey under section 133A could not bring on record any concrete materials to show that the company appropriated part of the fees collected with reference to the materials collected and impounded at the time of survey th view of the above, there is no scope for making addition of Rs. 2.14.25,713/- by invoking section 13(1)(c) and denying exemption under section 11 in respect of other exempt income of Rs.19,59,537/- and levy tax at maximum marginal rate. Further, the appellant has submitted the breakup detail of the fees collected by M/s. Dhevaki Diagnostics Pvt. Ltd. and ledger copy showing the transfer of CT scan fees to D.N Public Charitable Trust as supporting evidence. On perusal of the same, it is noticed that the fees collected by the company M/s. Dhevaki Diagnostics Pvt. Ltd. for utilizing the CT scan machine and particulars of CT Scan fees transferred to trust are as under:-

Sr. No.	Assessment Year	CT Scan fees Receipts	CT Scan fees transferred to Trust
1	2012-13	2,08,28,501	2,08,28,501
2	2013-14	2,01,68,780	2,01,68,780
3	2014-15	1,60,20,100	1,60,20,100
4	2015-16	66,27,830	66,27,830
5	2016-17	35,64,850	35,64,850
6	2017-18	0	0

In support of its claim, the appellant has also furnished the ROI of the company M/s Dhevaki Diagnostics Pvt. Ltd. for the year wherein fees income after transferring the amount to the trust has been shown in Profit & Loss A/c and ROI for the respective Assessment years. From the above table, it is evident that any fees collected by the company, M/s. Dhevaki Diagnostics Pvt. Ltd., for the use of the trust's machinery. particularly the CT Scan machine which is also evident from ROI & annual accounts of the company submitted by the appellant, have been fully and entirely transferred to the trust. The assessing officer has acknowledged this fact and recorded it in para 9(d) of the assessment order itself Furthermore, there is no dispute that M/s Dhevaki Diagnostics Pvt. Ltd. has collected fees from various diagnostic machines, including the MRI machine, CT Scan machine, Ultra Sound Machine, X-ray machine, and Mamography machine. However, it should be noted that only the CT Scanner machine available in the company's premises belongs to the assessee trust. This fact has also been recognized by the assessing officer and recorded in paragraph 9(b) of the assessment order. Nevertheless, the assessing officer has made an addition by taking 37.5% of the total fees collected by the company from the CT Scan, MRI scan and Ultra Sound Machine, despite the MRI scan and Ultra Sound Machine being owned and managed by the company. Furthermore, Assessing Officer has not proved with material evidence to show that the Appellant's trust had diverted their Income to the interested person referred to in sub-section of section 13 of the 11 Act In fact the Managing Director of the Trust and the Diagnostic Center run by the Managing Director of the Trust only has rendered services to the trust for carrying out the object of the trust.

In view of the above, the assessing officer was not justified in invoking section 13(1)(c) of the Act in the case of the appellant. Accordingly, addition of Rs.2,14,25,713/- made by the Assessing officer by invoking section 13(1)(c) is hereby deleted.



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 13 ::

5.6 With regards to the consequential addition of surplus income, it should be noted that I have already deleted the addition made by the Assessing Officer based on the invocation of section 13(1)(c) of the Act in the preceding paragraph. Consequently, the appellant trust is eligible for the exemption claimed in the return of income under sections 11 and 12 of the Act for surplus income. Accordingly, the addition of Rs. 19,59,537/- is hereby deleted.

12. Aggrieved by the aforesaid action of the Ld.CIT(A)/NFAC, the Revenue is before us.

13. The Ld.DR has assailed the action of the Ld.CIT(A)/NFAC and submitted that survey team had found that the property belonging to the assessee-Trust was being commercially exploited and the fees collected from using it, was not transferred to the assessee-Trust. And thus, violating sec.13(1)(c) & sec.13(2)(b) of the Act; and took us through the reasons given by AO for concluding that there was violation of sec.13(1)(c) of the Act and thus, assessee was not eligible for deduction u/s.11 of the Act. According to Ld DR, the Ld.CIT(A) erred in allowing the grounds of appeal without passing any speaking order and prayed that the impugned order be reversed and the action of the AO be upheld. Per-Contra, the Ld AR supported the action of Ld CIT(A) and submitted that the CT scanner in question was installed in the premise of M/s. DDPL considering the convenience of the patients/visiting Dhevaki Hospital. and the entire fees generated from it was passed on promptly to the assessee-Trust and drew our attention to relevant evidences placed in paper-book to prove that the entire fees from CT scanner collected by M/s. DDPL were transferred to assessee Trust; and thus, the Ld AR



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 14 ::

contented that assessee-Trust received more fees which in-turn was utilized to meet the charitable objects of the Trust. Further, it was pointed out by the Ld AR that M/s. DDPL didn't charge any rent from the Trust for utilizing it in the premises owned by M/s DDPL; and thus, the assessee Trust only benefited from such an arrangement with M/s.DDPL and not the other way i.e. company M/s. DDPL didn't benefit from such arrangement. And the Ld AR pointed out that the AO in order to estimate the compensation for using CT scanner has erroneously brought in some data based on report of Inspector, which copy was never given to assessee, so, according to Ld AR, the estimation is erroneous and flawed. The AO has noted at Para No.9(b) that the 'Siemens CT Scanner' was the only machine in the M/s. DDPL premise. The Ld.AR also pointed out inter alia several factual inconsistencies given by AO and pointed out some of them and especially drew our attention to Para No.9(d) of his reassessment order that the AO acknowledged that a perusal of accounts of the company M/s. DDPL would show that they have fully and entirely transferred to the assessee Trust, the fees from the use of 'Siemens CT Scanner', whereas his entire case was that M/s DDPL doesn't give adequate compensation for use of CT scanner to assessee-Trust. And the Ld CIT(A)/NFAC after appreciating the facts, have correctly deleted Rs 2.14 cr & Rs 19,59,537/-, by passing a speaking order. Thus, the Ld AR urged us to uphold the action of Ld CIT(A).



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 15 ::

14. We have heard both the parties and perused the materials available on record. We note that assessee-Trust was registered as a public charitable Trust and enjoyed registration u/s.12AA of the Act from AY 2004-05 onwards. The assessee Trust had filed its return of income (RoI) for AY 2015-16 on 27.09.2015 admitting 'NIL' income. Later, the RoI was selected for scrutiny and on 29.12.2017 assessment was framed u/s.143(3) of the Act accepting the income returned by the assessee. The assessee-Trust is noted to be running a Scan centre as part of its charitable/philanthropic activity in the name and style of "Seva Scans" at Kakkan Street, Shenoy Nagar, Madurai. On 22.01.2018 (i.e. in AY 2018-19), a survey u/s.133A of the Act was conducted at the premise of the assessee-Trust and it was noticed during the course of survey that one machine i.e. 'Siemens CT Scanner' which was purchased for ₹3.80 Crs. was missing from the premises of the assessee-Trust and instead it was found to have been installed in the premise of a Diagnostic Centre run by a company named as M/s. DDPL. This company is noted to be running a Medical Scanner Center and its Managing Director and Director was the author/trustee of the assessee Trust i.e. Dr. P.S.Nagendran & Dr. K. Dhevaki. According to the AO, since the author of the assessee-Trust Dr. P.S.Nagendran was the Managing Director of M/s. DDPL and the Trustee of the assessee Trust Dr. K. Dhevaki was a Director of M/s. DDPL and they were holding 99.16% of shares in M/s. DDPL, it was a concern



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 16 ::

specified u/s.13(3)(e) of the Act; and since the property of the assessee Trust ('Siemens CT Scanner') was made available to the benefit of the company M/s. DDPL "without charging adequate rent or compensation" from the company, he was of the view that there was *per se* violation of sec.13(1)(c) r.w.s.13(2)(b) and therefore, he recorded reason for re-opening the assessment and after issuing notice u/s.148 of the Act, proceeded to re-assess the income of the assessee and after hearing the explanation of the assessee regarding the utilization of CT Scanner at the premises of M/s.DDPL, rejected the explanation of the assessee and estimated the compensation [based on Inspector's Report] which could have been received by the assessee from M/s. DDPL for utilizing the assessee Trust property ['Siemens CT Scanner'] by computing 37.5% of the total fees received by M/s. DDPL, after reducing the fees already transferred to the assessee Trust and thus, AO arrived at ₹2,14,25,713/-, which he treated as adequate compensation which could have been received by the assessee Trust from M/s. DDPL for utilizing the Trust property 'Siemens CT Scanner' for AY 2015-16.

15. On appeal, the Ld.CIT(A)/NFAC noted the assessee's contention before the AO that the 'Siemens CT Scanner' (property in question) was installed in the premise of the assessee company M/s. DDPL to meet the convenience of the patients/visiting Dhevaki Hospital. It is noted that during survey, when the survey team asked the Trustee of the assessee-



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 17 ::

Trust [Dr. P.S.Nagendran, Managing Director of M/s. DDPL] 'as to why' the assessee-Trust property, 'Siemens CT Scanner' was installed in the premise of the company, M/s. DDPL, he replied that *"the said machine is exclusively used for cancer patients and cardiac patients. It is used for internal radiation. Since the Dhevaki Heart Hospital and Cancer Hospital is situated in the Dhevaki Scan Premises, we have installed the machine at Dhevaki Scans. This machine is exclusively used for brachy therapy, angiograms to detect the cardiac vessels blocks. The machine is also used for treatment under Chief Minister Health Insurance Scheme Patients. Therefore, this machine is kept in Dhevaki Scans"*. The AO also noted that the answer to the Q.No.12, as to whether the said CT scanner was used for commercial purpose. Dr. K. Dhevaki deposed that *"the machine was very rarely used for commercial purpose and the said amount has been transferred to the trust"*. Thus, according to the assessee, by making available the CT Scanner to M/s.DDPL, the assessee-Trust would get more fees which in-turn was utilized to meet the charitable objects of the Trust and asserted with the aid of corroborating evidence that the entire fees from CT scanner collected by M/s. DDPL were transferred to assessee Trust. Further, it was pointed out that M/s. DDPL didn't charge any rent from the Trust for using the machine at its premises, and thus, the assessee Trust only benefited from such an arrangement with M/s.DDPL and not the other way i.e. company M/s. DDPL didn't benefit



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 18 ::

from such arrangement but it was the Trust which was benefitted from such an arrangement. It was pointed out to Ld CIT(A) that the AO brushed aside the aforesaid relevant facts and proceeded to estimate the compensation [which ought to have been received from utilizing such a machine at the premises of M/s.DDPL] based on inadmissible inspector-report and data. The Ld CIT(A)/NFAC appreciated inter-alia these facts and gave relief to the assessee-Trust.

16. And the Ld AR pointed out that AO has based his estimation on erroneous data given by an Inspector, which report according to Ld AR could not have been used against assessee, firstly, for not giving a copy of report to assessee, and secondly, not allowing the assessee to rebut it and thirdly, not allowing cross-examination of the maker of such report vitiates the Inspector Report and AO erred in using it behind the back of assessee to draw adverse view is legally untenable. And further submitted that the AO erred in heavily relying on the report submitted by the Inspector for alleging that M/s.DDPL was charging exorbitant fees for use of CT scanner and drew our attention to the investigation report given by the Inspector dated 20.12.2018 [which copy has not been given to the assessee before assessment order was passed on 25.12.2018 (i.e. assessment order framed within five days after receipt of impugned Inspector Report); and a copy of Inspector-report was received by the assessee only after preferring a RTI on 15.02.2021 (i.e. after three



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 19 ::

years). According to the Ld.AR, a perusal of the investigation report placed at Page No.42 of the Paper Book would reveal that he has prepared the same after going to **some** of the scan centers located at Madurai on 20.12.2018 for gathering information about the scan machine/CT scanner in the case of M/s. DN Public Charitable Trust and pointed out that the inspector doesn't specify where/which scan-centers he visited to collect information to prepare the report. Without even giving the source of information/data, the report cannot be relied upon to draw adverse view against assessee and asserted that AO erred in placing reliance on it. The Ld.AR drew our attention to the fees charged in 2018 by various scan centers shown in Inspector's Report as under:-

- a) Sinus-CT ₹750/-
- b) Brain-CT ₹2500/-
- c) Abdoman-CT ₹5000/-
- d) Chest-CT ₹3500/-

17. Drawing our attention to Page No.217 of the Paper Book (Volume-II), the fees structure of the CT scans has been found placed which shows that assessee has been charging for Brain-CT ₹1500/-, Chest-CT ₹1950/- abdomen-CT ₹2000/- (only in the case of Sinus-CT assessee's fees is ₹1050/-, whereas, the inspector report ₹750/-). In other cases, there is a difference of more than ₹1000/- or even ₹3000/- more. Thus, according to the Ld.AR, fees charged by M/s. DDPL which was transferred



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 20 ::

to the assessee can't be said to be unreasonable, even if the inspector's report is considered.

18. The Ld AR also brought to our notice the reasons given by AO at para 9 (a) to (i), which according to him was full of factual inconsistencies & inaccuracies, and so it cannot be relied upon to draw adverse view against assessee, and that too without giving an opportunity to assessee to explain/rebut it (like carrying out 80-90 scans per day) which is impossible to carry out, because, CT scan, etc., per patient would take at least 30 to 45 minutes. Thus, on an average only 24 to 28 scans can be taken per day, even if it is used back-to-back. The Ld.AR pointed out that the AO erred in taking note of average charges for a scan at ₹2,500/- and thus, computing average Revenue from the CT scanner at ₹ 7 Crs. to ₹ 8 Crs. per year, which the Ld.AR asserted is a wild guess and wondered, if it is true, then the machine costing ₹3.80 Crs purchased on 24.09.2010 (AY 2011-12) could have generated within six months the cost of the machine itself. Therefore, the Ld.AR contended that the action of the AO was based on irrational input and on wrong assumption of facts, which was arbitrary and whimsical and based on suspicion, conjectures and surmises.

19. The assessee asserted with evidence that M/s. DDPL had transferred to the assessee-Trust the entire fees collected for utilizing the



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 21 ::

CT scanner at regular periodic intervals which facts even though where brought to the notice of the AO, the same has not been disproved by him. In this regard, the Ld.AR drew our attention to Page Nos.230-231 (Volume-I of Paper Book) wherein, the ledger of M/s. DDPL is found kept for AY 2014-15 which shows that CT scan fees of ₹1,60,20,100/- was collected by M/s. DDPL and the same was transferred to the assessee Trust. Likewise, the CT scan fees receipts for monthly wise for AY 2013-14 is found placed at Page No.231 of the Paper Book. Likewise, for AY 2014-15, the CT Scan ₹66,27,230/- which has been transferred to the assessee Trust at Page No.233 of the Paper Book reveals monthly wise breakup of the fees collection for AY 2014-15. Likewise, we note that for AY 2016-17, CT scan fees collected was to the tune of ₹ 35,64,850/- which was transferred to the assessee Trust [at Page No.235 of the Paper Book] breakup monthly wise for AY 2016-17. Likewise, the Ld.AR drew our attention to Page Nos.236-247 wherein the ledger extract in the books of the assessee Trust showing the running account maintained with M/s. DDPL which captures the transactions relevant to AY 2014-15 and from Page Nos.248-261 for relevant AY 2015-16 and likewise, the ledger extract for AY 2016-17 is found placed from Page Nos.262-275 of the Paper Book. At Page Nos.276-279 of the Paper Book, we note that the assessee has placed the proof of the payment of AMC & other expenses incurred by M/s. DDPL for the CT scan which shows that M/s. DDPL has



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 22 ::

remitted the amount of ₹29,79,720/- as comprehensive maintenance fees for the period from 01.10.2014 to 30.09.2016. Thus, according to the Ld.AR, it can be seen that the CT scan charges collected from the patients by M/s. DDPL were fully transferred to the Trust account and we also find that the Ld.CIT(A) has given a finding of fact after going through the ledger maintained by M/s. DDPL as well as the ledgers of the assessee and books of accounts etc., has given a finding of fact that the entire fees collected by M/s. DDPL in respect of using the machine of the assessee Trust i.e. 'Siemens CT Scanner' was duly transferred to the assessee Trust as under:

Sr. No.	Assessment Year	CT Scan fees Receipts	CT Scan fees transferred to Trust
1	2012-13	2,08,28,501	2,08,28,501
2	2013-14	2,01,68,780	2,01,68,780
3	2014-15	1,60,20,100	1,60,20,100
4	2015-16	66,27,830	66,27,830
5	2016-17	35,64,850	35,64,850
6	2017-18	0	0

20. We also find that for AY 2015-16, M/s. DDPL has received an amount of ₹11,27,10,656/- and the fees collected for various machines are given at Page No.232 of the Paper Book and M/s. DDPL has transferred to the assessee Trust ₹66,27,830/- which is noted as under:

SI.No.	FEES COLLECTION PARTICULARS	FEE RECEIPTS (in Rs.)
1	MRI FEES	19379572
2	CT SCAN FEES	6627830
3	ULTRA SOUND	15783699
4	X-RAY FEES	4062769
5	PET FEE RECEIPTS	30000
6	LAB TEST FEE RECEIPTS	1226473
7	MAMOGRAPHY	2049250
8	ECG FEE RECEIPTS	177013



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 23 ::

9	EEG FEE RECEIPTS	1048350
10	EAST VELI BRANCH RECEIPT	13782647
11	VNR BRANCH RECEIPT	10641845
12	MD INDIA P LTD ONCOLOGY FEES	37822984
13	MD INDIA P LTD CARDIOLOGY FEES	78224
	TOTAL	112710656
Less:	CT SCAN FEES TRANSFERRED TO DN TRUST (Details Enclosed)	6627830
	BALANCE FEES RECEIPT OFFERED AS INCOME IN M/S.DEVAKI DIAGNOSTICS PVT LTD (Details Enclosed)	106082826

21. And the monthly bifurcation placed from Page No.233 and also, we find that Page No.230 onwards, we find that finding of fact of the Ld.CIT(A) is matching, and thus we don't find any infirmity in the action of the Ld.CIT(A) holding the entire fees collected in respect of 'Siemens CT Scanner' were transferred to the Trust. Thus, it is noted that M/s. DDPL used to remit the fees for maintenance contract and no rent was realized from assessee-Trust for giving space in the premises of M/s.Devaki Hospital. We find that the Ld.CIT(A) after examining the relevant documents have rightly given a finding of fact that the fees collected by M/s.DDPL for utilizing the CT Scanner has been transferred to the assessee-Trust. This finding of fact couldn't be dislodged by the Revenue before us as discussed (supra). Moreover, we note that the survey team couldn't find any material to show that M/s.DDPL retained any part of the fees collected for use of CT scanner. Thus, we find that neither M/s.DDPL nor its Trustees/Directors of M/s.DDPL got any benefit from the CT scanner which was made available at M/s.Devaki Hospital. Thus, we concur with the Ld.CIT(A) that the AO failed to prove that



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 24 ::

M/s.DDPL appropriated part of fees collected for utilizing CT scanner rather, we note that M/s.DDPL has transferred the fees collected from using CT scanner to assessee. Since the trustees didn't get any benefit from assessee-Trust as noted (supra) and rather only helped the trust to earn more income by utilizing CT scanner, which in-turn was applied to achieve its philanthropic objects and thus there is no violation of sec.13(1)(c) of the Act. And as noted elsewhere, it is not the case of the AO that the survey team came across some evidences/materials which could show that M/s. DDPL had suppressed the fees it collected in respect of using 'Siemens CT Scanner' in question and thus, we note that the Ld.CIT(A) after appreciating the facts and circumstances of the case has rightly found that M/s. DDPL has not retained any part of fees collected in respect of 'Siemens CT Scanner' (assessee Trust). Thus, the Ld.CIT(A)'s finding of fact that the entire fees collected by M/s. DDPL in respect of 'Siemens CT Scanner' were transferred to the assessee can't be held to be perverse. Thus, we find that the assertion of the Ld.DR that there was a diversion of funds by M/s. DDPL by using the 'Siemens CT Scanner' in its premises can't be accepted and has been rightly repelled by the Ld.CIT(A). And even before us, the Ld.DR couldn't produce any material to suggest that M/s. DDPL has appropriated part of the fees collected with reference to the fees collected from the patients for using the 'Siemens CT Scanner'. Therefore, the omission on the part of AO to have



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 25 ::

overlooked the materials placed on record by the assessee to substantiate that the entire fees collected from the patients for utilizing the 'Siemens CT Scanner' was transferred to the Trust cannot be countenanced. In other words, the AO without finding any fault, erred in brushing aside the relevant material/evidences, financials of M/s. DDPL including the return of income, P & L A/c and the ledger copies of M/s.DDPL showing the transfer of funds to assessee Trust by M/s. DDPL (for the use of the Trust machinery); and further, we note that M/s. DDPL has collected fees from patients for using various diagnostic machines including MRI machine, ultra sound machine, X-ray machine and mammography machine apart from the 'Siemens CT Scanner' of the assessee Trust, therefore the AO erred in adding @37.5%, total fees collected by M/s. DDPL without appreciating that several machines were used at the premise of M/s. DDPL, which were owned by it [M/s. DDPL]; and as noted M/s. DDPL used to transfer fees collected for use of CT scan to assessee-Trust and the delay caused in remitting the same at times has been explained by assessee that some patients have medical-insurance, so payments from them would be delayed, but would be remitted in assessee's account promptly when M/s DDPL receive it from insurance-companies, which fact couldn't be disproved by Revenue. And we agree with the Ld.CIT(A) that there was no credible basis for estimation of compensation for using the CT scanner; and the basis of estimation of compensation is the



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 26 ::

Inspector's Report is flawed and ought not to have been used against assessee, without the same having been furnished to the assessee and given an opportunity to rebut it. Therefore, when the report of Inspector is legally fragile, it could not have been used against the assessee, and AO erred in relying on it. And if the Inspector report is discarded, we find there was no relevant material to support the computation of the impugned compensation and also the AO assertion that assessee Trust has diverted their income to the interested person referred to sub-sec.(3) of sec.13 of the Act, was without evidence and therefore, from any angle, the adverse view taken by AO can't stand the scrutiny of law and addition made has been rightly deleted by the Ld.CIT(A). Therefore, we do not find any merit in the Revenue's ground no 2-2.4

22. Coming to Ground no 3 of Revenue, we note that the main object of the assessee-Trust as per clause (b) of the Trust Deed is "to provide medical relief to the public in all the branches of medical sciences by all available means and providing diagnostic services has been enumerated under Clause (m) of the Trust deed as Main objects of the Trust", and the Ld.CIT(A) has rightly taken note of the decision of the co-ordinate bench of this Tribunal holding that diagnostic services rendered by a Charitable Institute can be considered as rendering medical relief. This Tribunal in the case of Lions Club of Anna Nagar Charitable Trust v. DCIT reported in [2015] 40 ITR 746 (ITAT-Chennai) it was held as under:-



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 27 ::

Entitlement to exemption under section 11-merely because the assessee is charging fees from the patients for providing diagnostic service, whether exemption under section 11 of the Act could be denied or not? Held that We have carefully gone through the trust deed of the assessee. Clause 15 of the trust deed clearly says that no funds shall be applied or paid or distributed among the trustees and shall be applied towards furtherance of the objects of the trust. Even at the time of dissolution, it shall be devoted to the objects similar to those of the trust. Therefore, the profit of the assessee-trust is applied only for charitable activity and there was a prohibition in the trust deed to divert the funds for any other object. Therefore, this Tribunal is of the considered opinion that merely because the assessee is charging fees for diagnostic service, it cannot be said that the assessee is not doing any charitable activity. Thus, the lower authorities are not justified in denying the assessee relief under section 11 of the Act as it is not doing any charitable activity.

Whether diagnostic service cannot be considered to be a medical relief? - Held that:- In the modern medical field, no doctor could give any treatment without actually diagnosing the nature of illness. So, diagnostic service facilitates enabled the doctors to give proper treatment at the appropriate time. The assessee is providing diagnostic service which would enable the doctors to give proper treatment. Therefore, this Tribunal is of the considered opinion that diagnostic service would fall within the meaning of medical relief. Even otherwise, the same has to be treated as other public utility service. There is no justification in denying the claim of the assessee under section 11 of the Act. Decided in favour of assessee.

23. Respectfully following the decision of this Tribunal in the aforesaid case, we don't find any infirmity in the action of the Ld.CIT(A) holding that the assessee Trust is eligible to claim exemption u/s.11 & 12 of the Act. And since there is no violation of section 13 as noted, the action of Ld CIT(A) allowing exemption u/s 11 and thus deleting ₹19,59,537/- which was surplus income as per income and expenditure a/c for AY 2015-16 is upheld. Ground No. 3 of the Revenue stands dismissed.

24. Ground Nos.4.1 to 4.2 of the Revenue's appeal are challenging the action of the Ld.CIT(A) allowing depreciation @40% on CT scanner machine.



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 28 ::

25. Brief facts are that the according to the AO, the CT scanner computed Tomography scan a type of sophisticated X-ray device, used for obtaining detailed images of internal organs, X-ray machines etc., are not coming under (Life Saving Medical Equipment as per New Appendix | Part-A-III(3)(xia) of the Income Tax Rules and thus, eligible for depreciation @15% only and not @40%.

26. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who noted that the assessee's medical equipment in question i.e. Somatom Definition AS Excel + CT Scanner is a High Definition Angiography, which enables new levels of image quality, clinical outcomes, and ultimately precision medicine, identical to Vacular Angiography System including Digital Subtraction Angiography in which imaging techniques are either magnetic resonance imaging, computed tomography. ultrasound angiography, fluoroscopy technique or x-ray angiography falling under sub-head (g) of New Appendix-I Depreciation Schedule Part-III (xia) of Income Tax Rules and the equipment was classified by Siemens as "lifesaving medical equipment". And Ld CIT(A) after going through relevant material placed by assessee on record for buttressing the claim of depreciation and taking guidance of the decision of the Hon'ble Madras High Court in a similar case of M/s. Vasantha Subramanian Hospitals Private Limited in TC. (A) No.885 of 2015 dated 04.09.2018, which upheld this Tribunal order, wherein, Tribunal held that



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 29 ::

though the Life Saving Medical Machinery in that case, was not specifically listed in New Appendix-I Depreciation Schedule Part-III (xia) of the Income Tax Rules 1962 (herein after the Rules), but the machinery of that assessee being similar/identical to the machines included in the Rules, are also eligible for 40% depreciation, being a beneficial provision it needs to be liberally interpreted, and taking in to consideration the short life-span of such machines/equipment or the machines becoming obsolete due to advance technology.

27. In the light of the decision of the Hon'ble High Court, the Ld.CIT(A) has allowed the depreciation @40% in respect of the medical equipment in question, and Revenue has preferred ground no 4.1-4.2 against action of Ld CIT(A).

28. Aggrieved, the Revenue is in appeal before us.

29. Having taken note of the aforesaid facts, the same are not repeated for the sake of brevity and we find that the issue is squarely covered by this Tribunal order in the case of M/s. Vasantha Subramanian Hospitals Pvt. Ltd., Chennai, which order has been upheld by the Hon'ble Madras High Court by order dated 04.09.2018 (supra) and the Ld.CIT(A) has followed the decision wherein, it was held that Life Saving Medical Machinery not listed in New Appendix-I Depreciation Schedule Part-III (xia) of Rules are also eligible for 40% depreciation, if it is found



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 30 ::

similar/identical as mentioned in Rules. And taking in to consideration the short life-span of such machines/equipment or the machines becoming obsolete due to advance technology, and the depreciation in such cases needs to be liberally interpreted. The revenue failed to show that the impugned order suffers from perversity. Therefore, we find no infirmity in the action of the Ld.CIT(A) and uphold the action of the Ld.CIT(A).

30. In the result, appeals filed by the Revenue are dismissed for AY 2015-16.

CO No.2/Chny/2024 for AY 2015-16:

31. We note that the assessee has raised the legal issue of re-opening of assessment u/s.147 of the Act on several grounds, which we are not inclined to examine, because we have decided on merits and the same are left open.

32. The only other issue raised in the CO i.e. Ground No.9 is against the action of the Ld.CIT(A) confirming the addition of ₹5,11,399/-, (being the notional interest charged @12% for the closing balance of the sum of ₹42,61,664/-) presumed by the AO to have been lent to M/s. DDPL for AY 2015-16 without adequate interest in the computation of taxable total income. The AO has made addition by observing as under:

13. During the course of scrutiny it was noticed from the balance sheet of the trust for the AY's 2014-15 to 2016-17 that the following amounts have been



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 31 ::

continuously lent to the company in which the trustees of the trust have substantial interest and without any adequate security and interest.

Sl.No	Name of the debtor (M/s.)	AY	Amount (Rs.)
1	Dhevaki Diagnostics P Ltd	2014-15	59,62,634
2	Dhevaki Diagnostics P Ltd	2015-16	42,61,664
3	Dhevaki Diagnostics P Ltd	2016-17	15,11,399

In this connection, the assessee was issued with show cause notice on 27.11.2018 by raising the question "why interest @ 12% on the amounts mentioned in the above table for the respective A Y's should not be charged to tax u/s 13(1) (c) r.w.s 13(2)(a) of the IT Act".

14. For which the assessee filed reply on 14.12.2018 and the same is reproduced below:

In the books of the M/s. DN Public Charitable Trust, a sum of Rs.15.11 Lacs is receivable from the company M/s. Dhevaki Diagnostic Private Limited for the Asst. Year: 2016-17, due to the reason of last 4 months (Dec 15 to Mar 16) CT Scan fee bills collected by the company and to be remitted to the trust otherwise there is no direct flow/lent of money by the trust to company. It is only book entry the account between the trust and company is a running a/c purely, maintained under expediency and philanthropic purpose to support the trust. In addition to the above, the trust does not borrow any working capital loans from any bank and lent the money to company without interest. Hence, the principal of borrowing funds for interest from banks and lending to same to company without interest not warranted in this case. Hence, the charging of interest @ 12% for the amount Rs. 15.11 Lacs does not arise.

15. The assessee's reply is consider carefully however not accepted, since perusal of ledger copy of the company M/s Dhevaki Diagnostic Pvt. Ltd, shows that the company has opening debit balance of Rs. 59,62,634/- out of which Rs. 17,00,970/- remitted during this year and the closing debit balance was Rs. 42,61,664/-, hence a sum of Rs. 42,61,664/- assessee trust's money was kept by the company throughout the year without any adequate security or interest and as already discussed in para 5 of this order, the company is a interested concern as specified u/s 13(3) of the I.T. Act. Hence a sum of Rs. 5,11,399/- (4261664°12%) is quantified as violation u/s 13(1)(c) r.w.s. 13(2)(a) of the I.T. Act for the A.Y. 2015-16 and charged to tax @ maximum marginal rate as specified in proviso to section 164(2) of the I.T. Act.

Addition: Rs. 5,11,399/-

33. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who confirmed the same.

34. Aggrieved, the assessee is before us.



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 32 ::

35. We have heard both the parties and perused the materials available on record. We note that the AO on perusals of the closing-balance of the assessee noted that a sum of ₹42,61,664/- was as an amount due from M/s. DDPL. When asked by the AO, the assessee brought to his notice that the said amount due was the fees collected by M/s. DDPL in respect of 'Siemens CT Scanner' installed in their premise. According to the assessee, many patients having insurance cover and hence, don't pay for the charges related to the usage of CT scanner immediately and in such an event, there is a delay in receiving the fee from the Insurance Company and whenever the amount is received by M/s. DDPL from the Insurance Company, the same was transferred to assessee-Trust within a reasonable time and also asserted that there was no loan or investment made by the assessee in the company [M/s. DDPL]; and moreover, according to the Ld.AR, it can be seen that there was a running account between assessee & M/s.DDPL and therefore, no notional interest can be charged considering the continuous transaction entered into by both the parties and that sec.13(1)(c) of the Act is not attracted. However, the AO was of the opinion that the company had opening debit balance ₹59,62,634/- out of which ₹17,00,970/- was remitted during the year and the closing debit balance of ₹42,61,664/- and hence, a sum of ₹42,61,664/- was the Trust money which was kept by the company through the year without any adequate security or interest and therefore,



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 33 ::

he was pleased to charge @12% on the sum of ₹42,61,664/- and made an addition of ₹5,11,399/-. We don't agree with the action of the AO since assessee's explanation that this amount was due from the patients while using the CT scanner and the Insurance Companies sanctioned the amount after few months and when M/s. DDPL received the same, the same is promptly given to the assessee. Therefore, a sum of ₹42,61,664/- was outstanding from M/s. DDPL and the same was given in the next year. Therefore, the action of the AO to tax the same is incorrect and therefore, we are inclined to allow it and direct deletion of Rs 5,11,399/-.

36. In the result, Cross Objections filed by the assessee are partly allowed. And as stated at the beginning, the result of appeal of Revenue & CO preferred by Assessee for AY 2015-16, will apply *mutatis mutandis* for other captioned AY's 2014-15 & AY 2016-17.

37. In the result, appeals filed by the Revenue are dismissed and Cross Objections filed by the assessee are partly allowed.

Order pronounced on the 09th day of October, 2024, in Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/JUDICIAL MEMBER



ITA Nos.1302 to 1304/Chny/2023 (AYs 2014-15 to 2016-17)
CO Nos.1 to 3/Chny/2024 (AYs 2014-15 to 2016-17)
M/s.D.N. Public Charitable Trust

:: 34 ::

चेन्नई/Chennai,

दिनांक/Dated: 09th October, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF