

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.3530/M/2024
Assessment Year: 2020-21
&
ITA No.3531/M/2024
Assessment Year: 2020-21**

Dy. Commissioner Of Income Tax (Exemptions)-2(1), Room No. 608, 6 th Floor, Peddar Road, Cumbala Hill, Mumbai - 400026	Vs.	Swami Vivekanand Medical Mission C/o Sanjivani Hospital, Datta Mandir Road, Virar(W) Mumbai – 401303 PAN: AABTS9185K
(Appellant)		(Respondent)

Present for:

Assessee by	: Shri Anil Sathe,CA
Revenue by	: Shri Dr Kishore Dhule,CIT(DR)
Date of Hearing	: 28.10.2024
Date of Pronouncement	: 19.11.2024

ORDER

Per : Prabhash Shankar, Accountant Member:

The above two appeals filed by the Revenue emanate from the appellate order passed by the Ld. CIT(A)/National Faceless Appeal Centre (NFAC), Delhi, with regard to the assessment/penalty orders passed under section 143(3) and 270A of the Income Tax Act 1961, (in short 'the Act') for the A.Y. 2020-21.

2. We take up the **quantum appeal** first relating to assessment order in **ITA No.3531/M/2024 Assessment Year: 2020-21.**

The Revenue has raised following grounds of appeal :

"1. Whether on the facts and circumstance of the case and in law, the Ld. CIT(A) erred in allowing exemption for the pharmacy shop's income u/s. 11 (4A) of the Income Tax Act and held that activity of running a pharmacy shop is incidental to the attainment of the objects of the trust as well as running shop is not a planned activity and when no separate books have been maintained as mandated u/s 11(4A) of Act?"

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in allowing claim of the assessee for exemption u/s. 11 by ignoring the fact that the Assessing Officer in his order has pointed out that the assessee runs a pharmacy store in its hospital for profit motive and without appreciating facts that the assessee's gross receipts of assessee from pharmacy are Rs. 17,87,98,532/-"

3. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT, Mumbai is justified in allowing claim of the assessee for exemption u/s. 11 by ignoring the fact that the Assessing Officer in his order has pointed out that the assessee runs a pharmacy store in its hospital for profit motive and without appreciating the facts that the assessee's pharmacy receipts is about 41.36% of the total gross turnover receipts during the year ?."

4. Whether on the facts and circumstances of the case and in law and in light of the law the Ld. CIT(A) has erred that activities even though incidental to the main activity can still be not charitable as per and can be hit by the provision of section 2(15) of the Act?

5. Whether on facts and circumstances of the case and in law, the Ld. CIT(A) was justified in concluding that the activities of assessee being incidental to main activity do not qualify to be trade, commerce or business covered vide proviso to section 2(15) of the Act not withstanding laid down by the Hon'ble Supreme Court in civil appeal no. 21762 of 2017 in various batch of appeal and SLPs [lead case ACIT(E) vs Ahmedabad Urban Development Authority (2022) 143 taxmann.com 278 (SC) ?

6. "Whether on facts and circumstances of the case the Ld. CIT(A) erred on relying upon the stand taken by the AO on the issue in one AY which has not been accepted by the Revenue ?.."

3. The main point of contention of the revenue revolves around action of the Ld.CIT(A) who allowed the exemption claim of the assessee



trust made in terms of section 11 of the Act on the gross receipts of Rs. 17,87,98,532/- as receipts from incidental objects. As per the audited Income & Expenditure a/c, it is noted that the receipts of Rs. 17,87,98,532 are credited to the I & E A/c on account of Sale of Medicines. The AO denied the claim of the assessee before him. The assessee in appeal challenged the addition made by the AO asserting that the appellant trust provided hospital facilities to deliver health services to the general public and patients with various illnesses visiting the hospital for consultation and treatment. After examination, doctors prescribe medications, and for the convenience of patients, the trust operates a medical store that allowed them to easily purchase medicines, even during late hours. The trust runs the medical store for the benefit of patients, an activity covered under the definition of 'charitable purpose' as per section 2(15) of the Act, which includes medical relief. Consequently, the sale of medicine is an incidental aspect required to achieve the trust's primary objective of improving public health and is not considered a separate business venture. The appellant has also contended that it did not initiate any new activity during the current year, rather, it continued the same operations as in previous years, which were previously accepted by the Income Tax Department in the scrutiny assessments. Moreover, the same issue was raised by the department during the scrutiny assessment for the assessment year 2022-23 too but no addition was finally made.

3.1. The Ld.CIT(A) after examining the facts of the case observed that it was evident that the appellant ran the medical store for the benefit of patients, an activity covered under the definition of 'charitable purpose' as per section 2(15) of the Income Tax Act, which includes medical relief. The medical store was integral to running the hospital and the main objectives of the appellant trust and could not be said to be a separate business venture so as to fall within the scope of section 11(4A). It was



further noted that the appellant maintained proper books of accounts including sale/purchase of the various types of medicines, as evidenced by the detailed financial statements and schedules thereto.

3.2 He further noticed that the Assessing Officer was not justified in ignoring the expenditure on purchase/consumption of medicines debited to the "Income & Expenditure Account" at Rs. 16,79,94,329 (as part of Expenses of Rs. 33,94,05,763 debited to the I & E A/c on account of Medical Relief) and taxing the gross sale of receipts in isolation. The relevant schedules of the audited financial statements of the appellant for the year under consideration were extracted below for ready reference:

SCH II :- EXP. OF OBJECT OF THE TRUST	
AMBULANCE EXPS.	90354.00
CATHLAB CLOTH AND LENEN	41383.00
CATHLAB DEPT ELECTRICITY BILL	33960.00
CATHLAB DEPT MEDICINE PURCHASE	688628.00
CATHLAB IMPLANT EXPS	358459.00
CATHLAB INTERNET EXPS	30528.00
CATHLAB STAFF SALARY	133000.00
CATHLAB SURGICAL INSTRUMENTS	31072.00
CATHLAB TRAVELING EXPS	2500.00
CEREMONY EXPS. & SEMINAR EXP.	76922.00
CLEANING EXPS.	1016070.00
CONCESSION TO POOR PATIENTS	2407951.00
CONSULTANCY FEES	220955.00
DOCTOR CONFERENCE	16575.00
DRESSING MATERIAL & EXPS	2352000.00
ELECTRICITY CHARGES	7404540.00
FOOD & DIET EXPS.	340075.00
HONORARIUM & DR.SALARY	78112343.00
LEAVE ENCASHMENT	1412908.00
MACHINERY MAINT.CONTRACT	2008412.00
MEDICINE CONSUMED	167994329.46
(AS PER SCHEDULE "A")	
O.P.D. CONCESSION	351653.00
PRINTING & STATIONERY	4347819.00
PROF. INDEMNITY PREMIUM	151284.00
R.M.O HONORARIUM	9937806.00
REPAIRS & MAINT	1056523.00



SALARY & ALLOWANCES	42864983.00
STAFF ALLOWANCE	13724155.00
STAFF O.P.D./INDOOR BILL	1557325.00
STAFF O.P.D./INDOOR MED.	641251.00
SURGICAL INSTRUMENT	2467263.00
X-RAY & SONOGRAPHY EXPS.	45232.00
HOSPITAL DAI TRAINEE	28210.00
TOTAL	339405763.46

SCH."A":-MEDICINE CONSUMED:-

OPENING STOCK	10665870.46
ADD: PURCHASES	219604.00
MEDICINE PURCHASES	140709465.00
GENERAL STORE EXPS.	15525.00
DENTAL MEDICINES	2099092.00
X-RAY & SONOGRAPHY FILMS	3710866.00
PATHOLOGY MEDICINES	18453026.00
OXYGEN GAS	2034898.00
HISTOPATHOLOGY CHGS.	54400.00
CLOTH & LEANEN	399516.00
GENERAL MEDICINE	1028965.00
EXPIRY RETURN	
LOSS DUE TO DAMAGE	
	179391227.46
LESS: CLOSING STOCK	11396898.00
MEDICINE CONSUMED	167994329.46

3.3 He further observed that even if it was assumed for argument sake that provisions of Section 11(4A) apply to the instant case and called for any disallowance, only the net profits from the business of running the medical store could have been brought to tax, and not the gross receipts. By disregarding the purchases and focusing solely on the sale of receipts, the AO failed to account for the expenses incurred in generating the income. It was noted that the appellant's case was also selected for scrutiny for the AY 2022-23 on the same issue of "large receipts from incidental objects". However, vide assessment order passed u/s 143(3) r.w.s. 144B dated 27.02.2024, no adverse inference had been drawn and the returned income had been accepted without, making any addition by



the National Faceless Assessment Centre. Furthermore, the appellant's case for assessment years 2016-17 and 2017-18 were also selected for regular scrutiny and no additions were made under section 11(4A) to the appellant's income.

4. Before us, the learned CIT(DR) vehemently argued that the appellate authority was not justified in treating the medicine shop business as incidental to the main objective of the trust running a hospital which resulted into substantial profits to it. It was argued that the relevant books of accounts were also not produced before the AO.

5. Per contra, the Ld.AR pleaded that the Id.CIT(A) was fully justified in deleting the addition by taking into account all the relevant facts of the case on merits as also on the admitted position even from department's perspective in consistently allowing this claim in past years on similar facts and circumstances of the case. He has further placed reliance on a decision of the jurisdictional High court in the case of **PCIT (Exemption) vs National Health and Education Society(2023) 154 Taxmann.com 636(Bombay)** wherein the Hon'ble Court on almost same facts and circumstances has allowed similar claim by holding that running of medicine shop in hospital premises for providing medical relief to its patients was ancillary to the main objects of running a hospital. The revenue was held to be not justified in treating the pharmacy business as a separate business entity and treating the surplus amount accrued there from as business income under section 11(4A) of the Act. Likewise, in the case of **Baun Foundation Trust vs CCIT and Others(2012) 73DTR 45**, Hon'ble Bombay High Court while considering denial of exemption to a trust u/s 10(23C)(via) of the Act by the CCIT with regard to a chemist shop in hospital premises, held that activity of running a chemist shop was incidental or ancillary to dominant objective and purposes which is to run a hospital.



6. We have carefully considered all the relevant facts and the circumstances of the case, contention of the rival parties and we are inclined to accept the contention of the Id.AR which is duly supported by the cited decisions(supra) having a binding precedence for us. Moreover, the consistency across multiple assessment years by the Revenue in accepting similar claim involving similar facts and circumstances supports the assessee's argument that the receipts in question were related to the main objects and very much part and parcel of the charitable activity of providing medical relief by running a charitable hospital. The continuity in the assessment approach in previous years-where the appellant's income was not subjected to any additions under Section 11(4A) suggests that the AO's decision to focus on gross receipts in the current year lacks support and departs from the well established Principle of Consistency in Income Tax assessments in the absence of any change in the relevant facts and circumstances during the current year vis-à-vis the past years. Each assessment year being a unit, what is decided in one year may not apply to the following year but when a fundamental aspect permeating through different assessment years has been found as a fact one way or other and parties have followed that position to be sustained by not challenging the order, it will not be appropriate to allow such position to be challenged in a subsequent year and rule of consistency would apply in such cases. Non-applicability of rule of *res judicata* in income tax matters should not unnecessarily disturb rule of consistency to be followed on factual matters repeated from assessment year to assessment year. The chord of consistency can be cut off only if facts are substantially different from earlier years, capable of leading to a different findings

6.1 Therefore, in view of the above discussion, we do not find any infirmity in the action of the lower appellate authority in deleting the addition made which is fully justified as the impugned addition made by



the AO is unwarranted. We have no hesitation in upholding his order and consequently dismissing the grounds in this regard.

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7. The Revenue has agitated deletion of penalty imposed by the AO u/s 270A of the Act w.r.t. the quantum appeal. The Id.CIT(A) has deleted penalty as quantum appeal was already allowed in favour of the assessee by him as the underlying addition itself did not survive penalty u/s 270A could not stand at all. Since we have upheld the decision of the Id.CIT(A) in the preceding ground, penalty being inconsequential, no interference is required in the conclusion drawn by him in dismissing the appeal. The grounds in this regard fail.

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

Order pronounced in the open court on 19/11/2024.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य / ACCOUNTANT MEMBER)

Place: मुंबई / Mumbai

दिनांक / Date 19.11.2024

Lubhna Shaikh / Steno

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT



4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, M

