

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

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

**ITA NOS. 3738 & 3739/MUM/2023 : A.Ys : 2016-17&
2017-18**

Breach Candy Hospital Trust
Employees Comprehensive Gratuity
Scheme, 60A, Bhulabhai Desai Road,
Cumballa Hill S.O., Mumbai 400 026.
PAN : AACTB1790J (Appellant)

Vs. Income Tax Officer,
Ward - 19(1)(2),
Mumbai.(Respondent)

**Appellant by : Shri J.D. Mistri &
Shri Fenil Bhatt**
Respondent by : Ms. Monika H. Pande, Sr. DR

Date of Hearing : 16/01/2025
Date of Pronouncement : 27/02/2025

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER :

Both the appeals filed by the assessee are directed against the orders passed by Ld CIT(A), NFAC, Delhi and they relate to the assessment years 2016-17 and 2017-18.

2. The assessee is a trust established for the benefit of employees of Breach Candy Hospital Trust, i.e., in order to give gratuity benefits to them. In the return of income filed for these two years, the assessee had claimed exemption u/s 10(25)(iv) of the Act. Section 10(25)(iv) of the Act provides exemption of income received by trustees on behalf of an **approved gratuity fund**. During the course of assessment proceedings, the AO asked the assessee to furnish a copy of approval granted to the gratuity fund by the competent authority. In response thereto, the assessee submitted that it had submitted application dated 23-09-2004 with LdCIT/Director (Exemptions) for approval of gratuity

fund and did not receive any communication from him thereafter. It was further submitted that it has also sent reminder letters on several occasions to Ld CIT/Director (Exemptions), but did not receive any communication so far from the competent authority. It also contended that, in the absence of any approval granted within reasonable time, the assessee should not be denied exemption claimed by it. In this regard, the assessee placed reliance on the decision rendered by Hon'ble Supreme Court in the case of CIT vs. Society for the Promotion of Education, Adventure Sport & Conservation of Environment (2016)(382 ITR 6)(SC). The AO, however, did not accept the explanations given by the assessee. Accordingly, he rejected the exemption claimed by the assessee u/s 10(25)(iv) of the Act in both the years under consideration. The Ld CIT(A) also confirmed the orders passed by the AO in both the years.

3. The Ld A.R submitted that the assessee has filed the application seeking approval of the gratuity fund way back in 2004 and thereafter, it has also sent several reminders. He submitted that the assessee has also met the assessing officer with a request to pursue the matter with Ld CIT (Exemptions). He submitted that nothing has happened till date. He submitted that the assessee should not be made to suffer in the facts discussed above.

4. We heard Ld D.R and perused the record. We notice that the AO has denied exemption claimed by the assessee u/s 10(25)(iv) of the Act for want of approval granted by the competent authority. It is the submission of the assessee that it has filed application in the prescribed form way back in 2004, but did not receive any communication so far. We notice that the assessee has also placed reliance on a decision rendered by Hon'ble Supreme Court (referred above) and contended that the exemption should not be denied. Since exemption u/s 10(25)(iv) is granted to an "approved gratuity fund", we are aware that the tax authorities would always insist upon the production of copy of approval granted to the gratuity fund in order to grant exemption u/s 10(25)(iv) of the Act. However, in the facts of the present case, we notice that the lapse mainly appears to be at the end of the revenue, as per various letters sent by the assessee to the Ld CIT(E) and the AO. We also notice that the

assessee has also started pursuing the application in 2023 only, even though the application was filed by it in the year 2004.

5. We may also refer to the letter dated 07-08-2024 written by the Ld CIT(E) to the assessee, wherein the Ld CIT(E) has observed as under:-

“The assessee has claimed the scheme was established on 12-08-2004 and application made on 23-09-2004. Further, it has been claimed vide letter dt. 31.05.2019 that approval was accorded and the same was lost and a Police Complaint was lodged on 03-06-2019.

Kindly confirm whether approval is being sought for the first time or whether assessee intends a copy of the approval.

Also whether any communication has been made between your office and the assessee in this respect”

The assessee, vide its letter dated 25 October, 2024 has replied as under:-

“As stated in our letter dated 18 December 2023, we confirm that the scheme was established on 12 August 2004, and the application was made on 23 September 2004. In this regard, the assessee submits that the approval was sought vide application dated 23 September 2004. The assessee asserts that approval would have been granted as the assessee has not received any communication rejecting the application. However, the assessee is not able to trace the approval that must have been granted. Hence, the assessee submits that the approval is not being sought for the first time. The assessee requests your goodself to provide a copy of the approval that may have been issued pursuant to the application dated 23 September 2004 or, in any case, provide a fresh/duplicate copy of approval operating from the date of application.”

6. In any case, we notice that the assessee cannot be compelled to produce the copy of the approval certificate, which it does not possess. Accordingly, we are of the view that the assessee's grievance should be addressed by the concerned competent authority only.

7. In view of the foregoing discussions, we deem it proper to set aside the orders passed by LdCIT(A) in both the years under consideration and restore all the issues to the file of the AO for examining the claim of the assessee for exemption in both the years afresh. The AO is directed to get the relevant details from the office of Ld CIT(E) and furnish the same to the assessee for offering its explanations. After hearing the assessee, the AO may take appropriate decision in accordance with law.

8. In the result, both the appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced on 27th February, 2025.

Sd/-
(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai, Date : 27th February, 2025

SSL

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, "B" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai