

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 2443 OF 2013

The Commissioner of Income Tax (Exemptions) .. Appellant.
v/s.
M/s. Saifee Hospital Trust .. Respondent.

Mr. A. R. Malhotra, for the Appellant.
Mr. P. J. Pardiwalla, Sr. Advocate with Mr. Rakesh Poojary i/b. Mulla &
Mulla, C. B. & C., for the Respondent.

**CORAM: M.S.SANKLECHA, &
A.K.MENON, JJ.**
DATE : 4th APRIL, 2016.

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 6th March, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is passed in respect of the Assessment Year 2008-09.

2 The Revenue urges the following questions of law for our consideration:

“(a) Whether on the facts and in the circumstance of the case and in law, the Tribunal was right in not following the decision of the Allahabad High Court in the case of Allahabad Agricultural Institute and others v/s. Union of India in right perspective and erred in allowing the claim u/s. 11 of the Act to the assessee?”

(b) *Whether, on the facts of the case and in law, the Tribunal was right in allowing the assessee's claim of exemption u/s. 10(23C) (via) of the Act without appreciating the fact that the assessee is running separate business activity of Gymnasium, Cafeteria and Pharmacy which does not come under the ambit of charity of Hospital and all these activities are business activities and not charitable activity as claimed by the assessee and for these business activities separate books of account were also required to be maintained as per the approval given u/s. 10(23C) (via)?*

(c) *Whether on the facts of the case and in law, the Tribunal was right in upholding the order of the CIT(A) in allowing the appeal of the assessee with regard to exemption u/s. 11 of the I.T.Act though it is clear that the assessee is in the business of the hospital and not charity of hospital?*

(d) *Whether on the facts of the case and in law, the Tribunal was right in ignoring the ratio of Hon'ble Supreme Court judgment in the case of Escorts Ltd. V/s. UOI (199 ITR 43) wherein Hon'ble Supreme Court has held that double deduction cannot be allowed if the same is not specifically provided by law, in addition to normal deduction?"*

3 **Re: Question (a):-**

- (a) Respondent-Assessee is a Charitable Trust, registered with the Charity Commissioner, Maharashtra. The Respondent-Assessee had been granted Registration as a Trust by the Director of Income Tax (Exemption) w.e.f. 1st April, 2000. During the course of Assessment, for the subject Assessment Year, the Assessing Officer rejected the Respondent-Assessee's claim for exemption under Section 11 of the Act. This on the ground that there had been an amendment to the trust deed which renders the Registration of the Trust under Section 12-A of the Act invalid;

- (b) On appeal, the Commissioner of Income Tax (Appeals) [CIT(A)] on examination of the original trust deed as well as the amended trust deed found that the object clauses in the original as well as the amended trust deed were identical. Thus, holding that Respondent-Assessee is eligible to exemption under Section 11 of the Act;
- (c) On further appeal by the Revenue to the Tribunal, reliance was placed by the Revenue upon the decision of the Allahabad High Court in *Allahabad Agricultural Institute & Others v/s. Union of India 291 ITR 116* to contend that as the trust deed has been amended, benefit of exemption under Section 11 of the Act is not available as registration under Section 12-A of the Act itself ceased. The Tribunal had on examination of the amended trust deed as well as original trust deed found that there was no change in its objectives. Thus holding decision of the Allahabad High Court in Allahabad Agricultural & Institute (supra) would not apply to the present facts as in that case, there was a change in the objects of the trust as some additional objects being added in the amended trust deed. In the above facts, the appeal of the Revenue was dismissed while upholding the order of the CIT(A); and
- (d) We find that both the Tribunal as well as the CIT(A) have rendered a concurrent finding of fact that there has been no change in the object clause of the trust by virtue of amended trust deed. Thus, decision of Allahabad High Court in Allahabad Agricultural Institute (supra) being relied upon by the Revenue is completely distinguishable. Thus, the question of law as framed does not give

rise to any substantial question of law. Hence, not entertained.

4 **Re Question (c):-**

- (a) The Assessing Officer during the course of Assessment Proceedings found that the Respondent-Assessee charges received from patients were exorbitant. Consequently he came to the conclusion that the Respondent-Assessee was engaged in the business of running hospital and not in-charity. Thus, holding that the Respondent-Assessee is not entitled to the benefit of Exemption either under Section 10(23C) (vi) or Section 11 of the Act. This was without considering whether the excess on the above amount received in offering medical services to its patients capable on paying its charges was utilized for charity;
- (b) In appeal, the CIT(A) found that the Respondent-Assessee had applied more than 85% of its income applied for charitable purpose. This inclusive of income on account of exorbitant charges to some of its patients. Thus, allowed the appeal of the Respondent-Assessee holding that Respondent-Assessee is entitled to the benefit of Section 11 of the Act;
- (c) The Revenue carried the issue in appeal to the Tribunal. The impugned order of the Tribunal also sustains the finding of the CIT(A). This after rendering a finding of fact that more than 85% of its income received on account of providing medical care to its paying patients is spent in rendering charity by making available medical treatments to patients who cannot pay; and

- (d) We find that it is not disputed before us that the primary objects of the Respondent-Assessee is to provide treatment to patients who cannot afford to pay for treatment. Thus merely because in rendering services to patients who can afford to pay, some income is generated, the same would not result in it ceasing to be a charitable trust. Further, the Revenue has not been able to show that the finding of the Authority that 85% of its income is applied to charitable purpose, is perverse.

In the above view, the impugned order of the Tribunal cannot be said to give rise to any substantial question of law as framed. Thus, not entertained.

5 **Re Question (d):-**

- (a) It is an admitted position that the issue arising in question herein above, stands concluded in favour of the Respondent-Assessee and against the Revenue by the decision of this Court in Director of Income Tax (Exemption) v/s. G. D. Birla Medical Research and Educational Foundation (ITXA 2294 and 2295 of 2013) rendered on 1st February, 2016. In the above case, this Court after considering the decision of the Apex Court in *Escorts Ltd., v/s. Union of India 199 ITR 43* – has held that there is no question of Respondent-Assessee taking double deduction on account of depreciation; and

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(b) In view of the above, question (d) as framed does not give rise to any substantial question of law. Thus not entertained.

6 **Appeal admitted** on substantial question of law as framed at question (b).

7 Registry is directed to communicate copy of this order to the Tribunal. This would enable the Tribunal to keep papers and proceedings relating to the present appeal available, to be produced when sought for by the Court.

(A.K.MENON,J.)

(M.S.SANKLECHA,J.)