

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

INCOME TAX APPEAL NO.53 OF 2014

The Director of Income
Tax (Exemption), Mumbai .. Appellant.

Vs.
Jaslok Hospital and
Research Centre .. Respondent.

Mr. A.R. Malhotra along with Mr.N.A. Kazi and Ms.Padma Divakar
for the Appellant.

Mr. Nitesh Joshi along with Mr.Rajesh Poojary i/b M/s.Mint and
Conferors for the Respondent.

**CORAM : S.C. DHARMADHIKARI AND
A.K. MENON, JJ.**

DATED : 20TH APRIL, 2015.

P.C. :

1. This appeal by the revenue challenges the order passed
by the Income Tax Appellate Tribunal, Bench at Mumbai dated
20th March, 2013.

2. The following three questions proposed by the revenue
are termed as substantial questions of law :

“A. Whether, on the facts and circumstance of the
case and in law, the Hon'ble Tribunal is justified in
granting exemption u/s.11 of the Income Tax Act,

1961 ?

B. Whether, on the facts and circumstance of the case and in law, the Hon'ble Tribunal is justified in allowing the claim of the assessee for exemption u/s.11 ignoring the fact that the Assessing Officer in his order has pointed out specific defects in treating the income earned by levying surcharge at a specific rate for the bills raised on patients and doctors on the fees paid to them and treating them as corpus donation instead of income earned from the activities of the trust ?

C. Whether, on the facts and circumstance of the case and in law, the Hon'ble Tribunal is justified in ignoring the fact that application of the assessee u/s.10(23C)(via) has been rejected by the CCIT, Mumbai ?”

3. As far as two questions are concerned, according to Mr.Malhotra the tribunal failed to note that the assessee is a registered public trust. The assessee also has been granted registration under section 12A(a) of the Income Tax Act, 1961 (for short “I.T. Act”). The assessee is notified Scientific Research Association under section 35(1)(ii) of the I.T. Act. The assessee applied for exemption under section 10(23C)(vi-A) of the I.T. Act. However, that exemption was denied.

4. In the present case, when the assessee filed the return of income for assessment year 2008-09 it declared total income at Nil. The assessing officer found that the assessee levied surcharge of 20% on the bills given to the indoor patients and also recovers 25% of the fees paid to the Honorary doctors. The assessing officer treated these amounts as corpus donation by the assessee. He, therefore, denied exemption under section 11 of the I.T. Act.

5. Aggrieved by such an order, the assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) and the said Commissioner allowed the appeal by his order dated 14th July, 2011. While allowing the appeal, the Commissioner followed the Income Tax Appellate Tribunal's order in the assessee own case for the assessment year 1995-96 and 2001-02.

6. Mr.Malhotra while fairly conceded that there is no material indicating that the tribunal's order for prior assessment year have been questioned by the revenue and any appeals are pending in this Court, still, it is clear that the observations of the Commissioner while denying exemption under section 10(23C) of the I.T. Act cannot be confined to that case. Mr.Malhotra has taken us through the assessment order and particularly the

paragraphs wherein it has been held that the surcharges have been levied and collected. The Commissioner also does not indicate that this is permissible course but makes distinction with regard to income exempted under section 11 and exemption under section 10(23C) of the I.T. Act. Mr.Malhotra would submit that such a distinction was impermissible and particularly when the assessee undertakes medical relief. If that is the principal object with which it is registered, then, such surcharges as are levied and collected did not meet that object and purpose. Therefore, independent of the observations and conclusions recorded earlier, this is a fit case where the Tribunal's order should be examined and minutely by this Court.

7. We are unable to agree with Mr.Malhotra for more than one reason. The definition of the term "charitable purpose" is appearing in section 2(15) of the Income Tax Act, 1961 and which includes medical relief.

8. Insofar as section 10(23C) is concerned, that pertains to any income received by any person on behalf of hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic

purposes and not for purposes of profit. In relation to that, we find that the Commissioner passed an order denying the exemption and that order of the Commissioner has been challenged by the assessee by filing a Writ Petition in this Court being Writ Petition No.323 of 2010 and that is pending.

9. In the present case, neither the Commissioner nor the Tribunal has decided anything by which it can be gathered that above exemption or the order in relation thereto forms the basis for the conclusion reached by the Commissioner and Tribunal concurrently. The question No.C, therefore, does not arise from the Tribunal's order at all.

10. Insofar as exemption under section 11 is concerned, in paragraph 5 of its order, the Tribunal has found that for the assessment year 2005-06, the only reason for not applying the Tribunal's order for earlier assessment years and as recorded by the assessing officer is that the revenue or the department has not accepted the said order. However, in the light of the fair concession of Mr.Malhotra that the tribunal's orders, on same facts, as rendered for the earlier assessment years, have not been challenged by the revenue, then, we cannot fault the Tribunal or Commissioner for applying them. It is clear from the Tribunal's order that there was no issue before the Commissioner in respect

of any exemption under section 10(21) and 10(23C). The assessing officer had disallowed the claim of exemption under section 11 of the I.T. Act. The Tribunal's earlier orders are in relation to this exemption. The Tribunal concurred with its earlier order dated 10th January, 2005. The Tribunal, therefore, found that when the facts are identical to the Assessment order under consideration, then, there is no difficulty in applying and following its views for the earlier assessment years. It is in these circumstances that we are of the view that the Tribunal's order does not raise any substantial question of law. In these circumstances the conclusion reached in paragraph 5 and 5.1 cannot be termed as perverse or vitiated by any error of law apparent on the face of record.

11. The argument of Mr.Malhotra that the levy of surcharge on patients and doctors ought not to have been treated as income earned from the activities of the trust but a corpus donation, need not detain us. Mr.Malhotra himself had pointed to us that certain directions were issued to the Assessee by the Charity Commissioner of the State in exercise of his powers under section 34 of the Bombay Public Trust Act, 1950. They have been referred to in the order of the assessing officer as well. The argument that the revenue can examine this aspect despite such directions of the Charity Commissioner is also without merit. The

order of the Charity Commissioner and particularly in relation to these matters is an aspect directly covered by the Bombay Public Trust Act. In that regard perusal of the said Act and particularly the provisions of Chapter V, V-A and section 40 and 41-A would indicate that the Charity Commissioner can from time to time issue directions to any trustees of the Public Trust or any person connected therewith to ensure that the trust is properly administered and the income thereof is properly accounted for or duly appropriated and applied to the objects and for the purposes of the trust. The Charity Commissioner has been conferred with the powers to give directions to the trustees, in the event, he finds that the trust property is in danger of being wasted, damaged, alienated or wrongfully sold, removed or disposed of. It is the duty of every trustee or persons connected with trust to comply with these directions. In the circumstances and when section 41-AA was inserted in the Bombay Public Trust Act by the Maharashtra Act of 1985 with a avowed and specific purpose, that we do not think that despite the directions of the Charity Commissioner, the revenue can insist that the amounts charged or sur-charges levied should not be treated as income from the activities of the trust. The authorities under the Income Tax Act are suppose to scrutinise the papers and related documents of the trust or the assessee so as to bring the income to tax and in accordance with the I.T. Act. In such circumstances,

the concurrent findings did not in any manner indicate that the directions issued by the Charity Commissioner are incapable of being complied or liable to be ignored as is held. The directions issued did not change the character of the receipts. In the circumstances even this argument would not enable us to entertain this appeal. The appeal, therefore, does not raise any substantial question of law and is accordingly dismissed. No costs.

(A.K. MENON,J.)

(S.C. DHARMADHIKARI,J.)