

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 27.07.2015

+ **ITA 141/2013**

MOOL CHAND KHAIRATI RAM TRUST

.....Appellant

versus

DIRECTOR OF INCOME TAX (EXEMPTIONS)

..... Respondent

Advocates who appeared in this case:

For the Appellant :Mr C.S. Aggarwal, Senior Advocate with
Mr Prakash Kumar and Mr Gautam Jain.

For the Respondent :Mr. Raghvendra Singh, Junior Standing Counsel.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The Appellant, a Charitable Trust, has preferred the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter the 'Act') impugning the order dated 3rd February, 2012 passed by the Income Tax Appellate Tribunal (hereafter the 'Tribunal') in ITA No. 5681/DEL/2010.

2. By the impugned order, the Tribunal allowed the appeal filed by the Revenue assailing the order of the Commissioner of Income Tax (Appeals), which in turn had allowed the appeal preferred by the Assessee against the assessment order dated 30th December, 2008 passed in respect of the

Assessment Year 2006-07. The Assessing Officer (hereafter 'AO') had denied the exemption claimed by the Appellant (hereafter the 'Assessee') under Section 11 and 12 of the Act as the AO was of the view that the activities of the Assessee were not in accordance with its objects. In addition, the AO also denied the Assessee's claim for depreciation on assets purchased by the Assessee by application of its income that was exempt under Section 11 of the Act.

3. Aggrieved by the assessment order, the Assessee preferred an appeal before the CIT (Appeals). The Assessee contended that the Assessee was a charitable institution engaged in running a hospital (both Allopathic and Ayurvedic) and the same constituted a charitable purpose within the meaning of Section 2(15) of the Act. It was urged that as the Assessee had applied its income for charitable purposes, the same was exempt under Section 11 and 12 of the Act. The Assessee further contended that it had been granted registration under Section 12A of the Act after considering the nature of its activities and, therefore, it was not open for the AO to deny the exemption under Section 11 of the Act.

4. The aforesaid contentions were accepted by the CIT (Appeals). In addition, the CIT (Appeals) also held that the Assessee was entitled for

depreciation on the assets purchased by application of its income, which was exempt under Section 11 of the Act.

5. The Revenue appealed against the aforesaid decision of CIT (Appeals) before the Tribunal being ITA No. 5681/DEL/2010. The Tribunal accepted the Revenue's contention that the properties of the Assessee had not been applied towards its objects. The Tribunal held that the Assessee's activities relating to Allopathic system of medicine had more or less supplanted the activities relating to Ayurvedic system of medicine and concluded that pre-dominant part of the Assessee's activities exceeded the powers conferred on the trustees and the objects of the Assessee Trust were not being followed. The Tribunal held that whilst the activities of the Assessee relating to providing medical relief by the Ayurvedic system of medicine were *intra vires* its objects, the activities of providing medical reliefs through Allopathic system of medicine was *ultra vires* its objects. Consequently, the Assessee was not entitled to exemption under Section 11 of the Act in respect of income from the hospital run by the Assessee, which offered medical relief through Allopathic system of medicine. Accordingly, the Tribunal directed that the income and

expenditure of the Assessee from the activities relating to the two disciplines of medicine, namely Ayurveda and Allopathy, be segregated.

6. Insofar as the Assessee's claim for depreciation was concerned, the Tribunal held that deprecation on assets, used for providing relief through Ayurvedic system of medicine or used in education and research relating to Ayurvedic system of medicine, was allowable notwithstanding that the expenditure on purchase of the assets was exempted under Section 11(1)(a) of the Act. However, insofar as the assets purchased for providing medical relief through Allopathic system of medicine was concerned, the Tribunal held that depreciation would not be available if the expenditure incurred on purchase of the assets had been exempted under Section 11(1)(a) of the Act.

7. Aggrieved by the impugned order, the petitioner preferred the present appeal. This Court, by an order dated 15th July, 2013, framed the following questions of law for consideration:-

“(1) Whether, the Income Tax Appellate Tribunal was justified in law in Confirming the action of the Assessing Officer in denying the claim of exemption u/s 11& 12 of the Income Tax Act, 1961, despite the fact that the assessee is a charitable institution engaged in running a hospital (both allopathic and

ayurvedic), which constitutes charitable activity u/s 2 (15) of the Income Tax Act. 1961?

- (2) Whether, on the facts and circumstances of the case the assessee trust is not entitled to exemption u/s 11 of the Act even assuming that activities of the trust that beyond of the objects of the trust which activities were wholly charitable in nature?
- (3) Whether, the Income Tax Appellate Tribunal was justified in law, in not allowing the depreciation on assets used for providing medical relief through allopathic system of medicines?"

8. Briefly stated the necessary facts for appreciating the controversy in the present appeal are as under:-

8.1 Late Lala Khairati Ram executed a Will dated 23rd December, 1927 and Codicil dated 8th January, 1928. In terms of the said Will, certain properties were settled in trust for furtherance of the objects as set out in the Will. The relevant extract of the said Will reads as under:-

“After meeting the above mentioned allotments the following institutions shall be observed with regard to the property of every description that may remain after my death :

a) All the remaining property of every description shall constitute a Trust known as Mool Chand Khairati Ram Trust, Lahore, the objects of which shall be as follows:-

- 1) Imparting education in and preaching Sanskrit according to SanatanDharm Methods, and*
- 2) Devising means for imparting education in and improving the Ayurvedic system of Medicine and*

preaching the same. In order to gain objects No.2 it is not prohibited to take help from the English or Yunani or any other system of medicine and according to need one or more than one Ayurvedic Hospital may be opened.”

8.2 In furtherance of the objects, the Assessee set up a hospital named Shri Mool Chand Khairati Ram Hospital and Ayurvedic Research Institute in Lahore (then in undivided India). After the partition of the country in 1947, the Assessee applied for allotment of land to the Government of India, Ministry of Rehabilitation and Urban Development, in order to continue its activities of running a hospital and an Ayurvedic Research Institute. Pursuant to the application, the Assessee was allotted land at Lajpat Nagar-III, New Delhi and in the year 1958, the Assessee set up an institution known as Shri Mool Chand Khairati Ram Hospital and Ayurvedic Research Institute, which included a hospital dispensing treatment under the allopathic system of medicine.

8.3 The Assessee has been running a hospital and Ayurvedic Research Institute from the site at Lajpat Nagar-III, since 1958 and it is not disputed that there has been no significant change in the nature of the activities undertaken by the Assessee since 1958. The Assessee was granted registration under Section 12A of the Act in December 1974.

8.4 It is not disputed that the Assessee runs dedicated indoor facility and manages 40 beds where Ayurvedic treatment is provided free of cost. It is also asserted by the Assessee that it has made significant contribution in advancing Ayurvedic medicine. The Assessee further claims that the hospital run by it at Lajpat Nagar dispenses treatment and training both in Ayurvedic system of medicine as well as Allopathy, to give best results to the patients. Be that as it may, it is not disputed that treatment under the Ayurvedic system of medicine as well as Allopathic system of medicine is dispensed to the patients at the hospital run by the Assessee. However, since the setting up of the hospital/institution in 1959-60, the gross receipts pertaining to activities of the Ayurvedic Research Institute has been significantly lower than the gross receipts from providing treatment under the Allopathic system of medicine. In the year 1959-60, the percentage of receipts pertaining to Ayurvedic system of medicine to the total receipts was 6.34%. The proportion of receipts pertaining to Ayurvedic system of medicine to the gross receipts in the following years has been lower. In the financial year 2005-06 the gross receipts pertaining to Ayurvedic system of medicine constituted 2.66% of the total gross receipts of the Assessee.

9. In the assessment order dated 30th December, 2008, the AO noted that in the financial year 2005-06 the Assessee had received a total sum of Rs.18,97,65,365/- out of which the receipts pertaining to Ayurvedic Research Institute were only Rs.55,41,423/-. The AO further found that total expenditure shown by the Assessee for the said financial year was Rs.27,96,97,610/- out of which only an amount of Rs.53,30,595/- was spent on operating expenses pertaining to the Ayurvedic Research Institute. In the circumstances, the AO held that the primary activity of the Assessee was running an Allopathic hospital. According to the AO, this was not in accordance with the object of the trust set out in the Will of Late Sh. Mool Chand Khairati Ram. This view was also accepted by the Tribunal in the impugned order.

10. Mr. Aggarwal, the learned senior counsel appearing for the Assessee contended that since there was no dispute that the activities of the Assessee fell within the meaning of charitable purposes as defined under Section 2(15) of the Act, the condition for grant of exemption under Section 11 of the Act was satisfied. He contended that the only requirement under Section 11 of the Act was to apply the income for charitable or religious purposes

and, therefore, the Assessee was entitled to the exemption under Section 11 of the Act.

11. It was next contended that running an Allopathic hospital would fall within the object of the trust and the mere fact that the proportion of receipts and expenditure for providing treatment under the Allopathic system was larger than for providing Ayurvedic services would not render the activity of running an Allopathic Hospital *ultra vires* the object of the trust. He contended that the treatment under both, the Ayurvedic system of medicine as well as Allopathic system of medicine was being rendered in the hospital and the Assessee had been endeavoring to advance the cause of Ayurveda by drawing on the Allopathic system of medicine. He also referred to a letter dated 9th December, 2008 submitted by the Assessee to the AO, which explained the activities undertaken by the Assessee in the field of Ayurvedic medicine.

12. Mr. Aggarwal further contended on behalf of the Assessee that the registration granted to the Assessee under Section 12A of the Act has not been revoked. He referred to Section 12A(3) of the Act and contended that in cases where it is found that the activities of the Assessee are not in conformity with the objects of the trust, the registration granted under

Section 12A could be revoked by the Commissioner Income Tax. And, as this was not done in this case, it would not be open for the AO to go behind the registration. Mr. Aggarwal submitted that it was not open for the AO to examine the issue whether activities of the Assessee were in conformity with the object since the same had been considered by the Commissioner Income Tax at the time of granting registration under Section 12A of the Act. Mr. Aggarwal also referred to the decision of the Supreme Court in **Assistant Commissioner of Income Tax v. Surat City Gymkhana: (2008) 300 ITR 214 (SC)** in support of his contention that once registration had been granted under Section 12A of the Act, the same is a *fait accompli* and the AO could not thereafter further probe into the objects of the trust.

13. It was also contended by Mr. Aggarwal that the Assessee had been claiming exemption under Section 11 of the Act since the year 1959-60 and the same had been accepted by the Revenue. He further pointed out that in several years in the past, the Assessee had been granted exemption under Section 10(22), 10(22A) and Section 10(23C)(via) of the Act. He emphasized that, admittedly, the activities of the Assessee had remained the same since 1959-60 and since the Revenue accepted the claim of the Assessee for exemption under Section 11 of the Act and/or under Section

10(22), 10(22A) and 10(23C) of the Act, in the past, it could not have taken a view contrary to the settled position. He relied on the decision of the Supreme Court in **Radhasoami Satsang v. CIT:(1992) 193 ITR 321 (SC)** and **Commissioner of Income Tax v. Excel Industries Ltd.: (2013) 358 ITR 295 (SC)** in support of his contention that following the principle of consistency, a view consistently accepted ought not to be unsettled.

14. Insofar as the issue of depreciation is concerned, Mr. Aggarwal submitted that the said issue is covered by the decision of the Division Bench of this Court in **Director of Income Tax (Exemption) v. M/s Indraprastha Cancer Society: Income Tax Appeal No. 240/2014, decided on 18th November, 2014.**

15. Mr. Raghvendra Singh, learned counsel appearing on behalf of the Revenue controverted the above submissions made on behalf of the Assessee. Mr. Singh submitted that the objects of the trust did not permit running of an Allopathic hospital and thus, the activities of the Assessee were in excess of its objects. He further submitted that the AO was fully justified in examining whether income of the Assessee was applied towards its object as that was the pre-condition for grant of exemption under Section 11(1) of the Act. He contended that the expression “such purposes” as used

in Section 11(1) of the Act would refer to the objects of the Trust and not to charitable or religious purposes in general. Consequently, even if the income of the Assessee had been applied for charitable purposes, the exemption under Section 11 of the Act would not be available if the same had not been applied towards the objects of the Trust. He stated that in the present case, it was not disputed that the activities of the Assessee fell within the scope of charitable purposes as defined under section 2(15) of the Act, however, this was not sufficient for availing exemption under Section 11(1) of the Act.

16. Mr. Singh referred to the decision of the Supreme Court in **Commissioner of Income Tax, Ujjain v. Dawoodi Bohara Jamat: (2014) 364 ITR 31 (SC)** in support of his contention that the exemption under Section 11(1) of the Act would be available only if the income of the Assessee was applied for its objects. He also referred to the decision of a Division Bench of this Court in **Director of Income Tax (Exemption) v. NBIE Welfare Society: (2015) 370 ITR 0490 (Delhi)** in support of his contention.

17. Mr. Singh contended that the principle of consistency would not be applicable in the facts of the present case as there had been no definite

determination that the hospital run by the Assessee was in accordance with the objects of the Trust. He further contended that the principle of *res judicata* was not applicable to proceedings under the Act and even if the exemption had been incorrectly granted in the previous year, it would not entitle the Assessee to claim the same in subsequent years also. He further submitted that the provisions relating to exemption had also undergone material changes from time to time. He referred to the decision of the Division Bench of this Court in **Krishak Bharati Cooperative Ltd. V. Deputy Commissioner of Income Tax: (2013) 350 ITR 24 (Delhi)** to contend that the rule of consistency did not have wide application.

18. In respect of the issue regarding depreciation, it was contended by Mr. Singh that there was no dispute that the depreciation would be allowable on the asset that was purchased by the Trust by application of its income which was exempted under Section 11(1)(a) of the Act. However, it was submitted that where the exemption under Section 11(1)(a) of the Act has been granted but the asset is applied towards the activities which are not in conformity with the object of trust, further depreciation would not be available on such assets.

19. At the outset, it would be necessary to refer to clause (a) of sub Section (1) of Section 11 of the Act which reads as under:-

“11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;”

20. A plain reading of Section 11(1)(a) of the Act indicates that for income to be excluded under the said clause the following conditions must be met:-

(a) That the income is derived from property held under Trust wholly for charitable purposes; and

(b) The income is applied for such purposes in India.

Income from the property, which is set apart for application for such purposes, is also exempted to the extent that it is not in excess of 15% of the income from such property.

21. The expression “such purposes” clearly refers to the purposes for which the property is held in Trust. Both the conditions i.e. the income should be derived from the property held in Trust for charitable or religious purposes and the condition that the income is applied for such purposes, are cumulative.

22. We are unable to accept the contention that the expression “such purposes” would mean any charitable or religious purpose, even if the said purpose is not the purpose for which the property is held in Trust. The contention that as long as the Assessee applies the income from a property held in Trust for charitable or religious purpose, to any charitable or religious purpose, the exemption under Section 11(1)(a) of the Act would be available, notwithstanding that the purpose for which the income is applied is not the purpose for which the property is held in Trust, cannot be sustained as the same would be contrary to the plain language of Section 11(1)(a) of the Act. In order for any income to be excluded from the scope of total income, the same must be derived from a property held in Trust for a charitable or religious purpose and must also be applied for that purpose.

23. In ***Dawoodi Bohara Jamat*** (*supra*), the Supreme Court had referred to Section 11 of the Act and observed as under:-

“..... The income of a charitable or religious trust is exempt from taxation under the correlated provisions of sections 11, 12, 12A, 12AA and 13. Section 11 deals with income from trusts for charitable and religious purposes and sets out which income shall be exigible to taxation. Section 11(1) relates to application of income towards the objects of the trust and exempts income of trusts with objects wholly charitable or religious or parts of income which relate to such objects.”

24. Mention may also be made of the decisions rendered by this Court in *CIT v. Hotel & Restaurant Association*: (2003) 261 ITR 190 (Del.), *Bharat Kalyan Pratisthan v. Director of Income-Tax (Exemption)*: (2008) 299 ITR 406, *Director of Income-Tax (Exemption) v. Daulat Ram Education Society*: (2005) 278 ITR 260 (Del.), *Director of Income-Tax (Exemption) v. Mamta Health Institute for Mother and Children*: (2007) 293 ITR 380 (Del.) and *NBIE Welfare Society (supra)*. In these decisions, the Court affirmed that if income is accumulated for applying towards the object of the Trust, which is wholly charitable or religious, the exemption under Section 11(2) of the Act would be available to the Assessee, provided the conditions as specified under Section 11(2) of the Act are met. Although these decisions were rendered in the context of Section 11(2) of the Act, the same would also be applicable while interpreting Section 11(1)(a) of the Act, as Section 11(2) of the Act also uses the expression “such purposes” which has been interpreted to mean the charitable/religious

objects for which the properties are held in Trust. At this stage, it is necessary to refer to Section 11(2) of the Act, which reads as under:-

“11(2) Where eighty-five per cent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the *Explanation* to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but is accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:—

- (a) such person specifies, by notice in writing given to the Assessing Officer in the prescribed manner, the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed ten years;
- (b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5):”

25. The expression “such purposes”, obviously, has the same meaning as used in Section 11(1)(a) of the Act. Section 11(2) of the Act has to be read in conjunction with Section 11(1) of the Act. While Section 11(1)(a) of the Act provides for exemption for income applied during the relevant previous year, Section 11(2) of the Act provides for conditions subject to which such income could be accumulated for use in later years.

26. In the aforesaid circumstances, the Assessee would be entitled to the exemption under Section 11(1)(a) of the Act, only if the income is applied for the charitable purpose for which the properties are held in Trust.

27. We also do not find any merit in the contention that the AO is not entitled to inquire whether the income is applied towards the charitable or religious purpose for which the property, from which the income is derived, is held in Trust. It is necessary for the AO to satisfy himself that the conditions for exclusion, as specified under Section 11(1)(a) of the Act, are met and for the said purpose the AO can make such inquiries as necessary.

28. The contention that since the Commissioner, by virtue of Section 12A(3) of the Act, is empowered to cancel the registration granted to an Assessee if it is found that the activities of a Trust or an institution are not genuine or are not being carried out in accordance with the object of the Trust or institution, the AO is precluded from examining whether the Assessee had applied its income for the object of the Trust or institution, is wholly without merit. The opening words of Section 12A(1) of the Act read as under:-

“Section 12A(1) The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or

institution unless the following conditions are fulfilled, namely:—”

29. The opening words of Section 12A(1) of the Act clearly indicate that the conditions imposed under that section are in addition to the conditions or exemptions as specified under Section 11 and 12 of the Act. Thus, if the conditions as specified under Section 12A(1) of the Act are not met, then the exemption available under Section 11 of the Act would not be available to the Assessee. This does not mean that if a trust is registered under Section 12A of the Act, exemption under Section 11 and Section 12 of the Act would necessarily follow. The provisions of Section 12 of the Act do not curtail or in any manner dilute the mandatory requirements of Section 11 of the Act. Thus, notwithstanding that an Assessee has been granted a registration under Section 12A of the Act, it would be necessary for the Assessee to comply with the conditions of Section 11 of the Act in order to claim any benefit under the provisions of that Section.

30. The reliance placed by the Assessee on the decision of the Supreme Court in *Surat City Gymkhana* (*supra*) is also misplaced. In that case, the Assessee had asserted that its objects were exclusively charitable and had claimed exemption under Section 10(23) of the Act. The contention of the Assessee was upheld by the Tribunal and the Revenue approached the High

Court of Gujarat claiming that the following two substantial questions of law arose from the order of the Tribunal:-

“(A) Whether, on the facts and circumstances of the case, the Income-Tax Appellate Tribunal was justified in law in holding that the objects of the trust restricting benefit to the members of the club would fall within the purview of the act of ‘general public utility’ under section 2(15) of the Income-Tax Act constituting as a section of public and not a body of individuals?

(B) Whether, on the facts and circumstances of the case, the Income-tax Appellate Tribunal was justified in law in holding that registration under section 12A was a fait accompli to hold the Assessing Officer back from further probe into the objects of the trust?”

31. A Division Bench of the Gujarat High Court held that the questions of law raised by the Revenue were covered by its earlier decision in the case of **Hiralal Bhagwati v. CIT: (2000) 246 ITR 188** and dismissed the appeal filed by the Revenue. The Revenue preferred a Special Leave Petition against the decision of the Gujarat High Court. Whilst the Supreme Court declined to entertain the SLP in respect of the first question on the ground that the same was covered by the decision in the case of ***Hiralal Bhagwati* (supra)** and the same had not been challenged by the Revenue, the Supreme Court granted special leave in respect of the second question. Subsequently, the Supreme Court found that the second question

was also covered by the decision of the Gujarat High Court in *Hiralal Bhagwati* (*supra*) and, accordingly, dismissed the appeal. In *Hiralal Bhagwati* (*supra*), the Gujarat High Court had held that once registration is granted under Section 12A of the Act, after accepting that the objects of the Trust are charitable, the AO cannot take a decision to the contrary. This would stand to reason because once a higher income tax authority i.e. a Commissioner had accepted the application of an Assessee and had accepted that the object of the Trust was wholly charitable, it would not be open for the AO to take a contrary view. Thus, it may not be open for an AO to examine whether the object of the Trust registered under Section 12A of the Act is charitable or not. However, the same would not preclude the AO from examining whether the income derived from the property held in Trust have been applied for the object of the Trust. It is necessary for the AO to conduct this exercise for each assessment year and the grant of registration under Section 12A of the Act would not prevent or in any manner impede the AO from conducting this exercise.

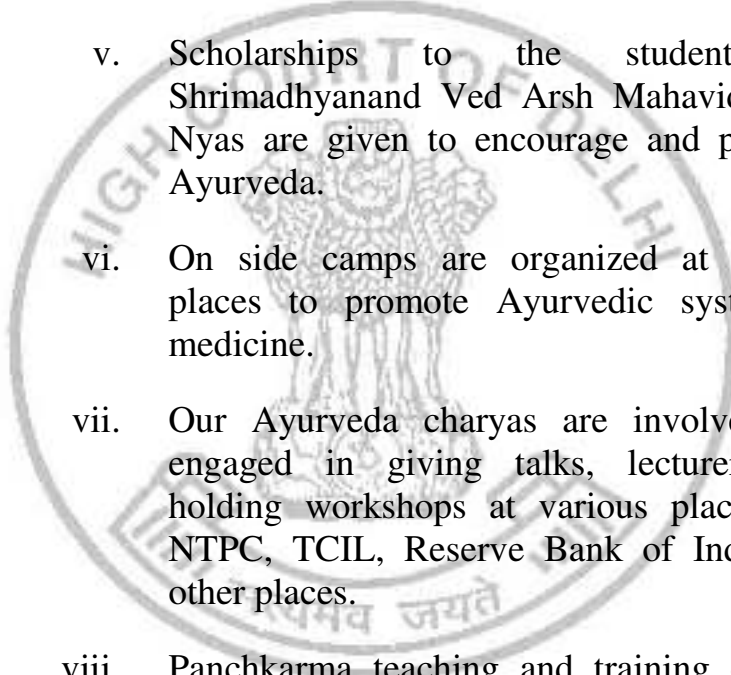
32. The only controversy that remains to be addressed is whether the AO and the Tribunal were justified in holding that the Assessee had applied its income for purposes other than its objects.

33. According to the Revenue, the objects of the Trust would not permit running of a hospital where patients are treated under the Allopathic system of medicine. The Assessee had disputed the same and had submitted a letter dated 9th December, 2008, *inter alia*, explaining that the institution run by the Assessee is an integrated institution, which has made significant advances in the field of Ayurvedic medicine. The Assessee further explained that the hospital in question integrates both the Ayurvedic system of medicine as well as Allopathic services, to provide the best treatment to the patients and the Ayurvedic treatment provided by the hospital utilizes methods of investigation used under the system of modern medicine. The relevant extract of the said letter is quoted below:-

“As is evident from the name of the hospital, this hospital is pioneer in the field of Ayurvedic Education and improving Ayurvedic system of medicine by Ayurvedic Research.

Over the past several years the hospital has developed new techniques of tendering services in the ayurvedic medicine; to name a few:

1. Scientific application of Panchkarma and medicine which includes :
 - a. Pizhichil Treatment (Sarvang Sneh Dhara) for Deformed Rheumatoid Arthritis (Amavata)
 - b. Kati Basil for Disc Prolapse (Katishula, Katistambha),

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- ii. The Trust runs dedicated indoor facility on Ayurvedic and manages 40 beds wherein the treatment is given free.
 - iii. Ayurvedic medicines are dispensed and provided at nominal cost and in case of deserving patient even free.
 - iv. Every third Friday of the month, trust organizes Ayurvedic Sambhasha Parishad and doctors from far and wide come and attend the event.
 - v. Scholarships to the students of Shrimadhyanand Ved Arsh Mahavidhayala Nyas are given to encourage and promote Ayurveda.
 - vi. On side camps are organized at various places to promote Ayurvedic system of medicine.
 - vii. Our Ayurveda charyas are involved and engaged in giving talks, lectures and holding workshops at various places like NTPC, TCIL, Reserve Bank of India and other places.
 - viii. Panchkarma teaching and training courses have been developed and are modified on regular basis.
- d. As a part of pioneer ayurvedic institute the hospital provide state of art ayurvedic facilities as :
- I Panch Karma
 - II Stri Rog
 - III. Shalya Shalkya
 - IV Kaya Chikitsa.

4. Ayurvedic pharmacy through which medicines are being manufactured and dispensed caters to the needs of patients coming for Ayurvedic treatment to the hospital. Besides this, Moolchand has developed the following important patient medicines:

- a. Moolchand Chitrak Haritaki for bronchitis, allergic rhinitis, sinusitis and continuous dry cough
- b. Raj Rasayan for rejuvenation, prostate enlargement, urinary disorders.
- c. Chyawan Prash as general rejuvenative tonic.
- d. Abhrak Miasma for cardiac ailments, fever, bronchitis, chest congestion, bronchial asthma.

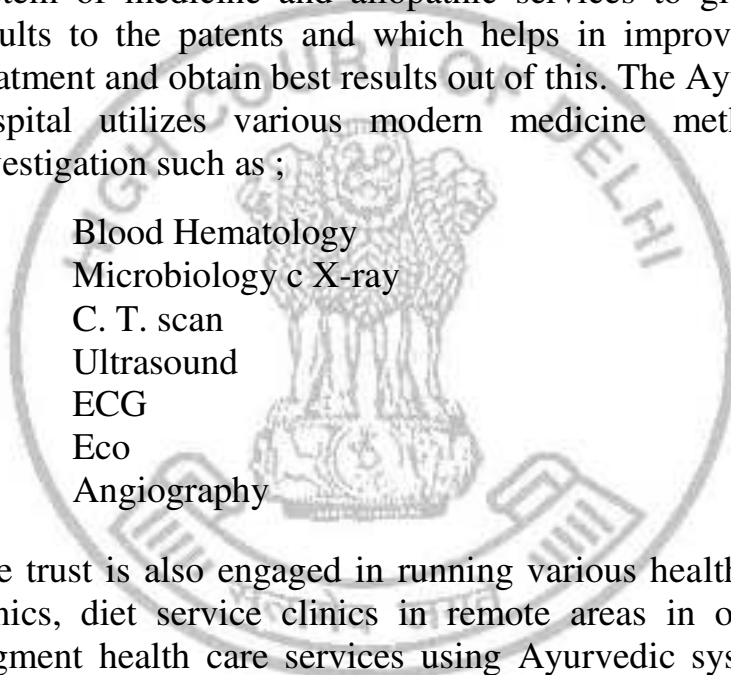
5. It has been clinically proven as result of continuous research that we have developed not only treatment but absolute care of:

- a. Diabetes
- b. O.A.
- c. Rhenatold
- d. Psoriasis
- e. Bronchial asthma
- f. Leucoderma
- g. Hepatitis
- h. Hepatitis B
- i. Hypertension
- j. Paralysis
- k. CVA
- l. Deaddiction programme for alcohol for drugs and smoking
- m. Psychological problems.

6. In order to promote Ayurvedic Medicine, help is taken from Modern Medicine system and trust runs various allopathic services both in medicine and surgery such as Department of Medicine (Gastroenterology, Respiratory &

Pulmonology, Cardiology, Oncology and internal Medicine); Department of surgery (General Surgery, Uro Surgery, cosmetic and plastic surgery, paediatric surgery); Department of Orthopedics; Department of Anesthesia; Department of Paediatrics; Department of Neonatology, Department of Nephrology; Department of Obs & Gynae; Department of Neurology; Department of Dental; Department of Ophthalmology; Department of ENT and Department of physiotherapy.

This is unique hospital that integrates both Ayurvedic system of medicine and allopathic services to give best results to the patients and which helps in improving the treatment and obtain best results out of this. The Ayurvedic hospital utilizes various modern medicine method of investigation such as ;

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- a. Blood Hematology
 - b. Microbiology c X-ray
 - c. C. T. scan
 - d. Ultrasound
 - e. ECG
 - f. Eco
 - g. Angiography

The trust is also engaged in running various health check clinics, diet service clinics in remote areas in order to augment health care services using Ayurvedic system of medicine.

7. In order to further - spread education, awareness and help in research in ayurvedic and Modern Medicine a full fledged scientific library is maintain by the hospital which has :
 - a. More than, one thousand books are available in the library including all leading journals.
 - b. Besides various subscriptions available, the library is open for student staff physicians, trainees, interns and technicians.

8. To further spread education, hospital also provides diploma in nursing which is registered under aegis of Delhi Nursing Council and every year 30 student enroll for this course. This duration for this diploma course is 3-1/2 years. Through this course, hands on training is also provided in Ayurvedic system of medicine.

It is a matter of pride that physicians from far and wide come for Ayurvedic training to this institute.

From the perusal of the above, it may be appreciated that lot of activities is being done to improve Ayurvedic system of medicines and preaching the same. It is respectfully submitted that your contentions/observations that 'it is no where permitted to open and run Allopathic Hospital' is prima facie untenable because of the fact that Trust has opened primarily an ayurvedic Hospital and taking help from Allopathic system of medicines or any other system of medicines is not prohibited, it means that it is permitted. While promoting Ayurveda, the other system of medicine also got promoted. It serves the General good of the community while retaining its charitable nature at all points of time. It will be appreciated that this is permissible under the provisions of the Trust Deed as well as under the provisions of the Income Tax, 1961.

It will also be appreciated that the Trust has not changed its activities/system of medicines of be it Ayurveda or be it allopathic from the very beginning. It is submitted that Trust can only open hospital but can not compel the community to choose the system of medicines. Thus while providing Ayurveda and continuously improving the Ayurvedic system of medicines, patients wanting allopathic treatment are being provided Allopathic treatment as well.

This is unique Hospital where in order to improve Ayurvedic system of medicines and create awareness about the Ayurvedic system of medicines are being adopted.

The name of the Hospital is not Moolchnd Hospital but Moolchand Khairati Ram Hospital and Ayurvedic Research Institute.”

34. The assertion made by the Assessee that it provides treatment under the Ayurvedic system at the hospital in question and is involved in the advancement of the Ayurvedic medicine is not disputed by the AO. It is also not disputed that the hospital run by the Assessee is an integrated hospital offering treatments under the Ayurvedic system of medicine as well as under the Allopathic system of medicine. The Revenue also does not dispute the Assessee’s contention that the treatment under the Ayurvedic system of medicine draws significantly from investigation techniques used under modern medicine system. In the circumstances, the limited issue to be addressed is whether running of such hospitals which provides Allopathic as well as Ayurvedic treatment and includes investigation techniques of modern medicine would be contrary to the object of the Assessee Trust.

35. A plain reading of the objects indicates that it includes “*devising means for imparting education and improving Ayurvedic system of medicine and preaching the same*”. It is also expressly clarified that the Assessee is not prohibited to take help from the English, Unani or any other

system of medicine for its object. Further, it is also expressly provided that according to the need, one or more Ayurvedic hospitals may be opened. It is at once clear that the object does not prohibit running of an Allopathic hospital or drawing from any the other system of medicine for improving the Ayurvedic system of medicine. The Assessee's endeavour of running a hospital providing modern techniques and treatment which would also be a source for improving Ayurvedic system of medicine would, plainly, be an activity towards the objects as specified. Merely because, running of an Allopathic hospital is not specifically mentioned, it does not necessarily mean that the same would be *ultra vires* the objects, as establishment of an Allopathic hospital does assist the Assessee in its object of improving the Ayurvedic system and taking assistance from the Allopathic system of medicine. Any activity reasonably incidental to the object would not be *ultra vires* the objects. As explained by the Assessee, the modern investigation techniques are equally utilized for treatment under Ayurvedic system.

36. In ***Lakshmanaswami Mudaliar v. Life Insurance Corporation: AIR 1963 SC 1185***, the Supreme Court had observed as under:

“(13) Power to carry out an object, undoubtedly includes power to carry out what is incidental or conducive to the attainment of that object, for such extension merely permits something to be done which is connected with the objects to be attained, as being naturally conducive thereto.”

37. Although the above observations were made in the context of interpretation of the Object Clause of a Memorandum of Association of a Company, the principle would also be applicable to determine whether any activity is *ultra vires* the purpose of a Trust.

38. Thus, in our view, the AO and the Tribunal erred in concluding that the Assessee's activities were in excess of its objects. Running an integrated hospital would clearly be conducive to the objects of the Assessee. The trustees have carried out the activities of the trust bonafide and in a manner, which according to them best subserved the charitable objects and the intent of the Settlor. Thus the activities of the Assessee cannot be held to be *ultra vires* its objects. The AO and the Tribunal were unduly influenced by the proportion of the receipts pertaining to the Ayurvedic Research Institute and the hospital. In our view, the fact that the proportion of receipts pertaining to the Ayurvedic Research Institute is significantly lower than that pertaining to the hospital would, in the facts of the present case, not be material. Undisputedly, significant activities are

carried out by the Assessee for advancement and improvement of the Ayurvedic system of medicine in the institution established by the Assessee and though the receipts from the Allopathic treatment are larger, the same does not militate against the object for which the institution has been set up and run.

39. The next issue to be addressed is whether it was open for the AO to take a view different from the one that has been accepted by the Revenue for the past several decades. It is well established that each year is a separate assessment unit and the principles of *res judicata* are not applicable. However, in this case, it would be appropriate to note that the activities carried out by the Assessee have been accepted as being amenable to exemption under Section 11 of the Act for the past several decades. In the past period, the Assessee has been granted exemption under Section 11 of the Act and also under Section 10(22)/10(22A) or Section 10(23C) of the Act. Concededly, the exemptions granted to the Assessee for past several decades would not be available if the activities of the Assessee were considered by the concerned AOs/Authorities to be *ultra vires* its objects.

40. In the circumstances, it would not be apposite to permit the Revenue to challenge a position that has been sustained over several decades without

there being any material change. In *Radhasoami Satsang (supra)*, the Supreme Court observed as under:-

“....each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year..”

41. In *Parashuram Pottery Works Co. Ltd. v. ITO: (1977) 106 ITR 1 SC*, the Supreme Court reiterated the principle that if the parties have allowed a position to sustain, it would not be appropriate to change the position in a subsequent year. The said decisions have also been followed by the Supreme Court in its later decision in *Excel Industries Ltd. (supra)*.

42. In *Krishak Bharati Co-operative Ltd. (supra)*, a Division Bench of this Court struck a note of caution that the rule of consistency is not of a wide application and a blind adherence to this rule would lead to anomalous results. Thus, in the circumstances, where the views are mistaken and apparently erroneous, it would not be apposite to compel the Revenue to follow the same on the principle of estoppel or of consistency. However, in cases, where two views are plausible, it would be, plainly, whimsical to

frame an assessment contrary to the position accepted in earlier years. This would render the exercise of assessment highly subjective; clearly, an Assessee cannot be subjected to such vagaries. Indisputably, the powers of AO are wide but its exercise cannot be undisciplined. In cases where there is a palpable mistake or the position accepted by the Revenue in earlier years is apparently erroneous, the AO would not be bound to accept the view of his predecessors. However, in cases - such as the present case - where the Assessee's claim for exemption has been accepted for several decades, it would not be open for AO to think of new grounds, which at best raise contentious issues, to cast a wider net of tax. It is trite law, that if two views are possible, the one favoring the Assessee must be adopted. This rule would apply *a fortiori* in cases where the Assessee's claim has been consistently accepted by the Revenue in the past. Thus, in cases where the claim of an Assessee has been accepted in earlier years, unless the claim of an Assessee is found to be devoid of any basis or plainly contrary to law, it would not be open for the AO to take a view contrary to the position which has been accepted by the Revenue in earlier years and has been permitted to sustain for a significant period of time.

43. In the facts of the present case, it is not possible to accept that grant of exemption to the Assessee for the past several decades was palpably erroneous and successive AOs were wrong in accepting that the activities of the Assessee were in furtherance of its charitable objects, entitling the Assessee to escape the levy of income tax.

44. In view of the above, the second question is answered in affirmative and Assessee would not be entitled to exemption under Section 11 of the Act if its activities are outside the scope of its objects, even if its activities are charitable in nature. However, the first question is answered in the negative and in favour of the Assessee and in our view, the Tribunal was not justified in allowing the Revenue's appeal and denying the Assessee's claim under Section 11 of the Act.

45. Insofar as the issue regarding depreciation on assets used for providing Allopathic systems of medicine is concerned, the learned counsel for the Revenue did not dispute that the depreciation would be allowable if the activities of the Assessee were considered to be within the scope of its objects. The Tribunal had denied the claim of depreciation, in respect of assets used for providing medical relief through Allopathic system of medicine, only on the basis that the Assessee's activity for running the

hospital was *ultra vires* its objects. In the circumstances, the third question is to be answered in the negative and in favour of the Assessee.

46. In view of the aforesaid, the impugned order of the Tribunal is set aside. The appeal is disposed of. No order as to costs.

VIBHU BAKHRU, J

S. MURALIDHAR, J

JULY 27, 2015
RK

