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

INCOME TAX APPEAL NO. 1536 OF 2014

DIT (Exemption), Mumbai .. Appellant

v/s.

Jaslok Hospital and Research Centre .. Respondent

Mr. Ashok Kotangle a/w Ms. Padma Divakar for the appellant
Mr. Madhur Agrawal i/b Mint & Confreres for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 14th MARCH, 2017.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 10th January, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2005-06.

2. The Revenue has urged only the following question of law for our consideration :-

> *(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in confirming the order of the CIT(A), deleting the addition made by the Assessing Officer on account of disallowance of provision for doubtful debts?*

3. The respondent is the charitable trust running a hospital and research centre in Mumbai. It is registered under Section 12A of the Act. During the subject assessment year i.e. A.Y. 2005-06, the respondent assessee had a deficit of Rs.19.08 crores and accordingly its return of income declared Nil income. The Assessing Officer did not accept the same and while disallowing the claim for exemption under Section 11 of the Act, determined the respondent's income at Rs.50.44 lakhs. However, in appeal the claim of the respondent assessee for exemption under Section 11 of the Act was allowed and the return of income of the respondent assessee declaring Nil income, was accepted.

4. Thereafter, on 23rd March 2011, the Assessing Officer issued a re-opening notice under Section 148 of the Act, seeking to reopen the assessment for Assessment Year 2005-06. The reasons recorded in support of the reopening notice was that the respondent assessee had made a claim for provision of doubtful debts amounting to Rs.78.32 lakhs, which was wrongly allowed in the regular assessment proceedings. Consequently, the income to the extent of Rs.78.32 lakhs had escaped assessment. The respondent assessee challenged the reopening of assessment by the Assessing Officer both on the issue of

jurisdiction as well as on merits. However, the Assessing Officer by an order dated 20th November, 2012 passed under Section 143(3) r/w Section 147 of the Act rejected the respondent's contention both on jurisdiction as well as on merits. Therefore, the above order dated 20th November 2012 brought to tax the amount of Rs. 78.32 lakhs i.e. the disallowed provision of doubtful debts.

5. Being aggrieved, the respondent assessee carried the issue in appeal to the CIT(A). By an order dated 9th August, 2012, the CIT(A) allowed the respondent assessee's appeal on merits stating that disallowance of provision of doubtful debts was not sustainable in view of the decision of Delhi High Court in the case of ***Director of Income-Tax (Exemption) Vs. National Association of Software and Services Companies, 345 ITR 362***. However, it recorded the fact that even if the provisions of doubtful debt of Rs.78.32 lakhs is added back on being disallowed, it would bring down the deficit from Rs.19.80 crores to Rs.18.45 crores, yet resulting in no taxable income in the hands of the respondent assessee.

6. Being aggrieved, the Revenue filed an appeal to the Tribunal. The Tribunal on merits upheld the order of the CIT(A) by placing

reliance upon *National Association of Software and Services Companies* (supra). Further, on the issue of jurisdiction, the impugned order of the Tribunal holds that the Assessing Officer could not have issued the notice as even if the provision for doubtful debts was to be disallowed, the result would not be any taxable income. The only consequence of the disallowance would be reduction in deficit from Rs.19.80 crores to Rs.18.45 crores. Thus, there would be no taxable income which has escaped assessment giving jurisdiction to the Assessing Officer to issue the notice dated 23rd March, 2011 seeking to reopen assessment for A.Y. 2005-06.

7. In the above view, the question raised by the Revenue in the present facts becomes academic. This is for the reason that the respondent assessee had before the CIT(A) urged that even if the deduction in respect of the provisions of doubtful debts is disallowed, the deficit income would not be wiped out and admittedly this deficit income is not carried forward by the respondent assessee. Therefore,in the above facts, the Assessing Officer could not have had any reason to believe that income chargeable to tax has escaped assessment which would give jurisdiction to the Assessing Officer to issue notice dated 23rd March, 2011 under Section 148 of the Act. This is particularly so

as the *sine qua non* for issuing a reopening notice is income chargeable to tax escaping assessment.

8. In the aforesaid circumstances, the question as proposed in the present facts is academic. Thus, need not be entertained.

9. Accordingly, the appeal is dismissed. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**