BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.12312 of 2019

M/s.Sri Kauvery Medical Care (India) Ltd.,
Represented by its
Managing Director,
Dr.S.Manivannan : Petitioner

Vs.

The Chief Commissioner of Income Tax,
No.44, Williams Road,
Cantonment,
Tiruchirappalli. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondent herein to re-consider the impugned order passed in proceedings C.No.991(1)/CCIT/TRY/2018-19, dated 30.01.2019 granting benefit, issued under proviso (ii)(b) of clause (viii) of sub-section (2) of Section 17 of the Income Tax Act, 1961 with effect from 30.01.2019 and consequently, further direct the respondent to consider the grant of benefit from the date of application by the petitioner Hospital under proviso (ii)(b) of clause (viii) of sub-section (2) under Section 17 of Income Tax Act, 1961, as just and necessary.

For Petitioner : Mr.M.Velmurugan

For Respondent : Mr.N.Dilipkumar

ORDER

This Writ Petition is filed by a Hospital for a Writ of Mandamus, to re-consider the impugned order passed by the respondent in proceedings C.No.991(1)/CCIT/TRY/2018-19, dated 30.01.2019, and to direct the respondent to consider the grant of benefit under proviso (ii)(b) of clause (viii) of sub-section (2) of Section 17 of Income Tax Act, 1961, with effect from the date of application of the petitioner Hospital.

2. The petitioner is running a reputed Hospital, by name "Kauvery Hospital", which was given approval under Section 17(2) of the Income Tax Act, 1961, for the period between 16.10.2015 and 31.03.2018. While granting approval, the respondent has specifically

mentioned that the establishment have to submit their application for renewal, one month prior to the expiry of the approval granted to them. Accordingly, the petitioner should have submitted his application for renewal on or before 01.03.2018. But, the petitioner submitted the application only on 18.04.2018, but, reached the department only on 24.04.2018. However, on 31.08.2018, the respondent called for certain clarification, which, the petitioner submitted it on 05.09.2018. After considering the explanation submitted by the petitioner, approval was granted on 30.01.2019 for the period between 30.01.2019 and 27.01.2020. According to the petitioner, they are complying with the Municipal Laws very meticulously, but, due to introduction of Clinical Establishment Act, there were certain practical difficulties in getting the certificate from the Corporation of Chennai. They could get the certificate only on 28.01.2019, which is valid till 27.01.2020. It is not that they have not complied with the Municipal Laws, as specified under Rule 3(A) of the Income Tax Rules, 1962. They have been continuously complying with the Municipal Laws and there is no disturbance or discontinuance of their registration.

3. Per contra, the respondent would contend that when there is a specific mandate that an application shall be filed one month prior to date of expiry of the grant, the assessees shall be very cautious to submit their applications. As per Rule 3(A) of Income Tax Rules, 1962, the authority can grant the approval only from the date of the certificate issued by the Municipal Authorities.

4. In the instant case, the certificate was issued on 28.01.2019. Immediately, the approval was granted from 30.01.2019. There is no power under the Act to grant approval retrospectively. If at all a retrospective effect is given, it will create chaos and that all the persons will not submit applications in time, but, seek for benefits retrospectively. This will result in leakage of revenue and undue benefits to the establishments. Therefore, in strict compliance of the Rules, approval can be granted from the date of submission of the certificate from the Municipal Authorities. Therefore, the order passed by the respondent is intact and the Writ Petition has to be dismissed.

5. The learned counsel appearing for the petitioner would contend that it is not the first time, the petitioner is applying for approval. Since the petitioner is a reputed Hospital and was given approval from the year 2016 onwards, it continues its functioning and for the purpose of renewal, the date of issuance of certificate shall not be the criteria, but, its functioning should be continuous. At least, the respondent could have considered the approval from the date of submission of application viz., 18.04.2018 [reached the department only on 24.04.2018]. The petitioner is only seeking for a limited prayer that the respondent/Chief Commissioner of Income Tax can have a re-look into the matter and after satisfying himself that the petitioner is strictly complying with

the Municipal Laws, can exercise discretion and may consider the grant of approval from the date of his application, as it has been done by the other Commissionerates.

6. In reply, the learned counsel appearing for the Income Tax Department would vehemently contend that if the petitioner gets a certificate with retrospective effect, approval would be granted with effect from the date of registration. The Chief Commissioner of Income Tax, having considered the certificate issued by the Municipal Corporation of Chennai, dated 28.01.2019, promptly granted approval from 30.01.2019. Therefore, the order impugned in this Writ Petition does not warrant any interference.

7. I have considered the rival submissions.

8. The proviso to clause (viii) of Sub-Section (2) of Section 17 of the Income Tax Act, 1961 reads as under:

> "(i) the value of any medical treatment provided to an employee or any member of his family in any hospital maintained by the employer.
>
> (ii) any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family-
>
> (a)..........
>
> (b) in respect of the prescribed diseases or ailments, in any hospital approved by the Principal Chief Commissioner or Chief Commissioner having regard to the prescribed guidelines."

9. There is no dispute with regard to the approval granted to the petitioner Hospital. The dispute is with regard to the date of grant of approval.

10. Rule 3(A) of the Income Tax Rules, 1962, reads as under:

> "Exemption of medical benefits from perquisite value in respect of medical treatment of prescribed diseases or ailments in hospitals approved by the Chief Commissioner.
>
> 3A.(1) In granting approval to any hospital other than a hospital for Indian system of medicine and homeopathic treatment for the purposes of sub-clause (b) of clause (ii) of the proviso to sub-clause (vi) of clause (2) of section 17, the Chief Commissioner shall satisfy himself that the hospital is registered with the local authority and fulfils the following requirements, namely:-
>
> (i) The building used for the hospital complies with the municipal bye-laws in force.
>
> (ii) The rooms are well ventilated, lighted and are

kept in clean and hygienic conditions.

(iii) At least ten iron spring beds are provided for patients.

(iv) At least one properly equipped operation theatre is provided, with minimum floor space of 180 square feet and with a separate sterilisation room.

(v) At least one labour room is provided, with minimum floor space of 180 square feet, in case the hospital provides medical service for maternity cases.

(vi) Aseptic conditions are maintained in the operation theatre and the labour room.

(vii) A duty room is provided for the nursing staff on duty.

(viii) Adequate space for storage of medicines, food articles, equipments, etc., is provided.

(ix) The water used in the hospital or nursing home is fit for drinking.

(x) Adequate arrangements are made for isolating septic and infectious patients.

(xi) The hospital is provided with and maintains:-

(a) high pressure sterilizer and instrument sterilizer;

(b) oxygen cylinders and necessary attachments for giving oxygen;

(c) adequate surgical equipments, instruments and apparatus including intravenous apparatus;

(d) a parthological laboratory for testing of blood, urine and stool;

(e) electro-cardiogram monitoring system;

(f) stand-by generator for use in case of power failure.

(xii) There is at least one qualified doctor available on duty round the clock for every twenty beds or fraction thereof.

(xiii) In hospitals providing intensive care unit facilities, there are at least two qualified doctors available on duty round the clock exclusively for such intensive care unit.

(xiv) One nurse is on duty round the clock for every five beds or a fraction thereof.

(xv) In hospitals providing intensive care unit facilities, there are at least four nurses provided exclusively for every four beds or fraction thereof for such intensive care unit.

(xvi) The hospital maintains record of health of every patient containing information about the patient's name, address, occupation, sex, age, date of admission, date of discharge, diagnosis of disease and treatment undertaken.

(1A) In granting approval to any hospital for Indian system of medicine and homeopathic treatment for the purposes of sub-clause (b) of clause (ii) of the proviso to sub-clause (vi) of clause (2) of section 17, the Chief Commissioner shall satisfy himself that the hospital fulfils the conditions specified vide Office Memorandum dated the 6th June, 2002, by the Department of Indian Systems of Medicine and Homeopathy, Ministry of Health and Family Welfare for approval of private hospitals for Indian system of medicine and homeopathic treatment to Central Government Health Scheme beneficiaries and Central Government employees.

(2) For the purpose of sub-clause (b) of clause (ii) of the proviso to sub-clause (vi) of clause (2) of section 17, the prescribed diseases or ailments shall be the following, namely:-

(a) cancer;

(b) tuberculosis;

(c) acquired immunity deficiency syndrome;

(d) disease or ailment of the heart, blood, lymph, glands, bone marrow, respiratory system, central nervous system, urinary system, liver, gall bladder, digestive system, endocrine glands or the skin, requiring surgical operation;

(e) ailment or disease of the eye, ear, nose or throat, requiring surgical operation;

(f) fracture in any part of the skeletal system or dislocation of vertebrae requiring surgical operation or orthopaedic treatment;

(g) gynaecological or obstetric ailment or disease requiring surgical operation, caesarean operation or laperoscopic intervention;

(h) ailment or disease of the organs mentioned at (d), requiring medical treatment in a hospital for at least three continuous days;

(i) gynaecological or obstetric ailment or disease requiring medical treatment in a hospital for at least three continuous days;

(j) burn injuries requiring medical treatment in a hospital for at least three continuous days;

(k) mental disorder - neurotic or psychotic - requiring medical treatment in a hospital for at least three continuous days;

(l) drug addiction requiring medical treatment in a hospital for at least seven continuous days;

(m) anaphylactic shocks including insulin shocks, drug reactions and other allergic manifestations requiring medical treatment in a hospital for at least three continuous days.

Explanation - For the purpose of this rule,-

(a) "qualified doctor" means a person who holds a degree recognized by the Medical Council of India and is registered by the Medical Council of any State;

(b) "nurse" means a person who holds a certificate of a recognized Nursing Council and is registered under any law for the registration of nurses;

(c) "surgical operation" includes treatment by modern methodology such as angioplasty, dialysis, lithotropsy, laser or cryo-surgery."

11. A reading of Rule 3A shows that if the Chief Commissioner is satisfied that the hospital is registered with the local authority and fulfils the requirements mentioned above, he can grant approval.

12. In the opinion of this Court, it is no doubt that the petitioner Hospital was registered with the local authority and on the basis of production of documents, the Chief Commissioner himself has granted approval for the period between 16.10.2015 and 31.03.2018. It is not the case of the respondent that the said compliance with the Municipal Bye-laws was discontinued or withdrawn by the local bodies. The petitioner is continuously functioning without any disturbance. What is applied at the time of grant of approval for the first time, need not be proved time and again. The Chief Commissioner, being satisfied that the Hospital is registered with the local authority and provided with the certificate at the earliest instance, should have considered as to whether the Hospital is continuously complying with the Municipal Laws and Rules. There is no mention that the Hospital has run into rough weather of cancellation of registration or default of registration or that it has become defunct due to financial or other reasons. It is continuously functioning as stated supra. In the event, the Hospital is complying with Municipal Laws and that it is continuously functioning, the Chief Commissioner shall apply his mind as to the availment of the benefits under Section 17(2) of the Income Tax Act, 1961. The request of the petitioner here is a restricted one. He claims that he is continuously functioning under the registration given by the Local Municipal Authorities and that he could not submit the certificate due to introduction of Clinical Establishment Act. This procedural delay can be compensated by imposing penalty. But, it cannot be totally denied.

13. Considering the limited prayer sought for by the petitioner, I think, it is a fit case where the Chief Commissioner can apply his mind and exercise discretion by having a re-look at the impugned order passed by him. It is equal to a review.

14. Considering the facts and circumstances of the case, a direction is given to the respondent to have a review of the impugned order dated 30.01.2019, to consider the approval from the date of the application, in the light of discretion conferred under Rule 3(A) of the Income Tax Rules, 1962 and pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order.

15. The Writ Petition stands disposed of with the above direction. No costs.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

SML

To
The Chief Commissioner of Income Tax,
No.44, Williams Road,
Cantonment,
Tiruchirappalli.

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-89576[F] dated 26/09/2019)

+1 CC to M/s.M.VELMURUGAN, Advocate (SR-89631[F] dated 26/09/2019)

Order made in
W.P.(MD)No.12312 of 2019
Dated: 24.09.2019

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