IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL (IT) NO. 671 OF 2018
WITH
INCOME TAX APPEAL (IT) NO. 1144 OF 2018

Commissioner of Income Tax (Exemptions),
Pune … Appellant
Versus
Lata Mangeshkar Medical Foundation … Respondent

Mr. Suresh Kumar for Appellant.
Mr. Rahul Hakani for Respondent.

CORAM K. R. SHRIRAM &
DR. N. K. GOKHALE, JJ.
DATED: 30th August 2023

P.C. :

INCOME TAX APPEAL (IT) NO. 671 OF 2018 :

1. Respondent-Assessee is a trust running a hospital by the name "Deenanath Mangeshkar Hospital" at Pune. During the assessment proceeding for Assessment Year 2010-2011, the Assessing Officer ("**AO**") denied the exemption under Section 11 of the Income Tax Act, 1961 ("**the Act**") and then vide assessment order under Section 143(3) of the Act, computed the total income at Rs. 18,16,02,520/-.

2. One of the aspects considered by AO while denying exemption under Section 11 of the Act was that the Assessee-Trust had not furnished proper information to the Charity Commissioner and there was shortfall in making provision of Indigent Patients Fund ("**IPF**"). According to AO, Assessee should have credited an amount of Rs. 2.14 crores to the IPF as against Rs. 75.96 lakhs only.

3. The second aspect for denial of exemption by AO was that the Assessee-Trust had generated huge surplus and therefore, the intention of the trust was profit making. AO was of the opinion that the hospital of Assessee did not provide services to the poor and under-privileged class of the society.

4. The third ground for denying exemption was that the Assessee-Trust was running a canteen in the hospital with profit motive and was not providing free meals.

5. AO also felt there was violation of provisions of Section 13(1)(c) of the Act by Assessee-Trust as remuneration was paid to two individuals, viz., Mrs. Bharati Mangeshkar, who is a trustee with no significant qualification and Mrs. Meena Kelkar, mother of the trustee Dr. Dhananjay Kelkar, who also did not possess any qualification and was beyond 65 years of age.

6. Being aggrieved by this assessment order dated 22nd March 2013, Assessee-Trust preferred an Appeal before Commissioner of Income Tax (Appeal) ("**CIT(A)**"). The CIT(A) granted relief to Assessee-Trust by restoring the exemption under Section 11 of the Act. Revenue challenged the said order before the Income Tax Appellate Tribunal ("**ITAT**"). The ITAT was pleased to dismiss the Appeal by an order dated 23rd June 2017. It is this order of the ITAT that Revenue is challenging and proposed the following substantial questions of law :

> *a. Whether on the facts and circumstances of the case and in law the Hon'ble ITAT was correct in overlooking the observation of the Charity Commissioner who had observed that the Assessee had not reserved 10% of the operational beds, thought it was so required in Bombay Public Trust Act under Section 41(AA) of the said Act; for indigent patients and patients of the weaker section of the society ?*
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> *b. Whether on the facts and circumstances of the case and in law the Hon'ble ITAT was correct in overlooking the inspection report of the Joint Charity Commissioner where the Assessee had understated the number of beds to be given to poor patients ?*

> *c. Whether on the facts and circumstances of the case and in law the Hon'ble ITAT was correct in ignoring the fact that the Assessee was running hospital purely on commercial lines and no justification or comparable care was provided by the Assessee to negate this observation of the Assessing Officer more so when high surplus was being generated ?*

7. The CIT(A) while deciding the issue in favour of the Assessee noted that the facts in the year under Appeal, i.e., for Assessment Year 2010-2011 was identical to that of Assessment Years 2008-2009 and 2009-2010. The CIT(A) followed the orders of his predecessor for Assessment Years 2008-2009 and 2009-2010 and decided the issue in favour of Assessee.

8. Revenue had challenged those orders of CIT(A) and filed an Appeal before the ITAT for Assessment Years 2008-2009 and 2009-2010. The co-ordinate Bench of the ITAT by an order dated 15th April 2016 upheld the order of CIT(A). The ITAT in the impugned order has also followed what its co-ordinate Bench held in its order dated 15th April 2016 for Assessment Years 2008-2009 and 2009-2010. Since there was nothing on record before the ITAT (or even before us) that the order of ITAT dated 15th April 2016 has been set aside or overruled in any manner by the High Court, the ITAT found no reason to interfere with the order of CIT(A). Therefore, we also find no reason to interfere with the order of ITAT.

9. Mr. Suresh Kumar states that the Appeals those were filed before for the earlier years have also been dismissed on the ground of delay.

10. Having considered the findings, we find no infirmity in the order of ITAT. Appeal dismissed.

INCOME TAX APPEAL (IT) NO. 1144 OF 2018 :

1. Here also the same identical/similar substantial questions of law have been proposed. Here also the findings of CIT(A) as well as of the ITAT are in the same lines as taken for Assessment Year 2010-2011, which was the subject matter in Income Tax Appeal (IT) No. 671 OF 2018. Therefore, this Appeal also stands dismissed.

(DR. N. K. GOKHALE, J.) **(K. R. SHRIRAM, J.)**