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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Decision delivered on: 11.07.2023

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ITA 362/2023 & CM Nos.34478-79/2023

COMMISSIONER OF INCOME TAX
(EXEMPTIONS) DELHI

..... Appellant

Through: Mr Abhishek Maratha, Sr Standing
Counsel with Mr Akshat Singh,
Standing Counsel.

versus

M/S INSTITUTE OF LIVER AND
BILIARY SCIENCES

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM Nos.34478/2023

CM Nos.34479/2023

1. The above-captioned applications have been filed by the appellant/revenue, seeking condonation of delay in filing and re-filing the appeal.

1.1 According to the appellant/revenue, there is a delay of 93 days in filing and 244 days in re-filing the appeal.

2. For the reasons given in the applications, the delay in filing and re-filing is condoned.

ITA 362/2023

5. The appeal is directed against the order dated 16.11.2021 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].

7. The two provisions that were required to be considered by the statutory authorities were Section 10(23C)(iii)(c) of the Income Tax Act, 1961 [in short, “Act”] and Rule 2BBB of the Income Tax Rules, 1962 [in short, “1962 Rules”]. For the sake of convenience, the said provisions are extracted hereafter:

10. *In computing the total income of a previous year of any person, any income falling within any of the following clauses shall not be included –*

(iii)ac) any 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, and which is wholly or substantially financed by the Government.”

[Explanation.—For the purposes of sub-clauses (iiiab) and (iiiac), any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds such



percentage of the total receipts including any voluntary contributions, as may be prescribed, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year;] or
“2BBB. *For the purposes of sub-clauses (iiiab) and (iiiac) of clause (23C) of section 10, any university or other educational institution, hospital or other institution referred therein, shall be considered as **being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds fifty per cent of the total receipts including any voluntary contributions, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year.**”* [Emphasis is ours]

8. The facts obtaining in the case show, that during the period under consideration i.e., Financial Year (FY) 2012-13 [AY 2013-14], the respondent/assessee had received a grant from GNCTD amounting to Rs.66 crores, whereas the total receipts earned were Rs.1,57,93,89,043/-, which in percentage terms was 41.78% of the total receipts.

8.1 Since, according to the Assessing Officer (AO), the grant was only 41.78% of the total receipts of the respondent/assessee, the AO concluded that the respondent/assessee could not seek benefit of the provisions of Section 10(23C)(iiiac) as also Sections 11, 12 & 13 of the Act.

8.2 Consequently, the respondent/assessee's income was assessed at Rs.20,72,34,969/-.

9. The CIT(A), however, *via* order dated 30.03.2018 reversed the view of the AO. In coming to the conclusion that the respondent/assessee was entitled to the benefit of the exemption claimed under Section 10(23C)(iiiac) of the Act, he took into account, broadly, the following two aspects:

- (i) First, interest earned had to be added to the grants.
- (ii) Second, the expression “wholly or substantially financed by the



Government” had to be construed in a broader sense. In other words, the said expression could not be confined only to annual grants, as apart from such annual grants, government could also provide for land and invest in building and infrastructure.

10. In support of this aspect of the matter, reliance was placed on the judgment rendered by the Karnataka High Court in ***Commissioner of Income Tax, Bangalore vs. Indian Institute of Management*** [(2014) 49 taxmann.com 136 (Karnataka)].

10.1 It is this view of the CIT(A) which the Tribunal has sustained.

11. Importantly, in relation to the aspect, as to whether or not the interest should be considered while quantifying the amount of grant received, the following findings of fact were returned by the Tribunal:

“4.1.2 I have considered the assessment order and the submissions of the appellant. It is noted that the Assessing Officer has not taken into consideration the interest on capital grant for phase II building to be done by DMRC. In the audit conducted for Financial Year 2011-12, a specific para was raised regarding the interest income not being considered as a part of the grant with a direction that the amount is to be treated as part of the grant. The Assessing Officer has also noted that interest cannot be considered as a part of the Government's grant since the grants are not expected to be repaid by the recipient. In this regard, the appellant has invited reference to the grant release document of the Delhi Government in which it has, inter-alia, been mentioned that while submitting the proposal for further release of grant, the amount of interest earned on amount for phase II construction may also be included. Similarly directions were also given while releasing the 2nd and final installment of grants-in-aid during Financial Year 2011-12. Further, it has also been pointed out that as per Rule 230(8) of the General Financial Rules 2017, all interest or other earning against grants-in-aid or advances (other than reimbursement) released to any grantee institution are required to be mandatory returned to the Consolidated Fund of India. Hence the contention of the Assessing Officer that receipts on account of interest, etc. are to be not to be returned back is not correct. Hence, the grants-in-aid to the assessee during the year under consideration should be considered at 50.85%.



4.1.3 The Assessing Officer has contended that the term wholly or substantially financed has not been defined under the Income Tax Act and hence definition has been taken from the CAG Act, 1971. In this regard, it is to be noted that the explanation to section 10(23C)(iiia) was inserted by the Finance(No.2) Act 2014 w.e.f. 01.04.2015 as per which an institution will be considered to be substantially financed if the Government grant to such institution exceeds the percentage as may be prescribed for the relevant previous year. It is to be noted that as per Rule 2BBB which was inserted by the IT (Thirteenth Amendment) Rules, 2014 prescribed the said percentage as 50%. Even if this percentage is considered, the grant received by the assessee including interest thereon which is to be included for the purpose of grant exceeds 50%.

12. It is evident, that the Tribunal has agreed that the interest is to be factored in while quantifying the grant-in-aid received by the respondent/assessee.

13. The Tribunal has also taken note of the fact, that if the interest was not factored while taking a decision with regard to grant-in-aid to be given to the respondent/assessee, then, under Rule 230(8) of the General Financial Rules, 2017, the interest would have to be remitted for being credited to the Consolidated Fund of India.

14. Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the appellant/revenue, however, contends to the contrary.

14.1 According to Mr Maratha, interest cannot be taken into account in construing as to what is the amount of grant which has been provided to the respondent/assessee.

15. In our opinion, the view taken by the Tribunal and the CIT(A) is wholesome.

16. The provisions of Section 10(23C)(iiia) of the Act provided for exemption to an assessee, who fulfills the conditions contained therein. This



exemption is extended to a hospital or other institution, which receives and treats persons suffering from illness or mental defectiveness or receives and treats persons during convalescence or those requiring medical attention or rehabilitation, and exist solely for philanthropic purposes and not for purposes of profit and is wholly or substantially financed by the Government.

16.1 The exemption makes it clear that the grant should exceed such percentage of total receipts (and not total income) including voluntary contribution as may be prescribed. The explanation appended to Section 10(23C)(iiia) was inserted via Finance Act 25 of 2014, with effect from 01.04.2015. The threshold has been pegged at 50%. Notably, the period we are concerned with is FY 2012-13 (AY 2013-14).

17. Notwithstanding the aforesaid position, in the instant case, upon reading the provisions of Section 10(23C)(iiia) of the Act and Rule 2BBB of the Rules, it is clear that in the given period, the government had to either directly fund the concerned hospital or institute or seek adjustment by factoring in the interest earned on previous grants.

18. In case there was no adjustment, then, the interest, even according to Mr Maratha, would have to be returned to the concerned government for being credited to the Consolidated Fund of India.

18.1 That being the position, we are of the view that no interference is called for with the impugned order.

19. According to us, no substantial question of law arises for consideration.

20. If interest is included, then, grant-in-aid provided to the



respondent/assessee is more than 50% of the total receipts.

21. Accordingly, the appeal is closed.
22. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 11, 2023
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