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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 16th January, 2023**Date of decision: 26th May, 2023*

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LPA 99/2018 & CM NO. 49958/2022**BATRA HOSPITAL & MEDICAL RESEARCH
CENTRE OF CH. AISHI RAM BATRA PUBLIC
CHARITABLE TRUST****..... Appellant****Through: Mr. Harvinder Singh, Mr. Anil
Bhat, Mr. Vivek P. Gupta and
Mr. Balwant Chowbey, Advocates.**

V

BATRA HOSPITAL EMPLOYEES UNION**.....Respondent****Through: Mr. Sanjay Ghose, Senior Advocate
with Ms. Urvi Mohan, Advocate.****CORAM:****HON'BLE MR. JUSTICE NAJMI WAZIRI****HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN****J U D G M E N T****SUDHIR KUMAR JAIN, J.**

1. The present judgment shall decide Letters Patents Appeal filed by Batra Hospital & Medical Research Centre of Ch. Aishi Ram Batra Public Charitable Trust (hereinafter referred to as “**the appellant**”) against Batra Hospital Employees Union (hereinafter referred to as “**the respondent**”) to



impugn the judgment dated 22.01.2018 (hereinafter referred to as “**the impugned judgment**”) passed in W.P. (C) bearing no.5349/2004 passed by the learned Single Judge whereby Award dated 03.11.2003 (hereinafter referred to as “**the impugned Award**”) passed by the Industrial Tribunal-I, Delhi (hereinafter referred to as “**the Tribunal**”) in ID no.20/2002 titled as *The Management of Batra Hospital V Workmen as represented by Ch. Aishi Ram Batra Charitable Trust Employees Union* was set aside.

2. The factual position as emerging is that the Secretary (Labour), Government of National Capital Territory of Delhi has referred a dispute arising between the management of M/s Batra Hospital and its workmen represented by Ch. Aishi Ram Batra Charitable Trust Employees Union vide notification no.F.24 (66)/2002-Lab./2586-90 dated 01.02.2002 with the following terms of reference:-

"Whether the provision of Bonus Act, 1965 is applicable on M/s. Batra hospital and if so, what directions are necessary in this respect?"

3. The workmen of M/s Batra Hospital as represented by Ch. Aishi Ram Batra Charitable Trust Employees Union (hereinafter referred to as “**the workmen**”) in the statement of claim have stated that the management of M/s Batra Hospital (hereinafter referred to as “**the management**”) is



engaged in the business of running of hospital and has grown from a small hospital in 1996 to a 300-bedded Hospital and the patients coming to the hospital are asked to pay medical charges and not a single patient is given free treatment except a few VIPs and highly connected people to fulfil the formalities of charity. The management does not have non-profitable character and has denied bonus to its workers. The hospital named itself as Research Centre which is merely a camouflage and the hospital is being run purely on commercial basis as reflected from its balance sheet. The trust which owns the hospital is founded and controlled by the members of one family and the resources and profits are used by these family members. The workmen are entitled to bonus. The Payment of Bonus Act, 1965 (hereinafter referred to as “**the Act**”) is applicable to the management and the hospital does not fall under the exemption of section 32(v)(c) of the Act.

4. The management filed written statement to contest the statement of claim preferred by the workmen. The management in **preliminary objections** stated that actual name and the description of the management is Batra Hospital and Medical Research Centre of Ch. Aishi Ram Batra Public Charitable Trust and not Batra Hospital as referred in the reference. Ch. Aishi Ram Batra Charitable Trust Employees Union is not in existence and



as such the union which has raised the dispute does not have any *locus standi* to file the claim and Vijay Singh does not have *locus standi* to sign the statement of claim. The dispute is not espoused and appreciable numbers of employees of the management are not members of the union which has raised the dispute.

4.1 The reference is bad in law and exemption under section 32(v)(c) of the Act is applicable to the management. The management is a society registered under Societies Registration Act, 1998. The management being a charitable hospital is not established for the purpose of profit. The management is entitled for exemption under section 32(v)(c) of the Act and has already been exempted under section 80G of the Income Tax Act, 1961 being a charitable hospital. The labour authorities on three earlier occasions also came to the conclusion that the Act is not applicable to the management. The management in **reply on merits** denied other pleas as mentioned in the statement of claim.

5. The Tribunal, out of the pleadings of the parties, framed the following issues:-

1. *Whether the union through which the claim is has been filed has locus standi to file the same? If not, its effect.*
2. *Whether the dispute is espoused? If not, its effect.*
3. *As per the terms of reference.*



6. The workmen examined Vijay Singh, President of the union as WW1 in evidence who tendered affidavit Ex. WW1/1 in evidence. The cross examination of WW1 Vijay Singh is reproduced verbatim as under:-

“Two years back, there were about 1300 to 1400 employees were employed in Batra Hospital. I do not know how many employees are there at present. Again said there were 1500 employees. About 800 employees of Batra hospital are members of Charitable Trust Employees Union at present. In the year 1999, about 750 employees were members of this union. The union is maintaining a register of membership. I was elected as President of the aforesaid union in the year 1997. Vol. and I am still the President. The record of elections held is maintained by the union. The union maintains the minute book with regards to the minutes of meetings. It is incorrect to suggest that the nurses working in Batra Hospital are not members of the above said union. I cannot admit or deny that last year, a settlement had taken place between the nurses and the management. It is correct that the registered name of the management is Batra Hospital and Medical Research Centre of Choudhary Aishi Ram Batra Public Charitable Trust. Vol. the name displayed of the mgt. at every place is Batra Hospital and the regd. name and in common parlance, the mgt. is known as Batra Hospital. It is correct that there is no union by the name of Choudhary Aishi Ram Batra Charitable Trust Employees Union. It is incorrect to suggest that the mgt. is a Society regd. under Societies Act or the hospital is a charitable hospital. It is correct that payment of Bonus Act is not applicable to charitable hospital. It is incorrect to suggest that I have filed a false affidavit.”

6.1 The management examined Ajay Jawatkar, Law Officer as MW1 in evidence who tendered affidavit Ex. MW1/A in evidence. The cross



examination of MW1 Ajay Jawatkar is reproduced verbatim as under:-

"I am not a Personnel Officer but a Law Officer with the mgt. Letter Ex. MW1/W-1 bears the signature of Shri. V.P. Gahar and of mine at point B. At that time, I was the Personnel Officer. It is incorrect to suggest that he continued to be a Personnel Officer or was never given the designation of Law Officer. I am not aware of the existence of Batra Hospital Employees Union. One Bhartiya Mazdoor Sangh which is an affiliated union is functional of the employees of the mgt. It is incorrect to suggest that the mgt. had entered into any settlement with Batra hospital Employees Union. It is not to my knowledge that the mgt. had filed a suit against Batra Hospital Employees Union or that the same was decided by the Court of Shri. L.S. Solanki, Civil Judge, Delhi. The mgt. has displayed on board that it is charitable hospital. Voll. even on the file it is mentioned that it is a charitable hospital. The mgt. run free O.P.Ds and free treatment including surgery is provided to poor patients. At present, I do not recall the name of any person who had been given such treatment. I am not aware whether the mgt. maintains a list or not of the persons to whom free treatment is given. I do not know the exact location of the board wherein it is displayed that it is a charitable hospital. I am not aware whether the dead body of one of the deponent of an employee was not released by the hospital for non-payment of hospital charges, or that an FIR was registered in this regard, bearing No. 117/98 PS Ambedkar Nagar. I say that the union had not been authorized as no document has been placed on record in this regard or before the mgt. Mgt. is a Society and not a Trust. I am not aware whether all the members of the Executive body of the Society are family inefnbers or relatives. Apart from Ex. MW1/4. I have no other document to show that the mgt. had been exemption U/s 32(v)(c) of the Payment of Bonus Act. It is incorrect to suggest that all the patients are required to pay the registration fees. Vol. the person availing free O.P.D. & free treatment does not pay any registration fee. Further Vol; a Rs. 5/- card is prepared for the purposes of identification



and further reference. Booklet depicting rates is meant only for the persons who are charged and as such, it is not mentioned there hospital is providing any free O.P.D. and free treatment to poors. I cannot recall at present as to in which of the broacher of the mgt., it is mentioned that it is providing free treatment and free O.P.D. It is incorrect to suggest that the management has not mentioned in any brochure that it is providing free O.P.D. and free treatment to the poor patient. A person having income less than Rs. 2500/- falls in the category of a poor person. At present, I have not brought any document to show that a person having income of Rs.2500/- p.m. is considered as poor eligible for free treatment. Except Ex. MW1/4, there is no other document to substantiate the averments, made in para 9 of my affidavit. I am not aware about the quantum of donations received by the hospital. The mgt runs from the donations received by it and as well as the income from patients. I am not aware about the proportion of the donations received. I am not aware about the statement of income & expenditure reflected in the balance-sheet of the mgt. I do not know the name of a person who has made donations to the mgt. I cannot admit or deny the suggestion that the Municipal Authority charges subsidized rates for water and electricity from the mgt. I cannot admit or deny that the equipments imported by the mgt are duty free. It is incorrect to suggest that no board is displayed regarding the hospital being a charitable institution.”

(emphasis supplied)

7. The Tribunal answered the reference against workmen vide the impugned award. The Tribunal, on the basis of evidence led by the concerned parties and the documents, has decided the issues no.1 and 2 against the workmen and in favour of the management. The Tribunal observed that the union has not filed any document and no averment is made in the affidavit to establish



that appreciable number of employees of the management are members of the union which is also authorized to espouse the cause of the employees. The Tribunal also referred cross examination of WW1 who deposed that out of 1400 employees, 800 employees of Batra Hospital are members of Charitable Trust Employees Union but no document in this regard has been filed. The Tribunal further observed that WW1 also deposed that the union is maintaining a register of membership besides maintaining a minute book of the meeting but without the support of necessary documents. The Tribunal also observed that as per the testimony of WW1, 800 employees are members of Charitable Trust Employees Union and not of Ch. Aishi Ram Batra Trust Employees Union. The Tribunal, ultimately on the basis of evidence, held that workmen have failed to prove that the union which raised the dispute has *locus standi* to do so or Vijay Singh was authorized and competent to sign the statement of claim and the dispute was espoused by a recognized union or by appreciable number of employees of management.

8. As to the question whether the Management can be exempted under section 32(v)(c) of the Act, the Tribunal held as under:-

“12. So far as the question, whether the management can be said to be exempted U/Sec, 33 (5)(c) of the Payment of-Bonus



Act or not, it has been argued by the AR for workmen that the management had not specifically denied the averments in para 4 of the statement of claim to the effect that management had charged various amounts from the persons who died during treatment and only after receiving the amounts their bodies were handed over to their relatives, which goes to show that the management is a profitable organization. At the very outset, it can be said that the averments made in this regard are even without particulars and the workmen had themselves not been able to prove these averments by producing, any material, on record and the management had termed the same as frivolous and baseless.

13. AR for the workmen had further argued that from the averments' made by MW1 in his cross-examination that he had failed to give the name of any person who had been given free treatment or non-production of a list of such persons to whom free treatment is given, the exact location of the board wherein it is displayed that the hospital is a charitable hospital, non denial of the fact that executive body of the society are family members of the relatives, non production of any document except MW1/4 to show that the management is entitled to exemption U/Sec. 32(v)(c) of Payment of Bonus Act, a statement that, registration fee of. Rs.5/-is charged from each patients, non mentioning in the booklet that free O.P.D, and free treatment to spoors is available, goes to show that management is earning profit and is not a charitable institution, is misplaced in as much as the earning of profits is not a criteria for seeking exemption U/Sec.'32(v)(c) of the Payment of Bonus Act rather it is the purpose which is material and the only thing which has to be shown is, whether the institution is. not established for purposes of profit and it is the own case, of the workmen and as well as of the management that whatever profits are earned they are put back into the funning of the hospital itself as a result of which the hospital has grown and it is the workmen's own case that the management had extended from a small hospital In 1986 to a 312 bedded hospital as on date. No evidence had been led by the workmen to show that profits earned are diverted to the



personal income of the persons who were members of the society. A suggestion to the management witness was given by the workmen themselves that the Municipal Corporation charges subsidized rates for water and electricity from the management and that the equipments imported by the management are duty free which goes to show that the Govt. and the M.Q.D. are treating the management as a charitable institution.

14. Ex. MW1/4 speaks off that the management had filed documents before the labour authorities to the effect that it has been granted exemption U/Sec. 80(G), the certificate of which has been placed by the management and has been proved as MW1/2 as per which it has been certified vide letter dated 10.2.89 by the Commissioner of income Tax that the management qualifies to tax relief U/Sec. 80(G) of the Income Tax Act. Subsequent certificates issued in 1993 and 1998 had also been proved on record.

15. The objects of the society as mentioned in Ex. MW1/3 which are the bye-laws of the .trust specifically states that one of the object of the trust is setting up of hospitals or other medical institutions for administering medical relief to needy, carrying out medical arid clinical research, grant of medical help to poor which clearly goes to show that the objective for which the society is formed and for, which the hospital is established is not for earning profits.

16. AR for the workmen had placed reliance upon the case of Workman of TIRUMALA TIRUPATI DEWASTHANAMS V/s. THE MANAGEMENT AND ANOTHER, (C.A. NO. 290(L) OF 1974) in which the question was, whether workman of the Dewasthanams were entitled to payment of bonus employed with Transport Department under the Act. It was held that the factors to be considered is the source of fundings, the balance sheet that is drawn up and the disposal of profits and whether the same had nexus with Dewasthanams or not, and in para 4 it was specifically held that the institution may be designed for profit although, it may make or may not make profit and that the institutions profit or earnings may be used for other charitable purposes and the factor to be seen is, was the



institution not one for purposes of profit and if it was one, hot. for earning profit but merely as an ancillary facility for pilgrims to reach and return, Sec. 32(v) will exclude the institution. In the said ruling it was clearly held that earning of profits is immaterial. It is the institution and establishment which is material and it has to be seen whether or not the establishment was for profit or not and rather it was held that even a transport department if it is only facilitating, the reach and return of pilgrims will be entitled to exemption under the Payment of Bonus Act, In the present case it is, the own case of the workmen that the management is putting back the profits in the hospital as a result of which hospital has grown up and no evidence has been led that the members of the society are usurping the profits for themselves.

17. The case of the workmen is not that since the Doctors at that hospital are charging, good amount, their service conditions be also made good. The case is payment of bonus and in view of the above discussion it can be clearly said that the management is exempted from payment of bonus under Section 32(v) of the Payment of Bonus Act being an institution established not for the purposes of profit. Reference is answered against the workmen.

Award is passed accordingly”

9. Aggrieved by the said Award, the respondent impugned it in a writ petition bearing no.5349/2004 titled ***Batra Hospital Employees Union (petitioner) V Batra Hospital & Medical Research.***

10. The learned Single Judge vide the impugned judgment quashed and set aside the impugned award passed by the Tribunal and allowed the writ petition.

10.1 The learned Single Judge with regard to issue no.1 as framed by the



Tribunal observed that the arguments advanced on behalf of the respondent are insubstantial. The learned Single Judge observed that the substratum of the objection as voiced on behalf of the respondent, before the Tribunal as well as before the court is, that the Union which on 23rd July 1999 initially represented the appellant hospital, was the “Batra Hospital & Medical Research Centre of Ch. Aishi Ram Batra Charitable Trust Employees Union (Regd. No.4144)”; the Union which raised the industrial dispute and subsequently petitioned the Tribunal, was the “Ch. Aishi Ram Batra Charitable Trust Employees Union (Regd. No. 4144)”, and that Union which has petitioned this court against the impugned award passed by the Tribunal is the “Batra Hospital Employees Union” and as such there were a multitude of unions espousing the cause of the workmen at different points of time which is impermissible. The learned Single Judge also observed that the Tribunal has merely relied on the two statements of WW1 Vijay Singh who, in cross-examination, deposed that **“about 800 employees of Batra Hospital are members of Charitable Trust Employees Union at Present”** and **“It is correct that there is no union by the name of Choudhary Aishi Ram Batra Charitable Trust Employees Union”** and these two admissions by WW1 in the estimation of the Tribunal clearly indicated that



(i) the employees of the appellant hospital were members of the “Charitable Trust Employees Union”, and not of either the “Batra Hospital & Medical Research Centre of Ch. Aishi Ram Batra Charitable Trust Employees Union” or the “Choudhary Aishi Ram Batra Charitable Trust Employees Union” and (ii) in fact, there was no union known as “Ch. Aishi Ram Batra Charitable Trust Employees Union”. It was further observed that the Tribunal expressed the view that the Union which had initiated the industrial dispute was a non-existent entity and that the employees of the appellant hospital were actually members of the “Charitable Trust Employees Union” which was nowhere in the picture. The impugned judgment rejected the objection voiced by the appellant hospital and held that finding of the Tribunal thereon is erroneous. It observed that the discrepancy in the name of Union as it figured on the representation made to the management and in the statement of claim before the Tribunal is no discrepancy at all. The impugned judgment after referring the documents on record and cross-examination of WW1 Vijay Singh expressed agreement that “Batra Hospital Medical Research Centre of Ch. Aishi Ram Batra Charitable Trust Employees Union”, the “Ch. Aishi Ram Batra Charitable Trust Employees Union” and the “Charitable Trust Employees Union” were one and the same



union.

10.2 The learned Single Judge with regard to issue no.2 as framed by the Tribunal observed that espousal either by the Union or by a substantial number of workmen in the establishment concerned would be sufficient to elevate the dispute to the status of an "industrial dispute". It was further observed that in the present case, the registered union of the workmen of the appellant hospital had initiated the industrial dispute and as such the requirement of an "espousal" is clearly satisfied. It was also observed that there is a note in vernacular on record stating that on 28.06.1999, a meeting of the Executive Committee of the petitioner-union met and decided that as the appellant hospital had refused to pay bonus and as such a dispute in that regard, be instituted in the Labour Court.

10.3 On merits, the impugned judgment has considered the contention of the parties and also considered findings of the Tribunal and observed as under:-

"28. As regards the merits of the matter, the Tribunal held that the criterion, on the basis of which an institution was excepted, under sub-clause (c) of Clause (v) of Section 32 [hereinafter referred to as "Section 32(v)(c)"] of the Act, from its rigour, was not the actual earning of profits, but whether the institution was established "for the purposes of profit". The position, accepted by both parties, that the profits earned by the hospital were funnelled back into the running of the hospital, which had resulted in its expansion from a small institution to a 300 bedded hospital, it was held, militated



against its having been established "for the purpose of profits". The Tribunal observed that no evidence had been led, by the petitioner, to show that the profits earned by the respondent-Hospital had been diverted for personal use of the members of the family managing the Hospital. Reliance was also placed, by the Tribunal, on the suggestion, given by the petitioner to MW-1, that the Municipal Corporation charged subsidized rates for water and electricity from the respondent-Hospital, and that equipments imported by the respondent-Hospital were duty free. These, the Tribunal opined, further went to show that the Government and the MCD were treating the Hospital as a charitable institution. The Tribunal also relied on the certificates, issued to the respondent-Hospital under Section 80-G of the Income Tax Act, as also the bye-laws of the Trust, which referred to one of the objects of the Trust being the setting up of Hospitals or other Medical Institutions for administering medical relief to the needy, carrying out medical and clinical research and grant of medical help to the poor.

This, too, in the opinion of the Tribunal, went to show that the respondent-Hospital had not been established for earning profits. In order to support the theory that, as the profits earned were ploughed back into the managing of the respondent-Hospital, exemption from the applicability of the Act was available, the Tribunal relied upon the Judgment in Workmen of Tirumala Tirupathi Devasthanam v Management, AIR 1980 SC 604."

10.3.1 The learned Single Judge after analysing case law and various decisions delivered by the Superior Courts observed as under:-

"49. A perusal of the certificates, issued to the respondent-Hospital under Section 80-G of the Income Tax Act, reveal that they have been issued under sub-section (5) thereof. Without reproducing the entire provision, it may be noted that exemption, under sub-section (5) of Section 80-G of the Income Tax Act, is available "to donations to any institute or



fund referred to in sub-clause (iv) of clause (a) of sub section (2), only if it is established in India for a charitable purpose..." Mr Sharma would submit that there is no real difference between the expressions "established not for the purpose of profit" and "established for a charitable purpose" and that, therefore, the certificates issued to his client under Section 80-G of the Income Tax Act effectively conclude the factual position that the respondent-Hospital was established not for the purpose of profit.

51. Even otherwise, on first principles, it would be hazardous to presume that every organization, which is certified under Section 80-G of the Income Tax Act, would, of necessity, be entitled, ipso facto, to immunity from the applicability of the Payment of Bonus Act. There is substance, in the contention advanced by Mr. Sanjay Ghose, learned counsel for the petitioner, that the word "charitable purpose", as used in Section 80-G (5) of the Income Tax Act, may not readily be equated with the words "not for the purpose of profit", as used in Section 32(v)(c) of the Payment of Bonus Act. It is well-settled principle, of interpretation of statutes, that different words used in one statutory instrument, have to be accorded different meanings, on the presumption that the legislature, in using such different words, must have intended it to be so. The Income Tax Act uses the expression "not for purposes of profit" in various sub-clauses of Section 10(23C) which, it is well settled, is a provision closely interlinked to Section 80-G. Where the two expressions "charitable purpose" and "not for purposes of profit" are used in the same statute, in cognate provisions, even if situated at some distance from each other, they cannot be accorded the same meaning, without due justification. In the present case, the situation would be worse, as Mr. Manish Sharma would exhort this court to equate the words "for charitable purpose", as used in Section 80-G of the Income Tax Act, with the words "not for purposes of profit" used in Section 32(v)(c) of the Payment of Bonus Act. This, in my opinion, would be entirely impermissible in law.



52. That apart, the object and purpose of the Income Tax Act, and of the Payment of Bonus Act, are completely distinct and different from each other. Per sequitur, the purpose of grant of exemption, in respect of donations made to an organization certified under Section 80-G of the former Act, would be distinct from the purpose of granting immunity, to an organization or institution, from the applicability of the Payment of Bonus Act, under Section 32(v)(c) thereof. No attempt has been made, before me, to equalise, or even analogise, the objects and purposes of the two statutes. What is being sought to be contended is that recognition under Section 80-G of the Income Tax Act would, for that very reason, exclude the institution from the applicability of the Payment of Bonus Act. I am unable to agree with the said contention.

55. Reverting to the determinative tests, to decide whether an establishment is being run "not for the purpose of profit" and is, consequently, entitled to the benefit of Section 32 (V)(c) of the Act, as set out in para 42 supra, if one were to apply the said tests to the respondent-Hospital, it is difficult to accept, at face value, the contention, of the respondent-Hospital, that it could be regarded as established "not for the purpose of profit". It is positively found, by the Tribunal, that profits were, in fact, earned by the respondent- Hospital, but the said aspect has been discounted on the reasoning that the profits were funneled back into the respondent-Hospital to enhance its services. As a result thereof, the Tribunal holds that the Hospital had expanded, from a small institution in 1986 to a 312-bedded hospital as on the date of the Award. - which, needless to say, would have further expanded, manifold, over the period of nearly a decade and a half during which this litigation has remained pending before this court. The Tribunal has held in favour of the respondent by relying on the "object of the Trust", as set out in its Bye-laws. Even on this aspect, all that is observed, in para 15 of the impugned Award, is that "one of the object of the trust is setting up of hospitals or other medical institutions for administering medical relief



to needy, carrying out medical and clinical research, grant of medical help to poor which clearly goes to show that the objective for which the society is formed and for which the hospital is established is not for earning profits". The finding, in my view is totally presumptuous in nature. The Tribunal does not disclose how, or why, it presumes that a Trust, which sets up hospitals which, inter alia, provide free treatment to needy patients, is not working "for the purpose of profit". It has to be realised, in this context, that expectation of profit, while running an enterprise, is not a sin. Neither is it immoral to run a hospital on commercial lines. However, earning such profit would necessarily entail the responsibility of sharing some part of such profit with the employees or workmen, whose effort have significantly contributed towards the earning of the profit. That is all that the Act requires, and it would be ex facie unconscionable, for the enterprise, to shirk the said responsibility.

57. It was admitted by MW-1 - the only witnesses cited by the respondent-Hospital in its defence - in cross-examination, that the Hospital was catering to two categories of patients, those who were being charged, and those who were being treated free. While asserting that persons having an income of less than Rs. 2500/- per month could be regarded as "poor", MW-1 fairly admitted that he was not in possession of any material, on the basis whereof it could be established that such "poor" persons were being granted free treatment by the respondent-Hospital. It was, however, admitted that the Hospital was run on the basis of the income received from patients, apart from donations given to it. MW-1 was also unable to point out the location, in the hospital, if any, where it was displayed that the hospital was run on charitable lines and was unable to name a single patient who had been given free treatment by the Hospital. He admitted the fact that the Hospital issued a booklet, depicting the rates charged by it for various services rendered, and that these rates were applicable to persons who were charged by the Hospital. While asserting that it was incorrect to suggest that the Hospital had not mentioned, in its



brochures, that it was providing any free treatment, the said witness admitted, in the same breath, that he could not recall where such information was provided, in any of the brochures issued by the Hospital. He frankly conceded that the only document, to support the assertion, in para 9 of his affidavit-in-evidence, to the effect that the respondent-Hospital was established for charitable purposes, was the communication, dated 8th September 1999 supra, from the Assistant Labour Officer to the All India General Mazdoor Trade Union, which was issued merely on the basis of the communication, from the respondent-Hospital, to the effect that it was not subject to the Act, being entitled to the benefit of Section 32(v)(c) thereof. The said communication, is neither here nor there. Rather, I find, from the Statement of Claim filed by the petitioner, before the Tribunal, that there are specific allegations, in para 4 thereof, that the respondent-Hospital was charging huge amounts even to hand over dead bodies, to the relatives of patients who had perished during treatment. It was further specifically asseverated, by the petitioner in the said para, that, in some cases, police intervention had also been necessitated. Barring a bald denial, the Written Statement, filed by the respondent-Hospital before the Tribunal, is blissfully silent regarding these allegations. These allegations were reiterated, by WW-1 Vijay Singh, in his affidavit-in-evidence, filed before the Tribunal, and there is no specific rebuttal, thereto, in the affidavit-in-evidence of MW-1 Ajay Jawatkar. The allegations have, therefore, to be regarded as true. It has also been asserted, by the petitioner, in the Statement of Claim, as well as by WW-1 Vijay Singh, in his affidavit-in-evidence, that the balance sheet, of the respondent-Hospital, showed huge profits, though these profits did contribute towards the betterment of the services provided in the hospital. The factor of huge profits having been reflected in the balance sheet of the Hospital is also not specifically denied in the Written Statement filed by it, except for yet another bald statement, that the Hospital was not earning huge profits. In the very next breath, the Written Statement admits that the advancement of the hospital was attributable to the income



and profits earned by it.

58. Ex facie, therefore, the respondent-Hospital cannot be regarded as established "not for the purpose of profit", as required by Section 32(v)(c) of the Act. The impugned Award of the Tribunal, which proceeds on assumptions and presumptions, without considering the material evidence on record, in the form of, inter alia, the witnesses' statements, and the contents of the affidavits filed by them, and, instead, applies tests that find no place in the Act, has necessarily to be characterised as perverse, and cannot sustain on facts or in law.

59. Resultantly, the impugned Award, of the Tribunal, is quashed and set aside. The respondent-Hospital is declared to be covered by the Payment of Bonus Act, 1965, and not entitled to the benefit of Section 32(v)(c) thereof. The reference, made by the Secretary (Labour), Government of National Capital Territory of Delhi, to the Tribunal, vide Notification No F.26 (66)/2002-Lab./2586-90, dated 1st February 2002, is answered in favour of the petitioner and against the respondent-Hospital. Consequential relief, to the workmen of the respondent-Hospital, who had petitioned the Tribunal, as well as to all other workmen of the respondent-Hospital, shall follow. In case of any default, by the respondent-Hospital, in disbursement thereof, in whole or in part, the workmen are at liberty to move the Tribunal by way of appropriate application(s) which, if moved, shall be decided expeditiously by the Tribunal, in view of the fact that, owing to the pendency of this matter before this court, the workmen of the respondent-Hospital have already been denied their legitimate right for nearly a decade and a half."

11. The appellant has impugned the judgment on the grounds that it is erroneous, arbitrary, perverse, devoid of material on record and legally not sustainable; that it has resulted into miscarriage of justice; the dispute raised



by the claimant/Union before the Industrial Tribunal was not espoused as required in law and the claimant was not having any *locus standi* to raise the dispute; the appellant hospital is not established and run for the purpose of profit but is rather a charitable hospital and is fully covered under the exemption granted by section 32(v)(c) of the Act. The appellant has also raised questions of law.

11.1 The appellant hospital further contends that the hospital provides free healthcare facilities like OPD and surgery to the poor whereas the fee and other expenses are being charged from other patients to run the hospital, the revenue which is generated is used only for running and improving facilities in the hospital and no money is used and applied for any other purpose and that the appellant was also granted exemption under section 80G of the Income Tax Act, 1961 being a charitable hospital.

11.2 The respondent filed claims before the Inspecting Officer appointed under the Act on three occasions which were rejected after detailed enquiry, as not being available under section 32(v)(c) of the Act. The findings of the Inspecting Officer were not challenged before the competent court of law.

11.3 Batra Hospital and Medical Research Centre of Ch. Aishi Ram Batra Public Charitable Trust Employees Union raised a demand vide notice dated



23.07.1999 on Batra Hospital for claiming bonus as given by other hospitals in the region including the Government Hospitals in Delhi. However, the said claim was actually raised and sent by another union, namely, All India General Mazdoor Trade Union and these two unions do not have any concern with the Hospital and never represented the employees of the hospital at any time. The hospital replied to the said demand notice vide letter dated 05.08.1999.

11.4 Ch. Aishi Ram Batra Charitable Trust Employees Union filed another statement of claim for claiming bonus before the Conciliation Officer, Delhi against Batra Hospital. The appellant had filed a reply to the said claim before the Conciliation Officer wherein it was contended that the dispute was not espoused as per law and did not constitute an industrial dispute within the meaning of section 2(k) of the Industrial Disputes Act, 1947. Vijay Singh, who claimed to be the President of the union, had no authority or *locus standi* to raise the dispute. The appellant is not liable to pay the bonus to employees.

11.5 The appellant has also challenged the impugned judgment on other grounds that the term of reference relating to the payment of statutory bonus was beyond the jurisdiction of the appropriate Government. The



dispute/claim under the Act was rejected by the authority. The claim filed before the Conciliation Officer was not in respect of the statutory bonus but it was in respect of the conditions of the employment and extension of benefit to the employees commensurate with the benefit being given to the employees in other hospitals and Government Hospitals. The dispute was raised against M/s Batra Hospital which is not a legal entity and the name of the appellant is Batra Hospital and Medical Research Centre of Ch. Aishi Ram Batra Public Charitable Trust. The claimant/Union was not an existing entity. The learned Single Judge made an error in law while considering the documents submitted along with the petition. The certificate issued to the appellant under section 80G of the Income Tax Act, 1961 was completely disregarded. The object of the expression "charitable" in the Income Tax Act, 1961 has the same purpose as the expression "not for the purpose of profit" in section 32(v)c) of the Act.

12. The learned counsel for the appellant contends that the impugned judgment has erred in holding without any credible evidence, that the appellant hospital is covered under the Act and is not entitled to the benefit under section 32(v)(c) of the Act; and it is based on illogical reasoning and process on account of misplaced sympathy, generosity and private



benevolence which has been deprecated by the Supreme Court in various judgments. The correct name of the appellant is 'Batra Hospital and Medical Research Centre of Ch. Aishi Ram Batra Public Charitable Trust but in reference dated 01.02.2002 the name of the appellant was incorrectly mentioned as M/s. Batra Hospital. The name of the union purportedly representing the workmen in conciliation in the reference order and in the pleadings and evidence before the Tribunal was "Ch. Aishi Ram Batra Charitable Trust Employees Union" but in the certificate issued by the Registrar of Trade Unions, Delhi, the correct name of the Union is stated to be "Batra Hospital and Medical Research Centre of Ch. Aishi Ram Batra Public Charitable Trust Employees Union" with effect from 05.09.1991 and "Batra Hospital Employees Union" with effect from 30.05.2001.

12.1 The reference order, consequential proceedings and the impugned award passed by the Tribunal are in incorrect name of employer and non-existent union and as such they became *non est* and null and void. The present writ petition filed to challenge the impugned award by the correctly named Union was not legally maintainable as no award had been passed against the correctly named Union. The learned Single Judge has not



considered the said admitted/undisputable circumstances which rendered the impugned judgment *per incuriam*, without jurisdiction and illegal.

12.2 The learned counsel for the appellant also argued that the learned Single Judge completely ignored the fact that respondent has not led any corroborative evidence oral or documentary except vague affidavit of WW1 Vijay Singh. The learned Single Judge should have held that the claim filed before the Tribunal was not proved by the wrongly named union. The learned Single Judge also completely ignored that in the absence of any credible evidence either oral or documentary parameters as mentioned in the impugned judgment for treating hospital established for the purpose of profit have been proved and the hospital being run by a charitable society was granted exemption under the Income Tax Act as not carrying on any commercial, business or trading activities for profit and even surplus income was never used for benefit of any of its members but used for improving the facilities in the hospital which is also admitted by the union.

12.3 The judgments relied upon by the learned Single Judge are not applicable to the facts of the present case. There was no material before the learned Single Judge to set aside the impugned Award and to hold that the appellant's establishment was not covered under section 32(v)(c) of the Act.



The impugned Award was not liable to be set aside and no relief could have been granted in favour of the respondent Union which is not the Union named in the reference order against which the impugned Award was passed. The learned counsel for the appellant argued that the appeal be allowed and the impugned judgment be set aside and Rs.50,37,552/- deposited with the Registrar General of this court as per interim order, along with the interest accrued thereon be directed to be released to the appellant.

13. The learned counsel for the respondent has refuted the appellant's contentions. He says that the finding of the learned Single Judge are correct and sound in law and the judgment calls for no interference. Apropos nomenclature of the respondent, he says that the learned Single Judge examined various documents which are Representation dated 23.07.1999 bearing registration no. of union as 4144 Ex. WW1/A and Memo of parties before the conciliation officer Ex. WW1/4 which bear same registration number and the addresses of the union. The Certificate of Registration of Trade Union bearing no. 4144 dated 05.09.1991 certifies that Batra Hospital Medical Research Centre was registered under the Indian Trade Unions Act, 1926 on 05.09.1991 which was changed to "Batra Hospital Employees Union vide Letter No.F10 (4144) RTU/453 dated 30.05.2001. The Deputy



Registrar, Trade Unions vide communication dated 30.05.2001 noted that in the constitution of the “Batra Hospital & Medical Research Centre of Ch. Aishi Ram Batra Charitable Trust Employees Union” was amended to “Batra Hospital Employees Union” and Vijay Singh on the letter head of Batra Hospital and Medical Research Centre of Ch. Aishi Ram Batra Charitable Trust Employees’ Union informed the appellant about the change of name.

13.1 The learned counsel for the respondent on the aspect of espousal by a majority of Workmen working in the appellant hospital rightly held that espousal either by the Union or by substantive number of Workmen in the establishment would be sufficient to elevate the dispute as an industrial dispute. The requirement of an espousal is satisfied as the registered Union had initiated the industrial dispute. The appellant has refused to pay the bonus and as such in the meeting of the Executive Committee of the respondent, it was decided to institute the said industrial dispute which is evident from the note (in vernacular) dated 28.06.1999.

13.2 The learned counsel for the respondent on the aspect whether the appellant hospital is exempted under section 32 (v)(c) of the Act argued that the learned Single Judge rightly observed that MW1 Ajay Jawatkar during



cross-examination could not recall the name of any person who had been given free treatment by the appellant hospital, MW1 was unaware that whether the appellant hospital maintained any list of the persons to whom free treatment was given, MW1 was not aware of the exact location of the board where it was displayed that the appellant hospital was charitable and that the booklet depicting rates was meant only for persons who were charged and there was no reference, therein, to any free OPD or other treatment being provided. It was further observed that MW1 could not recollect where it was mentioned that free OPD or other treatment was being provided in the Hospital brochure. The learned counsel for the respondent further argued that there was no document to substantiate the averment as deposed in para 9 of affidavit of MW1 that the appropriate authority had conducted three enquiries into the matter and found that the appellant hospital was established for charitable purposes and appellant hospital ran on the basis of the donations received by it and the income received from patients.

13.3 The respondent placed reliance on the decision in *Workmen of Tirumala Tirupati Dewasthanams V The Management and Another*, AIR 1980 SC 604; *Christian Medical College and Hospital v Presiding Officer*,



2003 (III) LLJ 650 (Mad) and several other decisions and argued that in the impugned judgment, it was rightly held that the test of “Dominant Purpose” would be the decisive factor and not whether the said entity was actually making profits, and that ploughing back of the profits earned into the institution for its betterment, would not immunize the institution from the rigours of the Act. The exemption under section 80-G of the Income Tax Act cannot automatically exempt the entity from the Act applicability by interpreting the phrase "established not for purposes of profit" in Act similarly with phrase "established for a charitable purpose" in the Income Tax Act and usage of the term "charitable purpose" in section 2(15) of the Income Tax Act. The counsel for the respondent argued that appeal is liable to be dismissed.

14. It is reflecting from the record that union which submitted representation on 23.07.1999 to the appellant Hospital was the Batra Hospital & Medical Research Centre of Ch. Aishi Ram Batra Charitable Trust Employees Union (Regd. No. 4144), the union which raised the industrial dispute and subsequently petitioned before the Tribunal was Ch. Aishi Ram Batra Charitable Trust Employees Union (Regd. No. 4144), and union which has filed the writ petition to challenge impugned award is the Batra Hospital



Employees Union. The appellant in present appeal named respondent union as Batra Hospital Employees Union. The Tribunal on basis of cross examination of WW1 Vijay Singh held that the employees of the appellant Hospital were members of the Charitable Trust Employees Union and Ch. Aishi Ram Batra Charitable Trust Employees Union which had initiated the industrial dispute before tribunal was a nonexistent entity and that the employees of the appellant Hospital were actually members of the Charitable Trust Employees Union.

14.1 The learned Single Judge rightly observed that words “Batra Hospital & Research Centre” were missing from the union Ch. Aishi Ram Batra Charitable Trust Employees Union which had represented workmen before the Tribunal in comparison to the union “Batra Hospital & Medical Research Centre of Ch. Aishi Ram Batra Charitable Trust Employees Union” which had represented to the appellant Hospital on 23.07.1999 and the said supposed discrepancy is no discrepancy at all as the Registered Number of the Union i.e. 4144 was prominently indicated both at the head of the representation dated 23.07.1999 (Ex. WW-1/A before the Tribunal) as well as in the Memo of Parties before the Conciliation Officer (Ex. WW1/4 before the Tribunal) with same address. These correlations are indicative



that Batra Hospital Medical Research Centre of Ch. Aishi Ram Batra Charitable Trust Employees Union and the Ch. Aishi Ram Batra Charitable Trust Employees Union were one and the same.

14.2 The learned Single Judge rightly did not appreciate findings of the Tribunal on basis of cross examination of WW1 Vijay Singh that about 800 employees of Batra Hospital are the members of the Charitable Trust Employees Union being suffering from perversity and further correctly concluded that Batra Hospital & Medical Research Centre of Ch. Aishi Ram Batra Charitable Trust Employees Union, Ch. Aishi Ram Batra Charitable Trust Employees Union and the Charitable Trust Employees Union were one and the same Union and not three different Unions and said finding of the learned Single Judge is supported by documents as detailed in para no 18 & 19 of the impugned judgment.

14.3 We do not find legal force in arguments advanced by the learned counsel for the appellant that union purportedly representing workmen in the reference and before the Tribunal was Ch. Aishi Ram Batra Charitable Trust Employees Union but in the certificate issued by the Registrar of Trade Unions, Delhi, name of the union is mentioned as Batra Hospital and Medical Research Centre of Ch. Aishi Ram Batra Public Charitable Trust



Employees Union with effect from 05.09.1991 and Batra Hospital Employees Union with effect from 30.05.2001 and as such these unions are different entities. These arguments were also rightly rejected by the learned Single Judge in impugned judgment.

15. Regarding issue no 2, the Tribunal held that the respondent had not filed any document to establish that an appreciable number of the employees of the appellant Hospital were the members of the union or any meeting was held by the union espousing the cause of the workmen or majority of workmen in the appellant Hospital had authorized the respondent -Union to espouse their cause. We are in agreement with the findings of the learned Single Judge that the registered union of the workmen of the appellant Hospital had initiated the industrial dispute and as such the requirement of an espousal is clearly satisfied.

16. The Act was enacted with objective to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity. Section 1 of the Act provides that the Act shall apply to every factory and every other establishment in which twenty or more persons are employed on any day during an accounting year. Section 32 of the Act exempts certain classes of employees from their



entitlement to bonus. The hospitals which are "established not for the purposes of profit" are exempted from the applicability of the Act by virtue of sub-clause (c) of clause (v) of section 32 which reads as under:-

“32. Act not to apply to certain classes of employees. - Nothing in this Act shall apply to -

(i) xxxxxxxx;

(ii) xxxxxxxx;

(iii) xxxxxxxx;

(iv) xxxxxxxx;

(v) employees employed by-

(a) the India Red Cross Society or any other institution of a like nature (including its branches);

(b) universities and other educational institutions;

(c) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit.”

16.1 The Supreme Court, in *Jalan Trading Company V Mill Mazdoor Union*, MANU/SC/0185/1966 while considering the vires of the Act including section 32 observed as under:-

“It may be broadly stated that bonus, which was originally a voluntary payment, out of profits made, to workmen to keep them contented, acquired the character, under the bonus formula, of a right to share in the surplus profits, and enforceable through the machinery of the Industrial Disputes Act. Under the Payment of Bonus Act, liability to pay bonus has become a statutory obligation imposed upon employers covered by the Act.”

16.2 The learned Single Judge in para no 33 of the impugned judgment observed that section 32(v)(c) of the Act has come up for judicial



interpretation on many occasions and referred ***Workmen of Tirumala Tirupathi Devasthanam V Management***, AIR 1980 SC 604. In this case, the issue before the Supreme Court was whether the Transport Department of the Tirumala Tirupati Devasthanam was an institution by itself and, if so, whether it was exempt from the operation of the Act by virtue of section 32(v)(c) thereof. The Supreme Court held as under:-

“2.... On the other hand, there must be proof that the Transport Department (a) is an institution; (b) established not for the purpose of profit. The Tribunal has not correctly appreciated the import of this latter requirement. It has been found that profits made some years are ploughed back whatever that may mean. It is also found that the motive for running the industry of transport was to afford special facilities for the pilgrims. These by themselves do not clinch the issue whether the institution has been established not for purposes of profit, nor are we satisfied that merely because in the administrative report of the Devasthanam, there is mention of the transport establishment as a remunerative enterprise, that is decisive of the issue.

4. Likewise, merely because it is an institution, the Transport Department does not cease to be one established 'not for purposes of profit', that has got to be made out on its merits. The institution may be designed for profit although it may make or may not make profit. The institution's profits or earnings may be used for other charitable purposes. That also does not determine finally the character of the institution. Was the institution 'not one for purposes of profit', motives apart? If it was one, definitely not for earning profit, but merely as an ancillary facility for pilgrims to reach and to return. Section 32(v) will exclude the institution. If we may tersely put it, the



dominant purpose of the Transport Department will be the decisive factor.”

16.3 The learned Single Judge also referred *T.N. Water Supply & Drainage Board V T.N. Water Supply & Drainage Board Engineers Association*, (1998) 5 SCC 370 and *State of Tamil Nadu V K. Sabanayagam*, (1998) 1 SCC 318. In *T.N. Water Supply & Drainage Board*, the Supreme Court observed as under:-

“Learned Single Judge has referred to the functions of the Board and its powers and rightly held that the purpose behind the functions of the Board is to provide protected drinking water supply and drainage facilities, but this also cannot be disputed that the Board has got its own assets and liabilities, that it has got its method of recovery of the cost of the scheme, making investment and constituting its funds by 'all moneys received by or on behalf of the Board ...', all proceeds of land or any other kind of property sold by the Board, all charges, all interest, profits and other moneys accruing to the Board and all moneys and receipts', deposited into the public accounts of the Government under such detailed heads of accounts as may be prescribed or in the Reserve Bank of India, State Bank of India or any corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. It has thus a scheme of profit and loss. It shall earn profit in some year and lose in another year. Thus, in its commercial activities of sort, it has got a capital structure of profit, liabilities and labour force to care for. We see reason to hold in accordance with the Rule indicated by the Supreme Court in the case of Workmen v. Tirumala Tirupathi Devasthanam that the Board is an institution designed for profit in the limited sense that when the Government's department found it difficult to run such projects



departmentally, they decided to create a Board and transferred the projects to ensure that there was proper service to the community at large on the one hand and on the other, there was no pressure on the meagre revenue and other resources of the State.

Applying the test as above, we have no hesitation in holding that the learned Single Judge has fallen in error in holding that the respondent-Board is an institution established not for purposes of profit. Employees of the Board qualifying for bonus under the Act, in our opinion, are entitled to minimum amount of bonus.”

16.4 The High Court of Madras in the case of ***Christian Medical College and Hospital V Presiding Officer***, 2003 (III) LLJ 650 (Mad) analysed the applicability of section 32(v)(c) of the Act. As observed by the learned Single Judge examined issue whether the Christian Medical College & Hospital was exempted from the application of the Act by virtue of section 32(v) (c) of the Act:-

- “(i) The CMC was being run on commercial lines.*
- (ii) The cost of education for a single Medical student was Rs. 64,000/- per year, whereas the fee charged from a student for a year, was only Rs. 3,000/-. This indicated that it was only from the earnings of the hospital, that subsidy could be provided for the student for their education.*
- (iii) The minutes of the Extra Ordinary Meeting of the Association of the CMC indicated that income from patients during 1978-88 was 88%, whereas contribution from the Members was only 1.42%, collections from students amounted to 1.5%, collection from other sources was 2.5% and earnings from the division of community health was 3.4%.*



(iv) Of 1484 beds in the hospital, only 161 beds were assigned for free treatment, i.e. a mere 11%. 90% of the inpatients and 60% of out-patients were charged on commercial basis.

(v) The CMC manufactured 144 items of medicines, sold them to patients at a profit and ploughed back the surplus from the sales to the institution itself.

(vi) 90% of the income of the institution came from the hospital. Even if the purpose of establishment, and the object of the institution at that time, had been to serve the poor, it was not necessary that the said object continued.

(vii) Free service, on charitable lines, was no longer available to all patients, as was admitted by the CMC itself.”

17. The perusal of impugned award reflects that the Tribunal in para no 15 of the impugned award after considering Ex. MW1/3 observed that one of the object of the trust is setting up of hospitals or other medical institutions for administering medical relief to needy, carrying out medical and clinical research, grant of medical help to poor which clearly goes to show that the objective for which the society is formed and for which the hospital is established is not for earning profits. The perusal of impugned award further reflects that the Tribunal did not agree with the arguments advanced on behalf of the respondent that the management i.e. the appellant had not specifically denied that management had charged various amounts from the persons who died during treatment and only after receiving the amounts their bodies were handed over to their relatives which goes to show that the management is a profitable organization by observing that these averments



are even without particulars and the workmen had not been able to prove these averments by producing, any material on record. The Tribunal also did not agree with the arguments advanced on behalf of the respondent in light of cross examination of MW1 that management i.e. the appellant is earning profit and is not a charitable institution. It is notable that in his cross examination, the management's witness - MW1 failed to give the name of even a single person who had been given free treatment, or provided/furnished a list/register/record of persons to whom free treatment was given by the hospital; the exact location of the board wherein it was stated to be displayed that the hospital was a charitable hospital was not answered or identified, nor was a photograph or any evidence regarding it produced. The fact that executive body of the Society are family members was not denied. Except MW1/4, no document or record was produced to establish that the management was entitled to exemption u/Sec. 32(v)(c) of the Act. In the booklet it is not mentioned that free OPD and free treatment to poor is available. The Tribunal observed that these arguments are misplaced in as earning of profits is not a criteria for seeking exemption under section 32(v)(c) of the Act rather it is the purpose which is material and the only thing which has to be shown is whether the institution is not



established for purposes of profit. The Tribunal also observed that as per workmen and as the management profits are put back into the funning of the hospital itself as a result of which the hospital has grown and it is the workmen's own case that the management had extended from a small hospital in 1986 to a 312-bedded hospital as on date. The Tribunal also observed that no evidence had been led by the workmen to show that profits earned are diverted to the personal income of the persons who were members of the society and further Municipal Corporation charges subsidized rates for water and electricity from the management and that the equipment imported by the management are duty free which reflects that the Govt. and the MCD have treated the management as a charitable institution.

18. After analytical and critical analysis of material on record including impugned judgment we are of view that the learned Single Judge rightly did not agree with above findings of the Tribunal while observing that these findings are presumptuous in nature and the Tribunal did not disclose how or why it presumes that a Trust which sets up hospitals which provide free treatment to needy patients is not working "for the purpose of profit". It is difficult to accept the contention that the appellant could be regarded as established "not for the purpose of profit". The learned Single Judge has



observed that profits were in fact earned by the appellant but were funnelled back into the appellant Hospital to enhance its services and as a result thereof, the appellant Hospital had expanded, from a small institution in 1986 to a 312-bedded hospital as on the date of the Award and must have been further expanded manifold. The earning of the profit would necessarily entail the responsibility of sharing some part of such profit with the employees or workmen whose effort have significantly contributed towards the earning of the profit which is mandate of the Act and it would not fair for the appellant to evade this responsibility.

19. In his cross-examination, MW1 has admitted that the appellant hospital was not in possession of any material to establish that poor persons were given free treatment by the appellant Hospital, in fact he admitted that the Hospital was running on the basis of the income received from patients, apart from donations received by it. The said witness failed to identify the location of the display or any notice or intimation to the general public that the appellant Hospital was being run on charitable purposes. Most strikingly, the management's witness was unable to name even a single patient who had been given free treatment by the appellant Hospital. MW1 also admitted that the appellant Hospital has issued a booklet mentioning the rates of



various services rendered by it but could not recall information regarding providing of free treatment in any of the brochures issued by the appellant Hospital. Further the respondent in the statement of claim and WW1 Vijay Singh in affidavit tendered in evidence stated that balance sheet of the appellant Hospital showed huge profits which was not specifically denied in the written statement filed by the appellant Hospital and only a bald statement was made that the appellant Hospital was not earning huge profits but admitted that the advancement of the hospital was attributable to the income and profits earned by the appellant Hospital. The learned counsel for the appellant argued with force that without any credible evidence oral or documentary except vague affidavit of WW1 it was held in impugned judgment that the appellant hospital is covered under the Act and not entitled to the benefit under section 32(v)(c) of the Act rather the learned Single Judge should have held that the claim filed before the Tribunal was not proved in accordance with law and should not treat appellant hospital established for the purpose of profit.

20. The contentions on behalf of the appellant are misplaced and misconceived particularly in light of cross examination of MW1, which was completely ignored by the Tribunal in impugned Award. The learned



counsel for the respondent rightly has argued that MW1, Ajay Jawatkar during cross-examination could not recall the name of any person who had been given free treatment by the appellant hospital and was unaware that whether the appellant hospital maintained any list of the persons to whom free treatment was given. MW1 could not give location of the board where it was displayed that the appellant hospital was charitable and further in the booklet there was no reference to any free OPD or other treatment being provided to poor persons. We are in agreement with the arguments advanced by the learned counsel for the respondent.

21. The Tribunal in impugned Award also observed that the appellant Hospital vide certificate Ex. MW1/2 was granted exemption under sub-section (5) of section 80G of the Income Tax whereby it was certified that vide letter dated 10.02.1989 issued by the Commissioner of income Tax, the appellant Hospital qualifies to tax relief under section 80 G of the Income Tax Act. The Tribunal also observed that subsequent certificates issued in 1993 and 1998 had also been proved. It was argued on behalf of the appellant Hospital before the learned Single Judge as reflected from the impugned judgment that the certificate issued to the appellant Hospital under section 80G of the Income Tax Act does amount to an



acknowledgement by the Income Tax authorities, that the appellant Hospital his client is a "no-profit" organization.

22. The learned counsel for the appellant Hospital also argued that the appellant hospital being run by a charitable society was granted exemption under the Income Tax Act as the appellant Hospital is not carrying on any commercial, business or trading activities for profit and surplus income was never used for benefit of any of its members but surplus income is used for enhancing the facilities in the hospital. The learned counsel for the respondent argued that the test of "Dominant Purpose" is the decisive factor and ploughing back of the earned profits for betterment would not immunize the institution from the rigours of the Act and the exemption under section 80G of the Income Tax Act would not automatically exempt the institution from the application of the Act by interpreting the phrase "established not for purposes of profit" in Act similarly with phrase "established for a charitable purpose" in the Income Tax Act. The learned Single Judge in impugned judgment has dealt these arguments in detail and did not agree with this argument advanced by the learned counsel for the appellant Hospital. The learned Single Judge in para no.49 of the impugned judgment observed that perusal of the certificates issued to the appellant Hospital



under section 80G of the Income Tax Act reveals that they have been issued under sub-section (5) thereof and exemption under sub-section (5) of section 80G of the Income Tax Act is available "to donations to any institute or fund referred to in sub-clause (iv) of clause (a) of sub section (2) only if it is established in India for a charitable purpose..." and further observed that as per arguments advanced on behalf of the appellant Hospital there is no real difference between the expressions "established not for the purpose of profit" and "established for a charitable purpose" and the certificates issued to appellant Hospital under section 80G of the Income Tax Act effectively conclude the factual position that the appellant-Hospital was established not for the purpose of profit. The learned Single Judge has rightly rejected the said argument by observing that the definition of "charitable purpose" as contained in clause (15) of section 2 of the Income Tax Act defeats the said contention, because it would be hazardous to presume that every organization which is certified under section 80G of the Income Tax Act would be entitled *ipso facto* to immunity from the applicability of the Act and the word "charitable purpose" as used in section 80G(5) of the Income Tax Act may not readily be equated with the words "not for the purpose of profit", as used in section 32(v)(c) of the Act. In our view observation of the



learned Single Judge made in impugned judgment that the objects and purposes of the Income Tax Act and the Act are distinct and different from each other. Consequently, the purpose of grant of exemption in respect of donations made to an organization certified under section 80G of the Income Tax Act would be distinct from the purpose of granting immunity to an organization or institution from the applicability of section 32(v)(c) of the Payment of Bonus Act. The appellant has neither placed on record any notification to prove that the equipment imported by the appellant Hospital was exempted from levy of any statutory duty.

23. In the background of above facts, we are of the considered opinion that the appellant Hospital cannot be regarded as established "not for the purpose of profit" as required by section 32(v)(c) of the Payment of Bonus Act and the dominant purposed of the appellant is manifestly to earn the profit. We are in agreement with the findings of the learned Single Judge that the impugned Award was passed on assumptions and presumptions and without considering the material evidence on record including statements of the witnesses and the contents of the affidavits filed by them. The impugned Award cannot be sustained on facts or in law. There is no merit in the appeal. The appellant Hospital is not entitled for exemption under section 32



(v)(c) of the Act. It is liable to pay bonus to its employees as per mandate of the Act. The appellant Hospital is directed to comply with directions in terms of para 59 of the impugned judgment.

24. The present appeal along with pending applications, if any, stands dismissed.

(SUDHIR KUMAR JAIN)
JUDGE

(NAJMI WAZIRI)
JUDGE

MAY 26, 2023
N/SD

