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

\+ ITA 173/2020

COMMISSIONER OF INCOME TAX (EXEMPTIONS), NEW DELHI ..... Appellant

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semwal, Ms. Nupur Sharma, Advs.

versus

DR. R. L. KHERA CHARITABLE TRUST ..... Respondent

Through: Mr. Satyen Sethi, Mr. Arta Trana Panda, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **16.02.2024**

1. The appellant impugns the order of the Income Tax Appellate Tribunal ["**ITAT**"] dated 27 May 2019 and has framed the following questions for our consideration:-

> "A. Whether, on the facts and in circumstances of the case and in law, the Hon'ble ITAT has erred in allowing payment of Rs. 4,23,77,370/- despite it being in violation of the provisions of section 13(2)(g) of the Income Tax Act, 1961 and disguised as consultancy fee for five years in advance whereas indirectly it was for the benefit of the trustees, at the time of transfer of management of the trust from these doctors to the promoter of Metro Group of Hospital?
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> B. Whether, on the facts and circumstances of the case and in law, the Hon'ble ITAT has erred in upholding the order of the Ld. CIT(A) ignoring the fact that the assessee society could not properly justify the services rendered by these four trustees to whom the professional fee has been diverted?"

2. The dispute appears to be centered around the payment of INR

4.27 crores by the Metro Group of Hospitals ["**Metro**"] to four individuals / doctors who were also stated to be Trustees of the respondent / assessee. It was contended by the appellant that the payment of the aforesaid monies would not be covered under Section 13(2)(g) of the Income Tax Act, 1961 ["**Act**"]. The aforesaid provision as also Section 13(3) reads as follows: -

> "**13.** Section 11 not to apply in certain cases
>
> (1) …
>
> (2) Without prejudice to the generality of the provisions of clause (*c*) and clause (*d*) of sub-section (1), the income or the property of the trust or institution or any part of such income or property shall, for the purposes of that clause, be deemed to have been used or applied for the benefit of a person referred to in sub-section (3),—
>
> (*g*) if any income or property of the trust or institution is diverted during the previous year in favour of any person referred to in sub-section (3)
>
> (3) The persons referred to in clause (*c*) of sub-section (1) and sub-section (2) are the following namely:—
>
> (*a*) the author of the trust or the founder of the institution;
>
> (*b*) any person who has made a substantial contribution to the trust or institution, that is to say, any person whose total contribution up to the end of the relevant previous year exceeds [fifty thousand] rupees;
>
> (*c*) where such author, founder or person is a Hindu undivided family, a member of the family;
>
> (*cc*) any trustee of the trust or manager (by whatever name called) of the institution;
>
> (*d*) any relative of any such author, founder, person, member, trustee or manager as aforesaid;
>
> (*e*) any concern in which any of the persons referred to in clauses (*a*), (*b*), (*c*), (*cc*) and (*d*) has a substantial interest."

3. While dealing with the aforesaid transaction, the ITAT has in

paragraph 7 and 8 observed as follows: -

> "7. On the other hand, learned counsel for the assessee had submitted that payments made by the Metro Institute of Medical Science Pvt. Ltd. are the regular payments to the doctors for their consultancy services and same· were routine payments which have been accounted for in the books of account and TDS has been deducted by the company. The income received by the doctors has also been offered in their respective return of income. During the relevant Assessment Year the assessee entered into an agreement with Metro Hospitals and Heart Institute for running and management of the hospital owned by the assessee. The said agreement inter-alia provides the details that Metro Hospitals will facilitate all funds required to be infused for effective management of the hospital. Metro Hospitals and Heart Institute appointed the four trustees of the assessee company as management consultants since they have opulent experience for managing hospitals and being in this profession for several years. The entire amount of consultancy charges was paid in advance for the entire period of five years after deducting TDS at applicable rates. He submitted that in the case of Dr. Aman Khera, amount of Rs. 1,21,83,494/- was declared as income for the A.Y 2006-2007 and was offered for tax. The AO took a view that the entire income had to be taxed in the initial year itself instead of spreading it over a period of 5 years. Dr. Aman Khera filed an appeal against the assessment order which was adjudicated by CIT(A)-XXIV, New Delhi vide order dated 24.11.2010. The contentions made Dr. Aman Khera were not accepted by the CIT(A) and was eventually reversed by the order of the Hon'ble ITAT, New Delhi ITA No. 475/D/2011 vide order dated 04.05.2012. The findings of the Hon'ble ITAT, clearly hold that the consultancy charges have been earned by Dr. Aman Khera and his family from Metro Hospitals and which was to be taxed in equal proportion for a period of 5 years beginning from A.Y 2006-2007. He further pointed out that specific evidence regarding rendition of services by Dr. Aman Khera to Metro Hospital was given which has been enclosing in the paper book and similar evidence was also given with regard to other doctors.
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> **8.** On the perusal of the material on record, we find that first of all, no part of the assets of the assessee trust including its land or building was sold Metro Hospitals or to any other party. Further, not even right or encumbrance of any kind had accrued on the property of the trust in any manner. There was no transaction at all between assessee and Metro Hospital by way of which an amount of Rs.4.27 crore could have been accrued to the assessee Trust. The payment has been made to four doctors separately for their rendition of services to the Metro Hospitals and all these payments have been offered to tax by *all the four individual* persons in their

> returns, which has been accepted. It is also a matter of record that in the subsequent assessment years, the entire income accruing and arising from the hospital is being accounted for in the books of the assessee trust and no amount has been paid by the assessee to the Metro Hospital as management fees. No case has been made out by the Assessing Officer for diversion of income within the meaning of Section13(2)(g); and in fact various evidences have been filed in support of rendition accrued services by four individuals to Metro Hospital for a period of five years for which they were paid consultancy charges. For invoking of Section 13(2)(g), the income of the property of the Trust or any part of income or property is deemed to have been used or applied for a benefit of a person referred to sub-section 2 of Section 13, if any income or property is diverted during the previous year in favour of any such persons. Here, in this case, nowhere it has been brought on record that any income or property has been used or applied for the benefit of specified persons. It has rightly been held by the ld. CIT (A) that there is no case of diversion of income within the meaning of Section 13(2)(g).Otherwise also, if the Assessing Officer has drawn an adverse inference regarding diversion of income within the meaning of Section 13(2)(g), then at the most Assessing Officer can deny the benefit of Section 11, but he is not empowered to notionally treat the alleged diversion as income of the assessee. The reason being no income accrued to the Trust. The income earned by the four persons was consultancy fees given by Metro Institute and Assessing Officer has actually failed to establish nexus between its income and Section 13. Accordingly, the order of the ld. CIT (A) is affirmed and the ground raised by the Revenue is dismissed.
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> In the result the appeal of the Revenue is dismissed."

4. In our considered opinion, the ITAT has rightly come to conclude that the provisions of Section 13(2)(g) of the Act would clearly not be attracted since the appellant had failed to establish that "*any income or the property of the trust or institution had been diverted*" to a person who would fall within the meaning of Section 13(3) of the Act.

5. Although according to the appellant and admittedly there was a transfer of land between the Trust and Metro, they have woefully failed to establish that any part of the income of the Trust was diverted to those individuals. The payment to them was made by Metro.

6. We, thus, find that the appeal raises no substantial question of law. It shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 16, 2024/*neha*