

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF MARCH 2021

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

I.T.A. NO.1 OF 2017

BETWEEN:

1. PR. COMMISSIONER OF INCOME TAX
(CENTRAL), BAGALORE.
2. THE ADDITIONAL DIRECTOR OF
INCOME TAX, (EXEMPTIONS)
RANGE-17, BANGALORE.

.... APPELLANTS

(BY MR. SANMATHI E.I. ADV.,)

AND:

M/S. MOOGAMBIGAI
CHARITABLE AND EDUCATIONAL TRUST
RR COLLEGE OF MANAGEMENT STUDIES
RAMAHALLI CROSS, KUMBALGODE
BANGALORE-560060
PAN:AATM1102H.

... RESPONDENT

(BY SMT. VANI H, ADV.,)

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THIS I.T.A. IS FILED UNDER SEC. 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 13.07.2016 PASSED IN ITA NO.1224/BANG/2015 FOR THE ASSESSMENT YEAR 2011-12, PRAYING TO DECIDE THE FOREGOING QUESTION OF LAW AND/OR SUCH OTHER QUESTIONS OF LAW AS MAY BE

FORMULATED BY THE HON'BLE COURT AS DEEMED FIT AND SET ASIDE THE APPELLATE ORDER DATED 13.7.2016 PASSED BY THE ITAT, 'A' BENCH, BENGALURU, IN APPEAL PROCEEDINGS NO.ITA NO.1224/BANG/2015 FOR ASSESSMENT YEAR 2011-12, AS SOUGHT FOR IN THIS APPEAL; AND TO GRANT SUCH OTHER RELIEF AS DEEMED FIT IN THE INTEREST OF JUSTICE.

THIS I.T.A. COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 has been preferred by the revenue against the order dated 13.07.2016 passed by the Income Tax Appellate Tribunal. The subject matter of the appeal pertains to Assessment Year 2011-12. The appeal was admitted by a Bench of this Court vide order dated 25.10.2017 on the following substantial questions of law:

"1. Whether on the facts and in the circumstances of the case the Tribunal is right in law in treating the 'Pharmacy' income as income of charitable trust inspite the same is rightly considered as business income as the assessee does not maintain separate books of accounts and even when the Tribunal has not

given finding about medicine sold to public is negligible or not?

2. Whether on the facts and in the circumstances of the case, the Tribunal is right in calculating 15% for accumulation on gross receipts instead of net receipts by relying on the decision in the case of Franciscan sisters of St. Joseph society of Chennai ITAT Bench where nature of receipts in the case of assessee is not identical with that case?"

2. Facts leading to filing of this appeal briefly stated are that the assessee runs an educational institution and hospital. The assessee filed return of income for the Assessment Year 2011-12 on 11.07.2011. The assessment order was passed on 27.03.2014 by which the Assessing Officer disallowed the claim of depreciation of Rs.10,73,00,124/-, income from pharmacy amounting to Rs.50,66,973/- and considered accumulation of 15% on net income instead of gross receipts which resulted into addition of Rs.1,70,68,779/- and also other disallowances. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax

(Appeals) maintained the order of the Assessing Officer in respect of the aforesaid reliefs, however, granted the relief in respect of the remaining issues. Accordingly, the appeal was partly allowed. The assessee thereupon filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal' for short). The Tribunal, by an order dated 13.07.2016 has partly allowed the appeal. In the aforesaid factual background, this appeal has been filed.

3. At the outset, learned counsel for the assessee submitted that the second substantial question of law is no longer *res integra* and has already been answered against the revenue in '**COMMISSIONER OF INCOME-TAX Vs. RAJASTHAN AND GUJARATI CHARITABLE FOUNDATION**' (2018) 402 ITR 441 (SC) and another decision of Supreme Court in '**COMMISSIONER OF INCOME-TAX Vs. PROGRAMME FOR COMMUNITY ORGANISATION**' (2001) 248 ITR 1 (SC). The aforesaid submission could not be disputed by the learned counsel for the revenue.

4. From perusal of the record, we find that the substantial question of law No.2 is covered by the aforesaid decisions of the Supreme Court. Therefore, the same is answered against the revenue and in favour of the assessee.

5. However, the first substantial question of law survives for consideration in this appeal. Learned counsel for the revenue, with regard to the substantial question of law No.1, submitted that the pharmacy income was rightly treated as business income by the Assessing Officer as well as the Commissioner as the assessee does not maintain separate books of accounts. It is also pointed out that the requirement to maintain separate accounts is mentioned in Section 11(4A) of the Act. It is further submitted that the twin conditions which are mentioned in Section 11(4A) of the Act that the income from Trust or Institution being profits and gains of business or profession, unless such business is incidental to such Trust and the requirement of maintaining separate books of accounts have not been satisfied by the assessee. It is also pointed out that the Assessing Officer have recorded a categorical finding that no separate books of

accounts are maintained by the assessee and considering the total turn over on Rs.2,15,40,529/- from the business of pharmacy has rightly been held that the assessee is doing business as a venture and not as charitable activity and the Commissioner has rightly confirmed the aforesaid addition. It is further submitted that the Tribunal has not recorded a finding about medicine being sold to public. Therefore, the income from pharmacy cannot be considered for exemption and the Tribunal has relied upon the decision rendered by the Chennai Bench without any application of mind.

6. Learned counsel for the assessee submitted that the Assessing Officer has noted the objects of the assessee and the pharmacy is incidental to running medical college and hospital. It is further submitted that the question of maintaining separate books of accounts does not arise as the pharmacy does not belong to a separate entity. It is further submitted that trading accounts were produced before the Tribunal and against the decision of the Chennai Bench of the Tribunal, the revenue did not prefer any appeal before the

High Court and therefore, the aforesaid decision has attained finality and is binding on the revenue.

7. We have considered the submissions made on both sides and have perused the record. Before proceeding further, it is apposite to take note of Section 11(4A) of the Act which reads as under:

"Section 11(4A) Sub-section (1) or sub-section (2) or sub-section (3) or sub-section (3A) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution, and separate books of account are maintained by such trust or institution in respect of such business."

Thus, from perusal of the aforesaid provision, it is evident that in order to claim benefit of the aforesaid provision, the assessee is required to comply with the twin conditions namely any Institution or Trust being profits and gains of business, unless such income is incidental to the attainment of the objective of the trust and maintenance of

separate books of accounts by such Trust or Institution in respect of such business.

8. In the instant case, the relevant extract of paragraph 16.4 passed by the Tribunal is reproduced below for the facility of reference.

"We have considered the rival submissions and the relevant material on record. The CIT (Appeals) has rejected the claims of the assessee on the ground that the assessee has not furnished the details regarding the sales made to the indoor and outdoor patients of the hospital of the assessee as well as outside public. In such a case, the entire amount cannot be treated as the income earned by the assessee from the sale of medicines to the outside public when the pharmacy is within the premises of the hospital and attached to the hospital. It is pertinent to note that a dispensary/pharmacy is inevitable and indispensable facility for the hospital. The necessity of the pharmacy cannot be ruled out as there are regular emergency situation requiring immediate medicines and other supply of pharmacy for emergency treatment as well as operation/surgery purposes. The Chennai

Benches of the Tribunal in case of Franciscan Sisters of St. Joseph Society (supra) has held in paras 7 to 15 as under:

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In view of the above discussion as well as the decision of the Chennai Benches of the Tribunal (supra), we decide this issue in favour of the assessee."

Thus, from perusal of the order passed by the Tribunal, it is evident that the Tribunal has not recorded any reasons whether or not the assessee has complied with the twin conditions mentioned in sub-section 4A of Section 11 of the Act. The order passed by the Tribunal is cryptic and suffers from the vice of non-application of mind. Therefore, the finding of the Tribunal insofar as it pertains to the first substantial question of law cannot be sustained.

9. Accordingly, the order of the Tribunal dated 13.07.2016 insofar as it records the finding with regard to the first substantial question of law is hereby quashed. Therefore, it is not necessary to answer the same. The matter is remitted to the Tribunal for recording the finding on

the aforesaid substantial question of law bearing in mind the mandate contained in Section 11(4A) of the Act.

In the result, the appeal is disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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