

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH**

BEFORE SHRI H.L.KARWA, VICE PRESIDENT
AND MS. RANO JAIN, ACCOUNTANT MEMBER

ITA No.1117/Chd/2014
(Assessment Year : 2010-11)

M/s Rogi Kalyan Samiti,
Dr.Rajinder Prasad Govt.
Medical College Hospital,
Tanda, Distt. Kangra, (H.P.)

PAN:AAAAR8787J

(Appellant)

Vs.

The A.C.I.T.,
Circle Palampur,
(H.P.).

(Respondent)

Appellant by : Shri Ashwani Kumar
Respondent by : Shri Manjit Singh, DR

Date of hearing : 21.09.2015

Date of Pronouncement : .10.2015

ORDER

PER RANO JAIN, A.M. :

This appeal filed by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals), Shimla dated 29.10.2014 for assessment year 2010-11.

2. Briefly, the facts of the case are that the assessee society is registered with District Magistrate-cum-Registrar, Dharamshala vide letter No.1540/C/HRC dated 24.11.2008. It was also granted registration under section 12A of the Income Tax Act, 1961 (in short 'the Act') by the Commissioner

of Income Tax, Shimla vide letter No.CIT/SML/Tech.-II/I/IOA/12-A/2005-06/4281 dated 14.6.2005. During the year under consideration, the assessee filed its return of income declaring nil income as on 15.10.2010 claiming deduction under section 11 of the Act. The assessee has set aside an amount of Rs.6,76,48,808/- for accumulation as provided under section 11(2) of the Act. The assessee had received Rs.11,23,70,948/-, however, during the year, it had spent only Rs.3,84,70,751/-. The assessee submitted Form 10 for accumulation of Rs.6,76,48,808/- under section 11(2) of the Act for the purpose of "salary and welfare of patients". The Assessing Officer found the said accumulation not made as per law and assessed it as AOP at Rs.6,76,48,808/-. The reasons for such conclusion arrived at by the Assessing Officer were that the objects specified in Form No.10 for accumulation of income were too vague and further there was no need for assessee to accumulate funds for the purpose of salary as it has enough funds including grants received from State Government for this purpose.

3. Aggrieved by the order of the Assessing Officer the assessee went in appeal before the learned CIT (Appeals). It was submitted that the assessee is a charitable trust having 12A registration certificate from Commissioner of Income Tax, Shimla. It is carrying on its activities with hundred percent financial aid from Government of Himachal Pradesh. The trust has been created by the State Government for the welfare of patients. It was submitted before the learned CIT

(Appeals) that the accumulation of surplus income for the purpose of salary and welfare of patients as described in Form No.10 is duly in accordance with objects of the trust for which it has been granted registration under section 12A of the Act. It was also brought to the notice of the learned CIT (Appeals) that the issue raised by the Assessing Officer that the assessee has made an excess provision of Rs.4,85,00,000/- for the payment of salary in the next year is not relevant in the facts and circumstances of the present case. It was clarified that in the next year the assessee had proposed to start a Super Specialty services in the Medical College and appointments of highly paid doctors were also to be made. Therefore, the requirement of more funds were anticipated. Further, it was also submitted that in subsequent assessment years 2011-12 and 2012-13, the Assessing Officer has allowed deduction and also accepted surplus amount set apart for the next financial year of same nature as is disputed in the year under consideration.

4. The learned CIT (Appeals) did not find herself in agreement with the submissions made by the assessee. She observed that though the assessee has duly submitted Form No.10 and has not spent 85% of the receipts and is also registered society under section 12AA of the Act, still the submission of Form No.10 is not only a technical requirement but in a way Form No.10 is in the nature of seeking permission of the Assessing Officer to accumulate the sum so mentioned and the specific objective for which the assessee

proposed to accumulate such funds. However, in the present case, the assessee has stated the non-specific objective for accumulation and these objectives are general in nature. Though the sum has been deposited in an account maintained with SBP as mentioned in the audited balance sheet of the assessee but the stated objectives are non-specific. She distinguished the cases relied upon by the assessee and held that the case laws relied upon by the Assessing Officer i.e. Cotton Textile Exports Vs. ITO, 4 ITD 642 (Mum Trib.) and CIT Vs. Muthiah Chettiar Family Trust, 245 ITR 400 (Mad) are applicable to the facts of the case. In this view, she held that there is no infirmity in the order of the Assessing Officer in disallowing exemption under section 11(2) of the Act on realizing that the stated objectives in Form No.10 are vague and historically the surplus money generated has also not been used for charitable purposes.

5. Aggrieved by the order of the learned CIT (Appeals) the assessee has come up in appeal before us. The learned counsel for the assessee while arguing before us stated that the assessee is a society registered under section 12A of the Act since 2005. The aims and objects of the society are duly covered under the definition of section 2(15) of the Act. There is a provision in section 11(2) of the Act that in case the assessee is not able to spend 85% of its receipts for the stated objectives, it can accumulate the same, the only requirement is to file Form No.10 before the Assessing Officer. During the year under consideration, the assessee has not

been able to spent 85% of its receipts and Form No.10 was duly filed before the Assessing Officer. The contention of the Assessing Officer is that the objectives for which the receipts had been accumulated as described in Form No.10 are vague. He drew our attention to the copy of Form No.10, whereby the objectives for which accumulation was sought for is stated to be "salary of staff and welfare of patients". Further, our attention was invited to the objectives of the trust as stated in the bye laws of the assessee society. The relevant portion of the objectives reads as under :

i) "To hire staff for enabling M/s Rogi Kalyan Samiti, Dr. R. P. Medical College, at Tanda to meet its obligations besides strengthening the staff positions in all categories.

ii) This will be a charitable Samiti and all the income generated by the Samiti will be utilized for the welfare of the patients"

These objectives have also been reproduced by the Assessing Officer in his order at para 6. Since first objective as stated hereinabove is to hire the staff and second objectives is that of welfare of the patients. In view of the same it was argued that there is no vagueness in the objectives stated in Form No.10. The main object of the assessee society is to hire staff for enabling it to apply its income for the welfare of the patients. There can be no vagueness in the objectives stated as "salary of staff and welfare of patients". It was further stated that the hiring of additional staff alongwith their maintenance i.e. payment of salary and welfare of patients is one of the general objectives

of the assessee society. The purpose of accumulation stated as above cannot be said to be non-specific. Reliance was placed on a number of judgments, particularly the following judgments :

- i) CIT Vs. Hotel and Restaurant Association, 261 ITR 190 (Del)
- ii) Director of Income-tax (Exemption) Vs. Daulat Ram Education Society, 278 ITR 260(Del)
- iii) Bharat Krishak Samaj Vs. Deputy Director of Income-tax (Exemption), 306 ITR 153 (Del)
- iv) Director of Income-tax Vs. Mitsui and Co. Environmental Trust, 303 ITR 111 (Del)
- v) Bharat Kalyan Pratisthan Vs. Director of Income-tax (Exemption), 299 ITR 406 (Del)

These cases were cited to emphasize the fact that even if no specific purpose for accumulation is specified in Form No.10 if the objectives are same as the objectives of the assessee society are as per bye laws on the basis of which registration under section 12A of the Act has been granted to the assessee, the accumulation so sought for cannot be denied. On the issue of excess provision of Rs.4,85,00,000/- made for the payment of salary in the next year as raised by the Assessing Officer, it was clarified that in the next year the society has proposed to start a Super specialty services in the Medical College and appointments of higher paid doctors were also to be made, therefore, in anticipation more funds were required in the next year. The accumulation of unspent portion of the receipts was earmarked for the said purpose. In view of these submissions, it was prayed that the action of the Assessing Officer may be held to be invalid.

7. The learned D.R. relied upon the orders of the Assessing Officer as well as of the learned CIT (Appeals). He also placed reliance on the judgment of Hon'ble Calcutta High Court in the case of Director of Income Tax (Exemption) Vs. Trustees of Singhanian Charitable Trust, 199 ITR 819 to the effect that for a charitable trust to be eligible for accumulation of income beyond the previous year under section 11(2) of the Act, the purpose of such accumulation must be specific. In this view, it was prayed that the orders of the Assessing Officer and the learned CIT (Appeals) be held as per law.

8. We have heard the learned representatives of both the parties, perused the findings of the authorities below and considered the material available on record. The only issue to be decided by us is that whether in the given facts and circumstances, the assessee has accumulated the funds as per law. The undisputed facts of the assessee are that the assessee society is registered under section 12A of the Act, hence is eligible to get exemption under section 11 of the Act. However, during the year, the assessee could not utilize funds to the extent of 85% and to comply with the requirements of section 11(2) of the Act, it filed Form No.10 before the Assessing Officer, stating the object for accumulation of funds as "salary and welfare of patients". On perusal of the bye laws of the assessee society, we see that hiring of staff and utilization of funds for welfare of patients

are two objects of the society. Therefore, it cannot be said that the objects which are stated for the purpose of accumulation of funds under Form No.10 are outside the objects as provided in the bye laws of the society. The contention of the Assessing Officer is that these objects are too vague and are not specific. We do not see any reason for not granting assessee the benefit of such accumulation given the fact that the accumulation is sought for the purpose of its objects on the basis of which it was granted registration under section 12A of the Act. We do not even find the objects stated in the Form No.10 too vague either, as these are the objects as per the bye laws. Admittedly, the objects stated in Form No.10 are not elaborately stated, but that cannot be the reason to deny the said benefit. Our view gets strengthened by the judgment of Hon'ble Delhi High Court in the case of CIT Vs. Hotel & Restaurant Association (supra), on which the learned counsel for the assessee placed reliance. In that case, the object stated for accumulation was to apply the funds in next years to achieve the object, for which it had been incorporated. The Hon'ble High Court held as under :

“Held, dismissing the appeal, that it is true that specification of a certain purpose or purposes was needed for accumulation of the trust's income under section 11(2) of the Act. At the same time the purpose or purposes to be specified cannot be beyond the objects of the trust. Plurality of the purposes of accumulation is not precluded but it depends on the precise purpose for which the accumulation is intended. In the present case, both the Commissioner (Appeals) and the Appellate Tribunal had recorded a concurrent finding that the income was sought to be accumulated by the assessee to achieve the object

for which the assessee was incorporated. It was not the case of the Revenue that any of the objects of the assessee-company were not for charitable purpose. The finding by the Tribunal was essentially a finding of fact giving rise to no question of law.”

In another case of Delhi High Court in DIT (Exemption) Vs. Daulat Education Society reported in (2006) 278 ITR 260 (Del), it is held that details of plan to be given is not necessary, if the purpose specified is in consonance with the objects. The judgment of Hon'ble Calcutta High Court in the case of Trustees of Singhania Charitable Trust (supra) as relied upon by the learned D.R. is distinguishable on facts as in that case all the objects as per law of the assessee were specified as the purpose of accumulation, which is not the case of the present assessee.

9. In view of the above, we find that there is no vagueness in the purposes specified by the assessee in Form No.10.

10. The other issue raised by the Assessing Officer to deny the benefit of accumulation is that the assessee has enough funds for the purposes of salary to be paid in the form of grants received from the State Government as well as the unutilized amount of grant so received by the assessee. The assessee has duly given its explanation for need of such huge amount in future years as it has plans to have some super specialty facilities in coming year. However, we find that the issue of such availability of funds or need for such huge funds in future are not relevant for the purposes of granting benefit

of accumulation of income. The provision of section 11(2) of the Act provides to give assessee the benefit of such accumulation on the compliance of two conditions stated there in clause (a) and clause (b). Clause (a) provides to give the notice to the Assessing Officer in the prescribed manner stating the purpose. That manner has been prescribed in Rule 17 of the Income Tax Rules. Clause (b) provides to invest the said funds in modes prescribed. Further Rule 17 provides the notice to be given to the Assessing Officer in Form No.10 before the expiry of time allowed for furnishing the return of income under section 139(1) of the Act. It is not the Assessing Officer's case that the assessee has not complied with any of these conditions. His only concern is the availability of a huge amount of funds for the said purpose. The Assessing Officer in this regard has to confine himself to the provision of the Income Tax Act read with the Income Tax Rules only. The Assessing Officer does not have any prerogative to comment on the way the activities are to be carried on by the assessee. How much funds are needed for which purpose and how funds are to be used for different purposes is none of the Assessing Officer's concern. It is only assessee's own way of functioning. The Assessing Officer cannot sit on the armchair of the assessee to decide all these things, given the fact that the Income Tax Act does not give him any such power. Whether the assessee is receiving excess grant or whether it is in need of such grants may be the concern of the granting authority or that the assessee, but certainly not of the Assessing Officer.

11. In view of the above, we find that this issue raised by the Assessing Officer to be not relevant for giving benefit of accumulation. We hereby direct the Assessing Officer to give assessee the benefit of accumulation of funds as provided under section 11(2) of the Act.

12. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 15th day of October, 2015.

Sd/-
(H.L.KARWA)
VICE PRESIDENT

Sd/-
(RANO JAIN)
ACCOUNTANT MEMBER

Dated : 15th October, 2015

Rati

Copy to: The Appellant/The Respondent/The CIT(A)/The CIT/The DR.

Assistant Registrar,
ITAT, Chandigarh