

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI: JUDICIAL MEMBER

ITA no. 2091/Del/2014

Asstt. Yr: 2010-11

Indian Medical Association Vs. ADIT (E), Trust Circle-II,
IMA Hosue, I.P. Marg, New Delhi. New Delhi.
PAN: AAATI 0290 G
(Appellant) (Respondent)

Appellant by : Shri Ved Jain CA and
Shri Ashish Chadha CA
Respondent by : Shri Rajesh Kumar Sr. DR

Date of hearing : 21/06/2016.
Date of order : 23/06/20126.

ORDER

PER S.V. MEHROTRA, A.M:

1. This is assessee's appeal against the order dated 24.2.2014 passed by the ld. CIT(A) in appeal no. 241/2013-14 relating to AY 2010-11.
2. The assessee had filed return of income declaring Nil income. AO has observed that the Society in the relevant assessment year was registered u/s 12A of the Income-tax Act, 1961 on 27.6.1974 and u/s 80G vide registration

no. 1436 dated 31.8.2009, which was valid from 2010-11 to 2012-13. The

AO noticed as under:

2. The main objects of the society are to promote and advance medical science and to promote improvement of public health and medical education in India. The activities of IMA included holding of periodical meetings/ conferences of the members and the medical profession in general, to publish and circulate official journals, conduct educational campaigns in India, encourage medical research etc.

2.1. The AO further observed as under:

“The activities carried out by IMA can be regarded as falling within the scope of general public utility. It is seen that during the assessment year 2010-11, the assessee is in receipt of income of Rs. 9.53 crores from various sources.

On examination of details of the above it is seen that some of the receipts are arising out of commercial transaction with outsiders who are non-members of IMA. 'A discussion of some of these is done in the succeeding paragraphs.

3. Endorsement Money: The IMA has received endorsement money of Rs. 1.89 crore during the year. It is seen that the same has been received for making endorsement of the 'attributes' of products of the following corporate entities:-

- a) Pepsico Holding Pvt. Ltd.*
- b) Dabur India Ltd.*
- c) Reckitt Benckiser of India Ltd.*
- d) ICICI Prudential Life Insurance Co. Ltd.*
- e) Procter & Gamble Home Products Ltd.*
- f) Abbott India Ltd.*

Since all of the above agreements are drawn along similar lines, for the purpose of analysis, the agreement with Mis. Pepsico is hereafter referred to. Some of the salient features of the Agreement include:

- *In lieu of endorsing the products of the company, the IMA is paid a consideration .*
- *As per the agreement, upon endorsement of the attributes of the products by the IMA, the company acquires the right to use and reuse the same in various media, on products packaging, at points of sales/display etc. (Clause-5) This includes projecting IMA name, representation, acronym, IMA logo, certification statements, testimonial or any other representation mutually agreed between the company and the IMA.*
- *On its part, the company makes certain CLAIMS with respect to its products while IMA endorse the product packaging and claims made by the company.(Clause-3.1 to 3.3)*
- *Clause 4 of the said deals with agreement CONSIDERATION/PAYMENT Terms, The total consideration (Rs. 1.38 crore in case of MIs Pepsico) is to be paid over a period of 3 years with Rs. 46 Lacs paid during year under consideration.*
- *In lieu of this, IMA grants MIs. PEPSICO exclusive non-sub licensable right to use attributes together with the manufacture, distribution and sale of its specified products (Clause-5.1) .*
- *Further, on perusal of the agreement between the two it is seen that there is also a clause of exclusivity (Clause-8.4), which stipulates that the IMA is NOT to provide similar services for any captivities products .*
- *Clause-8.6 of the agreement lays down that the status of the parties is that of contracting parties with respect to each other.*

- Further, Clause-Si 1? of the agreement prohibits public disclosures of the existence or terms or conditions of the same by IMA without prior written consent of MIs Pepsico. Thus on perusal of the various clauses of above agreements it is seen that the same are outright commercial in nature.”

2.2. In the backdrop of these facts the AO concluded that the proviso to section 2(15) was attracted. He determined the total income of assessee at Rs. 2,68,06,291/- as under:

Computation of Income:-

| | | |
|--|-----|------------------------------|
| a) Total income as per Statement of Computation | | 9,53,34,183/- |
| Less: b) Rental income from M/s C.K. Associates Delhi for annual lease of property considered Separately | (-) | 66,00,000/- |
| Less: c) Rental income from letting of IMA Building At Kolkata considered separately | (-) | 11,29,408/- |
| <u>Income from above (a-b-c)</u> | | <u>8,76,04,775/-</u> |
| a) Application of income as shown in statement of computation | | 6,71,30,672/- |
| b) Less: Capital expenditure | (-) | 9,20,602/- |
| <u>Expenses (a)-(b)</u> | | <u>6,62,10,070/-</u> |
| (i) Net taxable income under this head Income under head ‘House Property’ | | 2,13,94,705/- 66,00,000/- |
| <u>Add: (Mentioned above)</u> | | <u>11,29,408/-</u> |
| Less: Deduction u/s 24(1) 30% of the above | (-) | 23,18,822/- |
| (ii) <u>Net Income from House property</u> | | <u>54,10,586/-</u> |
| <u>Total Income for AY 2010-11, assessed at (i+ii)</u> | | <u>2,86,06,291/-</u> |

3. Ld. CIT(A) confirmed the AO’s action, inter alia, observing that the assessee was earning income from commercial activities and as such the

income was taxable and at the same time the assessee was not doing any charitable activity at all within the meaning of section 2(15) and was not eligible for any exemption u/s 11. Aggrieved, the assessee is in appeal before us and has taken following grounds of appeal:

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals)[(CIT(A))] is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(AL has erred both on facts and in law in confirming the action of the AO in making assessment at an income of RS.2,68,06,291/- as against NIL income declared by the assessee.

3(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in denying the benefit of Section 11 of the Act.

(ii) That the denial of exemption has been made despite the assessee being engaged in the charitable activities and also registered under Section 12A of the Act.

4(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the denial of exemption made by the AO by wrongly invoking the provision of Section 2(15) of the Act.

(ii) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in denying the exemption by misinterpreting the facts of the case.

5. Without prejudice to the above and in the alternative the learned CIT(A) has erred both on facts and in law in rejecting

the' contention of the assessee that income of the trust is otherwise not taxable on the basis of principle of mutuality.

6. That the appellant craves leave to add, amend or alter any of the grounds of appeal.”

4. At the time of hearing Id. counsel for the assessee submitted that for AY 2009-10, Tribunal vide ITA no. 4291/Del/2012 has held that assessee was eligible for exemption u/s 11 of the Act. He submitted that the facts of the present case are identical to the facts of the preceding year.

5. We have considered the submissions of both the parties and have perused the record of the case. There is no dispute regarding the facts of the case and the source from which amounts were received by Medical Association for attaining its objects. We find that the Tribunal in paras 7 to 7.3 has observed as under:

7. We have heard the rival submissions and perused the material available on record. It would be first appropriate to set out the relevant provision namely section 2(15) of the Act which we are required to take into consideration. The same is reproduced hereunder:-

2(15) "charitable purpose" includes relief of the poor, education, medical relief, [preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest,] and the advancement of any other object of general public utility:

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the

carrying on of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention, of the income from such activity:}

[Provided further that the first proviso shall not apply if the aggregate value of the receipts from the activities referred to therein is [twenty-five lakh rupees] or less in the previous year;]

7.1. *The aims and objects of the trust set out in page 53 in the Memorandum of Association are also reproduced for ready-reference:-*

III. OBJECTS

1. *"To promote and advance medical and allied sciences in all their different branches and to promote the improvement of public health and medical education in India.*
2. *To maintain the honour and dignity and to uphold the interest of the medical profession and to promote co-operation amongst the members thereof*
3. *To work for the abolition of compartmentalism in medical education- medical services and registration in the country and thus to achieve equality among all members of the profession. "*

7.2. *The methods for attaining the objects in sub-clause set out in page 53 to 54 are reproduced hereunder:-*

IV. METHODS

"For the attainment and furtherance of these objects, the Association may-

1. *Hold periodical meetings and conferences of the members of the Association and the medical profession in general.*
2. *Arrange from time to time congresses, conferences, lectures, discussions and demonstrations on any aspect of the medical and allied sciences.*
3. *Publish and circulate journal, which shall be the official organ of the Association of a character specially adapted to the needs of the medical profession in India and which shall undertake publicity and propaganda work of the Association through its columns and publish other literature in accordance with the objects of the Association.*
4. *Maintain a Library and an Association Office.*
5. *Publish from time to time transactions and other papers embodying medical researches conducted by the members or under the auspices of the Association.*
6. *Encourage research in medical and allied sciences with grants out of the funds of the Association, by the establishment of scholarships, prizes or rewards and in such other manner as may from time to time be determined upon by the Association.*
7. *Conduct educational campaign amongst the people of India in the matter of public health and sanitation by cooperating, whenever necessary, with different public bodies working within the same object.*
8. *Organise medical corps for providing medical relief during epidemics and in times of emergency.*
9. *Consider and express its views on all questions and the laws of India or proposed legislation affecting public*

health, the medical profession and medical education and initiate' or watch over or take such steps and adopt such measures from time to time regarding the same as may be deemed expedient or necessary.

10. Purchase, take lease of or otherwise acquire, hold, manage, let, sell, exchange, mortgage or otherwise dispose of movable or immovable property of every description and all rights or privileges necessary or convenient for the purpose of the Association and in particular any land, building, furniture, household or other effects, utensils, books, newspapers, periodicals, instruments, fittings, appliances, apparatus, conveyance and accommodation as and when deemed necessary or desirable in the interest of the Association, sell, demise let, hire out, mortgage, transfer or otherwise dispose of the same.

11. Erect, maintain, improve or alter and keep in repair any buildings for purpose of the Association.

12. Borrow or raise money in such manner as the Association may think fit and collect subscriptions and donations for the purpose of the Association.

13. Invest any money of the Association not immediately required for any of its objects in such manner as may from time to time be determined by the Association.

14. Assist, subscribe to or co-operate or affiliate or be affiliated to or amalgamate with any other public body whether incorporated registered or not, and having altogether or in part objects similar to those of the Association.

15. Create or assist in creating Branches for any of the purposes aforesaid.

16. Do all such other things as are cognate to the objects of the Association or are incidental or conducive to the attainment of the above objects. "

(Emphasis in the present proceedings)

7.3. In the facts of the present case since the Ld. Sr. DR inviting attention to only the agreement of Pepsico has canvassed that it cannot be related to any charitable activity as the other companies may be health related and pharmaceuticals companies we find on considering the copy of the specific agreement which is placed at pages 152 to 169 that the "endorsement" refers to "Quaker Oats" and "Tropicana 1 00% fruit Juice and fortified drinks" as set out in page 152. Per se we find no conflict if the assessee in the advancement of its aims and objects to promoting by improving public health if on research and analysis it propounds that there are significant health benefits to the uses of Oats or drinking fruit based, fortified health drinks as opposed to aerated drinks having no health benefits. It is not the case of the Revenue that the endorsement of healthy nutrition is medically/scientifically incorrect. The assessee as per the mandate of its objects and the methods set out in Clause IV(2); (3)(5) (6); (7) and (16) has endorsed products on the claims of health and nutritional benefit the grievance of the Revenue appears to be misplaced. The above is notwithstanding the material fact considering the judicial precedent as laid down by the Jurisdictional High Court in ITPO case (cited supra) namely that the dominant purpose of the activity was to mobilize funds for charitable purposes and not for endorsing the products. In the absence of any adverse finding in regard to the activities of the trust we find that the department's case has no merits. In the course of hearing it was submitted by the Ld. Sr. DR on query that the registration till date has not been withdrawn. The date of the assessment order the record shows is 08.11.2011. The Ld. Sr.

DR has also canvassed that the mere fact that the assessee has received financial support from the Ministry of Health and Family Welfare which fact it has been submitted does not mean that it is performing a charitable activity. On considering the judicial precedent cited we find that the Hon'ble High Court took into consideration in the facts of the ITPO that prime land was made available to the assessee to facilitate its objects of providing space on rent etc. for promotion of trade wherein the assessee apart from selling tickets etc was also providing food & beverage outlets and providing for water, electricity etc in the facts of the present case admittedly financial support is also provided to the assessee trust whose activities have not been assailed to be contrary to the aims and objects and we find that mobilizing resources towards its aims and objects that too within the methods enshrined by the trust deed which are ploughed back by the society towards its aims & objects to our minds does not cause any grievance to the Revenue. It goes without saying that financial support from the Ministry of Health and Family Welfare to the assessee necessarily would be based on the functions performed by the said trust and would necessarily be monitored at each and every step and stage with adequate checks and balances and would not be allowed to be frittered away carelessly. Accordingly considering the judicial precedent cited and the arguments of the parties before the Bench and the peculiar facts and circumstances of the case which we have brought out in great detail in the earlier part of this order, we hold that the departmental grounds have no merit and deserve to be dismissed”.

5.1. No change in facts and circumstances of the case, as compared to preceding year in assessee's case, have pointed out by either of the parties. Therefore, consistent with the view taken by the Tribunal in assessee's own case for preceding year i.e. AY 2009-10, we delete the addition of Rs.

2,68,06,291/- made by the AO and confirmed by the Id. CIT(A) by invoking provisions of section 2(15) of the Income-tax Act.

6. In the result, assessee's appeal is allowed.

Order pronouncement in open court on 23/06/2016.

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated: 23/06/2016.

MP

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.