

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1296/PUN/2019

निर्धारण वर्ष / Assessment Year: 2015-16

Swasthiyog Pratishthan, C/o. Dr. GS Kulkarni, Orthopedic Hospital, Extension Area, Miraj, Sangli- 416410. PAN : AAATS5400L	Vs.	DCIT (Exemptions) Circle, Pune.
Appellant		Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Shri M. G. Jasnani

Date of hearing : 28.06.2022
Date of pronouncement : 05.07.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)- 10, Pune. [‘the CIT(A)’] dated 18.06.2019 for the assessment year 2015-16.

2. The appellant raised the following grounds of appeal :-

*“The following grounds are taken without prejudice to each other –
On facts and in law,*

- 1] *The learned CIT(A) erred in holding that the appellant trust had violated the provisions of section 13 by giving residential accommodation to Dr. G. S. Kulkarni, trustee and his sons Dr. Milind and Dr. Sunil at a nominal rent of Rs.5,000/- per month*

and also by allowing the doctors from Kulkarni family to use the hospital equipments free of cost i.e. without charging any fee for such use.

2] *The learned CIT(A) erred in estimating the benefit to the trustees in violation of section 13 as under -*

- a. *By providing the residential accommodation to Dr. G. S. Kulkarni, Dr. Milind Kulkarni and Dr. Sunil Kulkarni at Rs.8,16,000/-.*
- b. *Allowing Dr. Kulkarni and other doctors from Kulkarni family the user of the Trust's hospital equipments free of cost at Rs. 1,95,899/-.*

3] *The learned CIT(A) failed to appreciate that considering the following facts the trust obtained a larger benefit from Dr. G. S. Kulkarni and his family members and thus, they did not obtain any benefit from the trust which could violate the provisions of section 13 -*

- a. *Dr. G. S. Kulkarni, Trustee had not charged any rent to the trust over the years for the portion of his hospital building and assets therein.*
- b. *Doctors of Kulkarni family had never charged the trust the professional charges in treating and operating its patients.*

4] *The learned CIT(A) erred in rejecting the stand taken by the assessee that the trust had provided accommodation at a concessional rate to Kulkarni Family Doctors as their services as doctors were available to the trust even at odd hours for any emergency and thus, providing quarters to these doctors near the trust hospital was in the interest of the trust and thus, there was no violation of section 13 of the Act.*

5] *The learned CIT(A) was not justified in holding that financial benefits conferred on the trust by Dr. G. S. Kulkarni and his family members were not to be taken into account for judging the violation of section 13 by the trust in giving benefits to them by way of concession in the rental for the residential accommodation and also for allowing them to use some of the trust equipments without any charges.*

6] *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."*

3. Briefly, the facts of the case are as under :

The appellant is a society registered under the Societies Registration Act. The appellant society is also registered under the Bombay Public Trust Act, 1950 and is also registered u/s 12A of the Income Tax Act, 1961 ('the Act') vide order dated 02.01.1980. The appellant trust is engaged in charitable activities viz. medical relief and education etc. The return of income for the assessment year 2015-16 was filed on 27.09.2015 declaring Rs.Nil income after claiming exemption u/s 11 of the Act. Subsequently, the survey operations were conducted under the provisions of section 133A of the Act in the business premises of the appellant trust on 18.01.2017.

During the course of survey operations, certain discrepancies were stated to have been found which are set out by the Assessing Officer in page no.2 of the assessment order. Even the statements of the trustees were also recorded on oath. In nutshell, the case of the Assessing Officer is that :

- (i) The founder of the trust Dr. G. S. Kulkarni and his two sons were using three bungalows which was constructed by the appellant trust and paying meagre rent of

Rs.5,000/- per month thereby violating the provisions of section 13(1)(c) of the Act.

- (ii) The operation rooms were used by Dr. G.S. Kulkarni and his two sons without paying any charges.
- (iii) The patients of the appellant trust have been diverted to the private practice of Dr. G.S. Kulkarni and his two sons.

4. In the backdrop of the above facts, the Assessing Officer was of the opinion that the appellant trust had violated the provisions of section 13(1)(c) of the Act, accordingly, the assessee was show-caused to explain as to why the exemption u/s 11 cannot be denied. In response to the show-cause notice, the appellant trust had filed a detailed explanation stating that Dr. G. S. Kulkarni is an Orthopaedic Surgeon for last 52 to 60 years. The appellant trust was found by Dr. G. S. Kulkarni with philanthropic objective. The building owned by Dr. G. S. Kulkarni was allowed to be used by the appellant trust to pursue its charitable objects without charging any rent. Even in the initial years of operation of the appellant trust, the equipment belonging to Dr. G. S. Kulkarni was allowed to be used by the appellant trust for charitable activities. The patients come to

the appellant trust's hospital only on account of goodwill and reputation of Dr. G. S. Kulkarni. Thus, the appellant trust had denied that the patients of the trust were diverted to the individual practice of Dr. G. S. Kulkarni and his two sons.

5. As regards to the provisions of residential accommodation to Dr. G. S. Kulkarni and his two sons, it is submitted that Dr. G. S. Kulkarni and his two sons were rendering voluntary services to the appellant trust without charging any fees and the appellant trust are required to be available throughout the day, as the services are required around the clock, the accommodation is provided in vicinity of the appellant trust and hospital. Dr. G. S. Kulkarni and his two sons had paid rent of Rs.5,000/- per month and the municipal taxes, water charges and electricity bills was borne by the said persons in consideration of case of accommodation provided by the appellant trust. Thus, it was contended that no benefit had accrued to the trustees of the appellant trust thereby violating the provisions of section 13(1)(c) of the Act. However, the Assessing Officer rejecting all the contentions of the appellant held that the appellant trust had violated the provisions of section 13(1)(c) and

denied the exemption u/s 11 and brought to tax the excess of income over expenditure.

6. Being aggrieved by the above order of assessment, an appeal was filed before the Id. CIT(A) contending that no benefit had accrued to the trustees or his relatives in violation the provisions of section 13(1)(c) and denying the charge that patients of the trust have been diverted to the personal practice of the trustee and his family members. The Id. CIT(A) on due consideration of submission made by the appellant held that the allegation that the patients of the trust were diverted to the individual practice of the trustees of the appellant trust is baseless. However, the Id. CIT(A) observed that the trust had acted in violation of provisions of section 13(1)(c), as no fees were charged towards use of operation rooms owned by the appellant trust, appellant charged the concessional charges on accommodation owned by the appellant trust. However, estimated rental value of the operation rooms of Rs.1,95,899/- and the fair rental value of bungalows occupied by the trustees of Rs.8,16,000/- and denied the exemption only on that part of income in violation of the provisions of section 13(1)(c) of the Act and balance of income was held to be exempt u/s 11 of the Act.

7. Being aggrieved by the decision of the ld. CIT(A), the appellant is in appeal before us in the present appeal.

8. The ld. AR submits that the appellant trust was allowed to use the hospital rooms owned by Dr. G.S. Kulkarni to pursue its charitable objects without charging any rent or consideration. Dr. G. S. Kulkarni and his two sons, family members were rendering voluntarily professional services to the appellant trust without charging any fees from the appellant trust. Thus, it was argued that the operation rooms and bungalows occupied by the trustees of Dr. G. S. Kulkarni and his two sons cannot be said to be without any consideration.

9. On the other hand, ld. CIT-DR submits that the appellant trust had clearly violated the provisions of section 13(1)(c) by allowing use of operation rooms by Dr. G. S. Kulkarni and his two sons and paying nominal rent for occupation of the bungalows owned by the appellant trust and, therefore, the order of the ld. CIT(A) should be sustained.

10. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the determination whether or not the appellant trust had violated the provisions of section 13(1)(c) of the Act?. Admittedly, Dr. G. S. Kulkarni and his two sons (hereinafter referred as ‘specified persons’) used the operation rooms owned by the appellant trust for his private practice without paying any rent or fees for such use. Dr. G. S. Kulkarni and his two sons had occupied the accommodation that owned by the appellant trust for the residential purposes on payment of Rs.5,000/- per month for each bungalow. It is also admitted fact that Dr. G. S. Kulkarni had allowed 50% of the building owned by him for use of the appellant trust to pursue its charitable objects. Dr. G. S. Kulkarni and his two sons were rendering the voluntarily professional services to the appellant trust without charging any fees. The provisions of section 13(1)(c) reads as under :-

“13. (1) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

.....

(c) in the case of a trust for charitable or religious purposes or a charitable or religious institution, any income thereof—

(i) if such trust or institution has been created or established after the commencement of this Act and under the terms of the trust or the rules governing the institution, any part of such income enures, or

(ii) if any part of such income or any property of the trust or the institution (whenever created or established) is during the previous year used or applied,

directly or indirectly for the benefit of any person referred to in sub-section (3) ⁹⁵⁻⁹⁶], such part of income as referred to in sub-clauses (i) and (ii)] :

Provided that in the case of a trust or institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3), if such use or application is by way of compliance with a mandatory term of the trust or a mandatory rule governing the institution :

Provided further that in the case of a trust for religious purposes or a religious institution (whenever created or established) or a trust for charitable purposes or a charitable institution created or established before the commencement of this Act, the provisions of sub-clause (ii) shall not apply to any use or application, whether directly or indirectly, of any part of such income or any property of the trust or institution for the benefit of any person referred to in sub-section (3) in so far as such use or application relates to any period before the 1st day of June, 1970;

.....

.....

(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),—

(a) if any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in sub-section (3) for any period during the previous year without either adequate security or adequate interest or both;

(b) if any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in sub-section (3), for any period during the previous year without charging adequate rent or other compensation;

(c) if any amount is paid by way of salary, allowance or otherwise during the previous year to any person referred to in sub-section (3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is in excess of what may be reasonably paid for such services;

(d) if the services of the trust or institution are made available to any person referred to in sub-section (3) during the previous year without adequate remuneration or other compensation;

(e) if any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in sub-section (3) during the previous year for consideration which is more than adequate;

(f) if any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in sub-section (3) during the previous year for consideration which is less than adequate;

(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):

Provided that this clause shall not apply where the income, or the value of the property or, as the case may be, the aggregate of the income and the value of the property, so diverted does not exceed one thousand rupees;

(h) if any funds of the trust or institution are, or continue to remain, invested for any period during the previous year (not being a period before the 1st day of January, 1971), in any concern in which any person referred to in sub-section (3) has a substantial interest.

(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.”

11. There is no dispute that the operation rooms of the appellant trust are made available for use by the persons mentioned u/s 13(1)(c) of the Act. Similarly, the residential accommodation

belonging to the appellant trust were used by specified persons who are specified persons u/s 13(1)(c) by paying rent of Rs.5,000/- per month. The further question that arises for determination is whether these benefits were availed by the specified persons without any other compensations or rent paid by such specified persons is inadequate. In case, it is found that these specified persons had availed the benefit from the appellant trust for compensation in any other form or rent paid is adequate, the question of applicability of section 13(1)(c) does not arise. Therefore, the question that arises before us is whether compensation had been paid to the appellant trust in lieu of the benefit availed by the specified persons and rent paid by the specified person is adequate. The submissions made on behalf of the appellant trust that the buildings owned by the specified persons is used by the appellant without payment of any rent remains uncontroverted by the Department. Therefore, it cannot be said that the specified persons had availed the benefit from the appellant trust without paying any compensations to the appellant trust. Furthermore, it is the submission of the appellant trust that the specified persons had been rendering the voluntarily professional services to the appellant trust also remains

uncontroverted. In the backdrop of this factual scenario, the question that arises for consideration before us is, can it be said, that the appellant availed the operation rooms owned by the appellant trust are used by the assessee without any compensations, the answer is “No”, as the appellant trust could have saved the cost of running the trust on rent, salaries as there is no rent or fees or any other claim by the specified persons of the trust for utilization of the premises as well rendering the voluntarily profession services. We are fortified in taking this view by the decisions of the Hon’ble Madras High Court in the cases of *Natya Sankalpaa vs. DIT*, 378 ITR 654 (Mad.), *CIT vs. 21st Society of Immaculate Conception* (2000) 241 ITR 193 (Mad) and Hon’ble High Court of Allahabad in *CIT vs. Foundation For Social Care* (2013) 37 taxmann.com 389 (All).

12. As regards to the question, whether the specified persons had paid adequate consideration paid for occupation of bungalows owned by the appellant trust. The submission made on behalf of the appellant trust that the specified persons had been rendering voluntarily professional services to the appellant trust and are available for the patients around the clock remains uncontroverted.

Therefore, the residential premises are made available for the specified persons only with view to ensure to the availability of the specified persons for the patients around the clock cannot be said to be without adequate consideration. In the circumstances, the provisions of section 13(1)(c) has no application to the facts of the present case. Accordingly, the grounds of appeal filed by the assessee are allowed.

13. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 5th day of July, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 5th July, 2022.

Sujeet/GCVSR

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-10, Pune.
4. The CIT (Exemptions), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “B” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.