

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA
(Virtual Court)**

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)

**I.T.A. No. 2079/Kol/2019
Assessment Year: 2013-14**

Sushila Birla Memorial Institute.....Appellant
[PAN: AABTS 5863 L]

Vs.

ITO (Exemption), Ward-1(3), Kolkata.....Respondent

**I.T.A. No. 2080/Kol/2019
Assessment Year: 2014-15**

Sushila Birla Memorial Institute.....Appellant
[PAN: AABTS 5863 L]

Vs.

DCIT, Circle-2, Kolkata.....Respondent

Appearances by:

Sh. Ajay Kumar Gupta, A/R, appeared on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : January 28th, 2021

Date of pronouncing the order : February 19th, 2021

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ORDER

Per J. Sudhakar Reddy, AM:

Both these appeals filed by the assessee are directed against separate but identical orders of the Learned Commissioner of Income Tax (Appeals)-25, Kolkata [hereinafter the "CIT(A)"], passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dated 06.08.2019 for the Assessment Years 2013-14 & 2014-15. As the issues arising in both these appeals are common, for the sake of convenience, they are heard together and disposed off by way of this common order.

2. The assessee Sushila Birla Memorial Institute (hereinafter "SBMI") is a Trust, registered u/s 12A of the Act from 31.10.1988. It is running a speciality school for retarded children as well as providing medical aid and treatment for persons who are suffering from illness or mental defectiveness.

2.1. The SBMI owns a number of mobile medical vans. These medical vans are run in collaboration with M/s. Bharat Sevashram Sangha, M/s. Vivekananda Swasthya Seva Sangha etc. which are charitable organizations. The mobile medical vans are well staffed with doctors, nurses, attendants etc and also are equipped with surgical equipments, x-rays, diagnostic equipments and medicines. The entire expenditure incurred on these mobile medical vans are paid by the assessee i.e. SBMI. These mobile medical vans provide medical services in remote and rural areas, where no medical facilities are available. The total annual receipt of the assessee is less than ₹1 crore.

2.2. The assessee, SBMI claimed exemption u/s 10(23C)(iiia) of the Act. The AO in the assessment order passed u/s 143(3) of the Act on 09.03.2016 held that, M/s. Bharat Sevashram Sangha and M/s. Vivekananda Swasthya Seva Sangha were running mobile medical unit and submitting the bills monthly to the assessee for reimbursement. He was of the view that this mobile medical van is a part and parcel of the hospital of M/s. Bharat Sevashram Sangha or M/s. Vivekananda Swasthya Seva Sangha and it was only funded by the assessee and that the assessee was merely reimbursing the bills raised by them.

2.3. In the assessment order, he held as follows:

“But for the purpose of section 10(23C)(iiia), the word ‘hospital’ means formal hospital and institution means similar Swasthya Seva Sangha. Therefore, it is evidently clear that financing other organisation does not fall within the purview of any hospital or other institution of the assessee of section 10(23C)(iiia). Hence, the claim of the assessee u/s 10(23C)(iiia) is rejected.”

2.4. Aggrieved, the assessee carried the matter in appeal. The Id. first appellate authority held that, exemption u/s 10(23C)(iiia) of the Act is available if the assessee is having a hospital and doing medical services by itself. He observed that the doctors are not regular employees of the assessee and they were employee of Bharat Sevashram Sangha, Kolkata and Vivekananda Swasthya Seva Sangha, Kolkata, on part time basis and that they have been paid very meagrely. He observed that the assessee could not establish that they are having permanent doctors for all treatments, much less specialised doctors. He held that “hospital” denotes reception centre, pathology lab, radiology and surgery department, female ward etc. He held that the term “hospital” denotes complete treatment of the patient. Thus he concluded that the assessee is simply a financier and is organizing medical camps with the help of deployment of

doctors on a part time pay basis, for few days. He relied on the decision of the Kolkata High Court in the case of CIT(C) vs. Apeejay Medical Research & Association Pvt. Ltd. for the proposition that there should be a nexus between the hospital and the income of the Trust.

2.5. He was of the view that the assessee has not proved any nexus from his source of income of running of the hospital. On facts, he concluded that the activities are not being undertaken by the assessee himself. Thereafter he held as follows:

“The purpose mentioned in section 10(23C)(aa), (earlier section similar to 10(23C)(iiia) cannot said to exist in this case because the activities has not been undertaken by the assessee himself. Therefore the income of the and its income and also keeping in view that the practical activity of the appellant are restricted to first aid kind of treatment, there is no composite treatment with the appellant which can be said to be as a hospital.”

2.6. Thus upheld the order of the AO. Aggrieved, the assessee is before us.

3. The Id. Counsel for the assessee submitted that the assessee Trust has been claiming exemption u/s 10(23C)(iiia) of the Act for the last several years and has also claimed the same for the subsequent years and that the Department has been, in various orders passed u/s 143(3) of the Act accepted the claim of the assessee. He submitted that the term “hospital” has not been defined under the statute and that the meaning as understood in the general parlance has to be taken and that the term “hospital” denotes an institution providing medical surgical treatment and nursing care for sick or injured persons. He argued that nowhere under the statute or in the general parlance, the term “hospital” required to be a fixed place and that it should be an immovable property. He submitted that the assessee’s mobile medical vans are fully equipped with surgical equipment such as x-ray machines etc. and staffed by qualified doctors and nurses and medical attendants and that medical and surgical treatment is provided in these vans. Thus he submits that the vans are performing the function of a hospital.

3.1. He submitted that the assessee is running these services, in association with the other charitable institutions such as M/s. Bharat Sevashram Sangha, M/s. Vivekananda Swasthya Seva Sangha etc. He submits that the AO as well as the Id. CIT(A) have used the word that the assessee is reimbursing expenditure incurred by these institutions for running medical services, which means that the expenditure belong to the assessee and it was incurring these expenditure through his institution. Thus he submits that the mobile hospitals are run by the assessee Trust and that expenditure was partly incurred

through third parties, for the purpose of convenience and for running of better services. He argued that the fact, that the assessee is running a mobile hospital by itself cannot be rejected.

3.2. The Id. Counsel for the assessee pointed out that the assessee in its submissions made before the Id. CIT(A) stated that mobile hospitals serve the people in rural areas with poor connectivity and as the other organizations are aware of the geography and needs of the locality, the assessee is working in association with these charitable organizations. He submitted that the ownership and control of each of the mobile hospital vans is with the assessee. He prayed that the claim of the assessee for exemption u/s 10(23C)(iiia) of the Act may be allowed.

4. The Id. D/R on the other hand opposed the contentions of the assessee and submitted that the assessee is not running any hospital and its mobile vans are purchased and operated through M/s. Bharat Sevashram Sangha and M/s. Vivekananda Swasthya Seva Sangha. She argued that the assessee is not running any medical services by itself and is merely reimbursing the bills of other charitable Trusts. She took this Bench through the order of the AO as well as the order of the Id. CIT(A) and submitted that a perusal of the same demonstrates that the Revenue is correct in holding that the assessee is simply a financier and is organising medical camps in association with certain other charitable institutions and is not running a hospital. She relied on the order of the Id. CIT(A) and submitted that the doctors are part time doctors of other organizations and that the assessee has no fixed place for hospital. She prayed that the order of the Id. authorities be upheld and the appeal of the assessee is dismissed.

5. Rival contentions heard. On a careful consideration of the facts and circumstances of the case, perusal of the papers on record and the case law cited, we hold as follows.

6. Section 10(23C)(iiia) of the Act reads as follows:

“Section 10(23C) Any income received by any person on behalf of –

(iiia) Any hospital or other institution for the reception and treatment of or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed.”

6.1. This Section requires:

a) That the income should be received on behalf of a hospital or other institutions, for the reception and treatment of persons suffering from illness etc.

b) The assessee should exist solely for philanthropic purposes and not for the purpose of profit.

c) The annual receipts of the assessee should not exceed the prescribed amount.

6.2. There is no dispute of the fact that the assessee Trust exists solely for philanthropic purposes and not for the purpose of profit. There is also no dispute of the fact that the annual receipts of the assessee do not exceed the amount prescribed. The only issue is whether the mobile medical vans run by the assessee fall within the ken of any hospital or other institutions, for the reception and treatment of persons suffering from the illness or mental defectiveness etc. Factually there is no dispute that the assessee is running a number of mobile medical vans which are equipped with surgical equipments, x-ray machines, medicines and that they are staffed by qualified doctors, nurses and that these mobile medical units are providing reception and treatment of persons suffering from illness, mental defectiveness at remote rural areas. The term “hospital” has not been defined under this statute. In the Cambridge Dictionary the term “hospital” is defined as “a place where people who are ill or injured are treated and taken care of by doctors and nurses”. In the Collins Dictionary the term “hospital” is defined as “a hospital is a place where people who are ill are looked after by nurses and doctors”. There is no requirement for a hospital to be located in an immovable property. Meagre payments to doctors etc. cannot also be a reason to conclude that the assessee is not running any institution or hospital to cure the sick.

7. In the case on hand, admittedly the expenditure is incurred by the assessee for the purpose of payment to doctors, nurses and other medical staffs as well as for medicine etc. The mobile medical vans are owned, equipped, maintained, run and controlled totally by the assessee. If any organization has incurred expenditure on behalf of the assessee, they claim reimbursement of such expenses from the assessee. The term “reimbursement” means that the expenditure is that of the assessee and has been incurred on behalf of the assessee.

7.1. Even otherwise, even if it to be assumed that the assessee is not running a hospital, any other institution which undertakes reception and treatment of persons

suffering from illness etc., is also entitled to claim exemption u/s 10(23C)(iiia) of the Act. On facts, the assessee is an institution which undertakes reception and treatment of persons suffering from illness. On this fact also the assessee's claim has to be upheld.

7.2. On these facts and also keeping in view that the Revenue has been granting exemption to the assessee under this Section for earlier assessment years as well as for the subsequent years, we hold that the assessee is eligible for deduction u/s 10(23C)(iiia) of the Act.

8. We now consider the case laws relied upon by the parties. The Revenue relied on the judgement of the jurisdictional High Court in the case of CIT vs. Apeejay Medical Research & Welfare Association (P) Ltd. (2016) 383 ITR 0079 (Cal.). In this case the claim of the assessee made u/s 10(22A) of the Act. The Hon'ble High Court held that the assessee had not undertaken any of the five activities mentioned u/s 10(22A) of the Act. The factual finding was given that the income in question for that assessee arose from interest and the predominant objectives of that assessee was not to carry out any act of charity or benevolence. On the contrary, the objective was to earn interest and the income had no nexus with any of the activities mentioned in the Section. Only in such factual circumstances the claim of the assessee was rejected. This is not the fact in the case on hand. There is no dispute in this case that the assessee's predominant objective is charity and the assessee is rendering medical services through mobile medical vans. Thus this case law does not apply.

8.1. The Id. Counsel for the assessee relied on the judgement of the Hon'ble Supreme Court in the case of Aditanar Educational Institution vs. ACIT [1997] 90 Taxman 528 (SC). In this case law the Hon'ble Supreme Court interpreted the words and phrases, "other educational institutions". While doing so it held as under:

"An educational society or a trust or other similar body running an educational institution solely for educational purposes and not for the purpose of profit can be regarded as 'other educational institution' coming within section 10(22). It would be rather unreal and hyper-technical to hold that the assessee-society was only a financing body and will not come within the scope of 'other educational institution' as specified in section 10(22). The object of the society was to establish, run, manage or assist colleges or schools or other educational institutions solely for educational purposes and in that regard to raise or collect funds, donations, gifts, etc. Colleges and schools were the media through which the assessee imparted education and effectuated its objects. In substance and reality, the sole purpose for which the assessee had come into existence was to impart education at the levels of colleges and schools and so, such an educational society should be regarded as an 'educational institution' coming within section 10(22). Therefore, the judgment of the High Court did not merit interference.

The language of section 10(22) is plain and clear and the availability of the exemption should be evaluated each year to find out whether the institution existed during the relevant year solely for educational purposes and not for the purposes of profit. After meeting the expenditure, if any surplus results incidentally from the activity lawfully carried on by the educational institution, it will not cease to be one existing solely for educational purposes since the object is not one to make profit. The decisive or acid test is whether on an overall view of the matter, the object is to make profit. In evaluating or appraising the above, one should also bear in mind the distinction/difference between the corpus, the objects and the powers of the concerned entity."

8.2. This judgement interpreting that the term "other institutions" appearing in Section 10(22) of the Act, helps the case of the assessee.

8.3. Thus, in view of the above discussion, we uphold the claim of the assessee for exemption u/s 10(23C)(iiia) of the Act.

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

Kolkata, the 19th February, 2021.

Sd/-
[Aby T. Varkey]
Judicial Member

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Dated: 19.02.2021

Bidhan (P.S.)

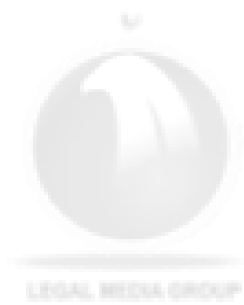
Copy of the order forwarded to:

1. Sushila Birla Memorial Institute, 2nd Floor, Birla Building, 9/11, R.N. Mukherjee Road, Kolkata-700 001.
2. ITO (Exemption), Ward-1(3), Kolkata.
3. DCIT, Circle-2, Kolkata.
4. CIT(A)-25, Kolkata. (sent through mail)
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6. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

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Assistant Registrar
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