

## **Hospital is entitled to claim sec. 11 relief from income arising from pharmacy, an integral part of hospital**

**Summary – The Chennai ITAT in a recent case of Franciscan Sisters of St. Joseph Society, (the Assessee) held that where assessee, a charitable society registered under section 12A, was running a hospital, income earned by it from its pharmacy being integral to main object of running hospital, could not be excluded from computing income eligible for exemption under section 11.**

### **Facts**

- The assessee was a society registered under the Societies Registration Act, 1860. It was also granted registration under section 12A, as a charitable institution.
- The object of the assessee-society was to carry on charitable activities by involving in educational and medical relief activities.
- The assessee-society was running a hospital along with a dispensary for the benefit of public at large.
- During assessment proceeding the Assessing Officer opined that certain activities carried on by the assessee-society such as running pharmacy, typewriting institute, working women hostels etc. involved carrying on of activities in the nature of trade and business and, therefore, such activities, even if meant for advancement of any object of general public utility, could not be treated as charitable purpose within the meaning of proviso provided in section 2(15)
- The Assessing Officer, thus, treated the receipts from said activities as relating to business activities and denied exemption under section 11.
- The Commissioner (Appeals), confirmed the order of the assessing authority.
- On second appeal:

### **Held**

- Firstly, as regards receipts from pharmacy section, it is found that assessee is running a full-fledged general hospital. The assessing authority has, no doubt, accepted the charitable nature of activities carried on by the assessee - society in respect of that hospital. The assessee is also running a dispensary. Number of patients are visiting the hospital and dispensary on a daily basis. Patients are admitted as in-patients and they are also treated as out-patients.
- For all the in-patients undergoing treatment in the hospital, medicines are delivered from the pharmacy run by the assessee-society. In respect of out-patients also, most of the patients purchase medicine from the pharmacy run by the assessee. A few of the out-patients might purchase medicines from outside.
- Likewise, few from the public living nearby to the hospital may purchase medicines from the pharmacy run by the assessee-society. The purchase of medicines by the public is absolutely negligible. That negligible amount of sales, if any, cannot decide the nature of activities carried on by

the assessee in running the pharmacy in its hospital premises. The pharmacy is not situated in any commercial area or outside the hospital compound with the intention to invite the public at large to purchase medicines from the pharmacy run by the assessee-society.

- The assessee-society is running the pharmacy within the premises of the hospital and as part of the hospital itself. It is clear that the pharmacy is run by the assessee-society only for the purpose of running the hospital. The hospital cannot be run without a pharmacy attached to it. If an assessee wants to run a hospital, running of the pharmacy is also a must. Therefore, running of the pharmacy by the assessee-society was not an activity carried on incidental to the running of the hospital; but, on the other hand, it was an integral part of the hospital run by the assessee.
- In these circumstances, the assessing authority has erred both on facts and in law in holding that the pharmacy run by the assessee-society is a separate unit, running as a business. The Assessing Officer has observed that the assessee-society has maintained separate accounts for the pharmacy section. Maintaining accounts separately for pharmacy section does not decide the nature of the activities carried on by the assessee through running of the pharmacy. Separate accounts are maintained by the assessee for the purpose of proper accounting and internal control. Even in the case of charitable hospital, it is not possible to provide medicines to every patient, free of cost. It is only in very deserving cases, a charitable institution could provide medicines free of cost.
- Therefore, running of a pharmacy set up as part of the hospital, involves purchase and sale of medicines. Therefore, not much discussion is necessary to come to a conclusion that in the case of a full-fledged hospital, pharmacy is an essential part thereof and as such, the pharmacy is run as part of the hospital establishment.
- In the facts and circumstances, the collection received by the assessee from its pharmacy section could not be excluded from computing the income eligible for exemption under section 11. The pharmacy collection also forms part of the collections accounted by the assessee from its charitable activities. Therefore, Assessing Officer is directed to give exemption under section 11 in respect of the pharmacy collection as well.
- Once the pharmacy collection is treated as part of its charitable activities, the total of the remaining items works out to less than Rs. 10 lakhs. The law has provided as on date an exclusion of Rs. 10 lakhs from the rigours of denying exemption under section 11, in respect of activities involving carrying on business or similar activities. The total collection from typewriting institute, working women's hostel and crèche work out to less than Rs. 10 lakhs, by virtue of the exclusion clause, those amounts also could not be considered for disallowing exemption under section 11.
- Therefore, the entire income of the assessee is entitled for relief of exemption provided under section 11. The Assessing Officer is directed to redo the assessment on the above line.
- In the result, this appeal filed by the assessee is allowed.