

Amendment to sec. 11 denying dep. to trust is prospective in nature: ITAT

Summary – The Cochin ITAT in a recent case of MAJ Hospital., (the Assessee) held that where nursing school was located within hospital's premises and students of nursing school got training in hospital, assessee's activities of running hospital and nursing school were intricately connected and dependent on each other and thus, was one inseparable activity entitling to exemption under section 11(1)

Amendment to section 11 denying depreciation to trust is prospective in nature

Facts

- The assessee was a charitable trust registered under section 12A. For the assessment year 2011-12, return of income was filed declaring *Nil* income after claiming exemption under section 11.
- The Assessing Officer treated the income received from running a hospital and nursing school as business activity and exemption under section 11 was denied.
- On appeal, the Commissioner (Appeals) held that the assessee was entitled to exemption under section 11 in respect of the income received from hospital. However, with regard to the income from nursing school, it was held that it was not entitled to exemption under section 11.
- On second appeal:

Held

- The school of nursing run by the assessee is located in the same premises, where the assessee runs the hospital. The students of the nursing school get training in the hospital. There cannot be nursing school, where the students are not trained in hospitals. The hospital and nursing schools are intricately connected and dependent on each other and in fact is part of one inseparable activity. The main objective of the assessee trust is to render medical reliefs by running a hospital. Article 4(iv) of the trust deed authorizes the assessee to engage in any legitimate activity for the attainment of objects of the charitable institution.
- It is clear from the article 4(iv) of the trust deed that the carrying on the activity of nursing school is part of the objects of the assessee-trust and that both medical relief and education are charitable objects entitled for exemption under section 11(1). The above view was further confirmed by the Department Circular No. 11/2008, dated 19-12-2008, wherein it is stated that the activities with regard to education and medical relief are not hit by the restrictive provisions contained in the proviso to section 2(15). Accordingly, the income of the school of nursing is not to be assessed as business income but as arising out of charitable activities of the trust eligible for assessment under section 11(1).

- Further, it is noticed that the income for the relevant year from the hospital is Rs. 7,13,38,194 whereas the income of the nursing school is only Rs. 15,23,338, *i.e.*, 2.14 per cent of the total income of the hospital. Moreover, on perusal of the accounts for the year ending, it is found that there was excess application in the case of hospital which was to be carried forward in the subsequent years. The Apex Court in the case of *Addl. CIT v. Surat Art Silk Cloth Mfgr. Association* [1978] 121 ITR 1/[1979] 2 Taxman 501 had held that if the dominant object is charitable then the incidental object for attainment of the dominant/primary object would also be charitable in nature. It was further held by the Apex Court that there is a very clear distinction between the object of a trust to carry on a business activity and the carrying on an activity of profit for achieving its objects. The Apex Court in the case of *Asstt. CIT v. Thanthi Trust* [2001] 247 ITR 785/115 Taxman 126 had also held that the assessee is entitled to the assessment under section 11 of the income derived from an activity incidental to the achievement of the objects of the trust. For these reasons, it is held that the assessee's activities of running the hospital and the nursing school is intricately connected and dependent on each other and it is one inseparable activity and both are entitled to exemption under section 11(1).