

Relief to persons suffering from HIV/AIDS falls into category of 'medical relief' u/s. 2(15)

Summary – The Delhi ITAT in a recent case of India HIV/AIDS Alliance., (the Assessee) held that Activities in form of medical relief for patients and creating awareness about HIV and AIDS for purpose of its eradication are charitable activities falling into category of 'medical relief' under section 2(15)

Facts

- The assessee was a company registered under section 25 of the Companies Act, 1956 and also registered under section 12AA. The main object of the assessee was to provide relief to persons suffering from HIV/AIDS by providing financial, technical and managerial assistance to fasten the cure and community support to those suffering from that disease. It was further the object to advance the education of the public concerning the prevention of the above disease and to collaborate with other NGOs for the above objects. The assessee filed its return for assessment year 2010-11 claiming exemption under sections 11 and 12.
- The Assessing Officer was of the view that the assessee was not in the field of education, medical relief or relief to poverty but was carrying on 'object of general public utility' as per section 2(15). He further noted that assessee had received a grant from international HIV/AIDS Alliance, UK and other agencies and on receipt of grant, for implementation of projects, assessee also charged management fees from its donor agencies and therefore Assessing Officer was of the view that activity of charging fee in lieu of execution of projects for donor agencies was like a business activity wherein service charges were taken for rendering services to the donor. Therefore, Assessing Officer held that assessee was not carrying on any object other than object of general public utility. He further held that excess of income over expenditure itself indicated that there was a profit component in the activity of the execution of the projects. Therefore, he held that assessee was covered by the proviso to section 2(15) and claim of the assessee being a charitable institution was rejected. A proposal for withdrawal of registration under section 12AA had also been sent to the Commissioner (Exemption).
- On appeal. The Commissioner (Appeals) held that there was no proper jurisdiction in the order of the Assessing Officer for denying exemption under section 11(1) to the assessee and accordingly the appeal of the assessee was allowed.
- Meanwhile, on the proposal sent by the Assessing Officer to the Commissioner (exemption), he withdrew the recognition granted to the assessee for registration under section 12AA holding that the assessee was carrying on the activity for the purposes of the profit and was not a charitable organisation not carrying on the charitable activities as specified under section 2(15).
- On cross appeals to the Tribunal:

Held

- According to the provisions of section 2 (15) which defines the 'charitable purpose' which includes relief to the poor, education, yoga, medical relief along with many other objectives and also the advancement of any other object of general public utility. On looking at the object of the assessee as well as the activities of the assessee, it is apparent that assessee is carrying on the activities for the purpose of eradication of HIV AIDS disease. Therefore the purpose of the assessee is charitable falling into category of 'medical relief'. The proviso of section 2 (15) only applies to the objects of general public utility and not to the medical relief. In view of this it is opined that the assessee is carrying on the charitable activities of medical relief falling under section 2 (15). Further, merely because the assessee receives the grant and also implement the project on behalf of the various organisation for eradication of HIV/AIDS, its activities do not become a business activity or non-charitable. Further for the purpose of implementation of each of the project, it charges the management fees to defray all other expenditure and administrative cost of the assessee. Merely charging the management fees does not make the activity of the medical relief of the assessee as business activity. The Commissioner(Appeals) has also given the similar finding in para number 4.4 of his order for assessment year 2010 - 11 wherein he has followed his order for assessment year 2009 - 10. Further, in his order where he has recorded the fact that the foreign global fund the donor to the assessee gives 85 per cent of the donation to the government of India for the HIV AIDS which runs the AIDS program in the name of National AIDS control Organisation and it is only about 15 per cent of the total donations which are given to other societies for awareness and treatment to the poor HIV AIDS patients. It is also the fact he has recorded that the assessee spends the whole amount through various societies and trust and the assessee is also running its own project for the welfare of the HIV and AIDS patients. Further it is also the fact that assessee is a section 25 company under the companies act 1956 which cannot carry on any business activities. In view of the above facts it is apparent that assessee is existing for and is carrying on the charitable activities in the form of medical relief for HIV and AIDS patient and the awareness about the disease. In view of the above facts, the order of the Commissioner(Appeals) for assessment year 2010-11 is confirmed and the appeal of the revenue is dismissed.
- As has been already held that assessee is carrying on the activities of medical relief for eradication and education of HIV AIDS patients the assessee is entitled to the registration under section 12AA as there is no finding by the Commissioner(exemption) that the activities of the assessee are not genuine. Same is not the case of the departmental representative also. In view of this the order passed by the Commissioner (exemption) cancelling the registration already granted to the assessee is cancelled by passing an order under section 12AA(3) and the Commissioner (exemption) is directed to restore the registration of the trust under section 12AA. The Assessing Officer is also directed to grant benefit of sections 11 and 12 to the assessee. In the result appeal of the assessee is allowed.