

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH, CHENNAI

BEFORE Dr. O.K.NARAYANAN, VICE-PRESIDENT AND  
SHRI S.S. GODARA, JUDICIAL MEMBER

ITA No. 1897(Mds)/2013  
Assessment Year : 2009-10

M/s Franciscan Sisters of  
St. Joseph Society No.VIII,  
St. Louis Convent,  
St. Thomas Mount,  
Chennai - 600 016.

v. The Joint Commissioner of  
Income Tax (Exemptions)-II,  
Chennai - 600 034.

PAN : AAAAF 0021 B  
(Appellant)

(Respondent)

Appellant by : Shri G. Baskar, Advocate  
Respondent by : Shri Shaji P. Jacob, IRS, Addl.CIT

Date of Hearing : 2<sup>nd</sup> January, 2014  
Date of Pronouncement : 6<sup>th</sup> January, 2014

**ORDER**

PER Dr.O.K.NARAYANAN, VICE-PRESIDENT

This appeal filed by the assessee-society pertains to  
assessment year 2009-10. The appeal is directed against the

order of Commissioner of Income Tax (Appeals)-VII at Chennai, passed on 3.10.2013. The appeal arises out of the assessment completed under Section 143(3) of Income-tax Act, 1961.

2. The assessee is a society registered under the Societies Registration Act, 1860, on 26<sup>th</sup> February, 1955. The society is also granted registration under Section 12A, as a charitable institution, through an order of the Commissioner of Income Tax, Tamil Nadu – V, on 9.8.1973. The assessee-society is also registered with Ministry of Home Affairs, Government of India, for the purpose of reporting details and utilization of funds received from outside India.

3. As per the records available before us, the object of the assessee-society is to carry on charitable activities by involving in educational and medical relief activities along with programmes of rural development and other miscellaneous social service activities.

4. In view of the above objects, the assessee-society is running a hospital by name “St. Thomas Hospital” at St. Thomas

Mount, Chennai. The society is also running a dispensary for the benefit of public at large. It also runs a number of schools providing general education as also a special school for nursing. The society was also running a typewriting institute. Other activities of the assessee-society are running a working women's hostel, students' hostel, crèche and old-age homes.

5. While computing the assessment for the impugned assessment year, the Assessing Officer observed that certain activities carried on by the assessee-society involve 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, cannot be treated as charitable purpose within the meaning of proviso provided in Section 2(15) of the Income-tax Act, 1961, subsequent to the relevant amendment brought therein. The Assessing Officer listed out such activities in the nature of business, as given below, along with the total receipts accounted by the assessee against those activities:-

(1) Pharmacy	:	₹ 2,25,78,151
(2) Typewriting Institute	:	₹ 1,04,650
(3) Working Women's Hostel	:	₹ 5,44,350
(4) Creche	:	₹ 56,000

6. In the case of pharmacy, the Assessing Officer observed that it is annexed to the St. Thomas Hospital and engaged in sale of medicine to public which amounts to business activity. Separate books of accounts are maintained for the pharmacy business. In the case of typewriting institute, the Assessing Officer has observed that assessee was collecting fees from students undergoing the training. Therefore, it is commercial in nature. In respect of working women's hostel, again the Assessing Officer has observed that facilities are provided against payment of fees and therefore, it is in the nature of business activity. In the case of crèche also, the Assessing Officer has observed that fees are collected against admission of children and therefore, it is an activity commercial in nature.

7. In the light of above observation, the Assessing Officer treated the above receipts accounted by the assessee as relating to business activities and accordingly denied exemption under Section 11 of the Income-tax Act, 1961. In respect of receipts arising out of other activities, such as running of hospital, schools, etc., the assessing authority has granted the

benefit of Section 11 to the assessee-society. A portion of the income of the assessee-society has been brought to tax on the ground that certain activities involve carrying on of activities in the nature of business.

8. When the matter was taken in first appeal before CIT(Appeals), he confirmed the order of the assessing authority and dismissed the appeal filed by the assessee. The assessee is aggrieved and therefore, the second appeal before the Tribunal.

9. The relevant grounds raised in the present appeal read as below:-

“(1.1) The Commissioner of Income Tax (Appeals) erred in confirming the order of assessment denying exemption u/s.11 of the Income-tax Act.

(1.2) The Commissioner of Income Tax (Appeals) erred in observing that the assessee does not deny the carrying on activities of typewriting institute, women’s hostel, crèche and pharmacy on a profitable basis.

(1.3) The finding of the Commissioner of Income Tax (Appeals) that the appellant did not deny selling of medicines to outsiders. Even assuming so, sale of medicines is only an object of providing medical relief to the poor virtually at cost and would not make it an object of profit.

(1.4) The Commissioner of Income Tax (Appeals) went wrong in holding that the appellant runs dispensaries in two places in a commercial manner, which finding is perverse; and in any event providing medical relief is covered in the first two limbs of Sec.2(15).

(2.1) The Commissioner of Income Tax (Appeals) went confirming the disallowance of depreciation and that it amounts to double deduction.

(2.2) The Commissioner of Income Tax (Appeals) failed to follow the various authorities cited before him and went wrong in relying on a decision which is not applicable to the facts of the case.”

10. We heard Shri G. Baskar, the Advocate, appearing for the assessee-society and Shri Shaji P. Jacob, the Additional Commissioner of Income Tax, appearing for the Revenue.

11. The crucial question to be answered in the present appeal is whether certain activities pointed out by the assessing authority are in fact carried out in the nature of business/commercial activities.

12. The first item so considered by the assessing authority is the receipts from pharmacy section. It is to be seen that assessee is running a full-fledged general hospital at St. Thomas Mount. 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 is not an activity carried on by the assessee incidental to the running of the hospital; but, on the other hand, it is an integral part of the hospital run by the assessee.

13. 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.

14. In the facts and circumstances, we find that the collection received by the assessee from its pharmacy section cannot be excluded from computing the income eligible for exemption under Section 11 of the Income-tax Act, 1961. 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.

15. Once the pharmacy collection is treated as part of its charitable activities, the total of the remaining items work out to less than ₹ 10 lakhs. The law has provided as on date an exclusion of ₹ 10 lakhs from the rigours of denying exemption

under Section 11, in respect of activities involving carrying on business or similar activities. The total of collection from typewriting institute, working women's hostel and crèche work out to less than ₹ 10 lakhs and therefore, by virtue of the exclusion clause, those amounts also cannot be considered for disallowing exemption under Section 11.

16. It is sufficient to state that, therefore, the entire income of the assessee is entitled for relief of exemption provided under Section 11 of the Income-tax Act, 1961. The Assessing Officer is directed to redo the assessment on the above line.

17. We make it very clear that this appeal has been decided on the basis of the particular set of facts surrounding the issues raised before us. The appeal is decided on the basis of the facts of the case. No binding proposition has been laid down. Therefore, there is no question of treating this decision as a binding precedence for similar cases without going into the facts of those cases.

18. In result, this appeal filed by the assessee is allowed.

Order pronounced on Monday, the 6<sup>th</sup> of January, 2014 at  
Chennai.

sd/-  
(S.S. Godara)  
Judicial Member

sd/-  
(Dr. O.K.Narayanan)  
Vice-President

Chennai,  
Dated, the 6<sup>th</sup> January, 2014.

Kri.

- Copy to: 1. Appellant  
2. Respondent  
3. DIT(Exemptions), Chennai  
4. CIT(A)-VII, Chennai-34  
5. DR  
6. GF.