* **HIGH COURT OF DELHI : NEW DELHI**

ITA No.184 of 2007

% Judgment reserved on: 26th March, 2008

Judgment delivered on: 3rd April, 2008

DIRECTOR OF INCOME TAX (EXEMPTION)
Laxmi Nagar,
New Delhi. ..... Petitioner.
Through: Ms.P.L.Bansal, Adv.

Vs.

JAIPUR GOLDEN CHARITABLE CLINICAL
LABORATORY TRUST
2, Institutional Area, Sector-3,
Rohini, New Delhi-85. ..... Respondent
Through: Mr.Prakash Kumar, Adv.

Coram:
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

V.B.Gupta, J.

Present appeal has been filed under Section 260A of the Income Tax Act, 1961(for short as 'Act') against the

order dated 1st May, 2007 passed by Income Tax Appellate Tribunal, Delhi Bench 'G' (for short as 'Tribunal') in ITA Nos.3649 & 3317/Del/05 relevant for the assessment year 2001-02.

2. The brief facts leading to dispute are that the Assessee is a Charitable Trust registered under Section 12A(1) of the Act. It is running a hospital called Jaipur Golden Hospital at 2-Institutional Area, Rohini, New Delhi. It filed its income tax return for the assessment year 2000-01 declaring 'Nil' income. In the course of assessment proceedings, it was noticed by the Assessing Officer that Assessee had received donations from 61 consulting doctors who had opted to give donations of Rs.10,000/- each under the terms and conditions. According to the terms and conditions, the Assessee was entitled to deduct 20% of the consulting charges and the balance amount to be paid to the consulting doctors. It further provided that if the consulting doctors paid donations of Rs. 10,000/- then they would be entitled to 85% of the consulting charges instead of 80%.

3. The Assessing Officer was of the view that donations received were not as per provisions of Sections 11 & 12 of the Act and are forced contribution as per agreement executed between doctors and the Hospital authorities. Therefore, he treated the impugned donations of Rs.6,10,000/- as "Income from Other Sources", applying the provisions of Section 56 to 59 of the Act.

4. Aggrieved with the order of the Assessing Officer, the Assessee filed appeal before Commissioner of Income Tax (Appeals) [for short as CIT(A)] who confirmed the order passed by the Assessing Officer, holding that the donations were not voluntary but are under a contractual scheme formulated by the Assessee and, therefore, the said cannot be treated as income derived from property held under trust. Accordingly, he denied benefit of Section 11 of the Act to the Assessee and dismissed the appeal.

5. Thereafter the Assessee filed an appeal before the Tribunal and vide impugned order, the Tribunal deleted the addition of Rs.6,10,000/- made by the Assessing Officer being contribution received by the Assessee from the

doctors towards corpus of the fund holding that the said amount could not be treated as income of the Assessee. It was optional for the consulting doctors to contribute donation of Rs. 10,000/- and the said donations were not forced donations.

6. Thus, the question arises as to whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the donation of Rs.6,10,000/- received by the Assessee from doctors towards corpus holding are voluntary in nature in view of the provisions laid down in Sections 11 & 12 of the Act.

7. It is contended by the learned counsel for the Revenue that donations were not given by the doctors out of their own free will but were given under a contract. The mere fact that out of 141 doctors, 61 doctors had opted for such scheme, did not convert the forced contribution into voluntary contribution so as to claim exemption under Section 11 of the Act.

8. Section 2(24)(iia) of the Act states that any voluntary donation received by a trust, whether the donation is

towards corpus or generally, is income of the trust. But Section 2(24) (iia) of the Act has to be read with Section 12 of the Act. Section 12 deals with the income of trusts and institutions from voluntary contributions, and Section 12(1) reads as follows:-

> "**12. Income of trusts or institutions from contributions.**
>
> (1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by a institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of Section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that Section and Section 13 shall apply accordingly."

9. In ***CIT vs. Sthanakvasi Vardhman Vanik Jain Sangh, (2003) 260 ITR 366(Guj.),*** the issue before the Gujarat High Court was that whether donation received by the assessee-trust of Rs.1,85,064/- which was not utilized for the object of the trust, was income of the trust?

10. It was held by the Gujarat High court that:-

> "On the plain reading of section 12, it is obvious that any voluntary contribution which is made with a specific direction that they shall form part of the corpus of the trust or institution would not be deemed to be income derived from the property held under trust wholly for charitable or religious purposes. Thus, the donation of Rs.1,85,064/- which was received by the Assessee-trust with a specific direction for construction of wadi formed part of the corpus of the trust and was not income of the trust."

11. Further, Section 11 of the Act also is worded in the same way as expression within the parenthesis of Section 12. Section 11 of the Act deals with income derived from property held for charitable or religious purposes. It provides, inter alia, that if the income is applied wholly to charitable/religious purposes in India, it is to be excluded from the total income of the recipient.

13. The concept of 'voluntary contribution' has been explained by N.D.Ojha C.J. speaking for the Division Bench (as his Lordship then was), in the case of ***CIT vs. Madhya Pradesh Anaj Tilhan Vyapari Mahasangh (1988) 171 ITR 677*** as:

> "The contributions, in order to be voluntary, had to be made willingly and without compulsion and the money was to be gifted or given gratuitously without consideration….."

14. In the view of the above discussion, it is clear from the facts of the case that the donations received were voluntary contributions. For this purpose, relevant clause 6 reads as under:-

> "20% collection charges will be deducted before issuing the cheque. If you offer to collect donation of Rs. 10,000/- per year collection charges will be levied at the rate of 15%."

15. From the perusal of the above clause, it is clear that it was optional for the consulting doctors to contribute donations which are also apparent from the fact that only 61 doctors opted for such arrangement out of 141 doctors working for the Assessee. The above mentioned clause neither binds nor forces the doctors. It only gives the option to give or arrange donations in case he wants less deduction from the professional fee payable to him. Considering this condition it can be said that the donations by the doctors have been given of its own volition and without any force. In this view, the action of the Assessing

Officer in holding that donations received were forced donations was not justified.

16. Further, the Tribunal also gone through the receipts issued by the Assessee trust which shows that contribution by doctors was towards corpus of the fund and, therefore, could not be treated as income of the Assessee.

17. In view of the above discussion, it is clear that in the present case, the voluntary contributions did not constitute income in the hands of the recipient trust. The Assessee had received voluntarily contribution towards corpus of the fund and consequently the sum of Rs.6,10,000/- could not be treated as income of the Assessee. Thus, no fault can be found with the order passed by the Tribunal and no substantial question of law arises at all.

18. Hence, the appeal filed by the Revenue is, hereby dismissed.

V. B. GUPTA, J.

MADAN B. LOKUR, J.

April 03, 2008
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