



\$~28

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 361/2023 & CM No.34475/2023**

COMMISSIONER OF INCOME TAX,
EXEMPTION, DELHI

.....Appellant

Through: Mr Abhishek Maratha, Sr Standing
Counsel with Mr Akshat Singh,
Standing Counsel.

versus

M/S BHAI HOSPITAL TRUST

.....Respondent

Through: Mr Mayank Nagi with Tarun Singh,
Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

11.07.2023

%

[Physical Hearing/Hybrid Hearing (as per request)]

1. Via this appeal, challenge is laid to the order dated 18.06.2021 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
2. The Tribunal, in the appeal, was examining the sustainability of the order dated 19.07.2011 passed by the Director of Income Tax (Exemptions), New Delhi.
3. Broadly, the Tribunal has set aside the aforementioned order on the following grounds:
 - (i) First, the registration of the respondent/assessee under Section 12A of the Income Tax Act, 1961 [in short, "Act"] has been set aside with retrospective effect, by taking recourse to the provisions of Section 12AA(3) of the Act, which was inserted in the statute on 01.06.2010. In this context, it was noticed that the respondent/assessee was registered on 30.03.1980.

ITA 361/2023

page 1 of 3



(ii) Second, there was no bar to remit funds to another trust i.e., Dr. Bhai Mohan Singh Foundation. The record shows, that the respondent/assessee had borrowed Rs.15.76 crores from an entity going by the name Oscar Pharmaceuticals Pvt. Ltd. Out of this amount, Rs.13.65 crores was donated to Dr. Bhai Mohan Singh Foundation.

4. Mr Abhishek Maratha, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that the provisions of Section 11 of the Act would not apply to the respondent/assessee.

4.1 In this context, reliance was placed by Mr Maratha on the provisions of Section 13(1)(a)&(c)(ii) read with sub-section (3) of the Act.

5. *Prima facie*, it appears to us that cancellation of registration with retrospective effect may not be sustainable. However, as to whether the transaction in issue could have been carried out is an aspect, which would require some examination.

6. Issue notice.

6.1 Mr Tarun Singh accepts notice on behalf of the respondent/assessee.

7. Learned counsel for the parties will file their written submissions, not exceeding three pages each, at least five days before the next date of hearing.

8. To be noted, an application i.e., CM No.34475/2023 has been moved on behalf of the appellant/revenue seeking condonation of delay in re-filing the appeal.

8.1 According to the appellant/revenue, there is a delay of 300 days.

9. The respondent/assessee will have liberty to file a reply to the above-captioned application.



- 9.1 The reply will be filed within the next four weeks.
10. List the matter on 08.12.2023.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 11, 2023

aj

Click here to check corrigendum, if any