

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'H' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.1048/Mum/2022
(Assessment Year :2015-16)**

**ITA No.1049/Mum/2022
(Assessment Year :2016-17)**

&

**ITA No.1050/Mum/2022
(Assessment Year :2017-18)**

Dy. Commissioner of Income Tax (E)-1(1) 6 th Floor, MTNL Building Cumballa Hill Dr. GD Deshmukh Marg Padder Road Mumbai – 400 026	Vs.	M/s. Karuna Medical Society Karuna Hospital, Hospital Road, Jeevan Bima Nagar Borivali (W) Mumbai – 400 103
PAN/GIR No.AAATK0426A		
(Appellant)	..	(Respondent)

Assessee by	Ms. Aarti Vissanji & Shri Kashyap Vapari
Revenue by	Shri Vivek Anand Ojha
Date of Hearing	27/07/2022
Date of Pronouncement	27/07/2022

आदेश / ORDER

PER M. BALAGANESH (A.M):

These appeals in ITA Nos.1048/Mum/2022, 1049/Mum/2022 & 1050/Mum/2022 for A.Y.2015-16, 2016-17 & 2017-18 arise out of the

order by the Id. Commissioner of Income Tax (Appeals) National Faceless Appeal Centre (NFAC) in appeal No.CIT(A)-1, Mumbai/10206/2017-18, CIT(A)-1, Mumbai/10716/2018-19 & CIT(A)-1, Mumbai/10535/2019-20 respectively dated 19/03/2022 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 22/11/2017, 13/12/2018 & 05/12/2019 respectively by the Id. Dy. Commissioner of Income Tax (Exem.)I(1), Mumbai (hereinafter referred to as Id. AO).

Identical issues are involved in all these appeals and hence, they are taken up together and disposed of by this common order for the sake of convenience.

2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in treating the running of a pharmacy as an activity incidental to the attainment of the objectives of the assessee society which is running a hospital in terms of Section 11(4A) of the Act in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. At the outset, we find that the Id. AO had sought to treat the conduct of the assessee in running a pharmacy on commercial basis. The Id. AO on perusal of the financials of the pharmacy and the assessee society on overall basis observed that the surplus earned in pharmacy contributed substantially to the overall surplus earned by the assessee society. He also observed that the pharmacy sells medicines to outsiders also. With these observations, the Id. AO concluded that assessee society running a pharmacy is not an activity incidental to the

attainment of the objectives of the society and sought to bring to tax the surplus earned by pharmacy alone on commercial basis.

3.1. We find that the Id. CIT(A) had granted relief to the assessee based on orders passed by this Tribunal in assessee's own case for A.Yrs 2010-11 to 2013-14, wherein the same issue has been addressed by this Tribunal in favour of the assessee. The Id. DR before us vehemently argued that the Tribunal order is not accepted by the Revenue and the department has preferred further appeal to the Hon'ble Bombay High Court and the same are pending. It is not in dispute that assessee is a charitable trust duly registered u/s.12A of the Act and entitled for exemption u/s.11 of the Act. It is not in dispute that the main objective of the assessee trust is education and medical relief to the public at large, *interalia* among others. We find that the issue in dispute is no longer res integra in view of the decision of this Tribunal for A.Yrs 2010-11 and 2011-12 in the case of assessee in ITA Nos. 6861/Mum/2014 and ITA No.4307/Mum/2015 respectively dated 14/12/2015 wherein by placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT vs. Thanthi Trust reported in 247 ITR 785; decision of Hon'ble Jurisdictional High court in the case of DIT vs Bombay Billion Association Dharma NO Kanto Trust reported in 254 ITR 708; decision of Hon'ble Calcutta High Court in the case of Aditanar Educational Institution vs. Addl. CIT reported in 224 ITR 310 and the decision of the Hon'ble Jurisdictional High Court in the case of Baun Foundation Trust vs. CCIT reported in 251 CTR (Bom) 237. We find that the Hon'ble Jurisdictional High Court decision referred to supra in the case of Baun Foundation Trust squarely addresses the issue in dispute before us wherein it was held that the activity of Chemist / Pharmacy was held to be incidental or ancillary to the dominant object or purpose for running a hospital.

Respectfully following the judicial precedents relied upon hereinabove, we do not find any infirmity in the order of the Id. CIT(A) granting relief to the assessee in the instant case. Accordingly, the grounds raised by the Revenue are dismissed.

4. In the result, appeals of the Revenue are dismissed.

Order pronounced in open Court on 27/07/2022

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 27/07/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary / Asstt. Registrar)
ITAT, Mumbai