

**IN THE INCOME TAX APPELLATE TRIBUNAL “PATNA BENCH”, PATNA**  
**(VIRTUAL HEARING AT KOLKATA)**

**SHRI DUVVURU RL REDDY, VICE PRESIDENT**  
**SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 65/Pat/2020**  
**Assessment Year: 2013-14**

**I.T.A. No. 66/Pat/2020**  
**Assessment Year: 2014-15**

**&**

**I.T.A. No. 67/Pat/2020**  
**Assessment Year: 2015-16**

**Deputy Commissioner of Income Tax,**  
**(Exemptions), Circle, Patna,**  
4<sup>th</sup> Floor, Lok Nayak Bhawan,  
Dak Bunglow Chowraha,  
Patna - 800001 .....**Appellant**

**vs.**

**M/s Deo Mangal Memorial Trust,**  
6 Military Flats, S.K. Puri,  
Bihar - 800001  
[PAN: AAATD9423G] ..... **Respondent**

**Appearances by:**

Assessee represented by : None

Department represented by : Ashok Kumar, CIT

Date of concluding the hearing : 01.01.2025

Date of pronouncing the order : 10.01.2025

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. In the present three matters it is seen that there is a delay in filing of appeals which has been requested to be condoned by the Revenue. For the sake of convenience, the application for condonation of delay for AY 2013-14 is extracted as under:

*“With reference to the subject it is to convey that the Order u/s 250 for A.Yrs. 2013-14 to 2015-16 of Ld. CIT(A)-1, Patna were received in CIT(E), Patna on 05.03.2020.*

*Due to unforeseen circumstances arises in the wake of COVID-19 across India including Bihar & Jharkhand and lockdown imposed by Government of India and the Government of Bihar, it was not possible to file the petition in due time.*

*Therefore, it is requested to kindly condone the delay in filling appeal and accept the appeal u/s 253(2) of the Income-tax Act, 1961 in the said case."*

It is seen that the request for condoning the said delays are similarly worded for the remaining two appeals. Hence, based on the reasons given for AY 2013-14, the delay in filing of the appeals is hereby condoned and these three matters are admitted for adjudication.

1.1 This is a batch of three appeals having additions made on same issue for all the three years under consideration. Accordingly, these three matters are being disposed of by a single order. For the sake of convenience, the appeal for AY 2013-14 (ITA No. 65/Pat/2020) is being taken as the lead case. In this case, it is seen that it is an old pending matter which for some reason has been allowed to linger on. It is also seen that ever since the hearing on 16.10.2023 none have appeared from the side of the petitioner, being the assessee. In any case, it is decided to not keep this matter pending any longer and the case is taken up for adjudication on the basis of documents already on record, including the paper books filed by the assessee.

2. The present appeals emanate from the orders passed by the Ld. Commissioner of Income Tax (Appeals)-Patna-1 [hereafter 'the Ld. CIT(A)'], u/s 250 of the Income Tax Act, 1961 (hereafter 'the Act') as under:

- (i) Assessment Year 2013-14 – order dated 24.02.2020.
- (ii) Assessment Year 2014-15 – order dated 18.02.2020
- (iii) Assessment Year 2015-16 – order dated 18.02.2020

Through the impugned orders, the Ld. CIT(A) is seen to have deleted the addition made by the Ld. AO. The Ld. AO has recorded a finding that the assessee is having receipts under the following heads (as on 31.03.2013):

- (i) College Fee – Rs. 12,83,05,000.00
- (ii) Hospital receipts – Rs. 2,70,33,405.96
- (iii) Hostel receipts – Rs. 1,63,86,667.00
- (iv) Pharmacy receipts – Rs. 35,09,829.00
- (v) Other receipts – Rs. 12,24,776.25

Furthermore, the Ld. AO found that the receipts from pharmacy exceeded the tolerance limit of 20% as per the proviso to section 2(15) of the Act. It is seen that there is also a supporting finding that considerable expenses have been claimed under the following heads, which have been debited as under:

| <i>Expenses Claimed</i>                 | <i>A.Y. 13-14</i>   | <i>A.Y. 12-13</i>   |
|-----------------------------------------|---------------------|---------------------|
| <i>Advertisement</i>                    | <i>3,881,536.00</i> | <i>36,890.00</i>    |
| <i>Consumables</i>                      | <i>5,387,964.00</i> | <i>3,853,562.00</i> |
| <i>Power &amp; Fuel</i>                 | <i>2,301,813.00</i> | <i>1,746,850.00</i> |
| <i>Legal &amp; Professional Charges</i> | <i>1,465,212.00</i> | <i>0.00</i>         |
| <i>Welfare Expenses</i>                 | <i>860,163.80</i>   | <i>0.00</i>         |
| <i>Travelling &amp; Conveyance</i>      | <i>2,834,827.00</i> | <i>68,140.00</i>    |

Thereafter, it is also recorded in the Ld. AO's order that the expenses could not be fully verified and hence some disallowances were also made and added to the quantum on which the claim of exemption u/s 11(1) of the Act was already denied.

2.1 Before the Ld. CIT(A), this matter was discussed and the Ld. CIT(A), who has given an extensive finding which may be summarized as under:

(a) The figure of Rs. – 7,06,307/- of gross profit from sales of medicine has been disputed.

(b) It has been held that the fact of separate books of accounts allegedly not being maintained of the pharmacy business has been given undue

weightage by the Ld. AO. The relief u/s 11(1) of the Act was to be allowed to the assessee-trust.

(c) Basis for disallowing expenses has not found favour with the Ld. CIT(A) and accordingly the action of Ld. AO was held as untenable.

Broadly on the basis of these findings none of the actions of Ld. AO found support with the Ld. CIT(A).

2.2 Aggrieved with this action of Ld. CIT(A), the Revenue has filed the present three appeals. As earlier mentioned, the lead case is for AY 2013-14, hence the grounds of appeal in the instant case are reproduced for reference:

*“1. The Ld. CIT(A) has erred in law as well as facts of the case in deleting the addition of Rs. 4,81,15,488/-ole surplus) in holding that the assessee has maintained separate books of account of the pharmacy whereas the assessee has never shown pharmacy store as its institution and no separate books of account was produced during assessment proceedings and restricting disallowance @ 10% of Rs.87,41,738/- (under heads of Advertisement, Legal & Professional Charges, Welfare Expenses and Travelling & Conveyance) which were added and disallowed by the A.O. in the assessment order passed u/s 143(3) of the Income Tax Act, 1961 on 23/03/2016.”*

3. Before us, the Ld. DR argued the matter and stated that the pharmacy business was represented commercial activity and for this purpose the assessee had not maintained any separate books of accounts and thereby argued that the assessee was covered under the last limb of section 2(15) of the Act being “the advancement of any other object of general public utility”. The Ld. DR argued that once the proviso to section 2(15) of the Act was applicable then the action of the Ld. AO was otherwise justified.

3.1 The Bench sought the assistance of the Ld. DR in going through the detailed paper book filed by the assessee and it was observed that the assessee is conducting activities which are broadly yielding receipts under 5 heads:

- (1) College receipts
- (2) Hospital receipts
- (3) Hostel receipts
- (4) Pharmacy receipts and
- (5) Other receipts

The facts on record were considered along with the perusal of all documents, with the help of Ld. DR.

4. We have carefully considered the submission of Ld. DR and also perused the contents of paper books and carefully gone through the orders of authorities below. A plain reading of section 2(15) of the Act would reveal that in case a charitable organization is carrying out the activities pertaining to relief of the poor; education; yoga, medical relief; preservation of environment, and preservation of monuments or place or objects of artistic or historic interest; then the proviso will not be applicable as it is triggered only when the residual limb of the definition of charitable purpose being “any other object of general public utility” is involved. In this case, it has not been clearly brought out by either the Ld. AO or the Ld. CIT(A) as to whether the assessee is wholly and exclusively involved with medical relief or is doing other activities which would fall in the residual object mentioned in section 2(15) of the Act. It is evident that until and unless all or some activities fall under the residual object then only the proviso restricting the carrying on of commercial activity would come into play. It is seen that the running of hospital is also mentioned, which would put that activity in the category of medical relief. However, since there are other revenue generating activities also mentioned then it becomes difficult to segregate and a relocate under various items included in the definition of “charitable purpose” u/s 2(15) of the Act. For more clarity, on this issue the matter deserves to be remanded back to the Ld. AO for exactly determining under which object defined in section 2(15) of the Act does the activity of the assessee falls in. Furthermore, the addition made while

disallowing expenses also deserves a second look since there was some recording of fact that supporting evidences were not filed before the Ld. AO in justification of the same. On this also this matter is remanded back to the file of Ld. AO for revisiting the disallowances made by him. We direct accordingly.

5. Before parting with this issue, we hasten, to add that in case the assessee is found to be eligible for relief u/s 11(1) of the Act then any additions made would need to be considered in the light of the said provision. Also, in case it is found that the case of the assessee-trust does not fall within residuary object mentioned in section 2(15) of the Act then the proviso to the said section cannot be triggered. However, since the matter has been remanded back to the file of Ld. AO it is expected that the verification of facts would be done in light of the provision of section 2(15) of the Act and section 11(1) of the Act for assessing the correct income of the trust.

5.1 The decision for AY 2013-14 [ITA No. 65/Pat/2020] shall apply mutatis mutandis to the AYs 2014-15 and 2015-16 also.

6. In the result, these appeals filed by the Revenue are allowed for statistical purposes.

Order pronounced in the court on 10.01.2025

Sd/-  
**(Duvvuru RL Reddy)**  
**Vice President**

Sd/-  
**(Sanjay Awasthi)**  
**Accountant Member**

Dated: 10.01.2025  
AK, P.S.

*Copy of the order forwarded to:*

1. M/s Deo Mangal Memorial Trust,
2. Deputy Commissioner of Income Tax, (Exemptions), Circle, Patna
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches