Cit (Exemptions), Mumbai vs Sir Kikabhai Premchand Settlement

ID: F2J-C-2421 **Court:** Bombay High Court
Case: INCOME TAX APPEAL NO. 2328 OF 2018 **Date:** 2025-11-25

Bombay High Court Cit (Exemptions), Mumbai vs Sir Kikabhai Premchand Settlement ... on 25 November, 2025 Author: R.I. Chagla Bench: R.I. Chagla 2025:BHC-OS:22234-DB

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 2328 OF 2018

CIT (Exemptions), Mumbai Room No. 616, Piramal Chambers, Lower Parel, Mumbai - 400 012 ... Appellant V/s. Sir Kikabhai Premchand Settlement Trust No.XI, Plot No. 96, Kikabhai Building, Sion Matunga Estate, Sion, Mumbai - 400 022 PAN : AABTS7221E ... Respondent

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Mr. Suresh Kumar for the Appellant Mr. Rohan Shah, Senior Counsel (through V.C.) with Ms. Vidushi Maheshwari and Ms. Renita Alex i/b. India Law Alliance for the Respondent _______________________________________

CORAM : R.I. CHAGLA AND FARHAN P. DUBASH, JJ.

RESERVED ON : 20TH NOVEMBER 2025 PRONOUNCED ON : 25TH NOVEMBER 2025

ORDER (Per Farhan P. Dubash, J.) :

1. This is an Income Tax Appeal filed under Section 260-A of the Income Tax Act,1961, (the Act) by the Appellant-Revenue impugning the order dated 27th December 2017 (impugned order) passed by the Income Tax Appellate Tribunal (ITAT/Tribunal) in Income Tax Appeal No.779/MUM/2017 for the Assessment Year (AY) 2012-13 interalia dismissing the Appeal filed by the Revenue. 1/8 ::: Uploaded on - 25/11/2025 ::: Downloaded on - 25/11/2025 21:12:57 ::: JPP 9. ITXA 2328.2018.doc

2. By the impugned order, the ITAT has followed an earlier decision of its Co-ordinate Bench in the Assessee's own case for AY 2010-11 (in ITA No.3141/Mum/2015) and AY 2011-12 (in ITA No.5441/Mum/2015) and interalia upheld the order of the Commissioner of Income Tax (Appeals) (CIT) dated 7th November 2016 which allowed the Appeal filed by the Assessee challenging the order by the Assessment Order (AO) dated 10th March 2015 passed under Section 143(3) of the ACT by the Assessing Office (ITO).

3. In exercise of the power under Section 263 of the Act, the CIT recorded his findings on three (out of five) grounds raised in the Appeal before him (since ground nos. 1 and 5 were general in nature, and did not need separate adjudication) in the AO dated 10th March 2015.

4. Mr. Suresh Kumar, learned Counsel for the Appellant - Revenue refers to the impugned order and submits that the same is passed on the basis of an erroneous interpretation of the provisions of Section 11 of the Act and in violation of the Indigent Patient and Weaker Section Scheme framed by this Court and therefore, requires to be set aside.

5. He invites our attention to the following substantial questions of law that are proposed in paragraph 6 of the present Appeal. They are set out hereunder :- 2/8 ::: Uploaded on - 25/11/2025 ::: Downloaded on - 25/11/2025 21:12:57 :::

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"6.1. Whether on the facts and in the circumstances of the case and in Law, the Hon'ble ITAT is correct in allowing the exemption u/s. 11 of the I.T. Act, 1961 ignoring the fact that the assessee Trust while calculating 2% of the Gross Billing has excluded the doctor's fees which resulted in shortfall in the transfer of Indigent Patient Fund (IPF Account) ? 6.2. Whether, on the facts and in the circumstances of the case and in Law, the Hon'ble ITAT is correct in allowing the exemption u/s. 11 of the I.T. Act, 1961 by not considering the fact that the assessee has violated the directions given by the Bombay High Court that 2% amount of Gross Billing is to be transferred to the 'Indigent Patient Fund' (IPF Account) for the betterment of poor and Indigent patients, and therefore the exemption claimed u/s. 11 of the I.T. Act, 1961 had been rightly disallowed by the A.O.?"

6. Per contra, Mr. Rohan Shah, learned Senior Counsel on behalf of the Respondent - Assessee submits that the present Appeal does not raise any substantial question of law inasmuch as the ITAT has rightly followed its earlier decisions in the Assessee's own case for AY 2010-11 and AY 2011-12 dated 24th February 2017 and confirmed the order of the CIT(Appeal) which rightly set aside the AO dated 10th March 2015.

7. We have heard both, Mr. Suresh Kumar and Mr. Rohan Shah and with their able assistance, also perused the record.

8. The issue pertains to the Indigent Patient and Weaker Section Scheme (the Scheme) framed by this Court under which, each year, 3/8 ::: Uploaded on - 25/11/2025 ::: Downloaded on - 25/11/2025 21:12:57 ::: JPP 9. ITXA 2328.2018.doc the Assessee - Trust is required to transfer an amount equivalent to 2 percent of its gross billing amount to the Indigent Patient Fund Account (the Account). It appears that whilst computing this amount, the Assessee had excluded doctor's fees of Rs.11,90,04,614/- by contending that the said 2 percent (of its gross billing) is required to be computed, net of the amount of fees paid by it to its doctors. On such basis, the Assessee is stated to have utilized almost 86 percent of its total billing towards charitable objectives and deposited the 2 percent, as required under the Scheme into the Account.

9. However, in the AO, the ITO appears to have proceeded on the basis that the Assessee had erroneously excluded the Doctor's fees whilst computing its gross billing and, as a result, held that there was a shortfall on its part in transferring the requisite 2 percent amount to the Account. On this premise, the ITO held that the Assessee's character ceased to be charitable in nature and he has accordingly, denied exemption to the Assessee under Section 11 of the Act and taxed the surplus amount of Rs. 6,81,70,680/- whilst initiating separate proceedings for computation of penalty thereon.

10. Whilst deciding the appeal filed against the AO, the CIT has relied on his own earlier order dated 30th September 2015 passed in the case of the Assessee itself, albeit for the earlier AY 2011-12 4/8 ::: Uploaded on - 25/11/2025 ::: Downloaded on - 25/11/2025 21:12:57 ::: JPP 9. ITXA 2328.2018.doc wherein, whilst deciding the identical issue that had also arisen in the previous year, he had already recorded a finding that the Scheme laid down by the Bombay High Court did not have any clause which impinges upon the entitlement of the Assessee for examination under Section 11 of the Act, once a certificate under Section 12A of the Act had been granted to it by the Competent Authority of the Income Tax Department.

11. In his order dated 7th November 2016, the CIT also recorded a further finding that the question as to whether the Assessee (charitable hospital) has to deduct 2 percent of the amount of doctor's fees also, as held by the ITO, whilst computing it's gross billing amount and credit such amount into the Account, cannot be answered by the Income Tax Authority since the exclusive jurisdiction to answer this issue vests with the Charity Commissioner. On this basis, the CIT held that the ITO could not have recorded a finding of violation of the Scheme, unless an adverse view to that effect had already been taken by the Charity Commissioner (who was the competent authority to adjudicate the issue as to whether there was a violation of the Scheme), which had admittedly not been done in the present case, even till date. The CIT has also relied on a decision of Gujarat High Court in Hiralal Bhagwati vs. CIT1 in support.

1 (2000) 246 ITR 188 (Guj) 5/8 ::: Uploaded on - 25/11/2025 ::: Downloaded on - 25/11/2025 21:12:57 ::: JPP 9. ITXA 2328.2018.doc

12. In the impugned order, whilst considering the said issue, the ITAT has also referred to its earlier decision passed in the Assessee's own case wherein, after analysing the similar set of facts in the previous year, they had held that in law, the ITO could not have usurped the role of the Charity Commissioner and declare that the Assessee had breached the Scheme, moreso when, there was no evidence produced, which stated otherwise. The ITAT also was impressed with the fact that the ITO could not have gone into this issue and recorded such an erroneous finding in the absence of any evidence before him that the Assessee's status of a charitable trust registered under the Bombay Public Trusts Act, 1950 being revoked by the Charity Commissioner. As a result, the ITAT dismissed the Appeal filed by the Revenue.

13. The scope of revision proceedings under Section 263 of the Act is now well settled by a catena of decisions including the decision of this Court in Commissioner of Income Tax v/s. Gabriel India Ltd. 2. In order to exercise power under sub-Section (1) of Section 263, there must be material before the CIT to consider that the order passed by the ITO was erroneous, insofar as it is prejudicial to the interest of the Revenue. The term 'erroneous' is further explained to mean that it must be an order which is not in accordance with the law or one, 2 (1993) 71 taxman 585 (Bombay) 6/8 ::: Uploaded on - 25/11/2025 ::: Downloaded on - 25/11/2025 21:12:57 ::: JPP 9. ITXA 2328.2018.doc which has been passed without making any enquiry in undue haste. Thus, there must be material available on the record called for by the CIT to satisfy him that the aforesaid requisite was present and if not, the CIT has no authority to initiate proceedings for revision.

14. Whilst considering revision proceedings under Section 263 of the Act, where two views are possible and the ITO has taken one view with which the CIT does not agree, such a view cannot be said to be 'erroneous' unless such view is unsustainable in law. This is laid down by a catena of decisions, including the decision of this Court in Commissioner of Income Tax-9 vs. Future Corporate Resources Ltd.3.

15. The CIT and ITAT are fact finding authorities. Both these authorities have considered the issue raised by the Revenue and negated the same by recording detailed findings thereon, which have also been discussed and recorded hereinabove and which view, is also endorsed by us. A similar view has also been recorded by this Court in Commissioner of Income Tax (Exemptions) vs. Lata Mangeshkar Medical Foundation4 which involved a similar case where the Lata Mangeshkar Medical Foundation (Assesee) was denied the exemption under Section 11 of the Act.

16. There is nothing in the record before the ITAT or even before us 3 (2021) 132 taxmann.com 173(Bombay) 4 (2024) 162 taxmann.com 118 (Bom.) 7/8 ::: Uploaded on - 25/11/2025 ::: Downloaded on - 25/11/2025 21:12:57 ::: JPP 9. ITXA 2328.2018.doc that the earlier orders of the ITAT have been set aside or overruled in any manner by the High Court. The ITAT found no reason to interfere with the order of the CIT. Therefore, also we find no reason to interfere with the impugned order.

17. It is also relevant to note that in the present Appeal, the Revenue has only challenged the impugned order passed by the ITAT and not the earlier order dated 7th November 2016 passed by the CIT which was confirmed by it.

18. Considering the above position, we are of the considered opinion that the ITAT has neither committed any perversity nor applied incorrect principles to the given facts. In fact, it would not be out of place to mention that no such ground of perversity of findings made in the impugned order has also been raised in the Memo of Appeal filed by the Appellant - Revenue. In the circumstances, we are of the considered view that the present Income Tax Appeal does not raise any substantial question of law.

19. The present Income Tax Appeal is, therefore, dismissed. There shall be no order as to costs.

(FARHAN P. DUBASH, J.) (R.I. CHAGLA J.)

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